



## **National Association of Flood & Stormwater Management Agencies**

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**Subject:** Comments on the USACE proposed Engineering Circular 1165-2-217 to comply with the 2015 Federal Flood Risk Management Standard (FFRMS)

### **Background on NAFSMA Involvement in National Flood Risk Management Initiatives**

The National Association of Flood and Stormwater Management Agencies (NAFSMA) is a local and regional public agency driven organization based in the nation's capital, with a focus on furthering effective flood, floodplain and stormwater management in urban areas. The association's mission for 39 years has been to advocate public policy and encourage technologies in watershed management that focus on flood protection, stormwater and floodplain management.

Many of NAFSMA's members are non-federal partners on flood damage reduction and environmental restoration projects with the U.S. Army Corps of Engineers and in August 2015 NAFSMA entered into a partnership Memorandum of Understanding with USACE and the Assistant Secretary of the Army (Civil Works). In addition, NAFSMA members often participate in the National Flood Insurance Program and are Cooperating Technical Partners with FEMA on its mapping program, are part of the National Flood Insurance Program, and manage National Pollutant Discharge Elimination Permits for stormwater management at the local level. In February 2014, NAFSMA entered into a Memorandum of Understanding with the U.S. EPA on green infrastructure for stormwater management and to assist with providing resiliency from urban flooding.

NAFSMA members are on the front line, protecting their communities and regions from flood hazards that can result in loss of life and property. They are responsible for flood mitigation, stormwater, floodplain and emergency management activities, as well as water quality protection.

NAFSMA has worked closely with both the U.S. Army Corps of Engineers and FEMA to help move the nation's Flood Risk Management programs forward. As part of this effort, NAFSMA has sponsored a number of national forums over the years to raise the visibility and dialogue on these critical national issues and has met regularly with both agencies to discuss these issues.

NAFSMA commented in May 2015 on the implementation guidelines for Executive Order 13690 and the FFRMS; also on December 22, 2015 responding to FEMA's outlined general path forward on implementation and again on October 21, 2016 on FEMA's Proposed Rule to implement EO 13690 and the Federal Flood Risk Management Standard.

NAFSMA's general statements and comments regarding the USACE's draft Engineering Circular are provided below:

- The draft EC is mostly clear and the level of detail with references kept the EC brief.
- NAFSMA concurs with USACE for specifying the CISA as the primary approach for determining the FFRMS floodplain, however an explanation of the reasoning behind this choice is needed in the EC.

- NAFSMA objects to Section 6a(2)(a) regarding routine operations and maintenance activities in a floodplain. This includes all existing USACE projects maintained by non-federal sponsors. This could lead to unnecessary and numerous evaluations of hundreds of projects that are existing and covered by existing agreements and O&M manuals. NAFSMA urges this be eliminated.
- Coordination with the local flood and stormwater managers (especially non-federal partners) is critical for any USACE action and should be mentioned in the EC. Please include the following two paragraphs in Section 7a, 7b, or somewhere more appropriate,
  - “Use the best available information and data from local, state, regional, or federal sources.”
  - “Recognize and possibly use higher elevations, setbacks, or other floodplain management measures if required by state, tribal, or locally adopted code or standards if they are more stringent than the USACE FFRMS floodplain.”
- The explanation in Section 7b regarding how the USACE FFRMS floodplain and elevation is used in the USACE planning and design process is clear and well stated. NAFSMA believes this is one of the most important paragraphs in the draft EC.
- In order to share how the USACE Headquarters staff sees Section 8, General Procedures will work, it would be helpful if the 8-Step FFRMS decision-making process was visually integrated into the Corp’s current planning process diagram and included as a figure in the draft EC. Also, in Section 8 in brackets [ ], generally indicate where each of the 8 FFRMS steps corresponds to the Corps Planning Process steps.
- Based on experiences of some NAFSMA members with the USACE planning process, Step 4 explained in 8d is not currently performed as described. NAFSMA recommends the USACE amend current guidance to include this, particularly the new requirement to determine if proposed actions or alternatives will induce development in the floodplain.
- Section 8f, Step 6 does not appear logical. What conditions or assumptions changed for the alternatives or measures analyzed in Steps 4 and 5? This seems more like an alternatives comparison and screening step.
- NAFSMA supports the requirement for feedback and plans to improve the EC (Section 15, Internal Reporting), however, USACE needs to provide your project partners (non-federal sponsors) and impacted stakeholders a chance to provide experiences and lessons learned, as well.
- It is difficult for many project partners (non-federal sponsors) and local, state, regional and tribal entities to understand the USACE “lingo” and references to multiple legal and USACE documents. Suggest editing for typical Corps District and local agency staff to improve changes of success, reduce misunderstandings, and reduce USACE staff time to translate and correct mistakes.
- NAFSMA urges that lines 283-294 be amended as shown below. The current language reads like the USACE does not want to pursue any more studies and projects with a non-federal sponsor. Below are examples from Lines 283-294 shown as track changes.
  - e. When a determination is made that no practicable alternative to undertaking an action in the floodplain exists, document it appropriately. Describe and adequately support the features or qualities of the floodplain that make it advantageous over alternative, non-floodplain sites.
  - f. When determining that an action must be taken in the floodplain, minimize potential harm caused by the action by restoring and preserving the natural and beneficial values of the floodplain to the extent possible.

