

White Paper on Executive Order 13690: Update to the Federal Flood Risk Management Standard

In late January 2015, the Administration issued Executive Order (EO) 13690 to update the Federal Flood Risk Management Standard (FFRMS) that helps define rules and regulations for Federal activities in a floodplain. This new FFRMS will require Federal agencies to update their flood-risk reduction strategies for any action that cannot be avoided in the floodplain. Shortly after issuing the Executive Order (EO) and the new standard, the Federal Emergency Management Agency (FEMA) issued proposed guidelines for individual Federal agencies to follow when implementing the EO and standard. Public comments on the proposed implementation guidelines are due April 6.

Current regulations define the floodplain as the area subject to a one percent or greater chance of flooding in any given year – the 100-year floodplain. FEMA identifies the floodplain on community maps where Federal flood insurance is required and building restrictions are imposed to minimize flood losses. All levels of government rely on the maps to make informed decisions about emergency response, land use, and construction in the floodplain.

This new EO and the accompanying FFRMS redefine the floodplain and provide new direction for federal agencies to avoid or manage actions in the floodplain. Consistent with the President's Climate Action Plan, the new EO and FFRMS seek to improve the nation's preparedness and resilience against flooding. Incorporating the new FFRMS will ensure that agencies expand management from the current base flood level (BFE) to a higher vertical elevation and corresponding horizontal floodplain. The FFRMS also requires review of Federal actions that are outside, but may affect the floodplain.

Federal agencies will select one of three options for establishing the flood elevation and hazard area:

1. Utilizing best-available, actionable data and methods that integrate current and future changes in flooding based on science,
2. Two or three feet of elevation, depending on the criticality of the building, above the 100-year, or 1%-annual-chance, flood elevation, or
3. 500-year, or 0.2%-annual-chance, flood elevation.

Federal agencies may make exceptions for reasons of national security, emergency response, and when application of the FFRMS would be demonstrably inapplicable for a Federal facility or structure. Otherwise Federal facilities and structures must adhere to the National Flood Insurance Program and the FFRMS.

Federal actions must consider alternatives outside the floodplain. When the floodplain cannot be avoided, the EO and the FFRMS requires federal agencies to use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration. All new or rehabilitated construction (50% or more net increase in value of an existing structure) must be elevated to the new standard. Federal agencies may consider cumulative improvements over time when calculating increased value.

Potential Concerns with EO 13690 and the FFRMS

- The Executive Order and the FFRMS were developed by a Federal agency working group with limited, if any, input for state and local governments or stakeholders who share in flood protection and emergency response. The opportunity for public comment

is limited to the implementation guidelines, essentially instructions to Federal agencies, rather than the standard itself. Congress expressed its concern with the standard by prohibiting funding until the Administration solicited and considered input from Governors, mayors, and other stakeholders. Yet the EO and FFRMS are now final.

- The scope of the EO and FFRMS is significant and will include every action of the federal government, including grants, loans, loan-guarantees, FHA and VA loans, wastewater permits and infrastructure, transportation projects, utility licenses and infrastructure, etc.
- While the NFIP itself might not be affected, its coverage could be extended to new areas not previously required to purchase flood insurance and subject to floodplain building restrictions. Flood insurance is required in special flood hazard areas, which may be expanded as Federal agencies, including FEMA, apply one of the four approaches required in the EO and FFRMS for defining the floodplain.
- No economic analysis of the costs and benefits of this EO and FFRMS have been conducted, despite the significant potential impacts of every Federal action being made subject to the FFRMS.
- Different Federal agencies can adopt different floodplains and management requirements that apply to a community, creating confusion about the land use and building ordinances that must be adopted to comply with the National Flood Insurance Program.
- While providing flexibility to Federal agencies can be beneficial, it can also create lengthy delays and legal challenges about the floodplain approach an agency selects. Existing practice sets a mapping process and flood risk standards that are readily understood by all levels of government and the public.
- The EO and FFRMS do not allow for “grandfathering” of existing Federal actions, nor those under development. Questions are being raised about whether constructed projects will have to be modified to comply with the FFRMS, or if studies and designs must be rescoped.
- The requirement that Federal actions must first consider natural systems, ecosystem processes, and natural-based approaches can delay or significantly increase the cost of a Federal action for these often land-intensive alternatives. Those applying for Federal permits would be subject to the same requirements.
- Federal agencies could be charged with making floodplain-related evaluations for which they have limited expertise, rather than relying on the expertise of the agencies historically charged with flood protection and floodplain management.