

Congress of the United States

Washington, DC 20515

October 17, 2016

The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472

Dear Administrator Fugate:

We are writing to request that the opportunity for public comment on the rulemaking proposed by FEMA on August 22, 2016, to implement Executive Order 13690 and the Federal Flood Risk Management Standard (FFRMS), be extended by a minimum of 90 days in order to maximize the integrity of this proposal and the FFRMS implementation process.

This request for an extension reflects our deep concern over the significant regulatory, economic and disaster mitigation and recovery implications of this proposed rule and the FFRMS. The extension would provide necessary opportunity for meaningful engagement with the public, locally elected officials and a broad array of impacted stakeholders, including local transportation, housing and flood control officials, to address assumptions and flaws in this proposal and the underlying FFRMS policy. To this point, no public participation in the development of the underlying standard-setting in the FFRMS has been solicited by the federal government.

In addition, we request that FEMA utilize this extension in order to provide thorough answers to the following questions:

- 1) FEMA states in 81 FR 57411 that it will use the Freeboard Value Approach (FVA) of Base Flood Elevation (BFE) + 2 for non-critical actions and the FVA BFE + 3 or the Climate Informed Science Approach (CISA) for critical actions, depending on whichever is higher.

It is safe to assume that building to higher elevations generally decreases flood risk, however, what is the analytical justification for using a FVA of BFE + 2 or BFE + 3 feet and/or CISA?

How were these values, which represent a two-fold or three-fold increase in stringency as compared to the Superstorm Sandy Rebuilding effort, determined?

How many local government entities utilize a BFE + 2-foot standard? The BFE + 3-foot standard?

- 2) FEMA states in 81 FR 57411 that it will not enforce the CISA for non-critical actions due to the lack of actionable data on future conditions in riverine areas.

Is there actionable scientific data and comprehensive cost-benefit data available to justify the use of freeboard values of 2 and 3 feet over the base flood elevation in riverine areas? Similarly, is there actionable scientific data and comprehensive cost-benefit data available to justify use of CISA for critical actions? If so, please summarize the results of those data and provide citations.

- 3) The available definition for “critical actions” is overly broad.

What specific projects or actions would not be considered critical actions? Will these critical action designations be made on case-by-case and agency-by-agency bases?

- 4) The national scope of the FFRMS floodplain expansion under the FEMA proposed rule has not been delineated. For example, FEMA estimates that only 18 percent of mapped flood zones have detailed floodplain boundaries of the 0.2 percent annual chance floodplain.

Please describe how application of an arbitrary freeboard standard without consideration for local conditions, including flow direction and drainage patterns, is efficacious.

Will the FVA based upon differences in ground elevation take into account intervening topography between the location of the FEMA Federally Funded Project and the BFE? For example, if the ground elevation of a proposed project is less than 2 feet above BFE but an Army Corps of Engineers accredited levee exists between the BFE and the proposed project location, will the project be consider in or out of the FFRMS floodplain?

- 5) FEMA estimates in 81 FR 57428 that the “freeboard requirements would expand the floodplain by 16.8 percent based on studies conducted in 24 U.S. counties with varied topography.” However, those counties are all coastal and represent a mere 0.76% of the 3,144 counties and county equivalents across the U.S.

Does FEMA believe the analysis of these 24 coastal counties is an adequate sample size or a representative sample from which to draw nationwide estimates of floodplain expansion under the freeboard value floodplain approach? Additionally,

how does the analysis of two dozen coastal counties address inland and riverine floodplain expansion?

- 6) FEMA estimates in 81 FR 57426 that its proposed rule will cost anywhere between \$60.1 million and \$394.7 million over the next 10 years, but is unable to provide any estimate of quantitative benefits.

Why is FEMA unable to provide quantitative benefits as the consequence of full implementation of its proposed rulemaking? Does this inability to quantify benefits call into question the efficacy of the proposed rule and the underlying FFRMS?

- 7) FEMA anticipates in 81 FR 57423 that FFRMS-related cost increases “will either be passed through to taxpayers or result in lower levels of Government services.”

Please provide specific scenarios where lowered levels of Government services could occur under the PA, IA and HMA or other FEMA grant categories.

Please provide an estimate of the number of households and communities for which PA, IA, and HMA or other FEMA grants would no longer be available due to FFRMS-related cost increases.

