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ASFPM's FINAL COMMENTS ON FEMA PROPOSED RULE ON FFRMS

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ASFPM is pleased to submit comments on FEMA's proposed rule to implement the Federal Flood Risk Management Standard as required by Executive Order 13690. ASFPM, a professional non-profit, represents 36 chapters and more than 17,000 state and local officials, as well as the private sector and other professionals engaged in all aspects of floodplain management and flood hazard mitigation. All ASFPM members are concerned with reducing our nation's flood-related losses. For more information on the association, its 14 policy committees and 36 state chapters, visit www.floods.org.

ASFPM previously submitted comments on October 3rd and those comments are included here along with our more detailed comments developed since that time.

ASFPM applauds the Federal Emergency Management Agency for producing a draft document that lays out how the FFRMS will be applied to FEMA actions. FEMA is showing leadership among federal agencies to protect taxpayer investments from repeat and future damage from flooding. We hope that ASFPM comments contained herein will be useful to advance wise floodplain management and improve community resilience throughout the nation.

Overall Impressions

ASFPM expresses strong overall support of the FEMA action to move ahead in implementation of FFRMS. This action is very important to protect taxpayer investments in taxpayer-funded disaster costs and mitigation actions. This is especially important in light of more intense storms and changing conditions that are leading to more intensive flooding and damages from extreme events such as those we have seen in the past 12 months in Iowa, Minnesota, Texas, South Carolina, Wisconsin, West Virginia, Louisiana, North Carolina and elsewhere. Approaches to reverse or stop the increase in damage are needed to reverse the loss of lives we are seeing when we do not plan for these increasing flood events.

Development and Eventual Use of CISA

It is important that the federal government begins now to plan for and take the necessary actions to allow for the use of CISA. FEMA over the past decade has embraced a risk management approach. The reason why CISA is so critical is that freeboard by itself will ultimately undermine the advances made in risk management. First this direction is moving away from being able to quantify risk which is fundamental to risk management. Second it presumes that flooding will be worse everywhere; that is not the case and ultimately will lead to misallocation

Dedicated to reducing flood risk and losses in the nation.

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of infrastructure and mitigation dollars. While the proposed FEMA rule provides a lengthy explanation of the challenges to implementing CISA, the absence of any plan of action to eventually transition to a CISA approach is of significant concern. A simple statement that allows CISA data to be used if data is available is inadequate. Instead ASFPM would like to see a plan and actions on how it will begin to transition to CISA. For example, FEMA could commit to undertake some of the basic research through the DHS Science and Technology directorate to evaluate and develop riverine methods to generate CISA data. The topic of CISA was the subject of the [2015 Gilbert White Forum](http://www.asfpmfoundation.org/ace-files/forum/Meeting_the_Challenge_of_Change.pdf) on “Addressing the Challenge of Change” (http://www.asfpmfoundation.org/ace-files/forum/Meeting_the_Challenge_of_Change.pdf).

As a co-leader of the Mitigation Federal Leadership Group (MIT-FLG) and Federal Interagency Floodplain Management Task Force, FEMA could commit to a goal to work with other agencies to develop a CISA approach for coastal and riverine areas within a set timeframe or outline the kinds of data needed to determine CISA. It is important that the key federal agencies (FEMA, USACE, DOT, USGS, NRCS, EPA) agree on a process and parameters so the states and local governments do not see a myriad of federal approaches, but rather a consistent process. For coastal areas, the Technical Mapping Advisory Council (TMAC), whose job is to advise FEMA on the priorities and direction of the flood mapping program, in their December 2015 report *Future Conditions Risk Assessment and Modeling*, calls on FEMA to use global mean sea level scenarios adjusted to reflect local and regional conditions to determine future coastal flood hazard estimates. This recommendation was identified as “short-term” – defined in the report as something that can or should be implemented within two years of the December 2015 report’s completion. Yet there is no mention of such an implementation plan in the proposed rule.

