

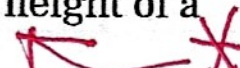
# FEMA quietly eases rules meant to protect buildings

BY CHRISTOPHER FLAVELLE

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The Federal Emergency Management Agency has decided to stop enforcing rules designed to prevent flood damage to schools, libraries, fire stations and other public buildings. Experts say the move, which has not been publicly announced, could endanger public safety and may be in violation of federal law.

The change in policy was laid out in a Feb. 4 memo by FEMA's chief counsel, Adrian Sevier, that was viewed by The New York Times.

The rule in question, called the Federal Flood Risk Management Standard, was one of the Biden administration's most significant efforts to address the growing costs of disasters. The rule says that when public buildings in a flood zone are damaged or destroyed, those structures must be rebuilt in a way that prevents future flood damage if they are to qualify for FEMA funding. That could include elevating a structure above the expected height of a future flood or relocating it to a safer spot. 

In some cases, the standards also apply to private homes repaired or rebuilt in a flood plain.

The rule has a tortured history. FEMA first proposed it in 2016, in response to an executive order from President Barack Obama. The powerful homebuilding industry opposed the rule on the grounds that it would increase construction costs. When President Donald Trump first took office in 2017, he revoked Obama's order, stopping FEMA's effort. Soon after taking office in 2021, President Joe Biden signed a new executive order calling for a federal flood standard, which culminated in a final rule issued by FEMA last July.


The goal wasn't just to protect people and property, according to Deanne Criswell, the head of FEMA at the time. It was also to save taxpayers' money as climate change made flooding more frequent, causing buildings in flood plains to be repeatedly damaged and then repeatedly rebuilt with government help.

"We are going to be able to put a stop to the cycle of response and recovery, and rinse and repeat," Criswell said at the time.

Trump, on his first day back in the White House, again revoked the executive order calling for a federal flood standard. In his memo last week, Sevier said that while FEMA considers how to amend the rule, the agency will not enforce it. "This pause must be implemented immediately while FEMA takes action to rescind or amend the policies," Sevier wrote.

In a statement, FEMA said that the flood rule "is under review per the president's executive order."

But FEMA cannot simply stop enforcing a regulation, according to David A. Super, a law professor at Yale University who specializes in administrative law.

If the agency wants to reverse course, it must follow a process clearly laid out by federal law: issuing a public notice, seeking and reviewing public comments and then publishing a new final rule. 

Repealing a regulation can take months or longer. Until that happens, the law says that the rule remains in effect, Super said.



FEMA's effort to "pause" the rule is in keeping with Trump's expansionist view of presidential authority, Super said. "The president is pursuing an extremely ambitious constitutional agenda to invalidate legislation regulating the executive branch."

Jennifer Nou, a professor at the University of Chicago Law School, said the legality of FEMA's decision depends on the length of the pause in enforcement. If FEMA stops enforcing the flood rule for an extended period of time, that would put the agency in greater legal jeopardy than just a short pause, she said.

Courts generally give agencies discretion over enforcing rules, Nou said. "But that discretion is not unlimited," she added — for example, if the agency's position amounts to abdicating its responsibility.

← Note

Chad Berginnis, executive director of the Association of State Floodplain Managers, said failure to enforce the rule would make people less safe.

Berginnis offered the example of a water treatment plant that is damaged or destroyed and needs to be rebuilt.

Under the flood rule, that plant must be built in a way that means it's unlikely to be damaged by future flooding. Pausing the rule leaves the plant more vulnerable. "We are jeopardizing the safety of the people in that community," Berginnis said.

He said pausing the rule also contradicted Trump's state goal of reducing government waste.