

# Floodplain Management/Proposed Rules: Associated General Contractors of America Comments

## Arkansas Environmental, Energy, and Water Law Blog



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The Associated General Contractors of America (“AGC”) filed October 21st comments on the Federal Emergency Management Agency (“FEMA”) August 22nd proposal to update its Floodplain Management and Protection of Wetlands Regulations (“Regulations”). See Fed. Reg. 57402. [See previous blog post on the matter here.](#)

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

FEMA also proposes to further clarify how the agency applies the FFRMS.

By way of background, 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 previously noted that Executive Order 13690 and the FFRMS 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 stated in the proposal that the FFRMS allows it to define “floodplain” using any of three “approaches”. It further stated 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 stated 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.

AGC’s October 21st comments note that its members are affected by the Regulations because they:

...regularly undertake activities that FEMA would consider “‘federally funded projects’ (i.e., actions involving the use of Federal funds for new construction, substantial improvement, or to address substantial damage to a structure or facility”) and are therefore subject to the updated definition of “floodplain” contained in the FFRMS.

The organization therefore states that it is seeking to ensure that new or updated floodplain management requirements provide cost-effective, clear, and consistent provisions necessary for the construction industry to continue to improve upon and restore areas damaged by disasters.

AGC preliminarily cites as its concerns:

- The proposed changes would expand the floodplain
- Costs would increase for actions involving the use of FEMA federal funds
- Added confusion and regulatory disparity on projects that require cooperation amongst multiple agencies that may establish the floodplain using different methods
- The changes would not improve the effectiveness of the nation's rebuilding after disasters

The October 21st letter provides both a background/summary of the proposed changes and details the organization's concerns.

[A copy of the October 21st letter can be downloaded here.](#)