

**APPENDIX B**

**FEMA/NFIP REGULATIONS, 1999**

## **PART 60—CRITERIA FOR LAND MANAGEMENT AND USE**

### **Subpart A—Requirements for Flood Plain Management Regulations**

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### **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 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 development 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 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 FIRM, 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 FIRM;

(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 FIRM;

(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 FIRM 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 FIRM:

(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 flood-proofed in accordance with paragraph (c)(3)(ii) of this section, the

elevation (in relation to mean sea level) to which the structure was flood-proofed, 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 non-residential 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 water-tight 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 flood-proofed 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 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 flood-proofed to that level to meet the flood-proofing 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 (e)(4) (i) and (ii) of this section.

(5) Provide that all new construction and substantial improvements within Zones V1-30, 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 lattice-work, 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 non-structural). 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 V1-30, VE, and V on the community's FIRM;

(7) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30, VE, and V on

the community's FIRM which would increase potential flood damage.

(8) Require that manufactured homes placed or substantially improved with-in Zones V1-30, 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 (e)(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 V1-30, 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 A1-30 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/A1-30, 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 Sections Affected in the Finding Aids section of this volume.

#### § 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 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 sub-chapter. 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 4751, 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 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 flood-proofed 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 flood-proofed 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 flood-proofed design level, and shall be designed so that minimal damage will occur from floods that exceed that level. The flood-proofed 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]

#### § 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., Mud-flow)-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 flood-proofing to reduce flood damage;

(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 flood-proofing 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 subdividers 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 A1-30, AE, V1-30, 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 hillsides, 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, filing, 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, area-wide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow) prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow) prone areas.

#### **§ 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;

(10) Assure coordination and consistency of flood plain management activities with other State, area-wide, 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.

[Riegle Community Development and Regulatory Improvement Act of 1994]

**TITLE V--NATIONAL FLOOD INSURANCE REFORM**

National Flood Insurance Reform Act of 1994.

**SEC. 501. SHORT TITLE.**

This title may be cited as the "National Flood Insurance Reform Act of 1994".

42 U.S.C. 4001 note.

**Subtitle A--Definitions**

**SEC. 511. FLOOD DISASTER PROTECTION ACT OF 1973.**

(a) IN GENERAL.-- Section 3(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)) is amended--

(1) by striking paragraph (5) and inserting the following new paragraph:

"(5) 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;"

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (6) the following new paragraphs:

"(7) 'Federal agency lender' means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

"(8) the term 'improved real estate' means real estate upon which a building is located;

"(9) 'lender' means a regulated lending institution or Federal agency lender;

"(10) 'regulated lending institution' means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; and

"(11) 'servicer' means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan."

Regulations.

(b) CONFORMING AMENDMENT.— Section 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(b)) is amended by striking “Federal instrumentality described in such section shall by regulation require the institutions” and inserting “Federal entity for lending regulation shall by regulation require the regulated lending institutions described in such section, and each Federal agency lender shall issue regulations requiring the Federal agency lender.”.

SEC. 512. NATIONAL FLOOD INSURANCE ACT OF 1968.

(a) IN GENERAL.— Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) in paragraph (5), by striking “and” at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (6) the following new paragraphs:

“(7) the term ‘repetitive loss structure’ means a structure covered by a contract for flood insurance under this title that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event;

“(8) the term ‘Federal agency lender’ means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

“(9) the term ‘Federal entity for lending regulation’ means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

“(10) the term ‘improved real estate’ means real estate upon which a building is located;

“(11) the term ‘lender’ means a regulated lending institution or Federal agency lender;

“(12) the term ‘natural and beneficial floodplain functions’ means—

“(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

“(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

“(13) the term ‘regulated lending institution’ means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; and

“(14) the term ‘servicer’ means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the [2257]

terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.”

(b) CONFORMING AMENDMENT.-- Section 1322(d) of the National Flood Insurance Act of 1968 (42 U.S.C. 4029(d)) is amended by striking “federally supervised, approved, regulated or insured financial institution” and inserting “regulated lending institution or Federal agency lender”.

### Subtitle B--Compliance and Increased Participation

Loans.  
Real  
Property.

#### SEC. 521. NONWAIVER OF FLOOD PURCHASE REQUIREMENT FOR RECIPIENTS OF FEDERAL DISASTER ASSISTANCE.

Section 311(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5154(b)) is amended by adding at the end the following new sentence: “The requirements of this subsection may not be waived under section 301.”

