



May 6, 2015

Mitigation Framework Leadership Group
c/o FEMA Regulatory Affairs Division, Office of Chief Counsel
Federal Emergency Management Agency, DHS
8NE, 500 C Street SW
Washington, DC 20472-3100.

Attention: Docket No. FEMA-2015-0006

Re: Comments on proposed "Revised Guidelines for Implementing Executive Order 11988, Floodplain Management" (January 28, 2015)

The American Exploration & Production Council (AXPC) and the Independent Petroleum Association of America (IPAA) appreciate the opportunity to offer comments on the Revised Guidelines for Implementing Executive Order 11988, Floodplain Management of 28 January, 2015 ("Implementing Guidelines"), issued by the Mitigation Framework Leadership Group (MFLG) of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security. Additionally, we support and incorporate, by reference, the comment letter of the American Petroleum Institute (API) "Comments on proposed Revised Guidelines for Implementing Executive Order 11988, Floodplain Management".

AXPC is a national trade association representing 31 of America's largest and most active independent natural gas and crude oil exploration and production companies. Our members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business, such as downstream refining and marketing. AXPC members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, both offshore and onshore from unconventional sources, and that allow our Nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

IPAA represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by the actions resulting from this regulatory proposal. Independent producers drill about 95 percent of American oil and natural gas wells, produce about 54 percent of American oil, and more than 85 percent of American natural gas.

I. The proposed guidance has far reaching regulatory implications beyond FEMA programs

AXPC shares FEMA's and Executive Order 11988 goals of mitigating flood losses through reasonable regulation of the regulatory floodplain. However, we believe the recently issued Executive Order 13690 and the resulting proposed "Revised Guidelines for Implementing Executive Order 11988, Floodplain Management (January 28, 2015)" will result in Catch-22 regulatory inconsistencies among FEMA, National Flood Insurance Program participating States and Communities (which number over 20,000 nationwide), sister Federal agencies with other Federal Action regulatory responsibilities that must implement these requirements, and local Stakeholders. More specifically, these revised Guidelines have significant regulatory implications in, but not limited to, the following:

- National Flood Insurance Program (Community participation and regulatory requirements within their jurisdictions)
- Clean Water Act permitting (Waters of the U.S Proposed Rule and its inclusion of "floodplain" within its language)
- Federal Land Policy and Management Act ("floodplain" requirements with respect to site development)
- National Levee Safety Program (floodplain protection requirements and standards)
- Endangered Species Act (habitat related floodplain requirements)
- National Wetlands Inventory Project (inventory includes "floodplains")

The above are just a few examples of the potentially expansive impact of this new Executive Order and proposed Guidance.

II. The new proposed methodologies for determining the floodplain will lead to regulatory confusion, inconsistencies and delay

Federal, State and NFIP Communities will now be faced with four (4) options for establishing floodplain elevations and areas, as follows:

- (1) *Climate-informed Science Approach* – Agencies shall use the best available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate and related science to determine the flood elevation and flood hazard area in a manner appropriate to policies, practices, criticality, and consequences. (Note: The proposed Guidance provides that when actionable climate science is available, the Climate-informed Science Approach is preferred.)
- (2) *Freeboard Value Approach* – Agencies shall use the Base Flood Elevation (or 1-percent-annual-chance flood determined using best available data) and an additional height to calculate the freeboard value. The additional height will depend on whether or not the action is a critical action.
- (3) *The "500-year" Elevation Approach* – Agencies shall use the 0.2-percent-annual-chance flood elevation (also known as the "500-year" flood elevation).
- (4) The elevation and flood hazard area that results from using any other method identified in an update to the Federal Flood Risk Management Standard (FFRMS).

This menu of ill-defined optional methodologies will clearly result in a multitude of regulatory inconsistencies, across jurisdictional boundaries, likely leading to stakeholder confusion, increased compliance costs and project delays. Most of the modeling options are ill-defined from a methodology viewpoint, which will lead to technical inconsistencies among regulatory agencies on model utilization and subsequent regulatory implementation. This will be particularly manifested in the Climate-informed Science Approach (especially with this being the preferred model) with the seemingly limitless ebb and flow of climate modeling uncertainties that will result in an ever-changing regulatory footprint. This model option is particularly troubling in its potential for unbounded costs and delay due to evolving science uncertainties.

III. FEMA should delay the proposed guidelines and charge the Mitigation Framework Leadership Group with conducting a comprehensive evaluation of the regulatory changes

AXPC respectfully requests that FEMA delay the proposed guidelines and charge the Mitigation Framework Leadership Group with conducting a comprehensive evaluation of the potential impacts of this proposal. The MFLG evaluation should include a comprehensive analysis of the potential extent of regulatory reach of the proposed guidance along with associated costs of implementation and compliance. Such an evaluation should span Federal, State and Local programmatic jurisdictions. The evaluation should also (1) identify implementation uncertainties, (2) potential for inconsistencies across all jurisdictional levels, and (3) utilize extensive outreach to the various regulatory and stakeholder groups impacted by this proposal for their input. Ultimately, the evaluation should be made a part of this, or any subsequent revised or new guidance proposal; and should be subject to review and comment through the public notice process.

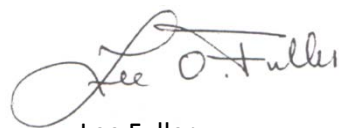
AXPC and IPAA appreciate the opportunity to comment on the proposed “Revised Guidelines for Implementing Executive Order 11988, Floodplain Management” (January 28, 2015). It is our recommendation that FEMA delay the current notice and comment period so as to cause an extensive evaluation of the proposed guidance and enter into comprehensive consultation with the various regulatory and stakeholder groups for input prior to any future notice and comment period.

Sincerely,



V. Bruce Thompson
President
American Exploration & Production Council
101 Constitution Ave., NW – Suite 700 E
Washington, DC 20001

202-742-4541 (direct)
303-638-7979 (mobile)



Lee Fuller
Executive Vice President
Independent Petroleum Association of America
1201 15th Street, NW – Suite 300
Washington, D.C. 20005

202-857-4722 (office)