NAFSMA’s specific recommendations for improving clarity, level of detail, intent, and overall understanding by federal partners (non-federal sponsors), impacted stakeholders, and local floodplain and stormwater managers are:

Lines 34-38 and Line 213

State all the exceptions to the EC in one place – Section 6c(1). This edit will also clarify the purpose of Section 2. Applicability.

Recommendation: Move lines 34-38 “except that this EC is not 34 applicable to the Corps Regulatory Program executed under the 35 Clean Water Act (33 USC 1344), Sections 9 and 10 of the Rivers 36 and Harbors Act of 1899 (33 USC 401, 403), and Section 103 of 37 the Ocean Dumping Act (33 USC 1413).” to line 213 and edit accordingly.

Line 146

Insert “Existing” before “Policy”.

Line 149

Add the following new sentence at the end of the paragraph – “The Corps will coordinate and seek input from project partners (non-federal sponsors) prior to finalizing the updates.”

Line 156

To clarify for the various project partners and types of water resources projects, please also reference Section 1014, WRRDA 2014 that consolidated all local-lead authorities.

Line 160

After “categories”, add “except for those listed in Section 6a.”

Line 165

There are three methods for determining the FFRMS floodplain and each federal agency can identify a different FFRMS floodplain. It is not the same as the 1% annual chance floodplain which has a lot fewer variations and is generally accepted by local floodplain and stormwater managers and engineers.

Recommendation: Change the first “The” to “A”.

Line 166

It appears the USACE is establishing a new design standard with this lead sentence which is not true.

Recommendation: To clarify, add “as described in Section 7b” after “processes”.

Line 182

Different federal agencies can identify and use different FFRMS floodplains and elevations for their projects or programs.

Recommendation: Add “USACE” before “FFRMS”.

Lines 199-200

It’s not clear what types of projects would be affected by this policy. Please elaborate or give examples.

Line 228

An equally important policy of the USACE should be coordinating and collaborating with the project partners (non-federal sponsors) during all project phases.

Recommendation: Add “in coordination with project partners (non-federal sponsors)” after “that”.

Line 237

Typo – Change “8b” to “8a”.

Line 242

In the future, there can be multiple FFRMS floodplains established by other federal agencies prior to the initiation of a USACE action.

Recommendation: After “agencies,” add “or where FFRMS floodplains have already been established by other federal agencies,”

#### Line 254

The USACE FFRMS floodplain event is not the only event used for assessing and selecting a recommended project.

Recommendation: After “elevation” insert “in addition to the established vertical flood elevations (e.g. 50% → 0.2% annual chance events)”.

#### Line 328

The FFRMS documents are written such that the Climate-Informed Science Approach (CISA) appears to be just about accounting for climate change and sea level rise. However, it also includes recognizing future land use which in hydrological science terms includes watershed conditions such future land development and associated drainage improvements for riverine areas. In many areas of the US, future watershed conditions will have a larger impact than near-term climate change. Recognizing and analyzing future watershed conditions is standard practice for engineers and hydrologist in flood and stormwater management.

Recommendation: To help clarify the misleading message, After “Guidelines” add “which includes future land uses (watershed conditions) for riverine and coastal analysis”.

#### Line 430

After “finding” insert “using the ongoing public participation process established for the study”.

#### Lines 438-440

Clarify or delete this sentence in Section 8h, Step 8 – “The individual responsible for making the recommendation should be identified in program-specific guidance.” It appears to be an internal note. Also, the USACE and non-federal sponsor partnership is making the recommendation.

#### Lines 455-463

Section 10, the term “Minimize” is not clear or helpful, and appears to contradict Section 8h, Step 8 and Section 9, Alternative Formulation and Evaluation in terms of assessing, comparing, and selecting a recommended project. For example, economic impacts are not listed and the last sentence, “All practical means and measures must be utilized to minimize any adverse impacts likely to occur because of an action in the floodplain,” is a directive without regard to the USACE’s planning process of comparing positive and negative impacts and conducting a trade-offs evaluation.

#### Line 490

A definition of outgrants is needed in the document? Although this is an expression used by UASCE staff, it is not recognized by local agencies. NAFSMA urges the definition and common outgrant examples to Attachment 1, Glossary.

In closing, NAFSMA very much appreciates the opportunity to comments on this important proposed Engineering Circular. Please contact NAFSMA Executive Director Susan Gilson at [sgilson@nafsma.org](mailto:sgilson@nafsma.org) or 202-289- 8625 with questions.