#### SEC. 522. EXPANDED FLOOD INSURANCE PURCHASE REQUIREMENTS.

(a) IN GENERAL.-- Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended to read as follows:

“(b) REQUIREMENT FOR MORTGAGE LOANS.--

“(1) REGULATED LENDING INSTITUTIONS.-- Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

“(2) FEDERAL AGENCY LENDERS.-- A Federal agency lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). Each Federal agency lender shall issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1).

Regulations.

**"(3) GOVERNMENT-SPONSORED ENTERPRISES FOR HOUSING.—** The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is--

**"(A)** secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

**"(B)** purchased by such entity,  
the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

**"(4) APPLICABILITY.—**

**"(A) EXISTING COVERAGE.—** Except as provided in subparagraph (B), paragraph (1) shall apply on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

**"(B) NEW COVERAGE.—** Paragraphs (2) and (3) shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994. Paragraph (1) shall apply with respect to any loan made, increased, extended, or renewed by any lender supervised by the Farm Credit Administration only after the expiration of the period under this subparagraph.

**"(C) CONTINUED EFFECT OF REGULATIONS.—** Notwithstanding any other provision of this subsection, the regulations to carry out paragraph (1), as in effect immediately before the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, shall continue to apply until the regulations issued to carry out paragraph (1) as amended by section 522(a) of such Act take effect."

**(b) EXEMPTION FOR SMALL LOANS.—** Section 102(c) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(c)) is amended--

(1) by striking "(c) Notwithstanding" and inserting the following:

**"(c) EXCEPTIONS TO PURCHASE REQUIREMENTS.—**

**"(1) STATE-OWNED PROPERTY.—** Notwithstanding"; and

(2) by adding at the end the following new paragraph:

**"(2) SMALL LOANS.—** Notwithstanding any other provision of this section, subsections (a) and (b) shall not apply to any loan having--

**"(A)** an original outstanding principal balance of \$5,000 or less; and

**"(B)** a repayment term of 1 year or less."

**SEC. 523. ESCROW OF FLOOD INSURANCE PAYMENTS.**

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended by adding at the end the following new subsection:

**"(d) ESCROW OF FLOOD INSURANCE PAYMENTS.—**

**"(1) REGULATED LENDING INSTITUTIONS.—** Each Federal entity for lending regulation (after consultation and coordination [2259] with the

Financial Institutions Examination Council) shall by regulation require that, if a regulated lending institution requires the escrow<sup>ing</sup> of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance under the National Flood Insurance Act of 1968 for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

“(2) FEDERAL AGENCY LENDERS.— Each Federal agency lender shall by regulation require and provide for escrow and payment of any flood insurance premiums and fees relating to residential improved real estate and mobile homes securing loans made by the Federal agency lender under the circumstances and in the manner provided under paragraph (1). Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).” Regulations.

“(3) APPLICABILITY OF RESPA.— Escrow accounts established pursuant to this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.

“(4) DEFINITION.— For purposes of this subsection, the term ‘residential improved real estate’ means improved real estate for which the improvement is a residential building.

“(5) APPLICABILITY.— This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.”

#### SEC. 524. PLACEMENT OF FLOOD INSURANCE BY LENDERS.

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a), as amended by the preceding provisions of this title, is further amended by adding at the end the following new subsection:

“(e) PLACEMENT OF FLOOD INSURANCE BY LENDER.—

“(1) NOTIFICATION TO BORROWER OF LACK OF COVERAGE.— If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been identified by the Director (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to [2260] paragraph (1), (2), or (3)



of subsection (b), the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subsection (b)(1), for the term of the loan.

"(2) PURCHASE OF COVERAGE ON BEHALF OF BORROWER.-- If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

"(3) REVIEW OF DETERMINATION REGARDING REQUIRED PURCHASE.--

"(A) IN GENERAL.-- The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the Director to review a determination of whether the building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide to the borrower and the lender with a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the Director shall be final.

"(B) EFFECT OF DETERMINATION.-- Any person to whom a borrower provides a letter issued by the Director pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the Director, which shall be specified in the letter and shall begin on the date on which such letter is provided.

