



FEMA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED OCT 15 2007

The Honorable Richard Mayers
Mayor, City of Blaine
334 H Street
Blaine, Washington 98230

Dear Mayor Mayers:

I am writing this letter as an official reminder that the City of Blaine, Washington, has until November 16, 2007, to adopt and have the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office approve floodplain management measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.3(e) of the National Flood Insurance Program (NFIP) regulations.

The City of Blaine must adopt floodplain management measures, such as a floodplain management ordinance, that meet or exceed the minimum NFIP requirements (copy enclosed) by November 16, 2007, to avoid suspension from the NFIP. If suspended, your community becomes ineligible for flood insurance through the NFIP, new insurance policies cannot be sold, and existing policies cannot be renewed.

The NFIP State Coordinating Office for your State has verified that Washington communities may include language in their floodplain management measures that automatically adopt the most recently available flood elevation data provided by FEMA. Your community's floodplain management measures may already be sufficient if the measures include suitable automatic adoption language and are otherwise in accordance with the minimum requirements of the NFIP. The NFIP State Coordinator can assist you further in clarifying questions you may have about automatic adoption.

The provisions of Section 202(a) of Public Law 93-234, as amended prohibits Federal officers or agencies from approving any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or disaster assistance loan or grant, for acquisition or construction purposes within Special Flood Hazard Areas (SFHAs), areas subject to inundation by the base (1-percent-annual-chance) flood. Your community's suspension from the NFIP would prohibit mortgage loans guaranteed by the Department of Veterans Affairs, insured by the Federal Housing Administration, or secured by the Rural Economic and Community Development Services. This prohibition also affects the disaster assistance in connection with a flood under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended.

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Furthermore, Section 202(b) of Public Law 93-234, as amended, requires Federally regulated lending institutions to notify the purchaser or lessee of improved real property located in an SFHA, whether Federal disaster assistance will be available when the property is being used to secure a loan that is being made, increased, extended, or renewed.

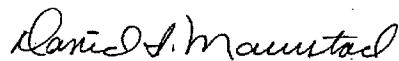
Your NFIP State Coordinator and FEMA would like to assist the City of Blaine to ensure it remains in good standing with the NFIP and avoids suspension from the Program. If your community is suspended, it may regain its eligibility in the NFIP by enacting the floodplain management measures established in 44 CFR Section 60.3 of the NFIP regulations. As stated in my previous correspondence, I recommend you contact your NFIP State Coordinator or the FEMA Regional Office if the City of Blaine is encountering difficulties in enacting its measures.

I recognize that your community may be in the final adoption process or may have recently adopted the appropriate floodplain management measures. Please submit these measures to the Floodplain Management Program at the Washington Department of Ecology. Daniel Sokol, the NFIP State Coordinator, is accessible by telephone at (360) 407-6796, in writing at Post Office Box 47600, Olympia, Washington 98504-7600, or by electronic mail at dsok461@ecy.wa.gov.

The FEMA Regional staff in Bothell, Washington, is also available to assist you with your floodplain management measures. The FEMA Regional Office may be contacted by telephone at (425) 487-4600 or in writing. Please send your written inquiries to the Director, Federal Insurance and Mitigation Division, FEMA Region X, at 130 228th Street, Bothell, Washington 98021.

In the event your community does not adopt and/or submit the necessary floodplain management measures that meet or exceed the minimum NFIP requirements, I must take the necessary steps to suspend your community from the NFIP. This letter is FEMA's final notification before your community is suspended from the Program.

Sincerely,



David I. Maurstad
Assistant Administrator
Mitigation

Enclosure

cc: Susan Reinertson, Regional Director, FEMA Region X
Daniel Sokol, NFIP State Coordinator, Washington Department of Ecology

§ 60.1

44 CFR Ch. 1 (10-1-04 Edition)

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60.26 Local coordination.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Requirements for Flood Plain Management Regulations

§ 60.1 Purpose of subpart.

- (a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.
- (b) This subpart sets forth the criteria developed in accordance with the Act by which the Administrator will determine the adequacy of a community's flood plain management

Federal Emergency Management Agency, DHS

§ 60.2

regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in § 60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in § 60.3 for flood-prone areas, § 60.4 for mudslide areas and § 60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in subpart C of this part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in subpart A of this part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of § 60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in § 60.3(b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in § 60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in § 60.3(c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of § 60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of § 60.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of § 60.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of § 60.5(b).

