

200 KAR 6:040. Floodplain management.

RELATES TO: KRS Chapters 45, 56

STATUTORY AUTHORITY: KRS 56.185

NECESSITY, FUNCTION, AND CONFORMITY: In order for the Commonwealth of Kentucky to qualify for the purchase of flood insurance for state structures under the National Flood Insurance Program it shall comply with the federal National Flood Insurance Program regulations administered by the Federal Emergency Management Agency. The amendments to 200 KAR 6:040 bring this administrative regulation into compliance with KRS 13A.222.

Section 1. General.

(1) Purpose. The purpose of this administrative regulation is to minimize the loss of lives and property due to floods. Each state agency undertaking a development activity within the base flood plains of the state shall comply with this administrative regulation.

(2) Definitions. Unless otherwise defined, terms in this administrative regulation shall be interpreted to give them the meaning they commonly have.

(a) "Addition to an existing building" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

(b) "Allowable base flood elevation" means an increase of no more than one (1) foot in the water surface elevation above the existing base flood elevation.

(c) "Area of shallow flooding" means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

(d) "Base flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year (i.e., 100-year frequency flood).

(e) "Base flood elevation" means the elevation of the existing base flood.

(f) "Base flood plain" means any land area susceptible to a base flood.

(g) "Basement" means that portion of a building having its floor subgrade (below ground level) on all sides.

(h) "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.

(i) "Development activity" means any manmade change to improved or unimproved real estate by a state agency including, but not limited to, the construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

(j) "Elevated building" means a nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

(k) "FEMA" means Federal Emergency Management Agency.

(l) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters;

2. The unusual and rapid accumulation or run-off of surface waters from any source.

(m) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

(n) "Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

(o) "Flood insurance study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

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

(q) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that shall be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

(r) "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

(s) "Functionally dependent facility" means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

(t) "Mean sea level" means the average height of the sea for all stages of the tide.

(u) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers. This term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

(v) "New construction" means facilities for which the "start of construction" began on or after the effective date of this administrative regulation.

(w) "Riverine" means relating to, formed by, or resembling a river (including tributaries), streams, brooks, etc.

(x) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(y) "Start of construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348)), includes substantial improvement, and means the date on which the work order was issued by the Finance and Administration Cabinet, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days from the work order date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(z) "State" means Commonwealth of Kentucky.

(aa) "State agency" means any state administrative body, department, bureau or division as defined in KRS Chapter 12, and any institution, commission, board,

program cabinet, instrumentality, independent state authority, office, or other agency of the state.

(bb) "State facility" means all structures including, but not limited to, buildings, manufactured homes, storage tanks, docks, piers, dams, levees, utilities, roads, and bridges, constructed or placed, and associated land disturbance activities or state-owned lands.

(cc) "Substantial improvement" means any repair, reconstruction, or improvement of a state facility, the cost of which equals or exceeds fifty (50) percent of the current value of the facility either: before the improvement or repair is started; or if the facility has been damaged and is being restored, before the damage occurred. The term does not include: any project for improvement of a structure to comply with existing state health, sanitary, or safety codes solely necessary to assure safe living conditions; or any alteration of a structure listed on the "National Register of Historic Places" or a "State Inventory of Historic Places."

(dd) "Water surface elevation" means the projected heights in relation to mean sea level reached by floods in the flood plains of riverine areas.

Section 2. Application. This administrative regulation shall apply to all base flood plains of the state.

Section 3. Establishing Flood Plains. Base flood plains in the state will be identified in writing by the Natural Resources and Environmental Protection Cabinet. The Finance and Administration Cabinet will use this in determining whether a permit is to be issued.

Section 4. Abrogation and Greater Restrictions. This administrative regulation is not intended to repeal, abrogate, or impair any existing state easements, covenants, or deed restrictions. Where this administrative regulation and another state administrative regulation conflict or overlap, whichever imposes the more stringent restrictions shall apply. Compliance with this administrative regulation does not relieve responsibility for complying with other statutory requirements. All permits as required under CFR 44, Chapter 1, Section 60.3(a)(2) of the National Flood Insurance Program shall be obtained where applicable.

Section 5. Interpretation. In interpreting and applying this administrative regulation, all provisions shall be construed in favor of the state.

Section 6. Warning and Disclaimer of Liability. This administrative regulation shall not subject the state or any officer, agency or employee thereof to any liability for any damages from flooding that may occur or result from compliance with or reliance on this administrative regulation or any administrative decision made pursuant to this administrative regulation.

Section 7. Development Permit.

(1) The Secretary shall administer this administrative regulation by granting, granting with conditions, refusing to grant, or otherwise determining the appropriate action as provided in Section 9 of this administrative regulation, a development permit to state agencies proposing to undertake development activity within the base flood plain, excluding only those activities of the Department of Highways in the Transportation Cabinet relating to the acquiring of right-of-way for, and constructing and maintaining of highways.

(2) The Secretary of the Transportation Cabinet, subject to this administrative regulation, shall grant, grant with conditions, or refuse to grant, a permit for development activities for the Department of Highways. The permit shall include a certification that it was issued pursuant to this administrative regulation and a copy of it shall be provided to the Finance and Administration Cabinet.