"(C) EFFECT OF FAILURE TO RESPOND.-- If a request under subparagraph (A) is made in connection with the origination of a loan and the Director fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

"(4) APPLICABILITY.-- This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994."

**SEC. 525. PENALTIES FOR FAILURE TO REQUIRE FLOOD INSURANCE OR NOTIFY.**

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a), as amended by the preceding provisions of this title, is further amended by adding at the end the following new subsections:

"(1) CIVIL MONETARY PENALTIES FOR FAILURE TO REQUIRE FLOOD INSURANCE OR NOTIFY.--

"(1) CIVIL MONETARY PENALTIES AGAINST REGULATED LENDERS.-- Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).  
"(2) LENDER VIOLATIONS.-- The violations referred to in paragraph (1) shall include--  
"(A) making, increasing, extending, or renewing loans in violation of--  
"(i) the regulations issued pursuant to subsection (b) of this section;  
"(ii) the escrow requirements under subsection (d) of this section; or  
"(iii) the notice requirements under section 1364 of the National Flood Insurance Act of 1968; or  
"(B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.  
"(3) CIVIL MONETARY PENALTIES AGAINST GSE'S.--

"(A) IN GENERAL.-- If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.  
"(B) DEFINITION.-- For purposes of this subsection, the term 'enterprise' means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"(4) NOTICE AND HEARING.-- A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.  
"(5) AMOUNT.-- A civil monetary penalty under this subsection may not exceed \$350 for each violation under paragraph (2) or paragraph (3). The total amount of penalties assessed under this subsection against any single regulated lending institution or enterprise during any calendar year may not exceed \$100,000.

"(6) LENDER COMPLIANCE.-- Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b).  
"(7) EFFECT OF TRANSFER ON LIABILITY.-- Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under paragraph (1), that occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating [2262] to a

loan committed by another regulated lending institution that previously held the loan

"(8) DEPOSIT OF PENALTIES.-- Any penalties collected under this subsection shall be paid into the National Flood Mitigation Fund under section 1367 of the National Flood Insurance Act of 1968.

"(9) ADDITIONAL PENALTIES.-- Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

"(10) STATUTE OF LIMITATIONS.-- No penalty may be imposed under this subsection after the expiration of the 4-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

"(g) OTHER ACTIONS TO REMEDY PATTERN OF NONCOMPLIANCE.--

"(1) AUTHORITY OF FEDERAL ENTITIES FOR LENDING REGULATION.-- A Federal entity for lending regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the national flood insurance program if the Federal agency for lending regulation makes a determination under paragraph (2) regarding the regulated lending institution.

"(2) DETERMINATION OF VIOLATIONS.-- A determination under this paragraph shall be a finding that--

"(A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (d), or (e) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968; and

"(B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (f)."

#### **SEC. 526. FEES FOR DETERMINING APPLICABILITY OF FLOOD INSURANCE PURCHASE REQUIREMENTS.**

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) as amended by the preceding provisions of this title, is further amended by adding at the end the following new subsection:

"(h) FEE FOR DETERMINING LOCATION.-- Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

"(1) BORROWER FEE.-- The borrower under such a loan may be charged the fee, but only if the determination--

"(A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;

"(B) is made pursuant to a revision or updating under section 1360(f) of the floodplain areas and flood-risk zones or

publication of a notice or compendia under subsection [2263] (h) or (i) of section 1360 that affects the area in which the improved real estate or mobile home securing the loan is located or that, in the determination of the Director, may reasonably be considered to require a determination under this subsection; or

“(C) results in the purchase of flood insurance coverage pursuant to the requirement under subsection (e)(2).

“(2) PURCHASER OR TRANSFEREE FEE.-- The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.”.

**SEC. 527. NOTICE REQUIREMENTS.**

Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a) is amended to read as follows:

**“NOTICE REQUIREMENTS**

**“SEC. 1364. (a) NOTIFICATION OF SPECIAL FLOOD HAZARDS.--**

**“(1) REGULATED LENDING INSTITUTIONS.--** Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Director under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

Records.

**“(2) FEDERAL AGENCY LENDERS.--** Each Federal agency lender shall by regulation require notification in the manner provided under paragraph (1) with respect to any loan that is made by the Federal agency lender and secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

Regulations.

**“(3) CONTENTS OF NOTICE.--** Written notification required under this subsection shall include--

**“(A)** a warning, in a form to be established by the Director, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

**“(B)** a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973;