

Floodplain Management: Federal Emergency Management Agency Notice of Proposed Rulemaking

Arkansas Environmental, Energy, and Water Law Blog



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09/09/2016

The United States Federal Emergency Management Agency (“FEMA”) published a notice in the August 22nd Federal Register proposing to update its Floodplain Management and Protection of Wetlands Regulations (“Regulations”). See Fed. Reg. 57402.

The Regulations are intended to implement Executive Order 13690 which establishes the Federal Flood Risk Management Standard (“FFRMS”).

FEMA also proposes in the Federal Register Notice to further clarify how the agency applies the FFRMS.

The Associated General Contractors of America (“AGC”) have expressed concern that these requirements (if finalized) would raise costs for actions involving the use of FEMA federal funds for new construction, substantial improvements, or to address substantial damage to a structure or facility. AGC also contends that the proposed changes could result in a requirement to design projects to a higher vertical elevation. The organization believes this could lead to accessibility challenges and higher costs.

The federal regulations found at 44 CFR part 9 describe an eight-step process that FEMA uses to determine whether a proposed action would be located within or affect a floodplain, and if so, whether and how to continue with or modify the proposed action. FEMA notes that Executive Order 13690 and the FFRMS had changed the Executive Branch guidance for defining the “floodplain” with respect to “federally funded projects” (i.e., actions involving use of Federal Funds for new construction, substantial improvement, or to address substantial damage to a structure or facility).

FEMA states that for its Federally Funded Projects it proposes to use the updated definition of “floodplain” contained in the FFRMS. The agency states that the FFRMS allows it to define “floodplain” using any of three “approaches”. It further states that in many cases each of these approaches would result in a larger floodplain and a requirement to design projects such that they are resilient to a higher vertical elevation. Further, for actions that do not meet the definition of a FEMA Federally Funded Project, the agency states it would continue to use the historical definition of floodplain, i.e., the area subject to a one percent or greater chance of flooding in any given year (or the area subject to a 0.2 percent annual chance of flooding in any given year for critical actions).

The proposed rule would also require the use, where possible, of natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for all actions proposed in a floodplain.

[A copy of the Federal Register Notice can be downloaded here.](#)