



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Jared Moskowitz
Director

November 2, 2020

MEMORANDUM

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management &
Insurance Branch *Jason O. Hunter*

RE: Florida Building Code and Permits Issued on the Basis of Affidavits
NFIP Communities Must Review For Floodplain Compliance

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

The NFIP regulations require communities to review proposed construction or development in special flood hazard areas. Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5th Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or floods@em.myflorida.com if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5th Ed. FBC, submitted 7/22/2012

ATTACHMENT

FBC, Building Sections 105.14 and 107.6.1

105.14 Permit issued on basis of an affidavit. Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

Exception: Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

107.6.1 [Affidavits] Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

SP5255

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Date Submitted	7/22/2012	Section	107.6 and 117 (new)	Proponent	Rebecca Quinn obo DEM
Chapter	1	Affects HVHZ	No	Attachments	No
TAC Recommendation	Pending Review				
Commission Action	Pending Review				

Related Modifications

Summary of Modification

Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.

Rationale

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.