



NATURAL RESOURCES DEFENSE COUNCIL

April 29, 2013

Submitted electronically via www.regulations.gov

Administrator Craig Fugate
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472-3100

**Re: Notice of Proposed Rulemaking: Change in Submission Requirements for State Mitigation Plans
Docket ID: FEMA-2012-0001**

Dear Administrator Fugate:

The Natural Resources Defense Council (NRDC) appreciates the opportunity to comment on the Federal Emergency Management Agency's proposed rulemaking to change the submission requirements for State Mitigation Plans. NRDC is a non-profit environmental advocacy organization with more than 1.3 million members and online activists. Consisting of more than 400 lawyers, scientists, policy analysts and others, our staff works to protect the environment and public health through advocacy and education.

NRDC appreciates FEMA's intention to better support hazard mitigation implementation activities, as well as promote closer coordination among state, local, and Tribal mitigation planning. However, NRDC opposes an extension of the State Mitigation Plan submission requirements from three years to five years, because the extension is not accompanied by requirements to ensure the quality of the State Mitigation Plans increases to compensate for less frequent updates. FEMA must ensure that the State Mitigation Plans are as effective and as timely as possible since hazard mitigation planning is critical to reduce risks to the public and to improve safety and health. To proceed with the proposed extension as currently articulated is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.¹

As written, FEMA's proposed rule will lead to plans losing relevance and becoming outdated more quickly. While extending the update requirements from three to five years will conserve government resources in the short term, NRDC is concerned that the quality of hazard mitigation will suffer, especially considering the implications of climate change. In the long run, this will cost the public more and result in greater risk to public health and safety. Successful hazard mitigation rests on meaningful plans with sound and timely risk assessments and relevant mitigation goals. To achieve this, the most up-to-date climate studies and modeling must be incorporated into State Mitigation Plans.

If the state update requirement is extended, FEMA should take this opportunity to ensure that states use the extra two years to significantly improve their plans, especially regarding climate change. States

¹ 5 U.S.C. § 706(2)(A).

tend to rely exclusively on historical data to predict the probability of future hazard events, and determine priorities for mitigation. Unfortunately, most states are not incorporating climate change projections and therefore are not maximizing accuracy of hazard predictions in risk assessments. FEMA should only approve State Hazard Mitigation Plans that adequately address climate change. FEMA also should provide agency guidance in FEMA's Blue Book on how to incorporate climate change into such plans. In addition to the current proposed rulemaking, FEMA should also initiate another new rulemaking to amend 44 CFR § 201.4, in order to confirm that climate change must be addressed by states in their hazard mitigation plans. NRDC and NWF submitted a petition to FEMA in October of 2012 that fully details this suggestion.² NRDC believes that all U.S. states must adequately address climate change in hazard mitigation plans as a condition of receiving non-emergency disaster mitigation assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207.

Climate change is already affecting every U.S. region and altering the frequency, intensity, and location of hazard events. Climate change poses a significant threat to public safety and will increase the damages caused by natural disasters. As affirmed by numerous international and national scientific bodies, including the Intergovernmental Panel on Climate Change ("IPCC"),³ the National Research Council ("NRC"),⁴ and the U.S. Global Change Research Program ("USGCRP"),⁵ the impacts of climate change are already visible, and the risks to people, property and natural resources posed by climate change are expected only to grow in the future.

The recently released draft of USGCRP's third National Climate Assessment (NCA) highlights that many U.S. regions are already experiencing more frequent and/or intense heat waves, heavy downpours, droughts and floods, while coastal areas are already observing rising sea levels.⁶ One key finding in the draft assessment report states: "Climate change threatens human health and well-being in many ways, including impacts from increased extreme weather events, wildfire, decreased air quality, and diseases transmitted by insects, food and water." Another key finding states: "Infrastructure across the U.S. is being adversely affected by phenomena associated with climate change, including sea level rise, storm surge, heavy downpours, and extreme heat."⁷

NRDC is opposed to extending the update requirement to five years, because we believe that without additional guidance and clarity as to how this additional time will improve plans, the quality of the plans

² Natural Resources Defense Council and National Wildlife Federation, *Petition Requesting That the Federal Emergency Management Agency Comply with the Stafford Act and Disaster Mitigation Act of 2000 By Approving Only State Hazard Mitigation Plans That Adequately Address Climate Change; Amend Its Regulations to Confirm that Climate Change Must Be Addressed in Hazard Mitigation Plans; and Provide Agency Guidance to States Regarding How to Address Climate Change in Hazard Mitigation Plans* (Oct. 2012), available at: <http://switchboard.nrdc.org/blogs/rhammer/FEMA%20Petition%20-%20FINAL%20-%202010-2-12.pdf>

³ S. Solomon et al. (eds.), *Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007), available at http://www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.

⁴ National Research Council, Committee on America's Climate Choices, *America's Climate Choices* (2011), available at <http://dels.nas.edu/Report/Americas-Climate-Choices/12781>.

⁵ U.S. Global Change Research Program (USGCRP), *Global Climate Change Impacts in the United States* (2009), available at <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>.

⁶ The National Climate Assessment and Development Advisory Committee, *Executive Summary: Draft Climate Assessment Report* (2013), www.ncadac.globalchange.gov.

⁷ *Id.* at 8 – 9.

and our communities will suffer. For example, states are less likely to update their plans in a timely manner to reflect climate change vulnerabilities. The traditional, exclusive reliance on historical data for State Mitigation Plans is outdated, and if FEMA extends the update timeline, the Agency must ensure that states use the additional two years to improve their planning process. FEMA must also only approve plans that meet this requirement. If given a full five years between updated plans, along with new FEMA guidance and amended regulations, states should use their extra time, staff resources, and budget to consult relevant experts, convene state agency representatives, collect existing climate studies, and initiate new research when state-level information is lacking.