- 8) Thirty federal departments and agencies have been ordered to submit FFRMS implementation plans to the National Security Council. The list of agencies includes USDA, Commerce, DOD, DOE, HUD, Interior, DOT, EPA, NASA, SBA and Veterans Affairs.

In its capacity as chair of the Mitigation Framework Leadership Group (MitFLG), does FEMA anticipate similar Government services reduction scenarios as a consequence of government-wide FFRMS-related cost increases? What is the government-wide FFRMS cost estimate? Please provide specific scenarios where governmentwide services could be lowered as a consequence of FFRMS-related cost increases.

Does FEMA take into account the economic and regulatory impacts when these projects become more expensive, are delayed, or if the federal government decides to forgo projects altogether due to the lack of available federal funding and inability of stakeholders to pay the increased costs?

- 9) An incongruent array of federally designated floodplains, one for the NFIP and a host of others for federal actions under the FFRMS, will result in confusion and uncertainty for

citizens, regulated parties and the government. As a consequence, the proposed FEMA rulemaking and underlying FFRMS threaten to worsen flood risk reduction efficiency and effectiveness.

Please describe FEMA analysis, plans and expectations, both under the proposed rulemaking and under the broader FFRMS in the agency's capacity as chair of the MitFLG, to avoid the above-described problems.

- 10) The FFRMS, Revised Guidelines, and FEMA proposed rulemaking call for continuously-evolving regulatory designations based on long-range future risk assumptions instead of a clear, transparent and known standard.

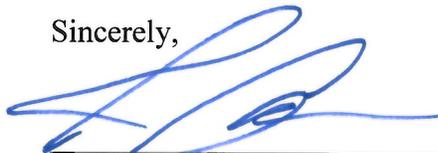
Please describe FEMA analysis, plans and expectations to avoid widespread and counterproductive regulatory uncertainty.

Increasing our nation's durability against floods is a commendable goal, but it is complicated by the uncertainty associated with flood risk determinations. According to the Technical Mapping Advisory Council (TMAC) appointed by FEMA, flood prediction uncertainties for current conditions increase significantly when coupled with the unknowns of future weather patterns and land use. Compelling FEMA and other federal agencies to further mitigate to unjustified standards against undefined threats is unacceptable and will place an undue burden on the communities that will bear the consequences of this policy. Far too many of our constituents have been affected by flood-related loss in recent years, and any government-proposed solutions in which taxpayer dollars will be used deserve careful evaluation of the costs, benefits and scientific rationale in the spirit of EO 13563 and the President's January 21, 2009 "Memorandum on Transparency and Open Government."

As Members of Congress who represent districts located in coastal and riverine areas, we understand the significant costs associated with catastrophic storm damage and flooding. However, we are concerned about the urgent need to balance improved flood management approaches with the equally urgent need to protect local property values, job creation and robust economic productivity. The regulatory impact analysis performed by FEMA in connection with this proposed rulemaking does not inform the public along these lines.

Thank you for your consideration of these requests and we look forward to your response.

Sincerely,



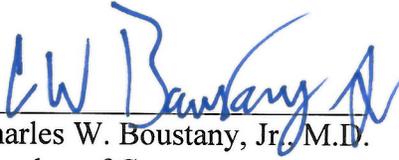
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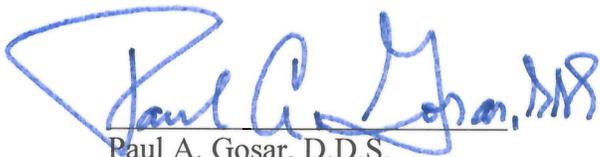
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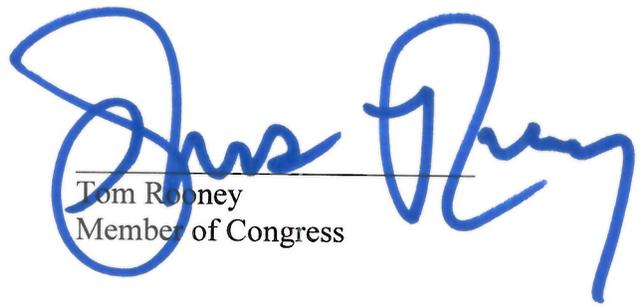
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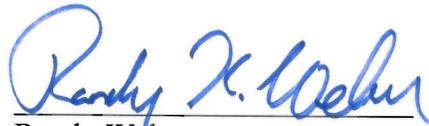
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