(d) Communities identified in part 65 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide (i.e., mudflow), and flood-related erosion hazard areas) shall adopt flood plain management regulations for

each type of hazard consistent with the requirements of §§ 60.3, 60.4 and 60.5.

(e) Local flood plain management regulations may be submitted to the State Coordinating Agency designated pursuant to § 60.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual or biennial reports to the Administrator pursuant to § 59.22(b)(2) of this subchapter shall also submit copies of each annual or biennial report to any State Coordinating Agency.

(g) A community shall assure that its comprehensive plan is consistent with the flood plain management objectives of this part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Administrator. Without prior approval of the Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 29318, June 24, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36024, Sept. 4, 1985; 59 FR 53598, Oct. 25, 1994; 62 FR 55716, Oct. 27, 1997]

§ 60.3 Flood plain management criteria for flood-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special flood hazard area designations and water surface elevations have been furnished by the Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) Review proposed developmental to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with

community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which reveals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Administrator shall withdraw the community from the Program and publish in the FEDERAL REGISTER under part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if it submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36023, Sept. 4, 1985; 57 FR 19540, May 7, 1992; 59 FR 53598, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997]

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A—Requirements for Flood Plain Management Regulations

notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, but prior to October 1, 1992, an additional premium of \$25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992. Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be \$50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This \$50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the

electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards.

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and (6) Require within flood-prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM or FIRFM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) Require permits for all proposed construction and other developments including the placement of manufactured homes, within Zone A on the community's FHBM or FIRFM;

(2) Require the application of the standards in paragraphs (a) (2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHBM or FIRFM;

(3) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph (b)(3) of this section, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community's FHBM or FIRFM meet the standards in paragraphs (c)(2), (c)(3), (c)(5), (c)(6), (c)(12), (c)(14), (d)(2) and (d)(3) of this section;

(5) Where base flood elevation data are utilized, within Zone A on the community's FHBM or FIRFM:

(i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(ii) Obtain, if the structure has been floodproofed in accordance with paragraph (c)(3)(ii) of this section, the elevation (in relation to mean sea level) to which the structure was floodproofed, and

(iii) Maintain a record of all such information with the official designated by the community under § 59.22 (a)(9)(iii);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Require that all manufactured homes to be placed within Zone A on a community's

FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(c) When the Administrator has provided a notice of final flood elevations for one or more special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

- (1) Require the standards of paragraph (b) of this section within all A1–30 zones, AE zones, A zones, AH zones, and AO zones, on the community's FIRM;
- (2) Require that all new construction and substantial improvements of residential structures within Zones A1–30, AE and AH zones on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements in accordance with § 60.6 (b) or (c);
- (3) Require that all new construction and substantial improvements of nonresidential structures within Zones A1–30, AE and AH zones on the community's firm (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (i) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of paragraph (c)(3)(ii) or (c)(8)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii);
- (5) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (6) Require that manufactured homes that are placed or substantially improved within Zones A1–30, AH, and AE on the community's FIRM on sites
 - (i) Outside of a manufactured home park or subdivision,
 - (ii) In a new manufactured home park or subdivision,
 - (iii) In an expansion to an existing manufactured home park or subdivision, or
 - (iv) In an existing manufactured home park or subdivision on which a manufactured

shall be submitted annually or biennially as determined by the Administrator.

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to the Federal Emergency Management Agency, Washington DC 20472.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979 and amended at 48 FR 29318, June 24, 1983; 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33656, Aug. 24, 1984; 50 FR 36023, Sept. 4, 1985]

§ 59.23 Priorities for the sale of flood insurance under the regular program.

Flood-prone, mudslide (i.e., mudflow) and flood-related erosion prone communities are placed on a register of areas eligible for ratemaking studies and then selected from this register for ratemaking studies on the basis of the following considerations—

- (a) Recommendations of State officials;
- (b) Location of community and urgency of need for flood insurance;
- (c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;
- (d) Availability of information on the community with respect to its flood, mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;
- (e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of §60.3 or paragraph (b) of §60.4 or §60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Administrator shall provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

- (i) Population;
- (ii) Number of one to four family residences;
- (iii) Number of small businesses; and
- (iv) Number of all other structures.