Section 8. Flood Plain Management.

(1) Every state agency (except as provided in Section 7 of this administrative regulation) proposing development activity within the base flood plain shall notify the Finance and Administration Cabinet prior to initiating this activity. The notice shall contain a complete description of the proposed development and likely effects of it on the base flood plain; an explanation of why the development shall be located in the flood plain, whether alternative sites were considered, and why alternative sites not in the flood plain were rejected.

(2) The plans and specifications for all construction covered by this administrative regulation shall meet the following criteria:

(a) All development activity within a floodway, except as provided in this section, is prohibited. Necessary utilities are permitted. Except as provided in subparagraph 3 of this paragraph, the following are also permitted in the floodway only if their construction does not cause the flood to exceed the base flood elevation: necessary marine use facilities (other than buildings) when the construction is considered together with full usage of the floodway on the opposite bank; and bridges, with their appurtenances. Construction within the floodway shall be designed to withstand at least the water velocity of the base flood. Dams are permitted only if the base flood plain is held entirely in fee simple. To meet the requirements of this administrative regulation, the following methods shall be acceptable in order of preference:

1. Design the facility so there is no encroachment within the floodway;
2. Fully offset the effect of any encroachment into the floodway by stream improvements; or
3. Determine the increased backwater over the base flood elevation caused by an encroachment and secure any affected land by flood easement or fee simple purchase.
4. In areas where no floodway is designated, an engineering analysis shall be conducted to establish an appropriate floodway or it shall be demonstrated that the proposed development, in combination with all present and planned development, will not cause the flood to exceed the allowable base flood elevation. The methodology for conducting this analysis may be obtained from FEMA.
5. If subparagraphs 2, 3, or 4 of this paragraph are used, new flood plain information shall be provided to FEMA.

(b) Development outside the floodway limits, but in the remaining portion of the flood plain, is permitted as follows:

1. Water supply, sewage, electrical, gas, and all other utilities shall be so located and constructed as to eliminate infiltration of flood waters which could damage the utilities. In the case of on site waste disposal systems, they shall also be located to avoid contamination from them during flooding.
2. All structures shall be anchored to prevent flotation, collapse, or lateral movement and constructed with materials resistant to flood damage by methods that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
4. No manufactured home shall be allowed in the base flood plain.
5. Buildings shall be constructed so as to be protected to at least the base flood elevation. Flood protection for these buildings may consist of the following methods in order of preference:
 - a. Elevation of the lowest floor (including basement) using open works such as columns, walls, piles.
 - b. Elevation of the lowest floor (including basement) using fill.

c. For nonresidential buildings only, together with attendant utility and sanitary facilities, completely flood proofed watertight with walls substantially impermeable to the passage of water and with structural components able to resist the hydrostatic and hydrodynamic loads and buoyancy effects of the base flood. The adequacy of the flood proofing shall be certified by a professional engineer registered in Kentucky.

(c) New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

1. Designs for complying with these requirements shall either be certified by a professional engineer or architect or meet the following minimum criteria:

a. Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

b. The bottom of all openings shall be no higher than one (1) foot above grade; and

c. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

2.

a. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation;

b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage or maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and

c. The interior portion of the enclosed area shall not be partitioned or finished into separate rooms.

(d) Standards for areas of shallow flooding (AO Zones). Located within the areas of special flood hazard are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions shall apply:

1. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated, at least two (2) feet above the highest adjacent grade.

2. All new construction and substantial improvements or nonresidential structures shall:

a. Have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement shall be elevated at least two (2) feet above the highest adjacent grade; or

b. Together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(e) Improvements to existing facilities are permitted within the flood plain provided:

1. For facilities located in the floodway, no additions, alterations, encroachments, or relocations will cause flood levels to increase.

2. Practical alternatives are considered and used to minimize or eliminate flood damages.
3. Facilities substantially improved shall meet all requirements of new development as contained in this section.

Section 9. Administrative Procedures.

- (1) Upon receipt and review by the secretary of notice from a state agency proposing development activity within the flood plain, the secretary shall: issue a development permit; issue a permit with conditions; refuse to issue a permit and provide the reasons for denial; or, in his discretion, determine that such a permit is not required under this administrative regulation.
 - (2) When a development permit for building construction is issued, the agency undertaking the development in accordance with the terms of the permit shall:
 - (a) Secure a certification from a land surveyor or professional engineer registered in Kentucky of the elevation of the lowest floor (including basement) or, if flood proofing is utilized, the actual level of flood proofing in relation to the mean sea level and provide the certificate to the secretary within thirty (30) days following its issuance.
 - (b) Secure certifications, as applicable under Section 8(2)(b)5c of this administrative regulation and provide same to the secretary within sixty (60) days after completion of the building.
 - (3) The Finance and Administration Cabinet shall maintain for public inspection all certifications and permit records required by these administrative regulations.
- (7 Ky.R. 695; Am. 813; eff. 4-1-81; 14 Ky.R. 1931; 2181; eff. 5-9-88; 18 Ky.R. 1371; eff. 1-10-92; Crt eff. 2-10-2020.)