

## E.O. 13690 and Federal Flood Risk Management Standard

President Obama issued Executive Order (E.O.) 13690 on January 30, 2015, to improve the nation's resilience to floods and mitigate federal post-disaster recovery costs. E.O. 13690 requires federal agencies to update their policies related to federal investments in floodplains. It also adds a Federal Flood Risk Management Standard (FFRMS) and a new floodplain definition to existing administration policy on floodplain management established by E.O. 11988 from 1977. Congress is weighing whether, and if so how, to influence E.O. 13690 implementation. Public comment on draft revised guidelines for implementing E.O. 11988 to reflect E.O. 13690 and the FFRMS is open through May 6, 2015 (see FR Doc. 2015-02284).

### FFRMS Development and Application

Since 1977, E.O. 11988 has been the framework for federal agencies to avoid or minimize actions in or impacting floodplains. As defined in E.O. 11988, federal action is any federal activity, including

- (1) acquiring, managing, and disposing of Federal lands, and facilities;
- (2) providing Federally undertaken, financed, or assisted construction and improvements; and
- (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

The FFRMS was released with E.O. 13690. The existing Mitigation Framework Leadership Group and the Federal Interagency Floodplain Management Task Force were involved in the development of the FFRMS and draft implementing guidelines. Whether the development process provided sufficient opportunities for input to satisfy the requirement in the Consolidated and Further Continuing Appropriation Act of FY2015 (P.L. 113-235) for input by governors, mayors, and other stakeholders is the subject of debate. The Administration is expected to respond to comments and publish the final implementing guidelines. Each affected department or agency is tasked with developing its own policies, guidance, or rules to implement E.O. 13690 and the FFRMS; these activities may provide additional opportunity for public comment.

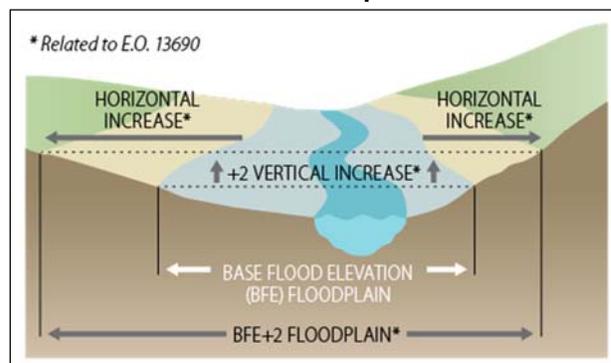
### Contents of E.O. 13690 and FFRMS

In addition to the creation of a formal standard by E.O. 13690, two other changes are new methods to define floodplains in E.O. 13690 and the vertical elevation requirement of the FFRMS.

### Floodplain Definition

Under E.O. 13690, a floodplain is defined using one of four possible approaches. In the near term, for most federal actions, the most common approach to define the floodplain is likely to be 2 feet above the elevation of the 100-year flood (i.e., a flood with 1% chance of occurring in any given year), which is known as the base flood elevation (BFE). For critical actions, the floodplain would be defined as 3 feet above the BFE (i.e., BFE+3). A critical action is defined as any activity for which even a slight change of flooding would be too great (e.g., prisons, emergency services facilities). Because of the new approaches to defining the floodplain, the area covered by E.O. 13690 is wider than the floodplain covered previously by E.O. 11988, as illustrated by **Figure 1**.

**Figure 1. Horizontal Increase in Floodplain Resulting from Vertical Increase in Floodplain Definition**



Source: CRS.

### Vertical Elevation Requirement

The FFRMS requires for new construction or substantially improved structures (i.e., structures with improvements or repairs that cost more than 50% of the value of the structures) a vertical elevation of BFE+2 or similarly protective mitigation measures. For critical actions, the FFRMS vertical elevation requirement is BFE+3 or similarly protective risk reduction measures.

### Agency Implementation

Given the federal action definition in E.O. 11988, numerous departments, agencies, programs, and projects that are covered by E.O. 11988 also may be affected by E.O. 13690. These include the activities of the Departments of Agriculture, Defense, Energy, Health and Human Services, Housing and Urban Development, the Interior, and Transportation; the Environmental Protection Agency; the General Services Administration; and NASA. An agency or department may “except” (i.e., exempt) particular activities from the FFRMS for national security, emergency actions,

## Other Implementation and Policy Issues

and federal facilities for which it is demonstrably inappropriate. What is known and what remains uncertain regarding agency-level implementation of E.O. 13690 and the FFRMS varies depending on the extent that publicly available documents address various topics. To illustrate this variation, **Table 1** answers or raises select questions related to the Federal Emergency Management Agency (FEMA) and Army Corps of Engineers (Corps).

