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44 CFR Parts 59 and 61

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 61

RIN 3067–AC79

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes an inspection procedure under the National Flood Insurance Program (NFIP) to help verify that structures comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The inspection procedure requires owners of insured buildings to obtain an inspection from community floodplain management officials as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. We, FEMA, will undertake the inspection procedure on a pilot basis in two communities, Monroe County, Florida, and the Village of Islamorada located in Monroe County. We will make any decision to implement the inspection procedure in other NFIP communities outside Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine the procedure's effectiveness.

EFFECTIVE DATE: July 27, 2000.

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SUPPLEMENTARY INFORMATION: Throughout the preamble and the rule we use the terms ''we'', ''our'' and ''us'' to mean and refer to FEMA. The term ''you'' refers to the reader.

Scope of Public Participation

We received over 65 letters and e-mail messages about the proposed rule, (64 FR 24256, May 5, 1999), many of which contained multiple comments. A number of these comments arrived after the closing date for comments, but because these comments were specific to the inspection procedure, we included them as part of the official record. Most of the letters represented local interests from Monroe County and the Village of Islamorada. Those submitting formal comments on the proposed rule included: one member of the Florida State House of Representatives, community officials and representatives of local governments within Monroe County, Florida and from communities outside of Florida, Florida State and regional agencies, a State of Louisiana agency, private citizens, representatives from local businesses and business associations, and representatives from lending institutions and associations and insurance companies.

Eight individuals participated in a meeting at FEMA Headquarters on August 31, 1999, including three representatives from the Village of Islamorada, Florida, a representative from the State of Florida, a private citizen, and three congressional staff members. We recorded oral comments at this meeting and included them as part of the official record.

Nine individuals participated in a meeting at FEMA Headquarters on September 10, 1999, including four representatives from Monroe County, Florida, two representatives from the Key West Chamber of Commerce, and three congressional staff members. We also recorded oral comments at this meeting and included them as part of the official record.

Introduction

We selected Monroe County and the Village of Islamorada for this inspection procedure due to the unique circumstances in the communities. Almost the entire County, including the Village of Islamorada, could be inundated by the 100-year flood (a flood having a one-percent chance of being equaled or exceeded in any given year). A number of factors make the conditions in Monroe County and Islamorada unique, including:

- The nature of the flood hazard,
- The number of possible violations (an estimated 2,000–4,000 illegally built enclosures in the communities),
- The exposure of these buildings to flood damages,
- The potential for loss of life in the event of a flood,
- The factors that have limited the community's ability to determine whether a building with an enclosure complies with the local floodplain management ordinance as documented in the proposed rule, and
- The communities' willingness to participate in this procedure.

We are providing the inspection procedure to these communities as a tool for addressing their unique situation.

Risk of Flooding

Comments on the Flood Risk

We received ten comments questioning the need for the inspection procedure on the basis that there is infrequent flooding and a low flood risk in the Florida Keys compared to other areas of the United States. Several people questioned FEMA's determination of the flood risk in the Florida Keys. One person specifically stated that FEMA is unfairly applying the rules that are used to determine the flood elevations along the Mississippi River to the Florida Keys. This person added that the Florida Keys will flood only a mile or two near the eyewall of a storm on the onshore quadrant and that floodwaters will rise and fall gently as the storm moves across similar to Hurricane Andrew in the Kings Bay and Saga Bay area where water was only a few feet high in homes.

Several people commented that most storm-induced damages to buildings in the Florida Keys would be due to wind loads and not from flooding or waves hitting the building since waves occur only near the coast. In similar comments, several people stated that there is no basis for the FEMA enclosure requirement since there was little, if any, evidence from Hurricane Mitch and Hurricane Georges that these enclosures were damaged or that they damaged the main portion of the building or nearby buildings.

Some stated that FEMA's reasoning for the inspection procedure is flawed in reference to our statements in the proposed rule that people living in lower level enclosures may not be aware of the danger of hurricanes and that there will be costly outlays for flood fighting. As an example, one commenter stated that people are aware of hurricanes because the Florida Keys are surrounded by water. This person remarked that people living in lower level enclosures are aware of the danger of a hurricane approaching and will evacuate and be protected since they will have advance warning.

Response

We identify and map flood hazard areas in communities nationwide by conducting a Flood Insurance Study (FIS) and publishing maps referred to as Flood Insurance Rate Maps (FIRMs). We do this in close coordination with the

community that we are studying. We base these flood hazard areas, which we refer to as Special Flood Hazard Areas (SFHAs), on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood or base flood. The NFIP adopted the 1-percent annual chance flood after considering various alternatives. The 1-percent annual chance flood is the standard for floodplain management in all of the approximately 19,000 participating communities in the NFIP. Federal agencies and most State agencies use the 1-percent chance flood as their standard for floodplain management. The standard is a reasonable compromise between the need for establishing building regulations to minimize potential loss of life and property and the economic benefits to be derived from floodplain development. A 1-percent annual chance flood has a 26-percent (or 1 in 4) chance of occurring over the life of a 30-year mortgage.

We determine the 1-percent annual chance flood, shown on the FIRMs as A Zones or V Zones, from information that we obtain through consultation with the community, floodplain topographic surveys, detailed hydrologic and hydraulic analyses, and historic records. We (and our contractors) use commonly accepted computer models that estimate hydrologic and hydraulic conditions to determine the 1% annual chance flood event, to determine Base Flood Elevations, and to designate flood risk zones. The procedures and models that we use to map the SFHA and determine Base Flood Elevations along the coast are very different from the procedures and models that we use for rivers and small lakes. In both cases, we use industry-accepted practices.

Along *rivers, streams, and lakes* within the United States, we compute flood elevations using computer models, statistical techniques, or both. These elevations are a function of the amount of water expected to enter a particular system by means of precipitation and runoff. The SFHAs in riverine environments are primarily identified as A Zones on the FIRM.

Along the *coast,* we determine SFHAs by an analysis of storm surge, wind direction and speed, wave heights, and other factors. We designate these areas along the coast as both V Zones and A Zones on the FIRM. V Zones are the more hazardous coastal flood zones because they are subject to high velocity wave action. We apply the V Zone designation to those areas along the coast where water depth and other conditions would support at least a 3-foot wave height. We also consider other factors in identifying V Zones, such as wave run-up. We usually designate A Zones in coastal areas landward of the V Zone. Coastal flood hazard areas mapped as A zones can be subject to storm surge and damaging waves; however, the waves are less than 3 feet in height.

Monroe County and the Village of Islamorada, Florida have a serious flood risk that includes storm surges, wave action, and high velocity flows. As stated in the proposed rule, we have designated almost the entire area of Monroe County, including the Village of Islamorada, as an SFHA. We have identified velocity zones (V Zones) along the coastline of Monroe County and the Village of Islamorada and designated the remaining portion of the SFHAs as coastal A Zones. Only a small area of Key Largo, Cotton Key, and Upper Matecumbe Key have areas with ground elevations high enough to be outside of the SFHA. You can find details regarding storm surge and wave height analyses used to delineate the SFHAs and to determine Base Flood Elevations in the Flood Insurance Study, March 1997, for Monroe County and incorporated areas including the Village of Islamorada.

Overwash flooding and wave action from Hurricane Georges and Tropical Storm Mitch were very limited, well below the elevation of the 1-percent annual chance flood. The National Hurricane Forecast Center categorized Hurricane Mitch as a Tropical Storm by the time it reached the Florida Keys with sustained winds estimated near 45 MPH. Hurricane Georges was a Category 2 storm when it passed the Florida Keys. When Hurricane Georges passed the Florida Keys, the highest measured sustained wind reported was 91-mph with peak gusts to 107-mph at Sombrero Key. Cudjoe and Big Pine Key sustained higher gusts. In the Florida Keys, the storm surge elevations from Hurricane Georges ranged from 3 feet to 6 feet above Mean Sea Level (MSL) [National Weather Service, 1998], well below the elevation of the 1-percent annual chance flood, with a total rainfall amount of 8.5 inches in Key West (NWS, 1998).

Although the storm surge and wave action from Hurricane Georges were not severe, we paid approximately 3,500 flood-related claims of over $40 million dollars in the Florida Keys as a result of this storm. In some areas of the County, flooding of several inches to several feet remained at building sites from 12 to 20 hours after the storm event. Approximately 80% of the claims were for pre-FIRM buildings. In Monroe County and the Village of Islamorada buildings are considered pre-FIRM if the starting date of construction or substantial improvements of buildings occurred on or before December 31, 1974.

The remaining 20 percent of the claims were for post-FIRM construction. By statute we consider all new construction in Monroe County and the Village of Islamorada built after December 31, 1974, and substantial improvements to pre-FIRM buildings to be post-FIRM. Under the NFIP, these post-FIRM buildings must meet the requirements of the community's floodplain management ordinance to protect them from flood damages. We would expect that most of the flood-related damage and flood claims would be to pre-FIRM buildings, which have not been protected to the minimum floodplain management requirements of the NFIP.

However, in reviewing a number of post-FIRM claims from Hurricane George in Monroe County, we found several post-FIRM buildings with ground level enclosures below the lowest floor of the elevated building that sustained flood-related damages from a few hundred dollars to several thousand dollars. We could not determine precisely whether these enclosures were built to the minimum requirements of the NFIP or were completely built with finished living space. The flood-related damages to these enclosures and the contents are, for the most part, not covered under the Standard Flood Insurance Policy (see section below on *Flood Insurance*).

The residents of Monroe County have been fortunate that a major hurricane with an associated 1-percent annual chance flood has not made landfall in recent years, but that does not mean that one will not occur. The State of Florida is one of the most hurricane-prone states in the United States (U.S.). According to the National Weather Service, from 1900–1994, Florida experienced over 297 direct and indirect landfalls from hurricanes, the most of any mainland area of the U.S. From 1900–1996, Florida has experienced 57 direct hurricane hits and of these over 24 were major hits (Category 3, 4, or 5 on the Saffir/Simpson scale). Florida also has the highest incidence rate of Category 3 or greater landfalls. Within the State of Florida from 1900–1996, southwestern Florida and southeastern Florida have experienced 18 and 26 direct hurricane hits respectively (NOAA). Several of these storms had fairly sizable storm tide levels causing extensive flooding. For example, Hurricane Donna, 1960, had tide levels just south of the Village of Islamorada in Upper Matecumbe Key measured at 13.45 feet above MSL (FIS,

1997). In 1935, a Labor Day Hurricane caused tide levels of 14 feet to 18 feet above MSL in the Tavernier-Islamorada area (FIS, 1997).

We agree that people living in Monroe County are generally aware that the Monroe County is prone to hurricanes. However, property owners with finished ground level enclosures or tenants who live in these enclosures may not be aware of the potential dangers and the damaging effects of storm surges commonly associated with coastal storms and hurricanes. Although adequate warning time may be given, property owners or tenants may undertake extensive efforts to protect the finished ground level enclosure and their contents. These flood-fighting efforts could add significant delays in evacuating from the Florida Keys in the event of an approaching hurricane. As a result, an orderly and timely evacuation process may be hindered, which could potentially lead to residents trapped in the Florida Keys as the hurricane's rising waters and increasing winds approach. Consequently, there is potential for loss of life for those who are unable to evacuate during the critical evacuation period. We would expect that a 100-year flood event in Monroe County would result in significant flood damages from storm surge and wave action to pre-FIRM buildings and to post-FIRM buildings that have not been properly elevated or have illegally-built ground level enclosures below elevated buildings.

NFIP Floodplain Management Requirements

Comments on the NFIP Floodplain Management Requirements for Enclosures

We received eighteen comments on the NFIP Floodplain Management requirements that ranged from general questions of why we regulate enclosures to specific comments concerning the appropriateness of the NFIP construction and building use requirements for enclosures located below the Base Flood Elevation.

One person suggested that instead of being concerned about enclosures, we should subsidize Monroe County as well as other communities in the program and allow them to run their own programs. In another comment, someone stated that the proposed rule disregards the fact that Monroe County is entitled to interpret its own laws as it has by allowing finished ground level enclosures. Several other people questioned why the NFIP requirements for enclosures were necessary since non-structural elements of lower area enclosures are not covered under the Standard Flood Insurance Policy. In a related question, someone asked what our role was in the enclosure issue since flood insurance is only required when a mortgage is being obtained. Several questions were also raised as to why we are focusing on lower level enclosures and not on buildings constructed at ground level or on buildings with enclosures built before 1975.

We also received recommendations on alternatives that we should consider in addressing enclosures. They included: (1) Allowing homeowners to buy a bond for the replacement cost of the enclosure, which would be used to repair flood damaged items; (2) allowing property owners to self-insure against any flood damages below the flood level; and (3) allowing property owners to purchase private insurance to cover the entire structure since we do not fully cover building elements below the lowest floor.

Several people commented that we have not made a case that ground level enclosures increase the risk to loss of life and property. Many people commenting believe that most storm-induced damages in the Florida Keys will be caused by wind loads rather than from flood loads. Specifically, some asked us what we base our claim on that lower level enclosures will be damaged and will cause the elevated part of the building to collapse or be damaged, or will cause damages to nearby buildings of a major hurricane. One commenter stated that many of the prohibitions pertaining to enclosures are overly broad and appear to apply without reason to harmless uses of enclosures. In other comments, some stated that lower level enclosures do not pose any more of a threat than anything else at ground level, such as automobiles, boats, and recreation equipment, and that enclosures can serve to limit the amount of wind-blown debris.

In several comments on the NFIP construction requirements commenters stated that enclosures could be made safe. One person recommended the use of breakaway walls. Others recommended that rather than constructing a building on a pile or column foundation system required under the NFIP in coastal areas, we should allow buildings to be constructed on solid reinforced concrete block foundation since they can provide better protection to buildings in the Florida Keys. One questioner asked why we believe that steel reinforced concrete foundation walls supporting the upper levels and enclosing the lower level pose a threat to buildings.

One person wanted clarification on how the proposed inspection procedure would address the critical difference between the requirements of a true foundation flood vent and the air vents that are not true flood vents.

Several people also questioned our requirements on the use of enclosures. Within this category of comments, one person suggested that the use limitation on enclosures was designed to solve a zoning problem by creating a false impression that finished enclosures threaten the upper level of buildings. Several people questioned our requirement of prohibiting uses other than parking, access, and storage in which cars, boats, and garden items can be stored that can be damaged or cause damage to the building, but not permit finished materials and other items. In other comments, several asked why we do not allow workrooms, home offices, libraries, wine cellars, recreation rooms, and additional storage since the finished space is not insurable. Many suggested that we should focus on enclosures that are used as apartments instead of other uses such as family rooms with breakaway walls.

One person urged us to permit homeowners to use an engineering solution similar to that of commercial buildings by allowing finished lower level enclosures below the Base Flood Elevation to be dry floodproofed. That person stated that we should recognize home offices in residences and treat them similar to non-residential buildings.

Response

In order to address these comments fully, we are first providing some background information on the NFIP in general.

General program description. Congress created the NFIP under the National Flood Insurance Act of 1968, as amended, to provide federally supported flood insurance coverage, which generally had not been available from private companies. Congress created the NFIP in response to the escalating cost of flood damages from a series of flood events from hurricanes and riverine floods in the early 1960's. However, making flood insurance available was not the only objective in creating the NFIP. In addition to indemnifying individuals for flood losses through insurance, Congress also created the NFIP to: (1) Reduce future flood damages through State and community floodplain management regulations; and (2) reduce Federal expenditures for disaster assistance and flood control.