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) will be made available for public inspection;

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and State-administered flood plain management regulations;

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

(i) Assist the Administrator at his/her request, in his/her delineation of the limits of the areas having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards;

(ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Administrator may request;

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FFBM or FIRM, any certificates of floodproofing, and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;

(v) Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBMs and FIRMs accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section, and

(2) Designate the official responsible to submit a report to the Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report

home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

(9) Require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) through (a)(4)(i) and (b)(5) through (b)(9) of this section;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(12) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A-1-30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(13) Notwithstanding any other provisions of § 60.3, a community may approve certain development in Zones A1-30, AE, and AH, on the community's FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of § 65.12, and receives the approval of the Administrator.

(14) Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the permit requirements of paragraph (b)(1) of this section and the elevation and anchoring requirements for "manufactured homes" in paragraph (c)(6) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is

attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(d) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AO zones, AH zones, A99 zones, and A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

- (1) Meet the requirements of paragraphs (c) (1) through (14) of this section;
- (2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;
- (3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge;
- (4) Notwithstanding any other provisions of § 60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the Administrator.
- (e) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1-30, VE, and/or V, the community shall:
 - (1) Meet the requirements of paragraphs (c)(1) through (14) of this section;
 - (2) Within Zones V1-30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement, and (ii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);
 - (3) Provide that all new construction within Zones V1-30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;
 - (4) Provide that all new construction and substantial improvements in Zones V1-30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (c)(4) (i) and (ii) of this section.
 - (5) Provide that all new construction and substantial improvements within Zones V1-

(October 16, 1975).

- (6) Title I, National Environmental Policy Act (Pub. L. 91-190).
 - (7) Land and Water Conservation Fund Act (Pub. L. 89-578), and subsequent amendments thereto.
 - (8) Water Resources Council, Principals and Standards for Planning, Water and Related Land Resources (38 FR 24778-24869, September 10, 1973).
 - (9) Executive Order 11593 (Protection and Enhancement of the Cultural Environment), dated May 13, 1971 (36 FR 8921, May 15, 1971).
 - (10) 89th Cong., 2nd Session, H.D. 465.
 - (11) Required land use element for comprehensive planning assistance under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR 600.72).
 - (12) Executive Order 11990 (Protection of Wetlands, dated May 24, 1977 (42 FR 26951, May 25, 1977)).
 - (13) Water Resources Council (Guidance for Floodplain Management) (42 FR 52590, September 30, 1977).
 - (14) Unified National Program for Floodplain Management of the United States Water Resources Council, July 1976.
 - (c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to the mandatory purchase of flood insurance under section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (54 FR 29666-29695, July 13, 1989).
- [41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 57 FR 19540, May 7, 1992]

Subpart B—Eligibility Requirements

§ 59.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.22 Prerequisites for the sale of flood insurance.

- (a) To qualify for flood insurance availability a community shall apply for the entire area within its jurisdiction, and shall submit:
 - (1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;
 - (2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;
 - (3) A copy of the flood plain management regulations the community has adopted to meet the requirements of §§ 60.3, 60.4 and/or § 60.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(c) Minimum requirements for adequate flood plain management regulations are set forth in § 60.3 for flood-prone areas, in § 60.4 for mudslide (i.e., mudflow) areas and in § 60.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 59.3 Emergency program.

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to part 60 of this subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures.

[43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543, Sept. 29, 1983]

§ 59.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

- (1) National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), Pub. L. 90-448, approved August 1, 1968, 42 U.S.C. 4001 et seq.
- (2) Housing and Urban Development Act of 1969 (Pub. L. 91-152, approved December 24, 1969).
- (3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Public Law 93-234, approved December 31, 1973.
- (4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Public Law 93-383, approved August 22, 1974.
- (5) Public Law 5-128 (effective October 12, 1977).
- (6) The above statutes are included in 42 U.S.C. 4001 et seq.
- (b) The following are references relevant to the National Flood Insurance Program:
 - (1) Executive Order 11988 (Floodplain Management, dated May 24, 1977 (42 FR 26951, May 25, 1977)).
 - (2) The Flood Control Act of 1960 (Pub. L. 86-645).
 - (3) Title II, section 314 of title III and section 406 of title IV of the Disaster Relief Act of 1974 (Pub. L. 93-288).
 - (4) Coastal Zone Management Act (Pub. L. 92-583), as amended Public Law 94-370.
 - (5) Water Resources Planning Act (Pub. L. 89-90), as amended Public Law 94-112