**Table 1. Select Questions Raised by E.O. 13690 and FFRMS for FEMA and Corps**

Agency/Department, Program, and Questions
<p><i>FEMA: Disaster Assistance and Mitigation Programs</i></p> <p>How does E.O. 13690 affect FEMA's emergency response programs? The EO does not apply to emergency work undertaken with the authority of Stafford Act, Section 403.</p> <p>How does this affect other Stafford Act sections? FEMA's permanent work to repair and restore facilities, Section 406 of Stafford, is covered by the E.O. 13690. This would include any mitigation activities within a Section 406-funded project. FEMA regulations do not contemplate rebuilding of any facilities unless they are more than 50% damaged.</p> <p>Does the new standard apply to FEMA mitigation programs? As with E.O. 11988, E.O. 13690 covers Section 404, FEMA's Hazard Mitigation Grant Program (HMGP); Section 203, the Pre-Disaster Mitigation Program (PDMP) and the Flood Mitigation Assistance (FMA) Program, which is a part of the National Flood Insurance Program (NFIP).</p>
<p><i>FEMA: National Flood Insurance Program</i></p> <p>The NFIP uses the 100-year flood to indicate Special Flood Hazard Areas (SFHA), as well as a minimum flood level to be addressed by a community's floodplain management ordinances. FEMA stipulates that these ordinances require the first floor of newly constructed buildings in SFHA to be at least BFE. E.O. 13690 does not trigger an update of these local ordinances. According to the Council on Environmental Quality (CEQ) in its fact sheet, "Taking Action to Protect Communities and Reduce the Cost of Future Flood Disasters," E.O. 13690 and the FFRMS are not anticipated to directly affect NFIP standards or rates. One unanswered question is, could there be indirect NFIP impacts given that FEMA may amend FEMA regulations at 44 C.F.R. §9, Floodplain Management and Protection of Wetlands (which were developed in response to E.O. 11988) to address E.O. 13690?</p>
<p><i>Army Corps of Engineers Projects, Repairs and Permits</i></p> <p>Because Corps civil works are often in floodplains, several questions arise. Would many Corps projects by necessity be exempted or comply through a statement of finding on the reason for their location? Would FFRMS create a minimum design standard for Corps coastal storm or flood damage reduction projects? Would all P.L. 84-99 authorized repairs of eligible nonfederal flood-damaged levees, dams, and dunes be exempted as emergency work? To comply with E.O. 11988, the Corps regulatory program is to avoid both significant adverse impacts associated with floodplain occupancy and floodplain development whenever practicable. Do E.O. 13690 and its floodplain definition create new requirements for the regulatory program?</p>

Source: CRS.

Many infrastructure projects take years or decades to plan, design, and construct. Will E.O. 13690 affect actions already in development? Final implementing guidance or agency-specific policies and rules likely will determine how existing projects are "grandfathered." For many activities, E.O. 11988 requirements have been met as part of National Environmental Policy Act (NEPA) compliance.

E.O. 11988 has been executive branch policy since 1977, but the extent to which it was followed in recent decades is unclear. When E.O. 11988 was signed, the Water Resources Council (WRC) was active in coordinating and overseeing executive branch water activities. Since the WRC became inactive in 1983, there was limited oversight of E.O. 11988 implementation beyond floodplain considerations being incorporated within NEPA documents. Who is responsible for overseeing implementation of the amended E.O. 11988 and the FFRMS? Who will review whether agency use of exceptions is consistent with E.O. 13690? One of the alternative approaches to define the floodplain was to use a "climate-informed science approach." Who will determine what qualifies as meeting the requirements for this approach?

E.O. 13690 amends E.O. 11988 to explicitly mention the FFRMS in relation to federal real property and facilities. The FFRMS itself references its application to all federal actions. Which activities are required by E.O. 13690 to follow the FFRMS—all federal actions or only federal real property and facilities? E.O. 13690 establishes the FFRMS. What type of federal document is the FFRMS?

The Administration conducted listening sessions in March 2015 during which many of the questions discussed herein were raised; for some questions, preliminary responses were provided. The final guidelines and agency-level documents will determine official implementation practice.

E.O. 13690 and the FFRMS have been put forth as being in the interest of national security and consistent with the Administration's Climate Action Plan. The Office of Management and Budget released a statement on the federal budget impacts of E.O. 13690 indicating that its implementation is anticipated to increase costs, but the effect on federal obligations and outlays will depend on the appropriations process. No comprehensive benefit-cost analyses of E.O. 13690 and the FFRMS have been released that evaluate anticipated effects on flood resilience and floodplains and the distribution across stakeholders of costs and benefits in the near term and long term. While the President has initiated the FFRMS through his E.O. 13690, Congress can influence implementation through oversight and authorization, appropriations, and other legislation.

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