



By Rebecca Quinn, CFM

FEMA released FEMA Policy #104-008-03 in February, prompting me to search through the Floodplain Manager's Notebook archives. I found a column from May 2008 about accessory structures. So let's see what, if anything, has changed. The following is lightly edited and my personal observations on the policy are [in brackets.] And you'll note I am not commenting on agricultural structures – that'll require a deeper dive.

Also, let me remind you that my columns are my opinions based on experience and published guidance. For official guidance on accessory structures and agricultural structures, community officials should contact NFIP State Coordinators, who in turn should contact their FEMA Regional Offices. I understand FEMA expects to publish guidance on the new agricultural structure and accessory structure policy give more detail.

Accessory Structures. And Yes, a Bit About Agricultural Structures.

Let's talk about accessory structures, especially sheds. You know, the ones you can buy at Home Depot, Lowe's, and similar stores and garden centers. The ones that Harry Homeowner and his neighbors put way out in the corner of the backyard. The ones that often are placed without regard for zoning setbacks and building codes, much less requirements found in local floodplain management regulations.

First, a little background. The NFIP requires participating communities to regulate development – and the definition of development is pretty all-inclusive. The NFIP doesn't have exemptions for things that are small (such as small sheds), or "minor" activities. This brings to mind the opinion of an assistant attorney general in Maryland who, after reading the statute for the state's floodplain regulatory program, said that it could be read that "even a teaspoon of fill" is a regulated activity. Of course, there's lawyer-talk and there's reality. But really, how many communities issue permits for sheds?

We'll get back to the NFIP requirements in a minute. But first, you've probably noticed that I regularly refer to building code requirements. The *International Building Code* and the *International Residential Code* are adopted by many states (and also by many communities in states that don't have state codes). These international codes have requirements for buildings in flood hazard areas. Communities with both building codes and floodplain management regulations should carefully examine the building codes, which are minimum requirements for buildings (and include some provisions that provide better protection than the NFIP minimums). FEMA Building Science posts [excerpts of the flood provisions in the I-Codes](#)

FEMA Policy #104-008-03

FEMA released *FEMA Policy: Floodplain Management Requirements for Agricultural Structures and Accessory Structures* in February 2020.

As of press time, the web link provided in the official notification of the policy does not work, and a web search turns up a draft that should not be used. Also be aware that the NFIP "policy index" webpage for agricultural structures and the one for accessory structures do not cite the policy and have not been updated.

and similarities and differences are explained in [Reducing Flood Losses Through the International Codes: Coordinating Building Codes and Floodplain Management Regulations](#).

So now let's talk about the building code and accessory structures. The IBC and the IRC both have lists of "work exempt from permit" and those lists include quite a few things. Both codes exempt "one-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area is not greater than square feet." The IBC limits the size to 120 sq. ft., while the IRC limit is 200 sq. ft. Why the difference? I have no idea! It's been that way since the 2006 editions.

As always with codes and regulations, one must be thorough. Note that while the IBC and IRC exempt accessory structures *from a permit* – both clearly state that exemption "shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances" of the jurisdiction.

What that means is while a property owner doesn't have to pull a permit to put a small shed in the backyard, the codes still apply. Code officials have told me that while they don't go looking to determine whether accessory structures are compliant, they can take enforcement action if necessary.

And that brings us back to which requirements in local floodplain management regulations apply to accessory structures, and yes, even those small enough to be exempt from a building permit. Of course, small accessory structures can be elevated to or above the base flood elevation. And, because they are not residential (dwellings), they could be dry floodproofed (Zone A/AE only). But I think we can agree it's unlikely that owners will choose those options.

The NFIP regulations don't explicitly address accessory structures and do not have explicit provisions for wet floodproofing. What we think of as "wet floodproofing" is described in [FEMA Technical Bulletin 7 Wet Floodproofing Requirements](#) published in 1993. But look closely at TB 7 and you'll see it says communities should handle wet floodproofing of accessory structures by variance. Well, decades ago many states negotiated with FEMA regional offices to establish a size limit to allow communities to issue permits for wet floodproofed accessory structures. [This allowance is now formalized in Policy #104-008-03, which indicates accessory structures can be approved "without a variance" (i.e., by permit) provided the structures are "less than or equal to a one-story, two-car garage" in Zone A and less than or equal to 100 square feet in Zone V – unless different sizes are approved by FEMA.]

So the next question is what requirements apply when someone wants to wet floodproof an accessory structure? TB 7 lays out the elements of wet floodproofing. They trace back to the rules for enclosures below elevated buildings: limited to parking and storage, elevated electrical and equipment, flood damage-resistant materials, and flood openings. [By my read of the new policy, the same elements outlined in TB 7 are still what's required for wet floodproofing.] Keep in mind that if a shed or accessory structure is proposed in a floodway, the floodway encroachment requirements must be satisfied. For the latest on flood openings, check out the latest version of [TB 1 Requirements for Flood Openings in Foundation Walls and Walls of Enclosures](#). And for Zone V, check out the latest version of [TB 5 Free-of-Obstruction Requirements](#).

There is one more very basic NFIP requirement that needs to be addressed: all structures (including accessory structures) must be “adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy” (44 CFR 60.3(a)(3)(i)). You can appreciate the importance of anchoring if you’ve ever seen a dislodged shed slammed against another building or jammed under a bridge or plugging a culvert, causing backwater flooding. It’s my understanding that people can be held liable for damage caused by their actions – or, in this case, inaction if they neglected to anchor a shed that washed away and is shown to have worsened flooding and damage.



Photo by Leif Skoogfors/FEMA (2001).

Some Important Terms – Keep These Differences in Mind

“Nonconforming” is not the same as “noncompliant.” A building constructed in violation of regulations or building codes is *noncompliant*: it does not comply with the requirements. *Nonconforming*, a term commonly used in zoning, refers to buildings that pre-date the adoption of regulations or codes. Thus, a building built before a community adopted its floodplain management regulations and FIRM (often called “pre-FIRM”) is nonconforming. Because it wasn’t required to comply, it is incorrect to call it noncompliant.

“Variance” is not the same as “waiver.” A *variance* is official permission to do something that is not otherwise permitted. The NFIP regulations provide for variances in 44 CFR § 60.6. Of particular note, variances are to be the minimum necessary to afford relief – not a wholesale permission to ignore all aspects of flood resistance. Communities must issue variances only upon a showing of good and sufficient cause, a determination that not granting a variance would result in exceptional hardship to the applicant, and a determination that 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 and ordinances. To *waive* something means to give it up or relinquish it voluntarily. For example, building codes typically allow building officials to waive or modify requirements for site plans with applications are for interior work and when otherwise warranted. Thus, one significant difference between variances and waivers is who initiates the action: a variance is requested by the applicant and a waiver is at the discretion of the code official.

Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcomed! Explore back issues of the [Floodplain Manager's Notebook](#).