30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

- (i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,
 - (ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.
 - (6) Prohibit the use of fill for structural support of buildings within Zones VI-30, VE, and V on the community's FIRM;
 - (7) Prohibit man-made alteration of sand dunes and mangrove stands within Zones VI-30, VE, and V on the community's FIRM which would increase potential flood damage.
 - (8) Require that manufactured homes placed or substantially improved within Zones VI-30, V, and VE on the community's FIRM on sites
 - (i) Outside of a manufactured home park or subdivision,
 - (ii) In a new manufactured home park or subdivision,
 - (iii) In an expansion to an existing manufactured home park or subdivision, or
 - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, meet the standards of paragraphs (c)(2) through (7) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones VI-30, V, and VE on the community's FIRM meet the requirements of paragraph (c)(12) of this section.
 - (9) Require that recreational vehicles placed on sites within Zones VI-30, V, and VE on the community's FIRM either
 - (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use, or
 - (iii) Meet the requirements in paragraphs (b)(1) and (e) (2) through (7) of this section.
- A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- (f) When the Administrator has provided a notice of final base flood elevations within Zones AI-30 or AE on the community's FIRM, and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified flood protection restoration areas by designating Zones AR, AR/AI-30, AR/ AE, AR/AH, AR/AO, or AR/A, the community shall:
- (1) Meet the requirements of paragraphs (c)(1) through (14) and (d)(1) through (4) of this section.

- (2) Adopt the official map or legal description of those areas within Zones AR, AR/A1-30, AR/AE, AR/AH, AR/A, or AR/AO that are designated developed areas as defined in § 59.1 in accordance with the eligibility procedures under § 65.14.
- (3) For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is 5 feet or less:
- (i) Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and
 - (ii) Using this elevation, require the standards of paragraphs (c)(1) through (14) of this section.
- (4) For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:
- (i) Determine the AR base flood elevation; and
 - (ii) Using that elevation require the standards of paragraphs (c)(1) through (14) of this section.
- (5) For all new construction of structures in areas within Zone AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:
- (i) Determine the applicable elevation for Zone AR from paragraphs (a)(3) and (4) of this section;
 - (ii) Determine the base flood elevation or flood depth for the underlying A1-30, AE, AH, AO and A Zone; and
 - (iii) Using the higher elevation from paragraphs (a)(5)(i) and (ii) of this section require the standards of paragraphs (c)(1) through (14) of this section.
- (6) For all substantial improvements to existing construction within Zones AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:
- (i) Determine the A1-30 or AE, AH, AO, or A Zone base flood elevation; and
 - (ii) Using this elevation apply the requirements of paragraphs (c)(1) through (14) of this section.
- (7) Notify the permit applicant that the area has been designated as an AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

[41 FR 46975, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 60.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in § 64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mud-flow)-prone areas adopted by a particular community depend on the

Technically incorrect. The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

V' Zone—see “coastal high hazard area.”

Variance means a grant of relief by a community from the terms of a flood plain management regulation.

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Zone of imminent collapse means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

[41 FR 46968, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 59.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO access.

§ 59.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in § 59.1) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969). Flood-related erosion (as defined in § 59.1) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as a community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, shall be provided within such an area unless the community in which the area is located is then participating in the Program, subject to certain exceptions. See FIA published Guidelines at § 59.4(c).

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

State coordinating agency means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

Storm cellar means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes, means:

- (1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
- (2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- (3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Subsidized rates mean the rates established by the Administrator involving in the aggregate a subsidization by the Federal Government.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

30-year setback means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

- (a) When the Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Administrator has delineated Zone M on the community's FIRM, the community shall:

- (1) Meet the requirements of paragraph (a) of this section; and
- (2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, sub-drains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.5 Flood plain management criteria for flood-related erosion-prone areas.

The Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the

Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

- (1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;
- (2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and
- (3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Administrator has delineated Zone E on the community's FIRM, the community shall

- (1) Meet the requirements of paragraph (a) of this section; and
- (2) Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 47511, Feb. 8, 1984]

§ 60.6 Variances and exceptions.

