



How to Use the 2006 Model: Flood Damage Reduction Regulations



Periodically, NFIP-participating communities must update their Flood Damage Reduction regulations to reflect changes made to the Code of Federal Regulations as well as additional FEMA guidance. ODNR has determined that, to maintain compliance with federal requirements, regulations adopted before 1998 must be updated. Remember, these regulations provide the legal basis from which your community meets their floodplain management responsibilities. In the event that your regulations are challenged or your community wants to pursue enforcement actions, we want your regulations to provide the legal foundation that you need to be successful!

Toward that end, ODNR has updated and improved our model regulations. We have incorporated required definition and standard changes, clarifications from FEMA guidance, and lessons learned from case law over the years. Clarifications to floodplain administrator duties, required technical analyses, information to be obtained (*i.e.*, required use of FEMA Elevation and Floodproofing Certificates), watercourse alteration requirements, and appropriate use of best available data were added to the model in 2002. These clarifications are intended to provide the backing that floodplain administrators need to do their job—by putting these items in black and white it supports what you always knew you needed but the applicants didn't want to provide you! In addition, the new model provides an updated exemption value for inflation and better organization of the standards. The model can be found online at:

www.dnr.state.oh.us/water/floodpln/modelfldrules/tabid/3518/Default.aspx

This model is a basic regulation that meets the minimum federal criteria. It can be used by any size community so it may not fit your needs perfectly. Please feel free to modify the document to fit your administrative process and other special needs so long as it still satisfies those federal minimums.

As you prepare the model to suit your community's needs, it is necessary to remove certain language (depending on whether you are a municipality or a county), author's notes, and references that are not applicable to your individual situation. In addition, each community has been provided a unique combination of maps and studies that must be referenced in these regulations. Therefore, in creating a compliant regulation, you may need to contact ODNR for two items:

- In Section 1.6(A), the correct map and study names should be inserted and should read as follows "*Flood Insurance Rate Map YOUR COMMUNITY, Ohio YOUR COUNTY and Flood Insurance Study YOUR COMMUNITY, Ohio YOUR COUNTY* both effective xx/xx/xxxx."
- In section 2.0, the "New Construction" definition requires that you insert the initial FIRM date for your community where indicated by [INITIAL FIRM EFFECTIVE DATE] which can be found on the legend of each FIRM.

Once you've obtained this community-specific information, there are eight required decisions to be made:

1. Do you want to reference sources of data other than the FEMA-provided FIS and FIRM? The "Basis for Establishing Areas of Special Flood Hazard" (Section 1.6) must reference the current effective Flood Insurance Rate Maps (FIRM) and Flood Insurance Studies (FIS) provided by FEMA. Also, this section provides the opportunity to reference other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard. These flood related studies conducted by other state or federal agencies should be entered in Section 1.6(B) with title, author, and date.

2. Where are you going to store floodplain development permit records and the FIS and FIRM? Public access to floodplain records and data must be provided; therefore, these regulations must identify the location of both Flood Insurance Study/Maps and Floodplain Variance/Appeals Board records. These addresses should be entered in Section 1.6(C) and 5.1(B), respectively. Both addresses should include street address, city, and state.

3. Who is going to be the primary individual responsible for implementation of these regulations? Designate the local Floodplain Administrator as a specific position within the community (*i.e.*, Zoning Inspector, Building Official, Mayor, *etc.*). The person who fills this role will be the primary local contact for floodplain issues and will be responsible for ensuring that all local NFIP duties are fulfilled. This position is established in Section 3.1.

4. Do you want to adopt a fee for floodplain development permits? This fee is optional. Your community may charge a fee for the Floodplain Development Permit application and/or Variance/Appeal application. These fees should be entered in Section 3.4(F) and 5.4(A)(3), respectively. The language to be entered may reference a separate schedule of fees or directly state a dollar amount in these sections.

5. Who do you want to serve on your Appeals Board? The Variance/Appeals Board membership should be stated generally by noting titles instead of proper names. The board should be made up of an odd number of citizens or officials that will evaluate relief from flood safety standards on a case-by-case basis. The membership may include elected officials but must not include the local Floodplain Administrator.