Section 1315 of the Act prohibits us from providing flood insurance to property owners unless the community adopts and enforces a floodplain management ordinance that meets or exceeds the criteria found in our NFIP regulations at 44 CFR 60.3. Community participation in the NFIP is voluntary. Over 19,000 communities currently participate in the NFIP.

The National Flood Insurance Act of 1968 requires us to charge full actuarial rates reflecting the complete flood risk to buildings constructed or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later. We refer to these buildings as post-FIRM. Actuarial rating assures that those locating in flood prone areas bear the risks associated with new buildings in such areas and not by the taxpayers at large. Flood insurance premiums on pre-FIRM buildings, buildings constructed before the effective date of the initial FIRM, are subsidized.

In general, the NFIP minimum floodplain management regulations require that new construction or substantially improved existing buildings in A Zones must have their lowest floor (including basement) to or above the Base Flood Elevation. In V Zones, the bottom of the lowest horizontal structural member of the lowest floor of all new construction or substantially improved existing buildings must be elevated to or above the Base Flood Elevation. Using knowledge of local conditions and in the interest of increased safety, many States and communities have more restrictive requirements than those that we established under the NFIP. We have designed the NFIP floodplain management regulations to protect buildings constructed in floodplains from flood damages; they help keep flood insurance rates affordable, and they minimize the need for disaster assistance.

For Monroe County and the Village of Islamorada, Florida, a post-FIRM building is a building constructed or substantially improved after December 31, 1974. When Monroe County and the Village of Islamorada joined the NFIP, they agreed to regulate all new construction built after the effective date of their initial FIRM, and substantial improvements to pre-FIRM buildings after this date to ensure that these buildings meet the requirements of the community's floodplain management ordinance, which meets the minimum requirements of the NFIP Floodplain Management Regulations.

Two other important components of the program are: (1) That Federal agencies are prohibited from providing financial assistance for the acquisition or construction of buildings in the designated flood hazard areas of communities that do not participate in the NFIP; and (2) that flood insurance is a condition of receiving federal financial assistance or loans from federally insured or regulated lenders in those communities that do participate. Flood insurance is not limited to property owners who must purchase flood insurance for mortgage purposes. It is available in participating communities to anyone, including those who live outside the designated flood hazard area.

We are responsible under the Act for establishing, developing, and implementing policies and programs in Special Flood Hazard Areas. This includes monitoring community compliance with the NFIP Floodplain Management Regulations and providing technical assistance to communities.

NFIP requirements for enclosures. We do not limit the NFIP floodplain management requirements to those building elements insured under the Standard Flood Insurance Policy or located above the Base Flood Elevation. While insurance coverage for enclosures below the lowest floor of an elevated building is very limited (see the *Flood Insurance* section below), the NFIP floodplain management requirements apply to all elements of a building and apply to both insured and non-insured buildings. Under the NFIP, communities are required to regulate all development in flood hazard areas, including those building elements located below the Base Flood Elevation such as enclosures. ''Development'' is defined under the NFIP as ''any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.''

Responding to the public's desire to permit an enclosed area below an elevated building, but recognizing the potential risks to lives and property, the NFIP Floodplain Management Regulations allow certain limited uses of enclosures below the lowest floor. Under the NFIP, the enclosed area below an elevated building can be used for the parking of vehicles, building access, or storage. Storage should be limited to items such as lawn and garden equipment, tires, and other low damage items. Our regulations allow these uses below the Base Flood Elevation because the amount of damage caused by flooding to these areas can easily be kept to a minimum by following certain performance standards that we describe below for the design and construction of these areas in A Zones and V Zones.

In A Zones, the NFIP allows construction of new and substantially improved buildings on extended foundation walls or other enclosure walls below the Base Flood Elevation. Because these walls will be exposed to flood forces, they must be designed and constructed to withstand hydrostatic, hydrodynamic and impact loads. If the walls are not designed and constructed to withstand those loads the walls can fail and the building can be damaged. Under the NFIP, the foundation and enclosure walls that are subject to the 1-percent annual chance flood must contain openings that will permit the automatic entry and exit of floodwaters. These openings allow floodwaters to reach equal levels on both sides of the walls, which will lessen the potential for flood damage by equalizing hydrostatic pressure.

The inspection procedure in this regulation does not modify the current NFIP requirements pertaining to openings. Under the NFIP,

- The building must provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
- The bottom of all openings can be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- As an alternative to the openings criteria described above, a registered engineer or architect may design openings that achieve the same objective of equalizing hydrostatic pressure.
- The design professional must certify that the openings are designed in accordance with accepted standards of practice. The design professional must submit this certification to the community.
- Local officials must inspect buildings with enclosures in A Zones to ensure that the enclosure walls contain proper openings.

In V Zones, the velocity water and wave action associated with coastal flooding can exert strong hydrodynamic forces on anything that obstructs the flow of water. Standard foundations such as solid reinforced masonry or concrete walls or wood-frame walls will obstruct flow and be at risk to damage from high-velocity flood forces, breaking waves, and debris impact. Foundation walls or other enclosure walls can also

create higher localized velocities capable of increased scour as water flows around the obstruction. In addition, solid foundation walls can direct coastal floodwaters into the elevated portion of the building or into adjacent buildings. The result can be structural failure of the building. For these reasons, buildings constructed in V Zones—

- Must be elevated on open foundations constructed of pile, posts, piers, or columns,
- The area below the lowest floor of elevated buildings must either be free of obstruction, or
- Any enclosure must be constructed with open wood lattice-panels or insect screening, or
- An enclosure must be constructed with non-supporting, non-load bearing breakaway walls that meet applicable NFIP criteria.

The NFIP requires that in V Zones, the open foundation and the structure attached to it must be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Open foundations must be designed to accommodate the base flood, wind and other loads acting simultaneously. The designs must comply with water loading values associated with the 1-percent annual chance flood. They must also comply with the wind loads required by applicable State or local building codes or with the wind and flood loads contained in the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and other Structures (ASCE 7–98). Under the NFIP, construction plans for all new and substantially improved buildings in V zones must be signed and sealed by a registered design professional.

Furthermore, to minimize flood damages in both A and V Zones, the enclosed area below the lowest floor must be built using flood resistant building materials, and mechanical, electrical, plumbing equipment, and other service facilities must be designed or located so as to prevent damage during flooding conditions. The uses of the area beneath an elevated building are restricted to parking, access, and storage.

Basis for these requirements. We have over 25 years of experience, including direct observations, flood insurance loss data, and field investigations that confirm that the NFIP floodplain management requirements described above minimize and reduce flood damages.

We conduct field investigations following major flood disasters to evaluate how well the NFIP floodplain management requirements performed. During these investigations, a team of experts inspect disaster-induced damages to residential and commercial buildings and other structures and infrastructure; conduct forensic engineering analyses to determine causes of structural and building component failures and successes; and evaluate local design practices, construction methods and materials, building codes, and building inspection and code enforcement processes. In addition, the teams make recommendations of actions that State and local governments, the construction industry, building code organizations, and individual property owners can take to reduce future damages and protect lives and property in flood hazard areas. Lessons learned by analyzing these building performance findings are also used by us to fine-tune and improve NFIP Floodplain Management Regulations related to building performance, designs, methods, and materials. These assessments are documented by us in Flood Damage Assessment Reports and Building Performance Assessment Team (BPAT) reports. We distribute this information widely using a variety of media including technical manuals, workshops, and the Internet, and through formal training courses.

We have conducted numerous post-flood disaster damage assessments that indicate that improperly constructed ground level enclosures significantly increase damages to buildings in both A Zones and V Zones. Hurricane Alicia was a Category 3 hurricane that made landfall on Galveston Island, Texas in August 1983. One of the findings from an on-site assessment of damages following that hurricane indicated that severe structural damage occurred to buildings with ground level enclosures when the storm surge hit non-breakaway walls in the areas where velocity was significant (Interagency Flood Hazard Mitigation Report, September 2, 1983). The findings confirmed that where water was able to pass below the elevated structure unobstructed, as required in V zones, damage was limited to items such as exterior stairways and decks. This finding, in particular, is often cited in assessments in coastal disasters (Hurricane Hugo, 1989, South Carolina; Hurricane Bob, 1991, Massachusetts). Hurricane Hugo struck a number of elevated coastal buildings that were enclosed with non-breakaway walls. Hugo's powerful wave action and storm surge destroyed the finished enclosed areas, which resulted in considerable contents losses to homeowners.

Hurricane Fran was a Category 3 hurricane that struck North Carolina in 1996. An assessment of damages indicated design and construction flaws in breakaway walls in V zones, including connections between breakaway panels and the building foundation, interior cross-bracing behind the breakaway walls, and attachment of utility lines to breakaway wall panels. These connections and attachments inhibited velocity flows and waves from passing freely under the building, and resulted in extensive damage to the building. In addition, the assessment also found homes in A zones and in areas outside the floodplain landward of the coast elevated 8–9 feet above grade to allow parking and storage beneath the building. However, the assessment found that where the area beneath the elevated building had been enclosed with non-breakaway wall panels and were used as finished living space, the enclosure walls had collapsed and the affected buildings had incurred extensive damage.

Based on our flood insurance experience, we know that buildings constructed to the minimum requirements of the NFIP also minimize insured losses. Our insureds avoid approximately $1 billion of flood damages every year as a result of the NFIP and our building requirements. We also know that structures that are not built to NFIP requirements suffer as much as five times the amount of flood damages that compliant structures suffer.

Our insurance experience further reveals that post-FIRM buildings with enclosures below the Base Flood Elevation suffer twice as much flood damage when compared to post-FIRM buildings without enclosures. This is particularly important to note since coverage is limited for enclosures below the lowest floor of elevated buildings to what are considered to be essential elements, namely, sump pumps, well water tanks, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, and electrical junction and circuit breaker boxes. The foundation elements that support the building are also covered under the NFIP. We do not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture, which are not reflected in our flood insurance loss data.

Dry floodproofed structures. This section addresses the comments that we should treat residential buildings the same as non-residential buildings by dry

floodproofing homes with enclosures below the Base Flood Elevation.

Under the NFIP, residential buildings in A Zones must have their lowest floor elevated to or above the Base Flood Elevation. Non-residential buildings in A Zones must be either elevated or floodproofed to the Base Flood Elevation. Since the program's inception, the NFIP's emphasis has been for people to live above the Base Flood Elevation. We have consistently found in our post-disaster assessments and in our flood insurance experience that properly elevated residential buildings successfully minimize flood damages. In addition to property protection, elevation also achieves another important objective of the program—the protection of lives.

We do not permit dry floodproofing in V Zones for either non-residential buildings or residential buildings because of high velocity flood flows and wave action. In V zones, both residential and non-residential buildings must have the bottom of the lowest horizontal structural member of the lowest floor elevated to or above the Base Flood Elevation.

Under the NFIP, floodproofed non-residential buildings in an A Zone must be designed so that below the Base Flood Elevation, the structure and associated utility and sanitary facilities are watertight with walls substantially impermeable to the passage of water. This technique is often referred to as ''dry floodproofing''. Dry floodproofing is a technically complex method of flood protection, which requires significant adjustments and additions of features to the non-residential building that are intended to reduce the potential for flood damage. The structural components of dry floodproofed buildings must be capable of resisting hydrostatic, hydrodynamic, and debris impact loads. The type of adjustments and additions that must be considered in the design and construction of a dry floodproofed building include:

- Anchoring of the building to resist flotation, collapse and lateral movement;
- Installation of watertight closures for doors and windows;
- Reinforcement of walls to withstand floodwater forces and impact forces generated by floating debris;
- Use of membranes and other sealants to reduce seepage of floodwater through walls and wall penetrations;
- Installation of pumps with an uninterruptible power source to control interior water levels;
- Installation of check valves to prevent entrance of floodwater or sewage flows through utilities; and
- Locating electrical, mechanical, utility, and other valuable damageable equipment and contents above the Base Flood Elevation.

A registered engineer or architect must certify the design and methods of construction used to dry floodproof the nonresidential structure on a Floodproofing Certificate. The owner must submit this certification to the community and with the Flood Insurance Application in order for the building to be eligible for lower flood insurance rates.

In studies on dry floodproofing and in post-flood disaster assessments, we have found that the long-term viability of floodproofed buildings depends on other factors in addition to design and construction. To ensure the long-term viability of the floodproofing method, the design professional should develop the following plans for the non-residential structure:

(1) A flood emergency operation plan that addresses issues such as flood warning and evacuation, and identifies who has responsibility for implementing the plan including the installation of flood shields over the openings if required; and

(2) An inspection and maintenance plan for the various components and features of the flood protection method such as sump pumps and generators to make sure they continuously work, flood shields and gaskets to ensure that they are in good condition, and walls and joints to ensure that no cracks or potential leaks develop.

If the business has an emergency operation plan, the owner should file the plan with the community so that adequate flood warning can be provided in order to implement the floodproofing system and for an orderly evacuation of employees. If there is a flood warning, employees on site would be evacuated before flooding occurs to minimize the threat to their safety. These employees are likely to return to their homes or relocate to shelters.

Under the NFIP, we do not permit dry floodproofing for either residential or non-residential buildings in coastal V zones due to loads generated by hydrodynamic forces, including wave impact, storm surge, and debris impact loads. While Base Flood Elevations in coastal A zones contain a wave height component of less than 3 feet, the severity of the flood hazard in coastal A zones, such as in the Florida Keys, is often much greater than in non-coastal A zones due to the combination of water velocity, wave action, and debris impact that can occur in these areas. Consequently, while permitted under the NFIP for non-residential buildings, generally we do not recommend dry floodproofing in coastal A zones. During base flood (1-percent annual chance flood) conditions, buildings in both V zones and coastal A zones can experience some of the most extreme loads associated with natural hazards. This was confirmed in a recent study on breakaway walls funded both by us and by the National Science Foundation (''Behavior of Breakaway Wall Subjected to Wave Forces: Analytical and Experimental Studies'', 1999). In the study, laboratory wave tank tests demonstrated that over 10,000 pounds of pressure can be generated on an 8 foot wide test wall by waves of less than 3 feet in height, *i.e.,* those found in coastal A zones during base flood conditions.

Although dry floodproofing may seem simple, it is a technically complex flood protection method that requires an understanding of the possible dangers from poor planning, design, construction, and maintenance. Our concerns about the limitations on the use of dry floodproofing for residential construction and in coastal areas are also supported by nationally recognized experts in the field of flood resistant construction.

The United States Army Corps of Engineer's (COE) National Floodproofing Committee has sponsored studies and tests of materials and systems for dry floodproofing structures, has sponsored post-disaster field investigations to analyze how well dry floodproofed buildings perform during actual flooding conditions, and has issued guidance on dry floodproofing (Flood Proofing Tests, 1988; Flood Proofing Techniques, Programs, and References, 1997; and Flood Proofing Performance Successes and Failures, 1998). The National Flood Proofing Committee is comprised of a group of Corps of Engineers employees experienced in floodplain management and selected from various Division and District Corps offices nationwide. The Committee promotes the development and use of proper floodproofing techniques throughout the United States. These reports discuss the critical features of dry floodproofing, the importance of using design professionals to analyze hydrostatic forces on the building, and some of the limitations on its use in preventing floodwaters from entering the building. Over a period of several years, the National Flood Proofing Committee documented the performance of buildings in actual flood events (Flood Proofing Performance Successes and Failures, 1998). Several building sites visited included dry floodproofed

buildings that had been exposed to floodwaters. Almost all of the dry floodproofed buildings that the Committee observed had failed for various reasons.

