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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 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

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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.

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### § 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

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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]