Ultimately, we must safeguard against becoming too lackadaisical in using freeboard when better methods for estimating future risks will become available. Existing data sets can be adjusted using climate trends and future conditions to provide estimates of future flood risk, and methods for incorporating these considerations exist (both riverine and coastal) and are being used in different areas across the United States. For example, climate informed data is available in the Northwest which was produced by the University of Washington Climate Change group. In the Chicago area, the Illinois State Water Survey data recently published and the state of Illinois is updating its hydrology Bulletin 70, and in the Northeast NOAA published climate informed science flows for some New England rivers. These are simply examples, and more exist elsewhere. We also point out that projecting future flooding conditions has another equally important consideration; that of increased watershed development. Current NFIP flood maps do not consider future planned or projected watershed development, which can result in significantly increased flood levels. The 2012 NFIP Reform bill directed the NFIP to consider these future conditions, but that has not yet happened. When implementing the FFRMS, FEMA should take future watershed development into consideration when calculating the hydrology.

8-Step Decision Making Process

ASFPM has several specific comments related to the 8-step decision making process:

Step 1: Floodplain Determination (9.7)

FEMA's proposed rule specifically defines the data sources that will be used for Federal projects and federal actions (that are not projects). ASFPM notes that the list of data sources does not include FEMA generated flood risk products and associated data. Such datasets may include 1% and .2% chance flood data that are not published in an effective FIRM, FIS, or FBFM (i.e. First Order Approximation (FOA) and Base Level Engineering (BLE)). ASFPM urges that these datasets be added to the list of those that must be consulted.

In response to the request in the proposed rule, ASFPM supports FEMA calculating CISA, freeboard and 0.2 percent flood for critical facilities and using the highest of those determinations.

Step 3: Practicable Alternatives (9.9)

ASFPM is concerned that the proposed rules do not strongly emphasize avoidance of flood hazard areas. The huge increase in flood damage we have seen in the past few decades is related to the current national approach of "identify the floodplain and then we will show you how to build in it." This is predicated on the false belief all development can be protected, even in high risk areas. For this reason, ASFPM is strongly opposed to the proposal to eliminate paragraph (d)(2) of § 9.9, which prohibits FEMA from locating a proposed critical action in the 500-year floodplain, if a suitable site exists outside of the 500-year floodplain. The explanation is because the 500-year floodplain is no longer the applicable flood hazard area rather it is the FFRMS floodplain. This explanation totally misses the point of why the standard was in there in the first place – to express a preference for avoidance of the floodplain for critical actions. Instead ASFPM urges that FEMA retain this preference and update the applicable flood hazard area citation.

Similarly, ASFPM has a major concern that the proposed rule allows critical facilities to be constructed in coastal high hazard areas if the project is elevated to the freeboard elevation. Critical facilities should never be constructed in Coastal high hazard areas unless **accessibility and operability are ensured during extreme events**. Katrina, Sandy and other big events are the poster children that showed this must happen to protect lives and make response viable. The rule explains that FEMA proposes to add the requirement to use natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for Federal actions in the floodplain to § 9.9(b). However, the proposed language does not really accomplish this objective: "In developing the alternative actions, the Agency shall use, where possible, natural systems, ecosystem processes, and nature-based approaches." While this encourages such systems/processes/approaches in alternatives, it could lead to a large number of projects not considering them because they are deemed "not possible." Currently FEMA requires that at least three alternatives be examined: Alternative sites outside the floodplain; alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain; and "no action." ASFPM believes that the proposed language should be supplemented by a requirement that at least one alternative must (no exceptions) be inclusive of such systems/processes/approaches or must include a fourth alternative based on natural systems, ecosystem processes, and nature-based approaches. It is not the purpose of step 3 to determine practicality or what is possible. That is the purview of steps 4-7.