Current model building codes and national consensus standards do not permit dry floodproofing of residential buildings. As examples, the new International Building Code (IBC) and its companion, the International Residential Code (IRC), do not allow dry floodproofed residential buildings. No model building codes issued before the IBC or IRC that addressed flood resistant construction allowed dry floodproofed residential buildings. The American Society of Civil Engineers national consensus standard for Flood Resistant Design and Construction (SEI/ASCE 24–98) does not permit dry floodproofing of residential buildings and for non-residential buildings it is only permitted outside of ''high risk'' flood hazard areas that are subject to high velocity flows and wave action. Furthermore, the proposed Florida Building Code will not permit dry floodproofing of residential buildings either.

The combination of flood loads in a coastal A zone is generally beyond the design strength of standard exterior walls of residential buildings and most non-residential buildings. The specialized design, engineering, and construction requirements for dry floodproofing a coastal A zone building may make it cost prohibitive. Designers of dry floodproofed coastal A Zone buildings must know the strengths of connections, the response of walls to velocity flows, wave action, and debris impact and the conditions under which failure occurs and the potential modes of failure. Most design professionals and contractors of low-rise residential buildings are not familiar with designing and constructing buildings with these extreme loads in mind. Residents would be faced with significant threats to life and damages to property if their homes were not properly designed, constructed, and maintained.

However, even when design and construction constraints can be overcome, there are other significant constraints associated with dry floodproofed homes that may compromise the level of public safety and property protection envisioned in the NFIP's objectives for people who choose to live in floodplains. These constraints are described below.

With any flood protection measure, residents may have a false sense of security that they are protected from flood events of any magnitude. Dry floodproofing does not place the finished living spaces of residential buildings above the Base Flood Elevation. If the dry floodproofed measure for the home fails from a flood event greater than the base flood, the flood damages will be much greater compared to damages to an elevated building. The dry floodproofed area acts as a bathtub and would fill to the level of the flood damaging everything below that level, whereas in an elevated building only that area below the base flood would be damaged.

The potential for a false sense of security may also inhibit individuals from heeding calls by emergency management officials to evacuate and may result in the use of the dry floodproofed space during a flood event. Consequently, the safety of the residents living in floodproofed homes is jeopardized should the level of protection be overtopped or a failure of the floodproofed wall or components occur.

Unlike elevation, dry floodproofing requires critical human intervention and maintenance for it to operate properly and effectively when flooding is imminent or actually occurring. Individual property owners must have adequate warning time to implement whatever measures are necessary to protect the building, such as installing flood shields over doors and windows, checking for deterioration of gaskets, joints, or other critical features, and making sure drainage systems and generators will operate. It may take several hours to implement. If property owners are away, they will need someone else available to implement and check the floodproofing measures. In areas with a large number of second homes or vacation homes, such as in coastal areas, it may be difficult to find people to undertake steps to protect floodproofed homes if these same people must also protect their own homes and prepare to evacuate.

The community itself may have to develop and implement a separate flood-warning system for individual property owners of dry floodproofed buildings so that they have adequate time to implement the floodproofing measures. In the case of hurricanes and other approaching coastal storms, abrupt changes in direction may not give property owners adequate time to prepare, which may reduce or eliminate the amount of time available to implement the floodproofing measures and prepare to evacuate. As a result, evacuations may get delayed affecting the entire community. In Monroe County orderly evacuation is extremely critical given its unique transportation system with a single road and connecting bridges to the mainland that form the backbone of the entire County transportation system.

Invariably all dry floodproofing measures leak through the sealant, cracks, joints, and around openings into the interior of the building. That is why a sump pump and drainage system are critical components of the dry floodproofed system. Since electrical power will likely be interrupted during a coastal storm, alternative sources of power need to be provided, such as an onsite power generator to provide energy during a power failure. Homeowners may decide to stay home to make sure these systems work if there is a flood. As a result, homeowners may be in the floodproofed area of the home checking pumps or other systems as floodwaters rise, exposing themselves to extreme danger. A homeowner's decision to stay and floodfight may well be contrary to evacuation orders from emergency management officials.

Dry floodproofing is not a simple flood protection technique that can be ignored once it is installed. Periodic checking and maintenance are very important aspects of making sure dry floodproofing will work when it is needed. Waterproofing compounds or sealants and gaskets eventually deteriorate and owners may lose flood shields that cover critical openings. To make sure that the floodproofing measure will work in a flood, property owners would need to check periodically that floodproofing items are on site and easily accessible, such as bolts, gaskets, caulking, timbers, and flood shields to cover doors, windows, or other openings below the Base Flood Elevation. If homeowners or tenants become complacent about maintenance, lack of care can result in complete failure of the dry floodproofing method. Homeowners would have to be diligent in maintaining the various components for the floodproofing measure to remain effective.

As new homeowners replace former homeowners, the former owners may not disclose the importance of the floodproofing measure to protect the home. Moreover, if the unsuspecting buyer is not notified that the home is floodproofed, the former owners and others may be liable if the home is damaged in a flood disaster. There is also little chance that future property owners will receive proper guidance or information on emergency operations and maintenance requirements that come along with a dry floodproofed building.

Allowing residents to sleep, work, recreate, or otherwise occupy the space below the Base Flood Elevation would

conflict directly with sound floodplain management practices. People who may occupy the floodproofed space below the Base Flood Elevation as a separate housing unit may be subject to significant adverse health and safety risks should the floodproofed system fail. Environmental justice issues for the program are raised when dry floodproofed housing units serve as the primary source of affordable housing for low-income populations in the community. One of the basic premises of the NFIP is that economic means should not be the basis for the level of protection afforded to individuals by having those with the most limited resources living in the most vulnerable area of the building—below the Base Flood Elevation. Under the National Flood Insurance Act of 1968, as amended, we have a responsibility to protect both property and lives. Other than locating outside the SFHA elevation is the best flood protection method for minimizing the threat to public safety, especially for homeowners. The 1-percent annual chance flood (100-year flood) is a reasonable compromise between the cost of meeting this standard and the resulting reduction in loss of life and damage to property. Furthermore, the elevation requirements for residences is consistent with mandates in Executive Order 11988, Floodplain Management, current model building codes, national consensus standards, and the proposed Florida Building Code to reduce the risk of flood losses and minimize the impacts of floods on human safety, health, and welfare.

Flood Insurance

We received fourteen comments asking how buildings are rated under the NFIP in general and specific comments on the effect that the implementation of this rule would have on the insurance aspects of the NFIP.

Comments on NFIP Insurance Rates

One person asked that we describe the rate making process and explain the differences in methodology used in determining premium rates for pre-FIRM buildings, post-FIRM buildings, and non-compliant buildings. Why are rates the same for different parts of the country? The risk would appear to be different. We also received a comment that Monroe County property owners are paying the highest flood insurance rates in the nation even though houses are elevated.

Response

A key provision of the National Flood Insurance Act is section 1315, which prohibits FEMA from providing flood insurance unless the community adopts and enforces a floodplain management ordinance that meets the minimum requirements established at 44 CFR 60.3. A major component of the program is to identify and map the nation's floodplains to create broad-based awareness of the flood hazards and to provide the data needed for floodplain management programs and to rate flood insurance actuarially.

The National Flood Insurance Act of 1968, as amended, separated the flood insurance ratemaking process into two distinct categories. The two categories are subsidized rates and actuarial rates.

Congress authorized the NFIP to offer policies at less than full risk (actuarial) premiums to existing buildings constructed on or before December 31, 1974 or before the effective date of the initial Flood Insurance Rate Map. Congress concluded that these buildings were built without the occupants' full knowledge and understanding of the flood risk, and to rate them using the actuarial rates might make the flood insurance prohibitively expensive. These less-than-full-risk rates are known as subsidized rates. We estimate that risks in this class are paying only 35 to 40 percent of what the full risk premium should be to fund the long-term expectation of the flood losses to the building. Only such general rating factors as flood risk zone, occupancy type, and building type are used to rate these buildings for flood insurance. Even though premiums for policies on existing buildings are subsidized, floodplain occupants pay for at least part of the cost of the insurance and no longer need disaster assistance.

In exchange for this subsidized insurance, participating communities must protect new construction. The National Flood Insurance Act requires that we charge full actuarial rates reflecting the complete flood risk to buildings constructed or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later. Once we identify the flood risk and make the information available to communities, actuarial rating assures that those located in such areas bear the risks associated with buildings in flood prone areas and not taxpayers at large. The flood insurance rates take into account a number of different factors including the flood risk zone shown on the FIRM (*i.e.*, Zones A, AH, AO, AE, A1–30, AR, V, VE, V1–30, B, C, X) elevation of the lowest floor above or below the Base Flood Elevation, the type of building, the number of floors, and the existence of a basement or an enclosure.

The flood risk zone and the Base Flood Elevation are specific factors that can differentiate the flood risk in various areas of the country. For example, we designate certain shallow flooding areas as AO and AH zones. We designate some riverine areas and inland areas of coastal communities as A and AE zones, while we may designate areas subject to damage by waves and storm surge as V and VE zones. The rates in the various types of A zones are much lower than the rates for the V and VE zones. This difference reflects both the lower expectation of loss and our actual loss experience for these zones. While we print rate tables showing all possible flood risk zones and use them for the entire country, we do not show the same zones on every FIRM. For example, communities in Utah or Kansas do not have V zones because they are not subject to wave action and storm surge. However, where the same zone designation is used in two different areas of the country, it is because our engineering studies have shown that the degree of risk is very similar. Consequently, Monroe County is not paying higher rates compared to other parts of the country. Policyholders in AE and VE zones in Monroe County are paying the same rates as policyholders in other parts of the country, if the lowest floor elevation of the buildings are the same in relation to the Base Flood Elevation. This is because their risk of flooding is statistically the same.

Buildings that comply with community floodplain management regulations pay premiums based on flood insurance rates that are in most cases significantly lower than the subsidized rates charged pre-FIRM buildings. However, buildings constructed in violation of the community's floodplain management ordinance pay much higher rates, which can exceed thousands of dollars a year for buildings substantially below the required elevations. We base the flood insurance rates for structures on a building's exposure to flood damage. Based on our loss experience older structures built before establishment of NFIP minimum building requirements, we can generally expect that they will suffer as much as 5 times the flood damage that compliant new structures experience. New buildings with non-compliant ground level enclosures in coastal areas can actually represent risks that are at least as poor as the average older pre-FIRM buildings. Also, buildings with illegally built ground level enclosures will be damaged during

flooding conditions that occur more often than those associated with the Base Flood.

Comments on Flood Insurance and Enclosures

We received eight comments specifically related to the insurance provisions pertaining to enclosures. Some asked why there is a requirement to purchase flood insurance when ground level enclosures are not covered by the NFIP. Another commented that since we have no liability, it is reasonable to allow enclosures below elevated buildings to be finished with sheet-rock, carpet, and office equipment, and other furniture. One recommended that instead of implementing an inspection procedure, we should treat buildings with improperly built enclosures as ''Submit for Rate'' properties so that normal policy provisions and re-rating apply. In a related comment, the commenter expressed concern that we are treating Monroe County differently from other communities where flood insurance rates are simply adjusted upward. Another commenter expressed concern that FEMA would be charging property owners potentially punitive rates that did not reflect the actual exposure of the building to flood risk.

Response

In 1983 we began to limit the coverage for enclosed areas below the lowest floor of elevated buildings, including basement areas, due to the financial losses that we experienced when we provided full coverage in these areas. In order to provide insurance coverage for the items that are excluded under the NFIP Standard Flood Insurance Policy (SFIP), we would have to charge significantly higher flood insurance rates, which would make flood insurance on the building unaffordable for many property owners.

The Article 6—Property Not Covered provision in the Dwelling Form of the SFIP limits coverage for enclosures, including personal property contained in them. However, the SFIP does provide some coverage for enclosed areas below the lowest floor of elevated buildings for what are considered essential elements; namely, sump pumps, well water tanks, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, and electrical junction and circuit breaker boxes. Foundation elements that support the building, and foundation walls in A Zones, are also insurable under the NFIP. The NFIP does not cover items in the enclosure, such as finished walls, floors, ceilings, and personal property, such as rugs, carpets, and furniture.

The limitation of flood insurance coverage for the enclosed area of an elevated building is consistent with the NFIP floodplain management requirements since these requirements limit the use of the enclosed space to parking, access, and storage, thereby minimizing the potential for damage to the building and its contents. Furthermore, flood damages can easily be kept to a minimum by following certain performance standards for the design and construction of enclosures in A Zones and V Zones. We described these in detail earlier in the section on NFIP Floodplain Management Requirements. Finished enclosures used for other than parking, building access, and storage significantly increase the flood damage potential to the area below the lowest floor of the elevated building. Furthermore, finished enclosures increase the flood damage potential to the foundation and to the elevated portion of the building that are insured under the NFIP. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the foundation and to the elevated portion of the building with the potential for catastrophic collapse.

The resulting increased damage to buildings with illegally built enclosures has implications for all policyholders. We will have to charge higher flood insurance rates for buildings with enclosures to reflect the higher NFIP loss frequency and high damage potential. The increased flood risk and our loss experience must be reflected in the premiums that we charge to policyholders of buildings with ground level enclosures below the lowest floor. When we receive a flood insurance application that describes an elevated building with a finished enclosure below the Base Flood Elevation, we rate the building using the Submit for Rate procedures. The flood insurance rates that we charge for all buildings reflect the coverage limitations in the policy and our loss experience with this type of building. They do not include any rating factor designed solely as punishment for building illegally—we have no specifically punitive rates.

Furthermore, the resulting increased damage to buildings with illegally built enclosures has implications on the financial stability of the National Flood Insurance Fund. By increasing the damage experienced from a single flood event, the claim payments on these buildings will result in slower recovery of the Fund in rebuilding the surplus needed to respond to subsequent flood events.

Additionally, we are concerned about the effect that finished ground level enclosures have on the policyholder at claims time. If we rate a building with an enclosure as an elevated building, but do not include the finished ground level enclosure in the flood insurance premium at the time application is made for flood insurance, problems may occur during a flood insurance claim. In this case, the policyholder may not have paid sufficient premiums that reflect the risk to the building. The Reformation provision in the SFIP requires the policyholder to pay the additional premium for the current and prior year for the additional risk to the building before the settlement of the claim. Correcting misratings complicates the loss adjustment process and can substantially delay claim payments. If new owners of the building are not aware that the enclosure is illegally built, they will likely be disappointed when they find out the finished enclosure is not covered by flood insurance.

Furthermore, if there is a major flood, there is the potential for significant uninsured losses in a community for buildings with illegally built enclosures. That would shift the burden from flood insurance coverage under the NFIP to legitimate policyholders and potentially to taxpayers in general in the form of casualty loss deductions and Federal disaster assistance, such as loans from SBA.

This inspection procedure will provide us with accurate rating information on buildings with illegally built enclosures to ensure that the building is properly rated to reflect the flood risk. The flood insurance rates that we will charge policyholders that obtain an inspection under this procedure will reflect the actuarial principles described above. For those policyholders that receive a notice to obtain an inspection before renewal of the flood insurance policy, but choose not to obtain an inspection from the community, we will not renew the flood insurance policy. These policyholders cannot reapply for coverage under the NFIP until they obtain an inspection report from the community and submit a copy with their application for coverage.

Comment Regarding Property Owner Notification

We received a comment that the procedure does not address the existence of absentee owners. It suggested that the communities were in

a better position to facilitate awareness by sending the notices to the property owners rather than to the agent or insurer who will not have answers to specific questions.