- (a) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. The Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Administrator may take appropriate action under § 59.24(b) of this subchapter. Variances may be issued for the repair or rehabilitation of historic structures upon a determination

for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a violation means to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Risk premium rates mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dunes mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Scientifically incorrect. The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

Second layer coverage means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program.

Servicing company means a corporation, partnership, association, or any other organized entity which contracts with the Federal Insurance Administration to service insurance policies under the National Flood Insurance Program for a particular area.

Sheet flow area— see *area of shallow flooding*.

60-year setback means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

Special flood hazard area— see "area of special flood hazard".

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

Standard Flood Insurance Policy means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a

FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

100-year flood see *base flood*.

Participating community, also known as an *eligible community*, means a community in which the Administrator has authorized the sale of flood insurance.

Person includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

Policy means the Standard Flood Insurance Policy.

Premium means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

Program means the National Flood Insurance Program authorized by 42 U.S.C. 4001 through 4128.

Program deficiency means a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the standards in §§ 60.3, 60.4, 60.5, or 60.6.

Project cost means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

Recreational vehicle means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference feature is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

Regular Program means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRM's effective before that date, are eligible

that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure. Procedures for the granting of variances by a community are as follows:

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a)(6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the Administrator.

(7) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of paragraphs (a)(1) through (a)(4) of this section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(b)(1) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion prone community must adopt and submit adequate flood plain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in §§ 60.3, 60.4 or § 60.5. However, certain exceptions from the standards contained in this subpart may be permitted where the Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and gross inequity for a particular community. Consequently, a community proposing the adoption of flood plain management regulations which vary from the standards set forth in §§ 60.3, 60.4, or § 60.5, shall explain in writing to the Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, and data with respect to the impact on public safety and the environment.

(2) The Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant impact on the human environment. The decision whether an Environmental

Impact Statement or other environmental document will be prepared, will be made in accordance with the procedures set out in 44 CFR part 10. Ninety or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

(c) A community may propose flood plain management measures which adopt standards for floodproofed residential basements below the base flood level in zones A1-30, AH, AO, and AE which are not subject to tidal flooding. Notwithstanding the requirements of paragraph (b) of this section the Administrator may approve the proposal provided that:

(1) The community has demonstrated that areas of special flood hazard in which basements will be permitted are subject to shallow and low velocity flooding and that there is adequate flood warning time to ensure that all residents are notified of impending floods. For the purposes of this paragraph flood characteristics must include:

- (i) Flood depths that are five feet or less for developable lots that are contiguous to land above the base flood level and three feet or less for other lots;
- (ii) Flood velocities that are five feet per second or less; and
- (iii) Flood warning times that are 12 hours or greater. Flood warning times of two hours or greater may be approved if the community demonstrates that it has a flood warning system and emergency plan in operation that is adequate to ensure safe evacuation of flood plain residents.

(2) The community has adopted flood plain management measures that require that new construction and substantial improvements of residential structures with basements in zones A1-30, AH, AO, and AE shall:

- (i) Be designed and built so that any basement area, together with attendant utilities and sanitary facilities below the floodproofed design level, is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capacity to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to the floodproofed design level, and shall be designed so that minimal damage will occur from floods that exceed that level. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the 500-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet.

(ii) Have the top of the floor of any basement area no lower than five feet below the elevation of the base flood;

(iii) Have the area surrounding the structure on all sides filled to or above the elevation of the base flood. Fill must be compacted with slopes protected by vegetative cover;

(iv) Have a registered professional engineer or architect develop or review the building's structural design, specifications, and plans, including consideration of the depth, velocity, and duration of flooding and type and permeability of soils at the building site, and certify that the basement design and methods of construction proposed are in accordance with accepted standards of practice for meeting the provisions of this paragraph;

(v) Be inspected by the building inspector or other authorized representative of the community to verify that the structure is built according to its design and those provisions of this section which are verifiable.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36025, Sept. 4, 1985; 51 FR 30308, Aug. 25, 1986; 54 FR 33550, Aug. 15, 1989]

Independent scientific body means a non-Federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

Insurance adjustment organization means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

Insurance company or insurer means any person or organization authorized to engage in the insurance business under the laws of any State.

Levee means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement).

An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.

