

## § 415.33

## 18 CFR Ch. III (4-1-10 Edition)

### § 415.33 Uses by special permit.

(a) Within the floodway the following uses by special permit may be authorized under the standards hereinafter provided:

(1) Uses or structures accessory to open space use.

(2) Circuses, carnivals and similar transient enterprises.

(3) Drive-in theaters, signs and billboards.

(4) Extraction of sand, gravel and other non-toxic materials.

(5) Marinas, boat liveries, docks, piers, wharves and water control structures.

(6) Fish hatcheries.

(7) Railroads, streets, bridges, utility transmission lines and pipelines.

(b) Within the flood fringe the following uses by special permit may be authorized under standards hereinafter provided:

(1) *Non-residential uses generally.* Structures other than residence shall ordinarily be elevated as herein provided but may in special circumstances be otherwise flood proofed to a point above the Flood Protection Elevation.

(2) *Commercial uses.* Commercial structures shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Accessory land uses, such as yards, railroad tracks and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the Regulatory Flood.

(3) *Manufacturing and industrial uses.* Manufacturing and industrial buildings, structures, and appurtenant works shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Measures shall be taken to minimize flood water interference with normal plant operations especially for streams having protracted flood durations. Certain accessory land uses as yards and parking

lots may have lesser protection subject to the flood warning requirements set out in 2 above.

(4) *Utilities, railroad tracks, streets and bridges.* Public utility facilities, roads, railroad tracks and bridges shall be designed to minimize increases in flood elevations and shall be compatible with local comprehensive flood plain development plans to the extent applicable. Protection to the Flood Protection Elevation shall be provided where failure or interruption of these public facilities would result in danger to the public health or safety, or where such facilities are essential to the orderly functioning of the area. Where failure or interruption of service would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads or utilities.

(5) *Water supply and waste treatment.* No new construction, addition or modification of a water supply or waste treatment facility shall be permitted unless the lowest operating floor of such facility is above the Flood Protection Elevation, or the facility is flood proofed according to plans approved by the Commission, nor unless emergency plans and procedures for action to be taken in the event of flooding are prepared. Plans shall be filed with the Delaware River Basin Commission and the concerned state or states. The emergency plans and procedures shall provide for measures to prevent introduction of any pollutant or toxic material into the flood water or the introduction of flood waters into potable supplies.

### ADMINISTRATION

### § 415.40 Administrative agency.

(a) Class I projects as defined by § 415.20 of this part shall be subject to review and approval by the Commission.

(b) Class II projects as defined by § 415.21 shall be subject to review and approval by a duly empowered state or local agency; and if there be no such state or local agency at any time on and after January 1, 1978, and only during such time, the Commission may review any such project which has been

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identified by the Executive Director as having special flood hazards, and:

(1) Is located along the mainstem Delaware River or a major tributary thereof, or

(2) An agency of a signatory party requests such review.

### § 415.41 Special permits.

A special permit may be granted, or granted on stated conditions, provided:

(a) There is a clear balance in favor of the public interest in terms of the following environmental criteria:

(1) The importance of a facility to the community.

(2) The availability of alternative locations not subject to flooding for the proposed use.

(3) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(4) The relationship of the proposed use to any applicable comprehensive plan or flood plain management program for the area.

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(6) The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.

(7) The degree to which the proposed activity would alter natural water flow or water temperature.

(8) The degree to which archaeological or historic sites and structures, endangered or rare species of animals or plants, high quality wildlife habitats, scarce vegetation types, and other irreplaceable land types would be degraded or destroyed.

(9) The degree to which the natural, scenic and aesthetic values at the proposed activity site could be retained.

(b) The project shall not:

(1) Endanger human life.

(2) Have high flood damage potential.

(3) Obstruct flood flows nor increase flood heights or velocities unduly whether acting alone or in combination with other uses.

(4) Degrade significantly the water carrying capacity of any delineated floodway or channel.

(5) Increase significantly the rate of local runoff, erosion, or sedimentation.

(6) Degrade significantly the quality of surface water or the quality or quantity of ground water.

(7) Be susceptible to flotation.

(8) Have service facilities installed below the elevation of the regulatory flood without being adequately flood proofed.

### § 415.42 Technical standards.

(a) Standards used by state and local governments shall conform in principle to Commission standards but may vary in detail provided that resulting flood plain use will not be less restrictive than would result from the application of Commission standards. The Commission will review proposed state and local flood plain regulations to determine their compliance with Commission standards.

(b) Because of the variety and diversity of presently recognized hydrologic procedures, no one procedure or method is prescribed for determining the peak flow in cubic feet per second for the 100-year storm (Q 100) on which profiles for the delineation of flood hazard areas are based. The following may be used:

(1) A uniform Technique for Determining Flood Flow Frequencies—Bulletin No. 15—Water Resources Council, December 1967.

(2) Basin-Wide Program for Flood Plain Delineation—Delaware River Basin Commission—Anderson-Nichols & Co., Inc., June 1973.

(3) Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization—Special Report 38 U.S.G.S.—New Jersey Department of Environmental Protection, 1974.

(4) Guidelines for Determining Flood Flow Frequency—Bulletin No. 17—Water Resources Council, March 1976.

State and local agencies may use methods resulting in Q 100s which are in reasonable agreement with those of the Commission. Any significant difference shall be reviewed with and subject to approval by the Executive Director.

(c) Methods and procedures shall be uniform, so far as practicable, within sub-basins which have a major effect on the larger basins of which they are