Response

In establishing this inspection procedure, we were careful to separate the responsibilities of the communities and the insurance companies and agents based on their normal roles. Notices to policyholders concerning the renewal of their insurance is normally the role of the insurance company with any questions about the notice being directed to the policyholder's insurance agent. The community's role is to inspect the buildings and to complete an inspection report detailing the findings. We think that it would be a major complication if we were to change these roles with respect to this procedure. Furthermore, questions that insurance companies or agents receive concerning the floodplain management aspects of this procedure should be directed to the respective communities, which is no different than what is currently done.

Comments on Windstorm and Flood Insurance Purchase Requirements

We received three comments expressing concern about the requirement in Monroe County, Florida that the purchase of flood insurance is a condition for obtaining windstorm insurance.

Response

The Florida Windstorm Underwriting Association (FWUA) provides Florida citizens adequate wind and hail coverage when it is not available in the insurance marketplace. In June of 1996, the FWUA established that as a condition of eligibility for windstorm coverage through the FWUA owners must maintain flood insurance. That is the FWUA's prerogative. We briefed the Florida Windstorm Underwriting Association on the details of the inspection procedure before we published the proposed rule and we will provide them information on the final rule.

Comment About the Endorsement Form

We received one comment about the length of the proposed endorsement for inspection procedure. It suggested that we simplify the endorsement by referring only to the particular change in the policy endorsement for the inspection and place the rest of the endorsement in the flood insurance manual.

Response

We considered the suggestion that we shorten the endorsement, but for clarity we decided to publish it as shown in the Proposed Rule. The Endorsement outlines the rights, obligations, and penalties connected with the inspection procedure. Since it has such important consequences for the policyholder pertaining to the renewal or non-renewal of the policy, we felt that it would be in the policyholder's best interest to repeat the policy provisions in their entirety in the **Federal Register**. The alternative was to show only the changes that we are making in the **Federal Register**. This would require the reader to make a side-by-side comparison of the policy before the changes related to the inspection. We plan to print the endorsement as an attachment to the policy, which will result in a much shorter version than what appears in the **Federal Register**. We will not have to include those portions that already appear in the policy.

Comment Regarding the Administrative Burden to the Insurance Companies

We received a comment that the cost of the inspection procedure to the Write Your Own (WYO) insurers will be extensive. The concern is that the inspection procedure does not provide for any compensation to the WYO Insurance Companies for the additional costs associated with distribution of the endorsement, policyholder notices, and application processing for property owners who obtained an inspection after the expiration date of their policy. This person added that this procedure contradicts the arrangement with the WYO insurers.

Response

We have reviewed these concerns regarding the potential costs to the WYO companies, and we also discussed the concern with the WYO insurance companies on our advisory committee. We have determined that the provisions of our arrangement with the companies will cover this activity and that their compensation is adequate.

Participation in the Inspection Procedure

Comments on Singling Out Communities for the Inspection Procedure

We received seven comments that we are singling out Monroe County and the Village of Islamorada for the inspection procedure. Specifically, these commenters asked why the inspection procedure is not being done in other communities in Monroe County, such as Layton, Key Colony, or Key West and elsewhere in the country. Others also commented that we forced Monroe County and the Village of Islamorada into participating in the inspection procedure by threatening to cancel flood insurance policies if they did not comply. We also received comments that the County's willingness to participate was made based on a general concept of the inspection procedure and not on the specifics of how the procedure would work. With respect to the Village of Islamorada, some asked why the Village must participate in the inspection procedure since it was not involved in the development of the procedure and since it did not create the problem, but inherited the problem from Monroe County when the Village incorporated in January of 1998. In addition, we received four comments that innocent property owners have become victims as a result of the County not enforcing the provisions of the NFIP according to its agreement with us when it joined the program. Those commenting also stated that if we had also strictly enforced this agreement with the County there would not be thousands of illegally built enclosures.

We also received a comment that the argument that people did not know that finished ground level enclosures below the Base Flood Elevation were illegal is without merit. The party commenting cited the fact that the County had indicated to them that finished enclosures were not allowed when they applied for a permit in 1983. This commenter urged us to continue to implement the inspection procedure.

Response

We are not singling out Monroe County and the Village of Islamorada for an enforcement action. Furthermore, the implementation of the inspection procedure does not create any new floodplain management requirements under the program. All communities in Florida and throughout the country that wish to participate in the NFIP must adopt and adequately enforce the minimum requirements of the program, including the requirement that the enclosed space below the lowest floor of an elevated building meets the minimum requirements of the NFIP. Monroe County and the Village of Islamorada are only being treated differently from other communities in the country in that we are giving them additional assistance through an inspection procedure to fulfill their responsibilities under the NFIP. Participation by the communities in the inspection procedure is voluntary.

When Monroe County and the Village of Islamorada joined the NFIP in 1970 and 1998 respectively, they agreed to adopt and adequately enforce the minimum floodplain management requirements of the NFIP at 44 CFR 60.3. It is the communities' responsibility to ensure that buildings are properly elevated and that the enclosed area below the lowest floor of an elevated building meets the minimum requirements of the NFIP and the communities' floodplain management ordinances.

Under the National Flood Insurance Act of 1968, as amended, we are responsible to ensure that States and communities properly and effectively administer the NFIP floodplain management requirements. We offer technical assistance in a variety of forms to assist communities in understanding the NFIP floodplain management requirements. It can take the form of our staff having direct one-on-one contacts with State and local officials through Community Assistance Visits (CAV), workshops, formal training courses, telephone calls, and through other contacts. A CAV is a comprehensive assessment of a community's floodplain management program. We have found that most program deficiencies and problems identified through a CAV can be resolved through technical assistance to the community.

Staff from our Region IV office in Atlanta, Georgia conducted Community Assistance Visits in Monroe County in 1982, 1987, and again in August 1995. During these visits, we offered the community technical assistance to address any program deficiencies that we had identified during the visit. During each visit in Monroe County we identified floodplain management program deficiencies and violations and asked the County to take corrective actions .

In 1995, the CAV confirmed that, while the County had corrected administrative problems identified during earlier visits, the illegal conversion of the space below the lowest floor of an elevated building to uses other than parking, access or storage had become an even more serious problem than we had identified in earlier monitoring visits.

Because of the number and serious nature of the violations that we identified in Monroe County as a result of the 1995 CAV, we determined that an enforcement action would be necessary in Monroe County. The primary purpose for conducting an enforcement action is to obtain community compliance with the NFIP in order to reduce the potential for future flood damages and loss of life. When we identify communities with program deficiencies and violations, we work closely with communities to try to resolve the problems in the community before taking an enforcement action. An enforcement action is a FEMA-initiated measure to obtain community compliance with NFIP floodplain management requirements. The action is to ensure that communities correct program deficiencies and remedy violations and enforce their floodplain management ordinance for new construction and other development.

Rather than addressing the problem through our existing enforcement options by placing Monroe County on probation and potentially suspending the County from the program, we explored other options with County officials on how the problem could be addressed. Probation and program suspension are existing enforcement options established in NFIP Regulations at 44 CFR 59.24(b) and (c). If the community is not willing to correct program deficiencies and remedy violations, we will initiate a probation action with a formal notification that the community will be placed on probation on a date certain (usually several months) unless the community takes measures before the probation date to correct the identified deficiencies and remedy all known violations.

While a probation action does not affect the availability of flood insurance, we would add a $50 surcharge to the renewal of all flood insurance policies in the community for at least one year. During this period we would require the community to take measures to correct program deficiencies and to remedy violations to the maximum extent possible. If the community fails to take remedial measures during the period of probation, we might suspend the community from the NFIP. When we suspend a community from the NFIP it is subject to the provision of Section 202(a) of Public law 93–234, as amended, which prohibits Federal officers or agencies from approving any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan, or grant (in connection with a flood), for acquisition or construction purposes within SFHAs. Further, section 202(b) of Public Law 93–234, as amended, states that if the community suffers a disaster caused by a flood, Federal disaster relief assistance will not be available to any property located within the suspended community.

Since 1986, we have notified over 104 NFIP communities that they would be placed on probation if they did not address the problems identified in the CAV. We did not place many of these communities on probation because they addressed their program deficiencies and remedied identified violations. However, we did place over 55 of these communities on probation and we suspended at least 9 of those from the NFIP for not addressing their program deficiencies and violations during the probationary period. Currently, 7 communities participating in the NFIP are on probation and each policyholder in these communities must pay an additional $50 with their annual premium.

In addressing the issue of illegally built ground level enclosures, a Monroe County Citizen Task Force, appointed by the Monroe County Board of County Commissioners, recommended in a letter to us dated January 23, 1997 that we establish a procedure to require an inspection and a compliance report before the renewal of any flood insurance policy. In response to the Task Force recommendation and Monroe County's interest in trying to resolve these violations, we sent a letter to the Mayor of Monroe County on March 23, 1998, which provided details of how the proposed inspection procedure would work, including the requirement that Monroe County remedy any violations identified through this process. Therefore, we provided the details of how the inspection procedure would work to Monroe County almost a full year before publication of the proposed rule in the **Federal Register**.

On June 11, 1998, the Board of County Commissioners of Monroe County passed a resolution that asked us to establish an inspection procedure for the County as a means of verifying that buildings insured under the NFIP comply with the County's floodplain management ordinance. Our Region IV staff attended the June 11, 1998 meeting and made a presentation on how the inspection procedure would work. Our Region IV staff also had a number of conversations and meetings with local officials in both communities about the communities' implementation of their floodplain management ordinance.

The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a participating NFIP community on October 1, 1998. The Village encompasses four of the Florida Keys that would have been included in the inspection procedure for Monroe County. Because of the amount of land area incorporated, there are possible illegal enclosures within the Village's jurisdiction. The Village of Islamorada was not a party to the early

development of this inspection procedure since it was still a part of Monroe County when we and the County discussed the development of the proposal before the Village incorporated. We notified the Village of the Islamorada of the proposed inspection procedure before it applied to join the NFIP. The community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998. Community incorporation within Monroe County does not absolve the Village from its responsibility under the NFIP to address existing floodplain management violations. Therefore, the Village of Islamorada assumes responsibility for any violations under the NFIP that occurred while it was part of the County. We are giving the Village of Islamorada the same assistance that we are providing to Monroe County to address these violations. In the supplementary information to the proposed rule we stated that ''[w]e would require that areas in Monroe County that incorporate and become a separate community on or after January 1, 1999 to participate in the inspection procedure as a condition of joining the NFIP.''

Florida State Statute Governing Inspections

We received nine comments about the State statute governing property inspections and using the insurance mechanism to require inspections. Specifically, we received comments that the inspection procedure circumvents Florida State law, which exempts owner-occupied single family residences from administrative inspection warrants for possible code violations. Some of these commenters expressed concern that the inspection procedure results in an illegal search of property owners' homes. One also suggested that if an enclosure did contain an illegal apartment that it should be addressed through existing zoning laws. Two commenters suggested that since the communities are limited in enforcing ordinances because of inadequacies in State law, the remedy should be sought with the State to give communities the ability to enforce their ordinances.

Response

The NFIP is a voluntary program. When they join the program communities are obtaining the right for their citizens to obtain otherwise unavailable flood insurance in exchange for regulating floodplain development. The inspection procedure does not change the fundamental premise of the program or establish or require any new land use measures or criteria in floodplains. With respect to the requirements that owners of insured buildings obtain an inspection from local officials and submit an inspection report as a condition of renewing flood insurance on the building, we believe that it is a reasonable condition on the recipients of Federal financial assistance to ensure that flood insurance policies are properly rated. Under the terms of the flood insurance policy, insureds have full contracting powers to agree to those conditions. Furthermore, property owners must still give their consent to the community to inspect their property under the inspection procedure.

Comment on Disclosure of Enclosures

We received a comment that many people bought their homes in good faith without the benefit of disclosure from contractors, insurance agents, banks, real estate agents, the County, or us that the enclosure was non-compliant with the community's floodplain management ordinance.

Response

In response to the concern that property owners were not given adequate disclosure of the existence of illegally built enclosures before the property was purchased, we do not have authority to establish or require the disclosure of properties that are built in violation of the community's floodplain management ordinance. State or local laws and regulations will govern establishment of property disclosure requirements. In the final rule, we have provided for several notices to policyholders on the inspection procedure. We will provide these notices before implementation as well as during implementation of the inspection procedure.

Comments on Giving Amnesty to Enclosures

One person commented that the citizen's Task Force, established to address the issue of illegally built enclosures, recommended that we grant complete amnesty for all buildings built between January 1, 1975 and December 31, 1986 based on the contention that the citizens were not aware of the NFIP requirements and the County had not developed an effective permit and inspection program. Another person also recommended that we grant amnesty for illegal enclosures built before 1995.

Response

We have no authority under the National Flood Insurance Act of 1968 and the NFIP Floodplain Management Regulations to grant amnesty to illegally built enclosures that violate the minimum requirements of the NFIP and the community's floodplain management ordinance. As stated above, we are responsible to ensure that the community effectively carries out the program requirements. Ignoring the problem of illegally built enclosures below elevated buildings has serious implications for exposing buildings to flood damages and impacting the safety of residents. Allowing uses other than parking, building access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential for the area below the lowest floor of the elevated building and to the elevated portion of the building. It can undermine:

- Any efforts by the two communities to administer and enforce their floodplain management ordinances effectively and to protect their citizens from the devastating effects of flooding;
- Our efforts to ensure that communities throughout the country effectively administer and enforce the minimum requirements of the NFIP;
- What we are trying to achieve under the Community Rating System, which provides incentives to communities to take measures beyond the minimum requirements of the NFIP to reduce flood damages; and
- The purpose of promoting federally-backed flood insurance as an alternative to disaster assistance and other forms of federally subsidized financial assistance by continued construction of buildings in the floodplains that do not meet the minimum requirements of the NFIP.

Number of Illegal Enclosures

Comments

We received four comments asking how we estimated the number of possible illegal enclosures (2,000–4,000). In particular, a commenter referred to a March 21, 1996 letter from our Region IV office to Monroe County in which we stated that there are an estimated 8,000–12,000 illegal enclosures. Another referred to a letter from Monroe County to our Region IV office dated January 23, 1997 in which the County placed the number of affected structures at 11,590. Since we currently estimate that only 2,000–4,000 buildings will be inspected, it seems to these commenters that the procedure is being applied to a small percentage of the problem, and that, therefore, the inspection procedure will be ineffective and misguided.

Response

After the August 1995 Community Assistance Visit, we had estimated that there were potentially up to 4,000–5,000 buildings with possible illegally built enclosures. Our estimate of 8,000–12,000 buildings with possible illegally built enclosures referenced in our March 21, 1996 letter to the County was based on a local estimate provided to us, which we now believe overestimates the problem. The County's estimate of 11,590 buildings was based on the following breakdown: 5,795 pre-FIRM residential structures (built before January 1, 1975) with the lowest floor below the Base Flood Elevation and approximately 5,795 post-FIRM residential structures (built after 1975) with potentially some type of finished ground level enclosure that may not comply with the County's floodplain management ordinance.

Before we published the proposed rule, we discussed the potential number of illegal enclosures in post-FIRM buildings with Monroe County officials. We believe that the County's estimate of 2,000–4,000 insured buildings that have illegally built enclosures is a reasonable estimate. This inspection procedure only applies to insured post-FIRM buildings. Since publication of the proposed rule, local officials from Islamorada indicated to us during their visit in August 1999 that there were approximately 3,600 residential buildings in the entire Village and that 2,300 of these buildings had some type of enclosures. We believe that many of the 2,300 buildings are either pre-FIRM buildings or are post-FIRM buildings with compliant ground level enclosures that will not be subject to inspection.

