

OFFICE OF THE GOVERNOR
STATE OF MONTANA

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December 1, 2023

The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C Street Northwest
Washington, DC 20024

RE: Federal Emergency Management Agency (FEMA) Proposed Rulemaking "Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard" (FEMA-2023-0026-0001) and Proposed Policy "Federal Flood Risk Management Standard" (FEMA-2023-0026-0005)

Dear Administrator Criswell:

On behalf of the State of Montana, we offer comments on FEMA's proposed "Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard" (Rule) and "Federal Flood Risk Management Standard" (Policy). As presently proposed, both the Rule and Policy threaten to raise costs associated with federal actions and implement ambiguous standards ill-suited to rural areas like Montana. We ask that FEMA extend the comment deadline associated with the proposals by 60 days and implement extensive public outreach efforts communicating the proposals to local governments and communities.

The Proposed Rule and Policy Create Unnecessary Costs and Delays for Federal Actions.

In general, the proposed Rule and Policy package raises design standards for federal actions, which will affect mitigation and public assistance projects for post-disaster recovery. Elevated design standards increase project costs, which are in turn absorbed into applications and proposals for these projects. In many cases, funding is already limited for these types of projects, and is often prohibitively competitive for Montana's rural communities. The Rule and Policy threaten to create additional burden on these applicants.

The proposed Rule and Policy will also lengthen project timelines for federal actions. In the proposed Rule and Policy, FEMA makes the final decision on both the information that the applicant is using, and how permitting agencies are processing and permitting federal actions. This requires additional time, documentation, and coordination between local communities,

project proponents, stakeholders, and even FEMA, for critical mitigation projects and urgent post-disaster recovery efforts that require expedience.

The proposed Rule and Policy also create separate permitting standards for some federal and nonfederal actions. This added complexity necessitates additional expertise when it comes to administering local floodplain programs, and disproportionately impacts our rural communities that already lack sufficient staffing and funding to administer their programs.

If FEMA finds it necessary to revisit rule and policy, we ask that the agency minimize red tape and expense for communities seeking to implement projects. As proposed, this Rule and Policy add bureaucracy and increase the resources required to successfully implement meaningful projects.

FEMA's Proposed Use of the "Climate-Informed Science Approach" is Ambiguous and May be Ill-Suited for Use in Montana.

Use of the Climate-Informed Science Approach (CISA) is one of the concerning components of this proposed package. As it is currently contemplated, if the data is available, CISA must be used for actions subject to the Federal Flood Risk Management Standard (FFRMS). The CISA is supposedly based on the most current information available at the time of action and a range of conditions are to be considered. However, FEMA fails to explain how this data will be selected, evaluated, and updated to inform the CISA. This is problematic on a multitude of levels. For instance, how will FEMA select and evaluate the data? Will entities such as state agencies, flood plain managers, and stakeholders have an opportunity to inform what best aligns with on-the-ground realities? What are the methods FEMA proposes to use prior to selecting data? And, more importantly, how will FEMA communicate its actions and decisions publicly?

FEMA's lack of transparency here seems to represent a consistent theme for how the agency operates. Similar concerns were raised regarding proprietary tools used in the implementation of FEMA's Risk Rating 2.0, which created ongoing challenges concerning transparency and clear guidance to contest or provide more refined information. Those concerns remain unaddressed.

Further, proprietary tools could make it difficult to assess whether a FEMA-derived FFRMS floodplain that uses the CISA is appropriate for local conditions of a given project. National-scale, one-size-fits-all tools may be too heavily informed by high-population areas and coastal flood risk and may not be readily applicable to project sites in our rural state. We ask that the Rule and Policy provide specificity and clarity around the questions we have posed, and that FEMA commits to bringing in Montana-specific state and local stakeholders to provide our unique perspectives.

FEMA Should Re-engage with the States and Local Communities on its Highly Technical Proposals.

The floodplain program is administered at the local level, and FEMA has failed to conduct sufficient outreach, or even hold a single public meeting, to help explain these elaborate and expansive changes. Montana's local administrators and community officials deserve sufficient

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time to understand the proposed Rule and Policy changes and develop informed comments detailing how this might affect their programs. As such, we ask that FEMA perform additional outreach to educate local floodplain administrators, elected officials, and emergency managers on the proposed package.

Lastly, we have repeatedly heard that these highly technical proposals by FEMA lack clarity. Clarification is needed not only regarding which federal actions are subject to FFRMS, but also what project monitoring and evaluation is required and how compliance issues are to be

addressed. There is significant opportunity for misinterpretation and confusion among federal agencies and local administrator due to the poor drafting in these proposals. Further, FEMA must provide clarity on the tools, methods, and alternatives for determining the FFRMS floodplain, particularly regarding the CISA. FEMA should also establish and provide justification as well as a process to allow for community-specific information to be utilized in place of FEMA-driven CISA tools.

While the substance of the proposed Rule and Policy is certainly troubling for future projects, FEMA's proposed changes could significantly restrict ongoing work within the State of Montana as well. The State (as well as county commissioners, conservation districts, landowners, etc.) is still implementing mitigation projects related to the flooding that occurred in multiple major watersheds (including the Yellowstone River area) in June of 2022. The proposed Rule and Policy do not identify when they would become effective, or how they would affect projects related to ongoing recovery efforts. Changing rules and guidance, mid-recovery, would indeed have drastic impacts on Montana's ability to recover from this disaster. We ask that any effective date be clarified and implemented so as not to disrupt ongoing recovery efforts.

Given the complexity of the proposed Rule and Policy, and the inadequate public engagement conducted to date, we request that FEMA extend the comment period on both actions by any additional 60 days.

Should you have further questions, please reach out to Amanda Kaster, Director of the Department of Natural Resources and Conservation, at (406) 444-1948 or amanda.kaster@mt.gov.

Sincerely,



Greg Gianforte
Governor



Amanda Kaster
DNRC Director