The Third NCA will be different from previous US climate assessments in ways that can provide States ongoing access to current information on climate change's effects, both observed and projected, in their region. The NCA's new "sustained assessment process" will make the report entirely web-based to allow access to data, transparent 'line of sight' between data and conclusions, and support decision making processes within and across regions and sectors.⁸

Changes in the scope, frequency and intensity of hazards are already happening and yet are often not reflected in state plans. For example, in its 2010 plan, Texas estimated that drought would be responsible for roughly \$325 million in losses, mostly in crop damage.⁹ Yet in 2011, Texas suffered the worst one-year drought on record, the hottest month ever recorded since 1895, wildfires that caused \$100 million in direct damages and a total agricultural loss of \$5.2 billion.¹⁰ This demonstrates the degree to which the approved state plan underestimated the potential for risk and the significant failure of the state to adequately plan for true disaster costs. But if states are given 5 years between plans, this will not result in a resource saving over the long term because state plans will be even less likely to capture the true scope of risks and their associated costs.

Moreover, disaster mitigation plans not only benefit state agencies in their ability to protect communities from risks, but they benefit and empower the public by allowing private citizens to take their own actions to protect themselves or minimize risks to their own health and property. Extending the time between plans will make timely information less available to the public and make citizens less able to protect themselves from future risks.

⁸ US Global Change Research Program. *The National Climate Assessment: Information about the Draft Third National Climate Assessment Report* (2013). Available at: http://downloads.globalchange.gov/factsheets/draft_review_handout.pdf; USGCRP also intends to create a Global Change Information System as a 'one-stop-shop' of online, authoritative, accessible, usable, and timely information on climate change [USGCRP, *National Global Change Research Plan 2012 – 2021*: 15 (2012), available at <http://downloads.globalchange.gov/strategic-plan/2012/usgcrp-strategic-plan-2012-chapter-2-framework.pdf>]

⁹ NRDC Petition at 45.

¹⁰ Chris Hooks, *State Climatologist: Drought Officially Worst on Record*, Texas Tribune, Aug. 4, 2011, available at <http://www.texastribune.org/texas-environmental-news/environmental-problems-and-policies/state-climatologist-drought-officially-worst-record/>; National Drought Mitigation Center, U.S. Drought Monitor: Texas, http://www.drought.gov/portal/server.pt/gateway/PTARGS_0_2_426_223_0_43/http%3B/droughtmonitor.unl.edu/DM_state.htm?TX,S (last visited Aug. 16, 2012); Aaron Smith, *Texas Wildfire, Drought Damages Exceed \$5 Billion*, CNNMoney, Sept. 8, 2011, available at http://money.cnn.com/2011/09/08/news/economy/damages_texas_wildfires/index.htm; Texas Commission on Environmental Quality, Map of Water Systems Under Water Use Restriction, <http://tceq.texas.gov/drinkingwater/trot/location.html> (last visited Aug. 16, 2012).

If an update extension to five years is granted, states must still be encouraged to take action on new threats as they become apparent, like those evidenced during Hurricane Irene or Superstorm Sandy. At a minimum, an administrative trigger should be put into place that can assure states will undertake early action to modify their existing SHMPs, in light of new evidence or actual events that demonstrate a significant current or future threat not being addressed in the SHMPs. For example, the California state preparedness plan needed to be updated after a historic statewide 2006 heat wave, in which more than 16,000 excess emergency department visits, nearly 1,200 hospitalizations, and 655 premature deaths occurred; at an estimated health-related cost of over \$5.3 billion.¹¹

After major climate-sensitive hazard events occur in a given state, FEMA should determine whether the scope of such hazards and projected climate change effects are covered in the existing State Mitigation Plan. If the plan's scope and treatment of climate change is inadequate, then FEMA must act to ensure public health and welfare is protected in that state, in a timely fashion that does not hinge on a five-year update schedule. If the state does not take steps to build new information into its plan, then FEMA hazard mitigation funding should not flow to the state until appropriate adjustments and updates are made.

Historical data must be combined with a consideration of climate change impacts and projections to ensure that FEMA mitigation grants are spent appropriately. While NRDC appreciates the effort to reduce short-term government expenses, FEMA has an obligation to ensure that hazard mitigation grants are distributed to states based on meaningful, accurate plans in order to maximize effectiveness of money spent on preparedness activities for the long-term benefit of all communities.

Thank you again for the opportunity to comment on FEMA's proposed rulemaking.

Sincerely,

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¹¹ Kim Knowlton, et al., *The 2006 California heat wave: impacts on hospitalizations and emergency department visits* (2009), *Environmental Health Perspectives* 117:61-67 (January 2009); Kim Knowlton, et al., *Six climate change-related events in the United States accounted for about \$14 billion in lost lives and health costs* (2011), *Health Affairs* 30(11):2167-2176 (Nov. 2011); Cal EMA did update its *Emergency Plan for Excessive Heat Emergencies* in April 2010: <http://www.calema.ca.gov/planningandpreparedness/pages/heat.aspx>; Climate change is also expected to increase heat waves' frequency, areal extent, intensity and duration in this and future decades [Meehl G, Tebaldi C, *More intense, more frequent, and longer-lasting heat waves in the 21st century* (2004), *Science* 305:994-997]