At the present time we cannot specifically determine the number of illegally built enclosures since most of these enclosures were built without the benefit of a floodplain development permit. However, the number of post-FIRM flood insurance *policies* in force in each community is an indication that the 2,000–4,000 estimated number of insured buildings with possible illegal enclosures is a reasonable estimate.

In Monroe County and the Village of Islamorada combined, there are over 29,000 flood insurance policies in force. Respectively, there are approximately 3,500 flood insurance policies in force in the Village of Islamorada and approximately 25,500 flood insurance policies in force in Monroe County. Of these totals, Monroe County has approximately 11,000 post-FIRM policies and the Village of Islamorada has approximately 1,700 post-FIRM policies. The estimate of 8,000–12,000 illegal enclosures would mean that most of the communities' post-FIRM insured buildings are non-compliant. While this would be an extremely serious compliance problem, we do not believe that most of the post-FIRM insured buildings in Monroe County and the Village of Islamorada are non-compliant.

Therefore, only a small percentage (approximately 7–14 percent) of the total number of policyholders (approximately 29,000) would be affected by the proposed inspection procedure. We do not believe that the implementation of the inspection procedure would be adversely affected if the number of illegally built enclosures were somewhat less or somewhat greater than the estimated 2,000–4,000 buildings with possible illegal enclosures. Some of these enclosures may even comply, in which case the community would take no further action. With respect to non-insured buildings, which are not subject to the inspection procedure, the communities still have responsibility to remedy violations in these buildings to the maximum extent possible, including illegally built enclosures.

Procedural Comments

We received a number of comments and questions on procedural aspects of the inspection process.

Comments on Identifying Possible Violations.

We were asked how the possible violations would be identified.

Response

It is the communities' responsibility under their floodplain management ordinance to investigate possible violations of illegally built enclosures. We will give the communities several months before the effective start date for the inspection procedure to investigate and research the history of buildings to determine whether a possible violation exists using permit records, tax records and other community information. We will encourage the communities to share permit and other pertinent information about the buildings particularly since the County previously had land use authority over the area that is now within the Village of Islamorada. We will also provide a complete list to the communities of pre-FIRM and post-FIRM flood insurance policy information as additional information. In addition to these reviews, the communities would conduct a visual street inspection of the building to further identify a list of insured post-FIRM buildings that are possible violations. Through a process of reviews and visual street inspections, communities would identify those buildings that would need an inspection. The communities would submit a list of insured buildings that are possible violations to us.

Comment on the Frequency of Inspections

One person asked how frequently the inspections were to take place for each property. Specifically, the person asked whether inspections will be required on an annual basis and will they be required every time a new policy is written.

Response

Only buildings identified as possible violations by Monroe County and the Village of Islamorada would be required to obtain an inspection. For those buildings identified with possible violations, we expect that the notice that an inspection is required will be sent to the policyholder generally once during the timeframe established for implementing the inspection procedure. There may be circumstances where a building may be required to be inspected more than once in a case such as when the policyholder removes an illegally built enclosure, then sells the property, and the subsequent policyholder illegally builds an enclosure during the time period in which the inspection procedure is implemented. If the community identifies this insured building as a possible violation, the community will provide information on this building to us along with other possible violations.

New flood insurance policies issued after the effective date for implementing the inspection procedure will also contain the established endorsement in Appendices (A)(4), (A)(5), and (A)(6). If the communities identify buildings with illegally built enclosures for any new policies that we issue during implementation of the inspection procedure, these new policies will also receive a notice 6 months before the policy expiration date that the owner must obtain an inspection from local officials and the owner must submit an inspection report to the insurer as a condition of renewing flood insurance on the building.

Comment on Time Frame To Obtain an Inspection

One commenter expressed concern that homeowners may not have enough time to obtain an inspection before the policy expiration date.

Response

There are two notices that we will provide when an inspection is required. We will provide the first notice six months before the policy renewal advising the policyholder that an inspection is required in order to renew the policy. The insurer will provide the second notice with the renewal premium notice, approximately 45-days before the policy expiration date, reminding the policyholder that an inspection is required for policy renewal. We believe that the two notices provide ample time for a policyholder to request an inspection by the community. To further extend the notification period would not increase the likelihood that a policyholder would obtain an inspection within the time frame established. The six-month notice and 45-day reminder will state that the current flood insurance policy cannot be renewed until the policyholder obtains an inspection and submits the inspection report along with the renewal premium payment to the insurer by the end of the renewal grace period (30 days after the date of the policy expiration).

Comments on the Added Community Workload

We received comments expressing concern about the potential added workload on the communities to implement the inspection procedure in addition to the large number of inspections currently done as part of ongoing permit requests for new construction or improvements to existing buildings. One person stated that many buildings can be brought into compliance through the natural permitting process rather than through an inspection procedure.

Response

We will coordinate and consult closely with each community on the start date and the termination date for implementing the inspection procedure. We expect that the communities will factor in staffing and other resource issues when they determine the number of possible inspections that they can conduct each year and the follow-up actions that may be required to remedy the violations to the maximum extent possible. If the community identifies violations of illegally built enclosures through its normal permit and enforcement process unrelated to the inspection procedure, we would expect the community to remedy the violation to the maximum extent possible. Only insured buildings are subject to the inspection procedure. Therefore, under the NFIP, the community still has a responsibility under its normal processes to identify violations of non-insured buildings and insured buildings where the policyholder did not obtain an inspection report under the inspection procedure and to remedy these violations to the maximum extent possible. Actions that the community takes to address any violations of insured buildings through its normal permit and enforcement processes will reduce the number of buildings that would need to be addressed through the inspection procedure.

Comments on the Time Frame To Remedy Violations

Several commenters were concerned about the time frame in which the communities must remedy the violations. Their concern was expressed in the context of needing more time to make sure new housing is available to replace those illegally built enclosures that contain a full housing unit that must be removed. We were asked to modify the final rule to extend the time for compliance up to one additional year for illegally built enclosures that contain affordable housing. One question asked was why the community must exhaust all legal remedies including notices to the property owners and appropriate legal action.

Response

In the preamble of the proposed rule, we stated that ''[f]or each violation identified, the community would have to demonstrate to us that it is undertaking all possible actions to remedy the violation. If, after one year, the community demonstrated that it has taken all enforcement actions within its authority to remedy the violation to the maximum extent possible, including a notice to the property owner to remedy the violation and appropriate legal action, and the property owner had not corrected the violation, the community would submit a declaration of a violation and request a denial of flood insurance under 44 CFR 73, Implementation of Section 1316 of the National Flood Insurance Act of 1968.'' We recognize that there may be illegally built enclosures that the communities will identify through the inspection procedure where the community may need additional time to remedy the violation. We expect that most of the owners will be able to remedy violations within the first year after the inspection. However, we will give the communities flexibility to remedy a violation beyond the first year when they need additional time. The communities will notify us when they need additional time beyond the one year to remedy a violation before the one year anniversary date of the inspection of the building.

We are asking Monroe County and the Village of Islmorada to demonstrate to us that they have taken all enforcement actions within their authority to remedy the violation. One of the primary purposes of conducting the inspection procedure is to help the communities verify that buildings comply with each community's floodplain management ordinance. Once an inspection reveals a violation of the community's floodplain management ordinance, the responsible local official will notify the property owner of actions they must take to remedy the violation. We expect communities to remedy a violation to the maximum extent possible.

Comments on Contracting Inspections

One person asked whether the community participating in the inspection procedure can contract out the inspections or must use local government staff conduct the inspections.

Response

The responsibility for carrying out the inspections rests with the communities. It is up to the communities of Monroe County and the Village of Islamorada to determine how they intend to staff implementation of the inspection procedure. Whether the communities hire outside contractors, use existing staff resources, or hire additional inspectors is a community decision. Our primary concern is that each community adequately staff the inspection procedure according to the time frame (start date and termination date) established for implementing the inspection procedure.

Comment on the Inspection Report

Someone asked how insurance companies would know that they have received a legitimate inspection report.

Response

As indicated in the proposed rule, the policyholder would be responsible for contacting the community to arrange for the inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document the findings of its inspection on an inspection report. The community would provide two copies of the inspection report to the property owner. Communities have existing procedures and forms in place for documenting inspections under their floodplain management ordinance, which can be adapted for purposes of

implementing this inspection procedure. We will coordinate closely with the communities to ensure that these inspection reports will be easily identifiable to the insurance companies such as on community letterhead, signed by an authorized local official, and that they contain information for the insurer to properly rate the building.

Comments on the Cost of Inspections

Several commenters asked how much the inspections would cost. One person stated that our estimate of $35 to $50 for each inspection is significantly understated. This person further stated that property inspections are more likely to be closer to $125 if they are performed by third parties.

Response

We sought information from officials from each community on what they intended to charge for an inspection and addressed the fee to be charged for an inspection in the proposed rule that we published on May 5, 1999 in the **Federal Register**. The communities provided a general estimate of the cost for an inspection that ranged from $35 to $50 per inspection. The decision whether to charge and how much to charge for an inspection is the community's decision. In terms of third party services, the decision whether the community will use its own staff to conduct inspections or contract out the inspections is also a local decision.

We also sought information from the communities on their annual cost to implement this procedure. The County indicated that the annual cost for implementing the inspection fee is approximately $48,292 per year, which covers primarily the costs associated with conducting the inspection, administration, and research by county staff and indirect costs. We anticipate that the inspection fee Monroe County intends to charge for the inspection would cover much of these annual costs. The County also indicated that permit fees and fines would cover costs associated with any follow-up actions to address the violations identified through the inspection procedure. The Village of Islamorada indicated that the annual cost for implementing the inspection fee is approximately $250,000 per year, which includes the inspections, administration, research, follow-up actions by Village staff to address the violations, and indirect costs. The Village indicated that it intends to charge an inspection fee as well as a permit fee and fines to cover some of the costs associated with the inspection procedure.

We understand that the differences in the budgets between the two communities are largely attributable to the fact that much of the basic infrastructure and processes are already in place in Monroe County to implement the inspection procedure, and that the County does not intend to hire additional staff but intends to use existing building and code enforcement staff and resources. We also understand that the Village of Islamorada will need to hire additional staff. Furthermore, because it recently incorporated (1998), the Village will need to put basic systems and procedures in place that are associated with administration and enforcement of this inspection procedure. However, whatever systems and procedures the Village puts in place can also be used to implement their building code and floodplain management program in general; the systems and procedures are not just related to the pilot inspection program.

The fees that the communities intend to charge for the inspection, permits to bring the building into compliance, and any fines associated with enforcement are in line with what a community would normally charge property owners that violate a floodplain management ordinance, zoning ordinance, or building code.

Comment

A person asked whether we would suspend the community from the NFIP if owners of illegal enclosures opted not to participate in the inspection procedure.

Response

If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy. The community is responsible under the NFIP to enforce floodplain management regulations that meet the minimum requirements of the program for all new and substantially improved structures within the SFHAs. This includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

Starting and Termination Dates

We did not receive comments on the establishment of the starting date or termination date established at 44 CFR 59.30(c)(1). That section states that the Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director. The Regional Director will consult with each community. However, we recognize that there may be unique circumstances that may warrant an extension of the termination date such as a major disaster declaration under The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. We have added in subsection (c)(2) that the Associate Director for Mitigation and the Federal Insurance Administrator may extend the implementation of the inspection procedure with a new termination date upon the recommendation of the Regional Director. The Regional Director will consult with the community. The Associate Director for Mitigation and the Federal Insurance Administrator would grant an extension based on good cause, such as a presidentially declared disaster. The termination date means that all notices have been sent to policyholders stating that we require an inspection in order to renew the flood insurance policy and that the communities have completed all inspections for the notices that have been sent to policyholders.

Lender Involvement

We received four letters and one e-mail message containing multiple comments concerning lender involvement with respect to the inspection procedure.

Comments on Notification Process

Three commenters questioned how lending institutions and loan servicers for loans on the affected properties would be notified of inspections. They stated that community outreach efforts must go beyond the community level since lenders and servicers can be located outside of the State of Florida.

Response

The Federal Insurance Administration will instruct the insurers to notify the insured and all mortgagees of record six months in advance of the policy renewal for which the policyholder must obtain an inspection. The National Flood Insurance Reform Act of 1994 mandates that if the secured property is in an SFHA a regulated lender must notify our designee of the identity of the loan servicer at any time a change occurs. We have designated the various insurers, or the NFIP's Servicing Agent, as our representatives to receive the notice regarding change of servicer. If the lender follows the notice procedures, this will facilitate the inspection notification process. We will provide notice to the Federal Agencies regulating lenders of the start date for implementing the inspection procedure

to enable them to notify their lending institutions that may have loans on affected properties.

Comment on Requiring Corrective Measures

One commenter questioned whether a lender could use its rights under the mortgage contract to require corrective measures if the enclosure is determined to be in violation of the community floodplain management ordinance or require an inspection of the property if the homeowner refuses to obtain an inspection.

Response

The question of the legal rights of lending institutions to compel borrowers to undertake corrective actions or to force non-consenting borrowers to submit to a property inspection by community officials is outside our authority to answer. The terms and conditions of the mortgage agreement fully describe the rights and conditions of the parties. Therefore, we defer questions of this nature to the mortgage lenders and to the Federal regulatory agencies for lenders to address.

Comment on Lender-Related Inspections

Another commenter questioned whether the inspection by the community is the type contemplated by the mortgage, or does the mortgage only permit the lender to inspect the property for waste and other hazards specifically stated in the mortgage.

Response

We cannot comment on whether the inspection with respect to enclosures is the type contemplated by the mortgage agreement or whether the mortgage contract only permits a lender to inspect the property for specific hazards. The terms and conditions of the mortgage agreement fully describe the rights and conditions of the parties. Again, this is a matter that would be better addressed by mortgage lenders and the Federal regulatory agencies for lenders.

Comments on the Standard Flood Hazard Determination (SFHD) Form Procedures

Some commenters asked whether completing the existing Standard Flood Hazard Determination form would include reviewing inspection records and whether current contracts for flood determinations with national vendors would include this service. We were also asked whether we would require lending institutions to renegotiate these contracts.

Response

The Standard Flood Hazard Determination form documents the process of determining whether lenders should require flood insurance in connection with a given mortgage loan transaction, while Federal banking entities use it to monitor compliance by lenders. The form documents that the lender made a determination for a building or mobile home, whether the building or mobile home is in or out of the Special Flood Hazard Area, whether flood insurance is required, and whether Federal flood insurance is available. The flood determination depicts the location of the building and is separate from the inspection procedure. The determination process and inspection procedure are used for very different purposes. We will not revise the Standard Flood Hazard Determination form to include information about the inspection procedure. Therefore, we do not perceive a need for contracts with Flood Zone Determination companies to be renegotiated in response to the inspection procedure.

Comments on the Effect of Denying Flood Insurance Coverage

We received two comments that the denial of flood insurance might cause a bank to be viewed as non-compliant with the mandatory flood insurance purchase requirement and consequently assessed a civil monetary penalty by a Federal regulatory agency. Additionally, comments stated that the banks would have an increased credit risk that could result in loan defaults and eventually foreclosures if flood insurance has been denied.