Mangrove stand means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora Mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mudslide (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

Mudslide (i.e., mudflow) area management means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

Mudslide (i.e., mudflow) prone area means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial §

lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood-related erosion area or flood-related erosion prone area means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

Flood-related erosion area management means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

Floodway—see *regulatory floodway*.

Floodway encroachment lines mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Future-conditions flood hazard area, or future-conditions floodplain—see *Area of future-conditions flood hazard*.

Future-conditions hydrology means the flood discharges associated with projected land-use conditions based on a community’s zoning maps and/or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

General Counsel means the General Counsel of the Federal Emergency Management Agency.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

§ 60.7 Revisions of criteria for flood plain management regulations.

From time to time part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

§ 60.8 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

Subpart B—Requirements for State Flood Plain Management Regulations

§ 60.11 Purpose of this subpart.

(a) A State is considered a “community” pursuant to § 59.1 of this subchapter, and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Administrator, pursuant to part 75 of this subchapter, of its plan of self-insurance.

[41 FR 46975, Oct. 26, 1976, Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.12 Flood plain management criteria for State-owned properties in special hazard areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5. A State either shall:

- (1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or
 - (2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in §§ 60.3, 60.4, and 60.5.
- (b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in §§ 60.3, 60.4 and 60.5 may vary from the procedures by which local governments satisfy the criteria.
- (c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a)(2) of this section for the property.

§ 60.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to § 60.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to

suspensive action pursuant to § 59.24.

Where the State fails to adequately enforce its flood plain management regulations, the Administrator shall conduct a hearing before initiating such suspensive action.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone and Flood-Related Erosion-Prone Areas

§ 60.21 Purpose of this subpart.

The purpose of this subpart is to encourage the formation and adoption of overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

§ 60.22 Planning considerations for flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should:

- (1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;
- (2) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence of a flood disaster, each community shall consider—

- (1) Preservation of the flood-prone areas for open space purposes;
- (2) Relocation of occupants away from flood-prone areas;
- (3) Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;
- (4) Acquisition of frequently flood-damaged structures;
- (c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—

- (1) Human safety;
- (2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;
- (3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;
- (4) Adverse effects of flood plain development on existing development;
- (5) Encouragement of floodproofing to reduce flood damage;

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

Flood elevation determination means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

Flood insurance means the insurance coverage provided under the Program.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study see *flood elevation study*.

Flood plain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Flood plain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

Flood plain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Flood-related erosion means the collapse or subsidence of land along the shore of a

implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

Exception means a waiver from the provisions of part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

Existing construction, means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing structures see *existing construction*.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal agency means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

Financial assistance means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

Financial assistance for acquisition or construction purposes means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

First-layer coverage is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

Flood or Flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.

(6) Flood warning and emergency preparedness plans;

(7) Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring sub-dividers to furnish delineations for floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;

(14) Requirement of setbacks for new construction within Zones VI-30, VE, and V on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones AI-30, AE, VI-30, and VE on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

(19) Requirement that a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas be developed and filed with and approved by appropriate community emergency management authorities.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 50 FR 36025, Sept. 4, 1985; 54 FR 40284, Sept. 29, 1989]

§ 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.

The planning process for communities identified under part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to § 59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

- (a) The existence and extent of the hazard.

- (b) The potential effects of inappropriate hillside development, including
- (1) Loss of life and personal injuries, and
 - (2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;
 - (c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillslides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;
 - (d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filling, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;
 - (e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;
 - (f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;
 - (g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and
 - (h) Provision for emergencies, including:
 - (1) Warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow),
 - (2) Enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow),
 - (3) Fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides,
 - (4) Provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems,
 - (5) Similar provisions for sewers which in the event of rupture pose both health and site stability hazards and
 - (6) Provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);
 - (i) The means for assuring consistency between state, arcawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;
 - (j) Detering the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

Contents coverage is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

Criteria means the comprehensive criteria for land management and use for flood-prone areas developed under 42

U.S.C. 4102 for the purposes set forth in part 60 of this subchapter.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Curvilinear Line means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

Deductible means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

Developed area means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Director means the Director of the Federal Emergency Management Agency.

