

October 21, 2016

Submitted via www.regulations.gov

Adrian Sevier
Regulatory Affairs Division
Office of Chief Counsel
Federal Emergency Management Agency
8NE-1604, 500 C Street SW
Washington, DC 20472-3100

RE: Seeking Public Comment on FEMA's Proposed Implementation of the FFRMS;
Docket ID: FEMA-2015-0006

Dear Mr. Sevier:

On behalf of the 55 undersigned conservation and taxpayer organizations, we are pleased to submit this letter of comment on the Federal Emergency Management Agency's (FEMA) proposed rule (81 Fed. 57402) to implement Executive Order 13690 and the Federal Flood Risk Management Standard (FFRMS).

Flooding is already the most common and costly natural disaster in the United States and its economic, environmental, and social impacts are of great concern to our members. These impacts are anticipated to increase over time due to the effects of climate change. Recognizing, climate change is exacerbating the nation's vulnerability to flooding, we strongly believe action must be taken at the Federal level to improve the resilience of our communities, and to preserve and protect the nation's floodplains. Executive Order 13690 and the FFRMS not only reinforces the original intentions of Executive Order 11988 – “to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains” but expands upon it by requiring the Federal government to “take action, informed by the best-available and actionable [climate] science,” to improve the nation's resilience to flooding.

Thus, how FEMA chooses to implement the Executive Order and the FFRMS will have long lasting fiscal, social, and environmental implications. FEMA is a leader in disaster management, preparedness, and response, and a significant funder of infrastructure at the state and local level through its pre- and post-disaster mitigation programs. In general, we support FEMA's proposal, but believe reforms must be made to the proposed rule to truly attain the intentions of the executive order to preserve and protect our floodplains and increase community resilience to flooding.

- I. FEMA's approaches to protecting non-critical infrastructure and describing flood conditions are good policy decisions.
 - a. FEMA's use of the Freeboard Value Approach for non-critical projects is an effective mitigation approach

We support FEMA's use of the Freeboard Value Approach for non-critical projects as an effective means to mitigate flood risk. Multiple states and local communities have already implemented elevation requirements that either meet or exceed the elevation requirements required under the FFRMS. Also, we are pleased FEMA will comply with higher state, tribal, territorial, or local government flood risk standards when such standards are more protective than those indicated in the proposed framework. Complying with higher state and local elevation requirements helps to encourage and support communities to adopt higher floodplain protection standards.

- b. FEMA's change of flood terminology is a sound decision

We appreciate FEMA's decision to replace references to the "100-year flood" and "500-year flood" with the "1 percent annual chance flood" and "0.2 percent annual chance flood." Labeling floods using the former terms can cause confusion, and an underestimating of the true flood risk. This change in terminology more accurately portrays the risk.

- c. FEMA's commitment to coordinate with other agencies is necessary to achieve the important goals of Executive Order 13690

We appreciate FEMA's commitment, as outlined in its supplementary policy guidance, to coordinate with other agencies in the implementation of the FFRMS. Such coordination amongst the federal agencies that may play a role in implementing the FFRMS is essential to avoid contradictory rules and duplicative procedures that undermine the important goals of the Executive Order, fail to adequately protect public safety, produce projects that unnecessarily harm the environment, and waste taxpayer dollars.

- II. FEMA must change certain aspects of the proposed rule to satisfy the intentions of the executive order to protect our floodplains and to encourage resilient communities.

- a. FEMA must provide more direction on the use of nature-based approaches

We support ensuring that natural features, including green infrastructure, are included as practicable alternatives for preserving the floodplain, but remain concerned that the proposal does not provide adequate guidance on how to incorporate natural systems, ecosystem processes and nature-based approaches. We urge FEMA to define how to consider natural systems, ecosystem processes and nature-based approaches specifically for riverine systems and to direct recipients of FEMA grants who must comply with these standards to credible sources of information.

- b. FEMA must utilize the Climate-Informed Science Approach as the first choice to determine the flood risk for critical projects

Additionally, we believe FEMA's proposal concerning the protection of critical, federally-funded projects falls short. FEMA's proposed use of the Climate Informed Science Approach (CISA) as a secondary option for determining the FFRMS floodplain and corresponding level of resiliency to which critical projects must be built is not acceptable. Given that critical projects, such as the rebuilding of hospitals and nursing homes after a flood, are deemed projects for which

even a slight chance of flooding would be too great, these projects must account for the impacts of climate change. This is especially true for coastal areas. Sea level rise must be accounted for in planning and designing of critical projects to fully account for future flood risk. Failure to evaluate sea level rise over the next several decades would be an egregious oversight when deciding what to build, where to build, and how to build in coastal environments. As such, the CISA should be the primary approach for determining the FFRMS floodplain and the corresponding level of resilience to which critical infrastructure projects must be built. The FVA should only be used if it provides a higher level of protection over the CISA.

c. FEMA must narrowly define what constitutes an “emergency action.”

Lastly, while we understand the provision in EO 13690 that exempts “emergency actions” from application of the FFRMS, we urge the agency to narrowly define what constitutes an “emergency action.” In the proposed revisions to 44 CFR 9.7, FEMA proposes to adopt the exceptions outlined in Executive Order 13690 in their entirety, which includes an exception for “emergency actions.” However, FEMA has failed to adequately define and differentiate the term “emergency action” from “emergency work.” The latter provides an exception to work performed under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988. However, FEMA makes clear in its definition of the term “emergency work” the two are different terms. Thus, FEMA must provide a definition to ensure the “emergency action” exception is not abused.

We look forward to working with you on this important matter. For any further information, please contact Marisa Escudero at Water Protection Network at EscuderoM@nwf.org.

Sincerely,

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Dean Wilson
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