Response

The statute mandates coverage only when ''the sale of flood insurance has been made available,'' 42 U.S.C. 4012a(b). We interpret this to mean that a lender would not be in violation of the law if the structure were deemed ineligible for NFIP coverage. Therefore, we are of the opinion that a lender would not be compelled to call a loan on a building that is ineligible for NFIP coverage because it violates a community's floodplain management ordinance and we have denied NFIP insurance under Section 1316 of the National Flood Insurance Act of 1968. The *Mandatory Purchase of Flood Insurance Guidelines,* which we published, addresses the issue of buildings ineligible for NFIP insurance under Section 1316. The fact that a property subsequently becomes ineligible for NFIP coverage does not mean that the lender is non-compliant for a conventional loan. Of course, the lender could force-place private flood insurance (non-NFIP) as an alternative if the term of the mortgage permitted this and the lender wanted to have flood insurance even though the statute does not require it. However, the lender should be aware that the building is at a greater risk of flood damages than buildings that are compliant with the community's floodplain management ordinance. Each lender must tailor its flood insurance risk management procedures to suit its particular circumstances. We encourage lenders to evaluate and modify their flood insurance programs to comply both with the mandatory purchase requirements and with principles of safe and sound banking that may be unique to a particular lender. The lack of available NFIP coverage in a participating community does not prohibit a lender from making a conventional loan. We believe that the same rules that apply to buildings in violation also apply to a building not eligible for NFIP insurance because the required inspection was not done.

Comment on the Recourse for Buildings in Violation

One commenter questioned what happens to existing loans if a building enclosure is determined to be in violation of the community's floodplain management ordinance and whether time is allowed to make the necessary corrections to the structure.

Response

We expect that owners will be able to fix violations within the first year after the inspection. However, we will give the communities flexibility to remedy a violation beyond the first year if time is needed. If, after one year, the community has taken all enforcement actions within its authority to remedy the violation to the maximum extent possible, and the property owner does not correct the violation, the community will submit a declaration of a violation to us. This will result in denial of flood insurance under 44 CFR 73, Implementation of Section 1316 of the National Flood Insurance Act of 1968. However, as we stated before there is no impact for conventional loans as a result of denial of NFIP insurance under Section 1316.

Comments on the Need for Guidance

Two commenters recommend that FEMA include the lending and servicing community in devising procedures that will support the inspection procedure should we implement it. One comment

was made that not enough attention has been paid in the proposal on the potential impact on the mortgage lenders.

Response

We will continue to strengthen and maintain the partnership already established with the mortgage lending community and Federal agencies regulating lenders. We will undertake activities to coordinate with the lending and servicing industry for implementation of this procedure. We will have detailed information and sources of reference available on our website. We will also offer printed articles for publication in lender trade magazines and issue bulletins addressing the inspection procedure.

Comments on Escrow Provisions

We received two questions asking what happens when the premium is paid under escrow arrangements and, if the insurance is cancelled or ineffective, will the lender or insurance company be required to rebate a portion of the premium or the funds in the escrow account that would pay the premium. We were also asked what impact the disclosure requirements under the Real Estate Settlement Procedures Act (RESPA) of 1974 and Section 21 of HUD Regulation X, would have on existing escrow accounts.

Response

The mandatory purchase law expressly states that escrow accounts established under the Flood Disaster Protection Act of 1973 are subject to the escrow account provisions of Section 10 of RESPA, which imposes accounting and notice obligations on a lender for consumer loans. We would expect that the rules adhered to for issuing refunds when excess escrow funds have accumulated under standard practices would apply. The 1994 Reform Act mandates the escrowing of flood insurance premiums if the lender is escrowing for other reasons, *i.e.,* for insurance or taxes. While we administer the NFIP, we are not a regulatory agency for lending institutions and we do not have authority over any settlement activities performed by lending institutions. Therefore, the matter of RESPA and escrow provisions should be referred to the Department of Housing and Urban Development or to a Federal agency regulating lenders for guidance.

Comments on Forced Placement Insurance

We received two comments on the force placement process that takes place if the servicer does not receive evidence of renewal and whether we have considered the outcome. One commenter asked whether forced placement policies would cover the lender during periods when the borrower's policy is ineffective.

Response

We have considered the outcome of force placement coverage. Force placement under the NFIP will not be available for structures deemed to be in violation of State or local laws under Section 1316 of the 1968 Act or for structures where policyholders do not obtain an inspection and submit an inspection report under this procedure. The insurers and the NFIP Bureau and Statistical Agent will maintain a list of all structures found to be ineligible for flood insurance coverage. The NFIP Bureau and Statistical Agent will review the policies issued and renewed by insurers to make sure that any policies inadvertently issued for structures on this list are voided. Only private flood insurance coverage may be available for these structures.

Implementation in Other Communities and Evaluation of the Inspection Procedure

Comments on Implementation in Other Communities

We received four comments concerning implementation of the proposed inspection procedure outside of Monroe County, Florida. Specifically, we received several comments from communities and a State outside of Florida stating their objection to the implementation of the inspection procedure within their jurisdiction, citing primarily the impact that the inspection procedure would have on manpower and workload.

Response

We designed the proposed inspection procedure specifically to help the communities of Monroe County, Florida and the Village of Islamorada, located in Monroe County, to verify that structures are built in compliance with their floodplain management ordinance. The intent of this procedure is to assist these two communities materially to identify and correct violations of illegally built ground level enclosures below elevated buildings. We will undertake the inspection procedure on a pilot basis only in these two communities, and any other community within Monroe County, Florida that incorporated after January 1, 1999. We would make any decision to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after we evaluate the procedure's effectiveness. If we decide to implement this procedure outside of Monroe County, Florida after we complete the evaluation, we would have to issue a proposed rule and then a final rule so that interested parties could comment.

Comments on the Evaluation

We also received two comments concerning the evaluation of the inspection procedure. Specifically, the commenters expressed concern about the impact that the inspection procedure would have on property owners if we evaluate it and find that it is ineffective. One person specifically asked how we would gauge the effectiveness of the inspection procedure.

Response

We designed the proposed inspection procedure to assist the communities of Monroe County and the Village of Islamorada, Florida verify that structures comply with their floodplain management ordinances. We also designed it to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The evaluation will include the extent to which we achieve these objectives. Other factors that we will evaluate include:

- The extent to which policyholders do not obtain an inspection,
- The extent to which buildings are brought into compliance with the minimum requirements of the NFIP,
- Whether other enforcement options can be used to achieve the same objective,
- Whether the benefits derived from this procedure outweigh the associated costs, and
- The extent to which manual processes are required to implement the inspection procedure and the extent that such manual processes affect the implementation.

We would monitor and evaluate the inspection procedure and we would closely coordinate with each community throughout implementation of this procedure. The FEMA Region IV office would review the status of implementation with each community on activities such as the number of inspections conducted, the results of the inspections, and the follow-up actions being taken to remedy the violations to the maximum extent practicable. This review would be undertaken on at least a monthly basis for the first several months of implementation and on at

least a quarterly basis thereafter. The FEMA Region IV office would also make site visits on at least a semi-annual basis and more frequently if needed.

The results of any evaluation on the effectiveness of the inspection procedure does not modify or relieve Monroe County or the Village of Islamorada's responsibility under the NFIP to enforce their floodplain management ordinance and to bring noncompliant enclosures below elevated buildings into compliance with the community's floodplain management ordinance.

Economic Impact and Loss of Affordable Housing

Comments

We received 25 comments on the economic impact and loss of affordable housing. Many of those commenting on the inspection procedure stated that the inspection procedure would result in a much more devastating impact on the local economy and on housing compared to a major hurricane that would strike the Florida Keys. Many expressed concern that the inspection procedure and the removal of enclosures will create an economic disaster for homeowners, particularly those living on fixed incomes and those who supplement their income from renting these enclosures. Others also expressed concern that this procedure will have a serious impact on the value of property with as much as 25–30 percent of the value affected and will result in a significant loss in the local tax base. One commenter estimated that the County could lose as much as $2.47 million per year in property taxes.

Some suggested that since the County created the problem, it should reimburse homeowners half the assessed value of their property and adjust the property taxes accordingly. In addition, several people indicated that this procedure is unfair with regard to the rights of unsuspecting purchasers who bought their property in good faith and now must remove a substantial investment in the property.

A number of those commenting on the proposed rule expressed concern over the impact that the inspection procedure would have on the availability of affordable housing in Monroe County. Many people stated that the procedure would exacerbate an already existing housing crisis in the County. Several of those commenting indicated that these enclosures provide much needed housing particularly for low and moderate-income residents and that these enclosures provide much needed housing for the employees who work in the service industry, a major employer in the County. Commenters stated that these enclosures also provide housing for senior citizens or other family members and housing for seasonal workers and vacationers.

One person recommended that no tenant-occupied enclosure be demolished until there is an agreed upon plan by all the governmental agencies involved to increase the affordable housing stock and that an affordable unit be built prior to eliminating any existing units.

Response

As stated before, we have estimated that there are 2,000–4,000 illegally built enclosures in Monroe County and the Village of Islamorada. Since any finished enclosures were built illegally in the first place and do not comply with the community's floodplain management ordinance and the minimum requirements of the NFIP, we do not know precisely how many illegally built enclosures below elevated buildings exist and whether they are being used as rental units or additional living space. Our estimate is based on the 1995 CAV conducted by our Region IV office, a review of post-FIRM policies, and discussions with local officials from both communities. A December 1999 Memorandum of Agreement between the State of Florida Department of Community Affairs and Monroe County gives some indication of the number of possible illegal enclosures. It states that ''County staff estimates that these illegal downstairs enclosures may contain hundreds of below base flood dwellings serving as living quarters for Monroe County households'' and that ''an unknown portion of these illegal downstairs enclosures has traditionally provided housing for low and moderate income and working class households''.

Based on these estimates, we have conservatively estimated that there are between 500–800 out of the 2,000–4000 illegally built enclosures that may be occupied by low-income households in Monroe County and the Village of Islamorada. The impact on low-income populations is documented in our ''Record of Environmental Review'' on the proposed rule. These estimates indicate that there should not be a disproportionately adverse impact on low-income populations. While we do not have an exact estimate within each of the two communities, we estimate that Monroe County, which has the larger land area and greater number of post-FIRM buildings, has a significantly larger portion of the illegally built enclosures including enclosures used as a housing unit than the Village of Islamorada. Furthermore, based on the statement in the Memorandum of Agreement cited above, we believe that the owners of a majority of the illegally built enclosures use them as additional living space for their immediate family rather than as full living quarters for separate full-time households.

We do not dispute the fact that there will be some impacts as a result of implementing the inspection procedure. There will be some impacts on the estimated 500–800 low-income households living in a housing unit within an illegally built enclosure. The impact on low-income populations would result from the removal of the illegal enclosure under the inspection procedure. Consequently, the low-income renter will need to find replacement housing. However, finding available replacement housing may be a problem for the low-income households.

Local officials as well as people commenting on the proposed rule indicated to us that availability of affordable housing is a problem throughout the County. There are also limitations on the amount of housing that can be built in the communities in any given year. Communities in Monroe County, including the County, are under a State mandated Rate of Growth Ordinance (ROGO). This ordinance establishes the number of residential dwelling units, including the number of affordable housing dwelling units that can be built in a given year. The purpose of the ROGO is to protect property owners and others from the devastating effects of a natural disaster and to establish a rate of growth that is commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time.

There are other market conditions that have also had an impact on the availability of affordable housing, such as availability of land and financing as documented in the Monroe County Year 2010, Comprehensive Plan Technical Document, dated April 15, 1993. Under these conditions, the low-income household may have difficulty finding appropriate replacement housing.

Additionally, there will be some impacts on the property owners. Impacts on the property owners may include loss of additional living space or rental income if a housing unit is located in the ground level enclosure, the cost of removing the additional living space to bring the building into compliance with the community's floodplain management ordinance, and the potential loss in property value depending on the size and extent of the improvements to the enclosure. The

community may also experience a loss in property tax revenue due to the loss in value in some structures.

However, these effects are created as a direct result of building these illegal enclosures in the first place and not as a result of community enforcement of its floodplain management ordinance. If these illegal enclosures had not been built, there would be no need for this inspection procedure or any other enforcement actions under the NFIP. Any impacts associated with this inspection procedure should be minimized since it will be implemented over a multi-year period with the actual inspections staggered throughout the year.

Moreover, this inspection procedure will not cause more harm and devastation than a major hurricane as comments purported. As described earlier in this rule, South Florida is one of the most hurricane prone regions of the country. Almost the entire County, including the Village of Islamorada, could be inundated by a flood having a 1-percent chance of being equaled or exceeded in any given year. Buildings in these communities that are not properly protected are extremely vulnerable to flood damage. If a major hurricane were to strike Monroe County, there would be a much more devastating impact especially to the low-income households living in the illegally built enclosures when compared to the effects resulting from implementation of this procedure over a multi-year period.

Allowing uses for something other than parking, access, or storage in the enclosed area below the Base Flood Elevation significantly increases flood damages to the building. If the ground-level enclosure is finished as a separate housing unit or other finished living spaces, there is an increased risk to lives. Residents, who live in these ground-level enclosures, may not be fully aware of the severity of the flood risk.

Further, while the shortage of housing will be a significant problem in a major hurricane, it could become a crisis situation for those households living in illegally built ground level enclosures. The impact on housing even became evident in Hurricane Georges, a Category 2 hurricane. We provided over 1400 households with rental assistance in Monroe County in response to this event. We learned in comments that businesses throughout the County closed for several days following Hurricane Georges because they could not find enough people to work in them because housing was unavailable. Flooding and the coastal storm surges resulting from a major hurricane event could damage or destroy a number of illegally built enclosures used as full living units, compounding the problem of available housing. Since flood insurance is very limited for enclosures, property owners as well as any affected households living in these enclosures will not have the financial support of flood insurance to replace their personal belongings. Property owners will not be able to repair the illegal enclosures as finished living space or the housing unit since the community's floodplain management ordinance does not allow such enclosures. Households living in these enclosures will be dependent on federal and other disaster assistance and temporary housing in the short-term. If the property is not a primary residence, the property owner may be ineligible for Federal disaster assistance in the form of grants or loans.

With limited financial assistance available, the impact will be especially devastating to the low-income households living in these illegal ground level enclosures. The low-income population living in these enclosures may not be able to financially compete for available housing in the County. As a result, low-income households may be left without replacement housing in the long-term and they may have to relocate outside the County thereby placing additional economic and other burdens on the household. In the event of a major hurricane, the loss of housing units within illegally built ground level enclosures will only compound an already existing affordable housing shortage in Monroe County.

While we recognize the investment that property owners may have in these lower level enclosures, the increase in any value to the property is the direct result of violating the community's floodplain management ordinance. Property owners will also lose this value in a major hurricane. When a major hurricane strikes, the loss in property value will likely have more significant financial consequences to individual property owners and any tenants living in the enclosures than the inspection procedure will have. Property owners will not receive compensation for the loss of enclosures through flood insurance or through disaster assistance. There may be other financial repercussions if property owners still have outstanding mortgages on their buildings.

Communities should not rely on illegally built enclosures as a dependable source of tax revenue. In the event of a major hurricane, the loss of a number of illegally built enclosures would result in a more dramatic loss in the tax base and would impact the community as a whole more severely than through the removal of illegally built enclosures under the inspection procedure over a multi-year period.

In comparison to a major hurricane striking the County, the proposed inspection procedure will actually have a beneficial affect by eliminating illegally built enclosures over a several-year period. Because the inspection procedure will be implemented over several years and the inspections themselves will be staggered throughout the year as flood insurance policies are renewed, it will have the added benefit of giving the property owners time to remedy the violation and to give any tenants living in these illegal enclosures time to find appropriate alternative housing. Over time, buildings will comply with a greater level of flood protection.

We will make every effort to ensure that we and the communities provide effective outreach and public information on the inspection procedure. The communities will have several months before the actual starting date of the inspection procedure to undertake outreach and to provide information to the public about the procedure. The final rule provides criteria for several notices to be given to property owners about the inspection procedure.

- Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate.
- We will also publish a notice in the **Federal Register** that the communities will undertake an inspection procedure.
- Published notices will include the purpose of implementing the inspection procedure.
- Policyholders of insured structures will receive at least three specific notices established in the final rule.

—The first notice will be after the starting date, the policyholder will receive an endorsement to their Standard Flood Insurance Policy that an inspection may be required;

—The second notice will be for buildings that the communities identify as possible violations—the insurer will send a notice to policyholders approximately 6 months before the policy expiration date. This notice will state that the policyholder must obtain an inspection from the community and submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after the date that the policy expires); and

—Third, the insurer will send a reminder notice to the policyholder with the Renewal Notice about 45–60 days before the policy expires.

We will closely coordinate with the communities to ensure that there is adequate notification to the public in general and to the affected population throughout the implementation phase of the inspection procedure.

The inspection procedure also supports ROGO, which is tied to the County's hurricane evacuation plan. ROGO establishes a rate of growth that is commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time. Illegally built enclosures that have full housing units may effectively exceed the permit allocation system of ROGO for new residential development, thereby jeopardizing the County's goal of safeguarding the public against the effects of hurricanes and tropical storms.

The impacts created by the inspection procedure will be further minimized through steps that Monroe County is undertaking to address affordable housing. The Monroe County Board of County Commissioners approved an *Affordable Housing Action Plan* at its November 10, 1999 meeting. The first part of the action plan directs the County Planning Department to prepare a Memorandum of Agreement (MOA) between the County and the Department of Community Affairs (DCA) that would allow the County to receive credit for those affordable housing units that were counted in the ROGO, and could be lost due to the removal of illegal ground level enclosures.

On December 27, 1999, the DCA signed this MOA, thereby enabling Monroe County to add 90 ROGO credit units to its year 8 allocations. The agreement allows Monroe County to add up to 90 housing unit credits through July 13, 2002 to its ROGO allocation as replacement housing for affordable housing units in enclosures removed as a result of the implementation of the proposed inspection procedure.

The 90 credits can only be applied to those units that qualify as ''affordable housing'' as defined by the Monroe County Code. The Agreement provides for an amendment to adjust the number of ROGO credits should the County's inspection report document the removal of more than 30 housing units in illegally built enclosures. We understand that any housing units illegally created after 1990 do not qualify for the ROGO credits since they were not included in the 1991 Hurricane Evacuation Study upon which the ROGO annual residential dwelling unit allocation is based. However, under the general annual ROGO allocation, at least 20% of the annual allocation is for affordable housing. This annual allocation for affordable housing could be used for those low-income households living in an illegal enclosure created after 1990.

The second part of the action plan directs the County Planning Department to identify potential suitable sites for the construction of attached affordable housing. In addition, the County is looking at other considerations to improve the availability of affordable housing, such as developing partnerships with private developers to encourage development of affordable housing and evaluating zoning regulations to increase opportunities to build affordable housing units.

The Village of Islamorada incorporated in 1998 and joined the National Flood Insurance Program as a participating community on October 1, 1998. The Village is currently working to put in place plans, programs, and procedures affecting land use. We will work with the Village of Islamorada to pursue similar efforts for additional ROGO credits with the State Florida Department of Community Affairs should it be necessary.

We encourage both communities to continue efforts to develop plans, programs and procedures to provide affordable housing in order to minimize impacts resulting from the implementation of the proposed inspection procedure.

Previously Issued Permits

Comments

We received six comments and questions concerning the finished ground level enclosures for which permits were purported to have been issued by Monroe County. Specifically, the commenters asked why we did not make a distinction in the proposed rule between the finished enclosures for which a permit was issued and those that had been built without the benefit of a permit.

They also asked why we did not recognize in the proposed rule the settlement agreement between Monroe County and the plaintiffs, which was signed on April 13, 1999 in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida. This settlement agreement stipulated that, ''the Court acknowledges that plaintiffs have agreed to a dismissal of their putative class action based upon Monroe County's agreement that all below Base Flood Elevation non-conforming enclosed space that was authorized by permit from Monroe County shall not be cited for violating County ordinances setting forth floodplain regulations.'' With respect to this settlement, one commenter stated that the final rule must explicitly recognize the settlement and resultant Order and that the final rule must provide that: (1) permitted enclosed (below) Base Flood Elevation space shall not be considered to violate the floodplain management ordinance; and (2) flood insurance renewals shall be available to all such permitted but non-conforming structures.

Based on this settlement, some asked how the settlement affects the County's role in the inspection procedure. Some also asked how the settlement agreement affects the Village of Islamorada's role in the inspection procedure. In this regard, several commenters said that it would be unfair to require the Village of Islamorada to enforce its floodplain management ordinance on previously permitted finished enclosures that the County approved since the County does not intend to enforce its ordinance on permitted finished enclosures based on the settlement agreement. Some asked us to provide guidance on whether the Village could also enter into a similar agreement and to confirm that the Village would not be excluded from the NFIP if it enters into a similar agreement.

Response

When the communities of Monroe County and the Village of Islamorada applied to join the NFIP, each community adopted a resolution committing itself to recognize and evaluate flood hazards in all official actions and to take such other officials actions as reasonably necessary to carry out the objectives of the program [44 CFR 59.22(a)(8)]. This commitment is in addition to the requirement that the community takes into account flood hazards to the extent that they are known in all official actions relating to land management and use [44 CFR 60.1(c)]. In order to participate in the NFIP, all communities must adopt a floodplain management ordinance that meets or exceeds the minimum requirements of the program at 44 CFR 60.3. A community eligible for the sale of flood insurance shall be subject to suspension from the program for failing to submit copies of adequate floodplain management regulations meeting the minimum NFIP requirements in accordance with 44 CFR 59.24(a). Similarly, a community eligible for the sale of flood insurance shall be subject

to probation and potentially to suspension from the program for failing to enforce floodplain management regulations adequately meeting the minimum NFIP requirements in accordance with 44 CFR 59.24(b) and (c).

While communities participating in the NFIP have flexibility to adopt more restrictive criteria and to enforce their floodplain management ordinances, communities cannot enforce floodplain management requirements in a way that would contravene those requirements that they agreed to adopt and enforce at 44 CFR 60.3 when they joined the program. In that regard, communities are not allowed to permit finished ground level enclosures below the Base Flood Elevation since they would violate the requirements in 44 CFR 60.3. Nor are communities allowed to give amnesty to a building or a class of buildings that violate the communities' floodplain management ordinance. To do so, would jeopardize the communities' participation in the NFIP.

With respect to the April 13, 1999 settlement agreement between Monroe County and the plaintiff in which the County agreed that it would not enforce its floodplain management ordinance on previously permitted finished enclosures, we were not a party to that agreement nor were we aware that the County was entering into the agreement with the plaintiffs in the case. It would be contrary to the National Flood Insurance Act of 1968, as amended, and to the NFIP Floodplain Management Regulations at 44 CFR Parts 59 and 60 for us to grant amnesty for certain classes of buildings because the community failed to enforce its floodplain management ordinance adequately or the community granted permits for construction that violate the community's ordinance. Nor can we advise communities to grant amnesty for buildings or certain classes of buildings that would violate the community's floodplain management ordinance.

The illegally built enclosures for which the County had previously issued permits are still subject to the inspection procedure. Monroe County is still responsible for obtaining a level of flood loss reduction for these buildings given practical and legal constraints. In this case, the settlement agreement may be a possible legal constraint with respect to enforcement on the actual items that were permitted previously by Monroe County. However, the County must inspect the enclosure to ensure that it has not been improved beyond what had been previously permitted. If so, the County must take an enforcement action on those improvements that go beyond the previously issued permit for the finished enclosure and bring those improvements into compliance. As part of the inspection report to the policyholder, the County must notify the policyholder of the flood hazard and that the finished ground level enclosure cannot be expanded or improved or repaired from damages of any origin in accordance with the requirements in 44 CFR 59.22(a)(8), 60.1(c), and 60.3. Furthermore, for any finished ground level enclosure in which a permit was issued, the policyholder must obtain and submit an inspection report before the flood insurance policy renewal date.

The settlement agreement has no impact on the rating of insured structures. The National Flood Insurance Act of 1968, as amended, requires us to rate structures according to the risk and accepted actuarial principles for any types and classes of properties for which insurance coverage is available under the Act. The Village of Islamorada would be subject to similar requirements described above should it enter into a similar settlement agreement.

National Environmental Policy Act

We have reviewed the proposed rule under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. We determined that the action in the proposed rule qualifies for the exclusion on rulemaking relating to actions that themselves are excludable. The exclusions are in 44 CFR 10.8(d)(2)(ii) and (iv) regarding inspections, monitoring activities, and actions to enforce local regulations.

The rule does not establish any new requirements that Monroe County and the Village of Islamorada must adopt and enforce under the NFIP. Rather, it provides the communities with an additional tool to enforce existing requirements in their floodplain management ordinance. This existing ordinance requires that all new and substantially improved structures must be elevated to or above the Base Flood Elevation (BFE), and must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads.

We also determined that no extraordinary circumstances exist regarding this rule, as defined in 44 CFR 10.8(d)(3). We considered these potential extraordinary circumstances: Greater scope or size than normally experienced for a particular category action; high level of public controversy; presence of endangered or threatened species and their critical habitat; presence of hazardous substances; and actions with the potential to affect special status areas adversely or other critical resources.

We provided a copy of the Record of the Environmental Review documenting the findings to Monroe County and the Village of Islamorada. A copy may be obtained through our website at *www.FEMA.gov,* or by writing to the Federal Emergency Management Agency at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

Executive Order 12898, Environmental Justice

We have reviewed the proposed rule under E.O. 12898, Environmental Justice, and have determined that the inspection procedure will not have a disproportionate adverse impact on low-income populations and minority populations. We also determined that this action will have some adverse effects on low-income populations because some of the illegal enclosures are used as a full-living unit and the residents will have to find replacement housing. The effect is caused by the illegal activity, not by this regulatory action. We have determined, further, that there would be a much more significant adverse health and safety impact on the affected low-income populations if they stayed in these illegally built ground level enclosures. The enclosures are located in flood hazard areas below the Base Flood Elevation where there is a significant risk of flooding.

We provided a copy of the Record of the Environmental Review documenting the findings to Monroe County and the Village of Islamorada. A copy of the Record of the Environmental Review may be obtained through our website at *www.FEMA.gov* or by writing to the Federal Emergency Management Agency at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this final rule under the provisions of E.O. 12866, Regulatory Planning and Review. For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the executive order:

- The rule is a pilot program that applies only to two communities to address flood insurance and floodplain management issues required by statute for the communities to remain eligible for flood insurance and to avoid

probation and potential suspension from the NFIP;

• We estimate that the costs to the two communities to enforce the rule will be in the range of $48,000 to $250,000 per year, over a few years;

• This rule raises no novel legal or policy issues arising out of legal mandates of the NFIP, presidential priorities, or principles of E.O. 12866. It creates no new requirements that the two communities must adopt and enforce under the NFIP, but provides them with assistance to carry out their responsibilities under the NFIP and to enforce the existing requirements in their floodplain management ordinance;

• This rule will provide these communities with a tool to protect the health, safety, and welfare of their citizens and property exposed to a significant flood risk, a tool not otherwise available to the communities under the current regulations of the NFIP;

• We do not expect that the rule will adversely or materially affect the public directly affected by the rule. The inspection procedure will be implemented over a period of several years, will give property owners time to remedy the violations, and will give tenants living in illegal enclosures time to final appropriate alternative housing. The rule also accommodates the State-mandated Rate of Growth Ordinance (ROGO), the memorandum of agreement between the County and the State on ROGO allocations in order to deal with replacement units for illegal enclosures removed as a result of the inspection procedure;

• The inspection procedure adopted in the rule arises out of work done by a Citizen's Task Force that the Monroe County Board of County Commissioners appointed. We have worked closely with County, Village and State officials in preparing the rule [see Executive Order 13132, Federalism, below]; and

• The inspection procedure under this rule is the best available method to achieve the NFIP regulatory objective while taking into account State statutory constraints on inspections, State rate of growth mandates, housing limits with the two communities, and related factors.

The Office of Management and Budget has reviewed this rule under the principles of Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132, Federalism seeks to ensure that Executive agencies consider principles of federalism when developing new policies, and requires them to consult with State and local officials when their actions may have federalism implications.

In the proposed rule, we stated that this rule has no policies that have federalism implications under E.O. 12612, Federalism. However, we received three comments on the proposed rule that the inspection procedure violated the Executive Order on Federalism. Since the publication of the proposed rule, the President issued E.O. 13132, Federalism, signed on August 4, 1999. E.O. 13132 revoked E.O. 12612 and E.O. 13083.

We reviewed this rule for federalism implications under E.O. 13132. Based on our review, we have determined that this rule does not have federalism implications as defined in E.O. 13132 as it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule imposes no mandates on State or local governments; participation in the inspection procedure by Monroe County and the Village of Islamorada is voluntary. Moreover, we have consulted extensively with Monroe County, the Village of Islamorada, and the State of Florida during the development of the inspection procedure and the proposed and final rule.

As a result of the 1995 Community Assistance Visit (CAV) in which we assessed Monroe County's floodplain management program, we determined that the illegal conversion of ground level enclosures to uses other than parking, access, and storage had become an even more serious problem than in prior CAVs. In a follow-up CAV letter to the community, we outlined steps the County must take to remedy the violations or we would have to take an enforcement action in the community because of the serious nature and extent of the violations.

To address the issue of illegally built enclosures, the Monroe County Board of County Commissioners appointed a Citizens Task Force to develop recommendations for addressing the problem. The Monroe County Citizen's Task Force initially proposed the concept of an inspection procedure to us in a letter dated January 23, 1997. In their letter, the Task Force recommended establishment of a procedure to require an inspection and a compliance report before renewal of a flood insurance policy. In response to the Task Force recommendation and Monroe County's interest in trying to resolve the violations of illegally built enclosures identified in the 1995 CAV, we sent a letter to the Mayor of Monroe County on March 23, 1998, in which we agreed to develop an inspection procedure. Our letter included a detailed description of how the proposed inspection procedure would work. Through this letter we provided to Monroe County details of how the inspection procedure would work almost a full year before we published the proposed rule in the **Federal Register**. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that asked us to establish an inspection procedure for the County as a means to verify that buildings insured under the NFIP comply with the County's floodplain management ordinance. Our Region IV staff attended the June 11, 1998 meeting and made a presentation on how the inspection procedure would work.

During this time, the Village of Islamorada incorporated as a separate community in January 1998 and became a participating NFIP community on October 1, 1998. We notified the Village of the Islamorada about the proposed inspection procedure before it applied to join the NFIP. The community indicated its interest in participating in the inspection procedure in a letter dated September 24, 1998, when it applied to join the NFIP. The Village encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County.

Our Region IV staff consulted with the Florida Department of Community Affairs (DCA), Division of Emergency Management, which is responsible for coordinating the NFIP for the State, on the proposal by the Citizen's Task Force and steps that we were taking to develop the inspection procedure. This was part of our normal process in coordinating with our State NFIP coordinators on floodplain management issues in communities. This includes consulting with the State NFIP coordinators before we conduct a CAV, inviting the State NFIP coordinators to participate in the CAV with us, and consulting with them on the findings of the CAV and follow-up actions that the community needs to take to address any floodplain management program deficiencies and violations.

