



Pending Deadlines

FEMA – Public Assistance Proposed Rule

Comment period closes Sep. 3, 2024.

- [Proposed Rule](#)
- [Draft Guidance](#)
- [Comment Docket](#)

FEMA – NFIP Community Rating System RFI

Comment period closes Sep. 9, 2024.

- [Request for Information](#)
- [Comment Docket](#)

Recent CSO Letters/Comments

- [Comment to NOAA on draft ROP designation guidance](#) (Jul. 11, 2024)

Issue Updates

SCOTUS – *Chevron* Doctrine Overturned, Time Limit to Sue Extended

Update

On Jun. 28, the U.S. Supreme Court issued a decision in [Relentless v. Commerce](#) and [Loper Bright v. Raimondo](#), overturning [Chevron v. NRDC](#) and discarding the Chevron Doctrine, which for 40 years has instructed courts to defer to federal agency interpretations of ambiguous statutory language. Under the new doctrinal regime, federal courts hearing challenges to federal regulations will be expected to determine whether the agency's interpretation of its authorizing legislation is the best interpretation, rather than merely whether it is reasonable.

On Jul. 1, the Court issued a decision in [Corner Post v. the Federal Reserve](#) holding that a challenge to a federal regulation can be brought up to six years after the plaintiff claims an injury has accrued, rather than starting the clock when the rule became effective. Lawsuits challenging regulations that have already been defended in court (including those relying on the Chevron Doctrine) would still need to overcome the [stare decisis](#) presumption against overturning previously settled law.

Taken together, these cases are expected to expand the volume of challenges to major federal regulations, including those that have been on the books for years, and to make federal agencies [less likely to prevail](#) in such litigation. In turn, circuit splits and [multistate or national injunctions](#) on new rules may become more common. CSO plans to follow up via the Legal Council this summer to consider what support states may need in the coming years and how CSO should coordinate with other national groups that share strategic litigation priorities.

Context

The Chevron Doctrine applied to cases challenging federal regulations. Where a court determined that an authorizing statute was ambiguous as to an agency's power to enact a given regulation, the Chevron Doctrine directed the court to determine whether the agency's interpretation was reasonable, and if so, to defer to it. There are key principles and procedures in CZMA federal consistency that are based in NOAA's regulations rather than the statute, e.g., the definition of "consistent to the maximum extent practicable." Coastal programs are also impacted by federal regulations implementing statutes beyond CZMA, e.g., the use of NEPA to develop environmental impact information.

Although the Supreme Court has made little use of the Chevron Doctrine in recent years, lower courts have [continued to rely on it](#) for an analytical framework. In the past, [Congress](#) and administrations of both political parties have leaned on the Chevron Doctrine to defend policy decisions turning on highly technical issues (e.g., using public health data to justify environmental protections) or applying broad statutory authority to new issues (e.g., mitigating climate change via the Clean Air Act and NEPA). Agencies have already moved away from citing Chevron in rulemakings in recent years.

The Supreme Court has moved across recent terms to dramatically restrict the scope of federal regulatory powers. Looking ahead, the Court announced on June 24 that it will take up [Seven County Infrastructure Coalition v. Eagle County](#) to determine the scope of NEPA review.

OMB – Spring 2024 Regulatory Agenda Released

Update

On Jul. 5, 2024, the Office of Management and Budget released the [2024 Spring Unified Agenda](#). Several high-priority agency actions were issued earlier in the year, including BOEM's Renewable

Energy Modernization Rule, CEQ's NEPA Phase 2 Rule, and FEMA's Federal Flood Risk Management Rule. Few new items are proposed as election season shifts into gear, although USACE has announced plans to implement CEQ's new NEPA requirements and begin the Nationwide Permit renewal process. A staff summary of listings relevant to coastal management programs is available [here](#).

Context

The Unified Agenda of Regulatory and Deregulatory Actions is a compilation released every Fall and Spring by the Office of Management and Budget, Office of Information and Regulatory Affairs, providing the status of ongoing and planned federal agency rulemaking. The Agenda is typically released behind schedule. Agencies may not adhere to the aspirational timelines listed for each item, and the listings themselves are not open for public comment.

FEMA – Post-Disaster Public Infrastructure Recovery & Mitigation Rule Proposed

Update

On July 2, FEMA issued a [proposed rule](#) and [draft guidance](#) setting out implementation requirements for the Public Assistance program, which provides post-disaster recovery, restoration, and mitigation funds for public infrastructure projects. CSO will review the rule via the Coastal Hazards Adaptation work group. Comments may be submitted via [Regulations.gov](#) until Sept. 3, 2024.

Context

Public Assistance (PA), alongside Individual Assistance (IA) and Community Disaster Loans, comprises FEMA's primary post-disaster response and recovery funding mechanism under the Stafford Disaster Relief and Emergency Assistance Act. FEMA is authorized to provide PA funds to local governments immediately after declared disasters (response) for emergency protective measures such as emergency evacuation, sheltering, and debris removal, as well as in the months after the disaster (recovery) for permanent restoration of public facilities. Under the PA Mitigation program, FEMA can provide additional funding to integrate mitigation design features into public facility restoration projects.

FEMA's PA regulations set out the programs' structure and eligibility requirements. The Public Assistance Program and Policy Guide in turn sets out the application process, documentation standards, and specific implementation and methodology details.

FEMA – Federal Flood Standard Rule Issued

Update

On July 11, FEMA issued a [final rule](#) and [updated policy](#) to implement the [Federal Flood Risk Management Standard](#) (FFRMS) for FEMA-funded projects, effective Sept. 9, 2024. The rule establishes the “Climate-Informed Science Approach” (CISA) as the preferred standard for projects funded under PA, IA, and Hazard Mitigation Assistance grant programs, and would require the use, where possible, of natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for all actions proposed in a floodplain.

Context

The FFRMS requires that federal agencies design facilities and infrastructure to account for future conditions, including sea level rise, through one or a combination of approaches:

- **Freeboard Value Approach:** Adopt 1ft of freeboard above the 1% annual chance flood level (2ft for critical facilities).
- **500-Year Floodplain Approach:** Build above the 0.2% annual chance flood level.
- **Climate Informed Science Approach:** Use best-available, actionable hydrologic and hydraulic data and climate models.

The new rule replaces FEMA's [interim implementation procedures](#). The Housing & Urban Development Department issued a FFRMS [final rule](#) with similar scope in March 2024. The National Climate Task Force recently released a beta version for a new [Federal Flood Standard Support Tool](#) intended to automate the determination of whether the FFRMS applies to a project based on whether a user-defined project area falls within a zone of modelled future flood risk (called the FFRMS Floodplain in the tool) according to either the Freeboard Value Approach or, for coastal areas, the Climate Informed Science Approach.

FEMA – Flood Mitigation Incentive Program Feedback Request

Update

On July 11, FEMA [solicited feedback](#) on updating the National Flood Insurance Program's Community Rating System mitigation incentive program. CSO will review the rule via the Coastal Hazards Adaptation work group. Public meetings will be held in late August. Comments may be submitted via [Regulations.gov](#) until Sept. 9, 2024.

Context

The [CRS](#) offers premium discounts for NFIP policyholders in communities that voluntarily implement eligible flood hazard mitigation practices. CSO submitted [comments](#) on a CRS-focused RFI in 2021. Since then, FEMA has implemented the Risk Rating 2.0 system for setting NFIP premiums according to per-property assessed risk exposure, renewing questions about the CRS's incentive structure.