Many communities want to use an established board to serve as their Appeals Board for these regulations. If your existing code already establishes the administrative requirements for such a board (*i.e.*, Board of Zoning and Building Appeals), there is no need to reestablish them here. The following changes are necessary to accommodate this alteration of the model:

(1) Exclusively use the following sentence (bolded) to Section 5.1(A), Appeals Board Established: ***The [COMMUNITY NAME] [BOARD NAME] is hereby appointed to serve as the Appeals Board for these regulations as established by [COMMUNITY NAME] code Section [#].***

(2) Remove the existing text in Section 5.1(B) leaving only the following sentence: *Records of the Appeals Board shall be kept and filed in [LOCATION OF RECORDS].*

(3) Remove the existing text in Section 5.4(B).

(4) Change the subsection numbering as follows:

- Existing Section 5.4(C), please change this to Section 5.4(B)
- Existing Section 5.4(D), please change this to Section 5.4(C)

(5) Correct the intratext reference that has been made incorrect:

In the new Section 5.4(C)(2), please alter the intratext reference so that it reads as follows "*Generally, variances may be... providing items in Section 5.4(B)(1) to (11) have...*"

6. How long will the Appeals Board members serve? Excluding the situation described in Question #5 above, the members of the Appeal Board should be appointed for a specified number of years. At the end of each term the members may be reappointed. Staggering of terms is useful to maintain continuity of experience and knowledge base on the board. The term limit should be entered in Section 5.1(A).

7. How many days will applicants have to file an appeal? Where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations an appeal may be requested. In Ohio, 10-20 days is most commonly used. The number of days should be entered in Section 5.3.

8. What degree misdemeanor will be the penalty for violating these regulations? These regulations must set appropriate penalties for noncompliance. Violation of the provisions of these regulations or failure to comply with any of its requirements shall constitute a misdemeanor of your community's choice. Each day may be considered a separate offense. Consult with your legal counsel on which degree misdemeanor to choose. The degree should be entered in Section 6.3.

Your community has a distinctive set of risks, development pressures, community goals, and individual needs. Matching the right higher standards to those traits will benefit your community. For a detailed discussion of this subject, please see the *Ohio Floodplain Regulation Criteria*, Chapter 3. There is, however, one higher standard that is just too commonly used to omit from our discussion here. That standard is "Freeboard", which requires your community to ask two questions:

1. Will your community adopt a freeboard? "Freeboard" is a factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights such as wave action, obstructed bridge openings, debris and ice

jams, and the hydrologic effect of urbanization in a watershed. In addition, there are direct savings on flood insurance premiums for structures built with their lowest floor above the base flood elevation.

2. Which type of Freeboard will your community adopt: regular Freeboard and/or A Zone Freeboard? Regular freeboard applies only to building sites that have a base flood elevation available. A Zone Freeboard applies to building sites that fall within "Approximate A Zones", which do not have a base flood elevation available.

(A) Regular Freeboard: To adopt this standard, make the following change to the model: In Section 2.0, enter a number of feet in the definition for "Flood Protection Elevation" as follows "The Flood Protection Elevation, or FPE, is the base flood elevation plus **[X]** feet of freeboard..."

(B) A Zone Freeboard: In this situation, make the following two changes to the model: Add the following bolded sentence to the existing language in Sections 4.4(D) &/or Section 4.5(C): **Where flood protection elevation data are not available the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.**

Don't forget to submit a draft of your regulations to ODNR for review prior to adoption. Our office asks for 30 days to provide the review letter, but it often takes only a week or two. Once ODNR has approved draft regulations, your community can begin the adoption process. Please note that your community will not be in compliance with NFIP standards until ODNR has approved your adopted regulations. Please see the **Ohio Floodplain Regulation Criteria** guidebook on our website www.dnr.state.oh.us/Portals/7/floodpln/OFRC_8_2006.pdf for a more in depth discussion of these topics.

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www.dnr.state.oh.us/water/floodpln/default/tabid/3511/Default.aspx