Step 5: Minimize Impacts/Mitigation (9.11)

It appears that a significant standard has disappeared without explanation. In the earlier description of step 5, there is a requirement that prohibits new construction and substantial improvement in floodways and coastal

high hazard areas: “Pursuant to 44 CFR 9.11(d), FEMA will not allow new construction or substantial improvement in a floodway, and will not allow new construction in a coastal high hazard area, except for a functionally dependent use.” Proposed language in Section 9.11 concerning coastal high hazard areas states: There shall be no construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the FFRMS floodplain.” Seemingly, there is a significant weakening of the standard - essentially the allowance of new or substantially improved structures - with no explanation. Further, there is no standard mentioned for floodway areas. ASFPM is very concerned with a total reversal of FEMA’s longstanding position on investments in these highest hazard portions of floodplains. Even if there was a need for the repair or replacement of a facility that previously existed – it should be done by exception rather than by right. ASFPM supports the current policy of prohibition with some possible added flexibility for replacement of existing structures. To support taxpayer funded new construction in such high hazard areas without restriction other than constructing to a protection standard is ludicrous.

Concerns about Exceptions

In the proposed revisions to 44 CFR 9.7, FEMA proposes to adopt the flood protection standard exceptions outlined in Executive Order 13690 in their entirety, which includes an exception for “emergency actions.” However, FEMA has failed to define and adequately differentiate the term “emergency action” from “emergency work.” The latter is defined as an exception to work performed under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act). Further, in FEMA’s explanation of the aforementioned definition FEMA states it is changing the previous term for this exception from “emergency action” to “emergency work” to differentiate between the work performed under the referenced Stafford Act sections and the new exception to the application of the flood protection standard, which includes a “non-specific” reference to “emergency action.” Based on this distinction, FEMA is proposing to adopt an undefined exception to the application of the flood protection standard that is potentially very broad in scope. ASFPM urges FEMA to narrowly define these terms when considering exemptions to the EO and specifically recommends further guidance on emergency protective measures, including a methodology for their removal. Otherwise, actions that were meant to be temporary, such as the construction of temporary berms along a river to control flooding, become permanent, and thus should have been subject to the application of the flood protection standard.

The proposed rule adopts the traditional definition of substantial damage found under NFIP minimum standards including the exception for historic buildings. ASFPM believes that there should not be an exception for historic buildings; rather that they should go through the 8-step process to determine if there are practical mitigation alternatives. Because the FFRMS standard is a resiliency standard – there very well may be other options to better ensure resiliency of the historic structure that does not affect its designation. In light of rising sea level and increased storm intensity this does not bode well for historic buildings in high risk areas like St. Augustine, FL. These building will be receiving federal funds from FEMA and not elevating these buildings will lead to continual deterioration and likely complete loss of some of these buildings. Thousands of historic buildings have received the variance during rebuilding, even if "substantial improvement or substantially damaged". It is long past due for this variance to be eliminated, especially in the grant programs subject to the FFRMS, and the

historic buildings must come into compliance. The building elevation/moving technology has greatly evolved so mitigation of these buildings is totally viable. The variance only increases the future flood risk and the historic pre-FIRM buildings are all seeing NFIP rate increases to actuarial.

Other Comments

Recognition of State and Local Standards/Data

We applaud FEMA for expressing a general preference to use local and state standards in the application of FFRMS where those standards are more restrictive. It is extremely divisive when federal actions in a community do not meet standards the community requires for all other actions they approve. However, ASFPM notes that the proposed rule language to implement step 1 (establishment of the FFRMS floodplain), or step 5 (minimize impacts/mitigation) does not include any explicit requirement to use the more restrictive state or local standard. ASFPM would like to see a more clear and explicit statement of intent to use higher state and local standards in these areas.

When determining horizontal floodplain extent, FEMA's proposed rule indicates it may use good information from applicant or other federal agencies. This should indicate FEMA will also use it from states.

Definition of Substantial Improvement/Substantial Damage

ASFPM believes that FEMA should be adopting and enforcing provisions to ensure cumulative substantial damage is mitigated to the FFRMS standard. Given that public buildings are the single largest expenditure under the public assistance program, implementing substantial damage in this way will save taxpayers money.

Thank you for the opportunity to comment. For questions on these comments, please contact Chad Berginnis, ASFPM Executive Director, at cberginnis@floods.org, or Larry Larson, ASFPM Senior Policy Advisor, at larry@floods.org.