

FEMA incorporated these changes into the updates to the CRS manual, but they cannot be implemented until FEMA has met all applicable requirements and obtained all necessary OMB approvals.

### **Background Information**

On December 8, 2011, the National Wildlife Federation (NWF) filed a lawsuit against FEMA for its failure to follow the court order that mandated FEMA to implement the changes prescribed by NMFS. If FEMA is granted emergency approval to change the CRS Manual in order to satisfy NMFS recommendations, it will comply with the original court order and likely prevail in this litigation. If FEMA uses normal clearance procedures for the changes to the CRS Manual, it will likely not comply with the original court order. Regulations under 5 C.F.R. § 1320.13(a)(2)(iii) specifically allow and agency to seek emergency approval under these circumstances.

A loss in this litigation may result in enjoining the sale of flood insurance in the Puget Sound area. This will (1) bar federally regulated lenders from enforcing the NFIA's mandatory purchase provision with respect to all properties for which flood insurance is made unavailable, *see* 42 U.S.C. § 4012a(a); (2) prevent individual property owners from securing flood insurance from obtaining disaster assistance in the event of a disaster, *see* 42 U.S.C. § 5154a; and (3) prevent any facility unable to get flood insurance from obtaining disaster assistance for permanent work because flood insurance is a condition of eligibility for such assistance. *See* 42 U.S.C. § 5154. Such adverse consequences would be particularly onerous in economically depressed communities.

Currently, two thirds of the 5.2 million policyholders in the NFIP benefit from the CRS. It is one of the NFIP's most effective tools for reducing flood losses. There are 1,211 CRS participating communities affording flood insurance premium discounts to policy holders based upon community implementation of local public information, mapping/regulatory, flood damage reduction and flood preparedness activities that exceed the minimum NFIP requirements. These 1,211 communities represent a significant portion of the nation's flood risk as evidenced by the fact that over 66% of the NFIP's policy base is located in these communities.

The proposed changes to the CRS Manual integrate new data and insight about effective emergency management and flood loss reduction and are consistent with NFMS recommendations. The rating adjustments will become applicable when the CRS Manual becomes effective. The revised CRS Manual is the result of an exhaustive and collaborative effort reflecting the views of over 1,000 stakeholders. FEMA believes that these changes to the CRS Manual will incentivize CRS flood loss reduction practices and benefit the NFIP. For instance, more CRS credit will be given to community enforcement of higher elevation requirements for new construction, for preserving floodplains as undeveloped open space and for implementing community based flood risk awareness outreach programs. Conversely, fewer points will be given for certain CRS activities determined to be less effective, such as providing routine flood map reading assistance or implementing minimal dam safety programs.

If the program office were to comply with the normal OMB clearance process, it could prevent the NFIP participating communities from taking advantage of the manual updates until that time, but it significantly jeopardizes the agency's prospects in a lawsuit in which a loss could mean an injunction on the sale of flood insurance in 122 communities. Therefore, FEMA is requesting emergency authorization of the updates to the CRS Coordinator's Manual.

Attachment:

Information Collection Request (ICR) for OMB No. 1660-0022, Community Rating System (CRS) Program-Application Worksheets and Commentary