Eligible community or *participating community* means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Flood Insurance Program or *emergency program* means the Program as

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Applicant means a community which indicates a desire to participate in the Program.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of future-conditions flood hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

Area of shallow flood means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood-related erosion hazard is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBH). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

Area of special flood hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBH. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, AI-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or VI-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Area of special mudslide (i.e., mudflow) hazard is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBH. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

Base flood means the flood having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building—see *structure*.

Chargeable rates mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

Chief Executive Officer of the community (*CEO*) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Community means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native

§ 60.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under part 65 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to § 59.22 of this subchapter that they have flood-related erosion areas should include—

- (a) The importance of directing future developments to areas not exposed to flood-related erosion;
- (b) The possibility of reserving flood-related erosion-prone areas for open space purposes;
- (c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;
- (d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;
- (e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

§ 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.

(a) States are encouraged to demonstrate a commitment to the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the designation of an agency of State government to be responsible for coordinating the Program aspects of flood plain management in the State.

(b) State participation in furthering the objectives of this part shall include maintaining capability to perform the appropriate duties and responsibilities as follows:

- (1) Enact, whenever necessary, legislation enabling counties and municipalities to regulate development within flood-prone areas;
- (2) Encourage and assist communities in qualifying for participation in the Program;
- (3) Guide and assist county and municipal public bodies and agencies in developing, implementing, and maintaining local flood plain management regulations;
- (4) Provide local governments and the general public with Program information on the coordination of local activities with Federal and State requirements for managing flood-prone areas;
- (5) Assist communities in disseminating information on minimum elevation requirements for development within flood-prone areas;
- (6) Assist in the delineation of riverine and coastal flood-prone areas, whenever possible, and provide all relevant technical information to the Administrator;
- (7) Recommend priorities for Federal flood plain management activities in relation to the needs of county and municipal localities within the State;
- (8) Provide notification to the Administrator in the event of apparent irreconcilable differences between a community's local flood plain management program and the minimum requirements of the Program;
- (9) Establish minimum State flood plain management regulatory standards consistent with those established in this part and in conformance with other Federal and State environmental and water pollution standards for the prevention of pollution during periods of flooding.

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- (10) Assure coordination and consistency of flood plain management activities with other State, areawide, and local planning and enforcement agencies;
- (11) Assist in the identification and implementation of flood hazard mitigation recommendations which are consistent with the minimum flood plain management criteria for the Program;
- (12) Participate in flood plain management training opportunities and other flood hazard preparedness programs whenever practicable.
- (c) Other duties and responsibilities, which may be deemed appropriate by the State and which are to be officially designated as being conducted in the capacity of the State Coordinating Agency for the Program, may be carried out with prior notification of the Administrator.
- (d) For States which have demonstrated a commitment to and experience in application of the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the establishment and implementation of programs which substantially encompass the activities described in paragraphs (a), (b), and (c) of this section, the Administrator shall take the foregoing into account when:
 - (1) Considering State recommendations prior to implementing Program activities affecting State communities;
 - (2) Considering State approval or certifications of local flood plain management regulations as meeting the requirements of this part.

[51 FR 30309, Aug. 25, 1986]

§ 60.26 Local coordination.

- (a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;
- (b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;
- (c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

SUBCHAPTER B—INSURANCE AND HAZARD MITIGATION

PARTS 50–54 [RESERVED]

NATIONAL INSURANCE DEVELOPMENT PROGRAM

PARTS 55–58 [RESERVED]

NATIONAL FLOOD INSURANCE PROGRAM

PART 59—GENERAL PROVISIONS

Subpart A—General

Sec.

59.1 Definitions.

59.2 Description of program.

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59.4 References.

Subpart B—Eligibility Requirements

59.21 Purpose of subpart.

59.22 Prerequisites for the sale of flood insurance.

59.23 Priorities for the sale of flood insurance under the regular program.

59.24 Suspension of community eligibility.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Subpart A—General

§ 59.1 Definitions.

As used in this subchapter—

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001–4128.

Actuarial rates—see *risk premium rates*.

Administrator means the Federal Insurance Administrator.

Agency means the Federal Emergency Management Agency, Washington DC.

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

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FEMA

**Department of Homeland Security (DHS)
Federal Emergency Management Agency
(FEMA)**

**National Flood Insurance Program (NFIP)
Floodplain Management Regulations
44 Code of Federal Regulations (CFR) Parts 59-60**

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