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Regulatory Affairs Division
Office of Chief Counsel
Federal Emergency Management Agency, 8NE
500 C Street S.W.
Washington, DC 20472

RE: NRECA Comments on FEMA's Notice of Proposed Rulemaking: Update to FEMA's Regulations on Rulemaking Procedures. Docket ID FEMA-2017-0016, RIN 1660-AA91

I. **Introduction and Background**

The National Rural Electric Cooperative Association ("NRECA") appreciates the opportunity to submit additional comments on the above captioned item.

The National Rural Electric Cooperative Association is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states. Member systems cover 75% of the United States landmass. NRECA membership is composed of 838 distribution cooperatives and 65 generation and transmission ("G&T") cooperatives. Both distribution and G&T cooperatives were formed to provide reliable electric service to their member-owners at the lowest reasonable cost.

Every year, NRECA's member cooperatives lose critical facilities and infrastructure (including but not limited to, poles, towers, lines and transformers) to ice storms, tornadoes, floods, hurricanes and the like. If this damage is caused by an event declared to be a disaster by the President of the United States, then many of the cooperatives' response and recovery costs are eligible for reimbursement through grants from the Federal Emergency Management Agency ("FEMA"). These grants, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act and administered under FEMA's Public Assistance Program, can amount to tens of millions of dollars and are critical to the ability of cooperatives to recover from disasters. Thus, FEMA's implementation of the statutes and regulations applicable to grants made under its Public Assistance Program are of critical importance to NRECA and its members.

Unlike investor-owned utilities, electric cooperatives cannot claim tax breaks for storm expenses, nor can electric cooperatives create interest-earning balance sheet accounts to draw down at a later date for storm expenses. Electric cooperatives have limited sources of funding for declared disaster-related storm expenses: (i) FEMA reimbursement under the Stafford Act; or, (ii) self-funded recovery, which usually involves borrowing disaster recovery funds from either the U.S. Department of Agriculture's Rural Utilities Service (RUS) or private lenders, such as the National Rural Utilities

Cooperative Finance Corporation (NRUCFC) or CoBank – both of which are likely to ultimately involve rate increases to member-owners.

Cooperatives serve the vast majority of the nation’s persistent poverty counties (327 out of 353, or 93%). These counties have deeply entrenched poverty with rates consistently 20% or above for the last three decades. In all, one-in-six of the 42 million Americans served by cooperatives live below the poverty line, many of them in these counties. The ability of the population in these areas to absorb increases in their electric bills is extremely limited.

The provision of electric service is critical to society’s needs. Americans rely on and expect as rapid as possible post-disaster restoration of generation, transmission, and distribution of energy services for their homes (especially if those homes contain life-saving electric-powered medical devices), police stations, fire stations, hospitals, nursing homes, and military bases. Even the ordinary purposes to which reliable and affordable energy are put help prevent human injury and property damage, including pumping clean water for human and animal consumption, air conditioning and heating for sensitive human populations and temperature-sensitive poultry and livestock, refrigeration of food and dairy to prevent disease and spoilage, heating water and cooking food to prevent disease, and many, many others. Extended interruptions in energy delivery can lead to deaths and serious injuries, the loss of property and livestock, and billions of dollars in lost internet and financial sector revenue.

On June 7, 2017 FEMA published a Notice of Proposed Rulemaking in which it proposes to revise its regulations pertaining to the Agency’s rulemaking processes, with an eye toward removing outdated requirements and updating public participation processes.

II. Specific Comments on the Notice of Proposed Rulemaking

At the outset, we recognize that the regulations of concern in the NOPR were promulgated in June 1981. Much has changed over the ensuing 36 years. Nevertheless, the need to afford and the benefits of affording interested persons the opportunity to participate in the rulemaking process remains a constant. We are concerned that FEMA’s proposed changes would decrease opportunities for participation.

We believe that the mandates contained in Executive Order 12866¹ continue to apply to FEMA’s processes today. We would point out in particular the stated objective of that Executive Order:

“The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.” [Emphasis added.]

¹ Executive Order 12866 “Regulatory Planning and Review” signed September 30, 1993. 58 FR 51735 October 4, 1993.

In general, portions of the proposed rule that advocate removing existing sections that reflect internal documents are troubling as these internal processes are not available to the public and therefore reduce transparency. We are concerned that reliance on internal processes means that a rulemaking process will have a head start, gather a head of steam prior to stakeholders including the public being able to provide input, and therefore not be truly open to public participation.

Parts of the proposal that seem contrary to making the process more accessible and open to the public include:

1. FEMA's proposal to remove paragraph (d) from current section 1.4. While it is true that such a policy (i.e., giving the public, including small entities and consumer groups, an early and meaningful opportunity to participate in the development of rules such as through advance notice of proposed rulemakings, holding open conferences, and convening public forums or panels.) is not required to be in regulation, for the public or interested stakeholders looking to become involved in the process, this language creates the appropriate impression that FEMA is open to such participation.
2. FEMA's proposal to remove paragraph (e) from current section 1.4 creates the same issue. For the novice member of the public or interested stakeholder trying to become meaningfully involved in a process that will have impact on livelihoods and economic success or failure, what harm is there in keeping the language about the length of the comment period in the document?
3. We have the same observation about FEMA's proposal to remove paragraph (f) of Section 1.4 (dealing with provisions allowing an agency to bypass notice and comment).
4. FEMA's proposal to clarify the limited time that a hard copy of a rulemaking is available makes sense given the changes in electronic availability. In the same vein, FEMA's proposal regarding making hard copies available for public inspection makes sense.
5. NRECA agrees that the current process for publication by OMB of the regulatory agenda for each agency supersedes the current Section 1.7 and therefore that section 1.7 should be deleted.
6. FEMA proposes to remove Section 1.8 regarding periodic review of regulations. FEMA's reasoning is that the process for reviewing existing rules has changes. We recommend that FEMA update the current Section 1.8 to indicate that FEMA will continue to participate in reviews of existing rules, according to Executive Orders or other law or regulation that is currently in effect.
7. NRECA takes no issue with FEMA's proposal to remove Section 1.9 and instead include a copy of the OMB Circular (A-4) that contains the requirements for regulatory review.
8. FEMA proposes to remove a portion of section 1.13 that states that FEMA will send copies of regulatory flexibility analyses to the Chief Counsel for Advocacy of the Small Business Administration. FEMA's rationale is that the provision reflects an internal agency procedure. We recommend that the provision remain in the Final Rule as it is good information for members of the public that are trying to follow the rulemaking process and may not be aware of the SBA's Advocacy office ability to become involved.

9. FEMA proposes, without explanation, to delete paragraph (d)(2) of section 1.16. This proposed deletion is particularly troubling – the current requirement is for FEMA to make a determination that the factual conclusions underlying the Final Rule are supported by the record “*with full attention to public comments in general and the comments of persons directly affected by the rule in particular.*” (Emphasis added). We recommend that this requirement be maintained in the Final Rule as a testament to the Agency’s attention to the record and stakeholder input in particular.

III. Conclusion

While NRECA applauds FEMA’s effort to update and streamline regulations, we urge the Agency to do so in a way that increases, not decreases, transparency and opportunities for impacted stakeholders and the public to have meaningful participation in the rulemaking process.

Respectfully Submitted,



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