Before we published the proposed rule, we consulted with several state agencies on the proposed rule for the inspection procedure. On May 3, 1999, our FEMA Region IV staff met with several Florida State agencies to explain how the inspection procedure would work. In addition to the Secretary of the Florida Department of Community Affairs (DCA), representatives from the

following State offices and agencies participated in the meeting: Executive Office of the Governor; the Office of the Attorney General; the Florida DCA, Division of Emergency Management, Division of Community Planning, Division of Housing and Community Development, and Division of Coastal Management, and DCA staff from the Florida Keys Field Office; the Department of Insurance; and the Florida Windstorm Underwriting Association. Also present during this meeting were representatives from Monroe County. Officials from the Village of Islamorada were unable to attend, but were provided a separate briefing on the inspection procedure.

We received only one set of comments from the State of Florida. The Florida State Clearinghouse coordinated a review of the proposed rule. The responses received from the 17 State agencies and offices that reviewed the proposed rule indicated that they had ''no comments'' or made a ''consistency determination''.

Paperwork Reduction Act

We submitted the information collection requirements in the proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements were approved by the OMB under Control Number 3067–0275.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of subsections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Parts 59 and 61

Flood Insurance, Reporting and recordkeeping requirements.

Accordingly, we amend 44 CFR Parts 59 and 61 as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We amend Part 59 by adding a new subpart C consisting of § 59.30, to read as follows:

Subpart C—Pilot Inspection Program

§ 59.30 A Pilot inspection procedure.

(a) *Purpose.* This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999 and is eligible for the sale of flood insurance. The purpose of this inspection procedure is to provide the communities participating in the pilot inspection procedure with an additional means to identify whether structures built in Special Flood Hazard Areas (SFHAs) after the date of the effective Flood Insurance Rate Map (FIRM) comply with the community's floodplain management regulations. The pilot inspection procedure will also assist FEMA in verifying that structures insured under the National Flood Insurance Program's Standard Flood Insurance Policy are properly rated.

(b) *Procedures and requirements for implementation.* Each community must establish procedures and requirements for implementing the pilot inspection procedure consistent with the criteria established in this section.

(c) *Inspection procedure*—(1) *Starting and termination dates.* The Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director. The Regional Director will consult with each community.

(2) *Extension.* The Associate Director for Mitigation and the Federal Insurance Administrator may extend the implementation of the inspection procedure with a new termination date upon the recommendation of the Regional Director. The Regional Director will consult with the community. An extension will be granted based on good cause.

(3) *Notices.* Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator will publish a notice in the **Federal Register** that the community will undertake an inspection procedure. Published notices will include the purpose for implementing the inspection procedure and the effective period of time that the inspection procedure will cover.

(4) *Community reviews.* The communities participating in the pilot inspection procedure must review a list of all pre-FIRM and post-FIRM flood insurance policies in SFHAs to confirm that the start of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974, and to identify possible violations of insured post-FIRM buildings. The community will provide to FEMA a list of insured buildings incorrectly rated as pre-FIRM and a list of insured post-FIRM buildings that the community identifies as possible violations.

(5) *SFIP endorsement.* In the communities that undertake the pilot inspection procedure, all new and renewed flood insurance policies that become effective on and after the date that we and the community establish for the start of the inspection procedure will contain an endorsement to the Standard Flood Insurance Policy that an inspection may be necessary before a subsequent policy renewal [see Part 61, Appendices A(4), (5), and (6)].

(6) *Notice from insurer.* For a building identified as a possible violation under paragraph (c)(4) of this section, the insurer will send a notice to the policyholder that an inspection is necessary in order to renew the policy and that the policyholder must submit a community inspection report as part of the policy renewal process, which includes the payment of the premium. The insurer will send this notice about 6 months before the Standard Flood Insurance Policy expires.

(7) *Conditions for renewal.* If a policyholder receives a notice under paragraph (c)(6) of this section that an inspection is necessary in order to renew the Standard Flood Insurance Policy the following conditions apply:

(i) If the policyholder obtains an inspection from the community and the policyholder sends the community inspection report to the insurer as part of the renewal process, which includes the payment of the premium, the insurer will renew the policy and will verify the flood insurance rate, or

(ii) If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy.

(8) *Community responsibilities.* For insured post-FIRM buildings that the community inspects and determines to violate the community's floodplain management regulations, the community must demonstrate to FEMA that the community is undertaking measures to remedy the violation to the maximum extent possible. Nothing in this section modifies the community's responsibility under the NFIP to enforce floodplain management regulations adequately that meet the minimum requirements in § 60.3 for all new construction and substantial improvements within the community's

SFHAs. The community's responsibility also includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

(d) *Restoration of flood insurance coverage.* Insurers will not provide new flood insurance on any building if a property owner does not obtain a community inspection report or if the property owner obtains a community inspection report but does not submit the report with the renewal premium payment. Flood insurance policies sold on a building ineligible in accordance with paragraph (c)(6)(ii) of this section are void under the Standard Flood Insurance Policy inspection endorsements [44 CFR Part 61, Appendices (A)(4), (A)(5), and (A)(6)]. When the property owner applies for a flood insurance policy and submits a completed community inspection report by the community with an application and renewal premium payment, the insurer will issue a flood insurance policy.

(Approved by the Office of Management and Budget under Control Number 3067–0275)

PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

4. We amend Part 61 by adding Appendix A(4) to Part 61 to read as follows:

Appendix A(4) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Dwelling Form

[Issued under the National Flood Insurance Act of 1968, as amended (Act), and applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 9 of the Standard Flood Insurance Policy, Dwelling Form, only in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article that is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount that represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this policy, which will be void, nor can this policy be renewed or any new flood insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a ''Recertification Questionnaire,'' that causes us to issue a policy to you based on a premium amount that is less than the premium amount that would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. *Other Insurance.* If a loss covered by this policy is also covered by other insurance whether collectible or not, except insurance in the name of the Condominium Association issued pursuant to the Act, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss. If there is other insurance in the name of the Condominium Association covering the same property covered by this policy, this insurance will be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy can constitute a waiver of any of our rights. Except in the case of 1. a contents only policy, and 2. a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You:* You may cancel this policy at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described building or unit to someone else. In this case, we will refund to you, once we receive your written request for cancellation (signed by you), the excess of premiums paid by you that apply to the unused portion of the policy's term, pro rata but with retention of the expense constant and the Federal policy fee.

2. You cancel a policy having a term of 3 years, on an anniversary date, and the reason for the cancellation is:

a. A policy of flood insurance has been obtained or is being obtained in substitution for this policy and we have received a written concurrence in the cancellation from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the expense constant and the Federal policy fee.

3. You cancel because we have determined that your property is not, in fact, in a special hazard area; and you were required to purchase flood insurance coverage by a private lender or Federal agency pursuant to the Act; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which you may receive compensation under the policy;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which your property is located ceases, in which case the policy will be deemed void effective at the end of the last day of the policy year in which such cessation occurred and will not be renewed.

If the voided policy included 3 policy years in a contract term of 3 years, you will be entitled to a pro rata refund of any premium applicable to the remainder of the policy's term;

d. If you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy will be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, will be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

f. You have not submitted a community inspection report, cited in ''G. Policy Renewal'' below that was required in a notice sent to you in conjunction with the community inspection procedure established under National Flood Insurance Program Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and

paragraph F.1.d. does not apply, then the policy will be deemed to provide only such coverage as can be purchased for the entire term of the policy, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us before a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we will give a notice of additional premium due, and if you remit and we receive the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the policy, we will give a notice of premium due, and if you remit and we receive the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the policy, we will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this policy begins on its inception date and ends on its expiration date, as shown on the declarations page that is attached to the policy. We are under no obligation to:

1. Send you any renewal notice or other notice that your policy term is coming to an end and the receipt of any such notice by you will not be deemed to be a waiver of this provision on our part.

2. Assure that policy changes reflected in endorsements submitted by you during the policy term and accepted by us are included in any renewal notice or new policy that we send to you. Policy changes include the addition of any increases in the amounts of coverage.

This policy will not be renewed and the coverage provided by it will not continue into any successive policy term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by us at the office of the National Flood Insurance Program within 30 days of the expiration date of this policy, subject to Article 9, paragraph F. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the National Flood Insurance Program before the expiration date, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this policy will end as of the expiration date of the last policy term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received at the office of the National Flood Insurance Program and, in that event, we will not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice.

In connection with the renewal of this policy, you may be requested during the policy term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

Your community has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National Flood Insurance Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for policy renewal. As a property owner in such a community, you may be required to submit such an inspection report by a community official certifying whether your insured property is in compliance with the community's floodplain management ordinance. You will be notified in writing of this requirement approximately 6 months before your renewal date and again at the time your renewal bill is sent.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us before the expiration of the policy being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent application or other appropriate form (received by the National Flood Insurance Program before the mailing of the renewal notice by us), does, in all respects for purposes of the National Flood Insurance Program, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, if we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that we determine could preclude the likelihood of its being actually and timely received by you before the due date for the renewal premium, the following procedures will be followed:

If you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which we determine was attributable to the above circumstance, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the policy will remain as an expired policy as of the expiration date prescribed on the policy.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we will not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a flood loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, ''owner'') and the interest, if any, of others in the damaged property;

d. The actual cash value or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued;

h. Details as to who occupied any insured building at the time of loss and for what purpose; and

i. The amount you claim is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the policy; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with our adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help

you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

7. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss that includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

8. Any false statements made in the course of presenting a claim under this policy may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values or replacement cost (whichever is appropriate), amounts of loss claimed, and any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any policies of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the condominium documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other condominium documents if you are a unit owner in a condominium building; and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace:* We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options:* We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable:* Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment:* You may not abandon damaged or undamaged insured property to us. However, we may permit you to keep damaged, insured property (''salvage'') after a loss and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

N. *Appraisal:* If at any time after a loss, we are unable to agree with you as to the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers will first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located. The appraisers will then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, will submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us will determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both of us equally.

O. *Loss Clause:* If we pay you for damage to property sustained in a flood loss, you are still eligible, during the term of the policy, to collect for a subsequent loss due to another flood. Of course, all loss arising out of a single, continuous flood of long duration will be adjusted as one flood loss.

P. *Mortgage Clause:* (Applicable to building coverage only and effective only when the policy is made payable to a mortgagee or trustee named in the application and declarations page attached to this policy or of whom we have actual notice before the payment of loss proceeds under this policy).

Loss, if any, under this policy, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner will neglect to pay any premium due under this policy, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify us of any change of ownership or occupancy or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this policy, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy will be null and void.

If we cancel this policy, it will continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such cancellation and will then cease, and we will have the right, on like notice, to cancel this agreement.

Whenever we will pay the mortgagee or trustee any sum for loss under this policy and will claim that, as to the mortgagor or owner, no liability therefor existed, we will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations:* If you fail to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit:* You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation:* Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up

our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding:* Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this policy;

2. Not to seek renewal of this policy; and

3. Not to apply for any flood insurance under the Act for property at the property location of the insured building.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

U. *Duplicate Policies Not Allowed:* Property may not be insured under more than one policy issued under the Act. When we find that duplicate policies are in effect, we will by written notice give you the option of choosing which policy is to remain in effect under the following procedures:

1. If you choose to keep in effect the policy with the earlier effective date, we will by the same written notice give you an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.

2. If you choose to keep in effect the policy with the later effective date, we will by the same written notice give you the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or your insurable interests, whichever is less.

We will make a refund to you, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect. For purposes of this paragraph U., the term effective date means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing policy limits, the usual procedures for increasing policy limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy you choose to keep in effect.

5. We amend Part 61 by adding Appendix A(5) to Part 61 as follows:

Appendix A(5) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

Endorsement to General Property Form

[Issued under the National Flood Insurance Act of 1968, as amended (Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 8 of the Standard Flood Insurance Policy, General Property Form, only in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 8—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This policy will be void, nor can this policy be renewed or any new flood insurance coverage be issued to the Insured if any person insured under Article 1, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a ''Recertification Questionnaire,'' which causes the Insurer to issue a policy based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this policy is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance made available under the Act, in the name of a unit owner that provides coverage for the same loss covered by this policy, this policy's coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this policy can constitute a waiver of any of its rights. Except in the case of 1. a contents only policy and 2. a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. Voidance: This policy will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the property is located ceases, in which case the policy will be deemed void effective at the end of the last day of the policy year in which such cessation occurred and will not be renewed.

If the voided policy included 3 policy years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy will be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the Insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

f. The insured has not submitted a community inspection report, cited in ''F. Policy Renewal'' below and required in any notice that may have been sent to the Insured previously in conjunction with the community inspection procedure established under National Flood Insurance Program Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the policy will be deemed to provide only such coverage as can be purchased for the entire term of the policy, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured remits and the Insurer receives the additional

premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the policy, the Insurer will give a notice of premium due, and if the Insured remits and the Insurer receives the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the policy, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this policy begins on its inception date and ends on its expiration date, as shown on the declarations page that is attached to the policy. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that policy changes reflected in endorsements submitted during the policy term are included in any renewal notice or new policy sent to the Insured. Policy changes include the addition of any increases in the amounts of coverage.

This policy will not be renewed and the coverage provided by it will not continue into any successive policy term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the National Flood Insurance Program within 30 days of the expiration date of this policy, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the expiration date, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this policy will terminate as of the expiration date, of the last policy term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice.

In connection with the renewal of this policy, the Insured may be requested during the policy term to recertify, on a Recertification Questionnaire that the Insurer will provide, the rating information used to rate the most recent application for or renewal of insurance.

The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for policy renewal. The Insured may be required to submit such an inspection report completed by a community official to certify whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the policy being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent application or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the National Flood Insurance Program, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, if the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the policy will remain as an expired policy as of the expiration date prescribed on the policy.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this policy or within 45 days before the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this policy to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this policy. Alterations and Repairs: The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

I. Cancellation of Policy by Insured: The Insured may cancel this policy at any time but a refund of premium money will only be made when:

1. Except with respect to a condominium building or a building that has a condominium form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for cancellation (signed by the Insured) the excess of premiums paid by the Insured that apply to the unused portion of the policy's term, pro rata but with retention of the expense constant and the Federal policy fee.

2. The Insured cancels a policy having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the expense constant and the Federal policy fee.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a special hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable National Flood Insurance Program regulations.

J. *Loss Clause:* Payment of any loss under this policy will not reduce the amount of insurance applicable to any other loss during the policy term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

K. *Mortgage Clause:* (Applicable to building coverage only and effective only when the policy is made payable to a mortgagee or trustee named in the application and declarations page attached to this policy or of whom the Insurer has actual notice before the payment of loss proceeds under this policy.)

Loss, if any, under this policy, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this policy, *provided,* that in case the mortgagor or owner will neglect to pay any premium due under this policy, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the building or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this policy, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy will be null and void.

If this policy is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such cancellation and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this policy and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

L. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

M. *Loss Payable Clause (Applicable to contents items only):* Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

N. *Requirements in Case of Loss:* Should a flood loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the policy signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, ''owner'') and the interests, if any, of others in the damaged property;

d. The actual cash value of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued;

h. Details as to who occupied any insured building at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the policy; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this policy may be punishable by fine or imprisonment under the applicable Federal laws.

O. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values, amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any condominium documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the condominium, property insurance policies, and other condominium documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

P. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and

the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph R. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

Q. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property (''salvage'') after a loss and reduce the amount of the loss proceeds payable to the Insured under the policy by the value of the salvage.

R. *Appraisal:* In case the Insured and the Insurer will fail to agree as to the actual cash value of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of actual cash value and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

S. *Action Against the Insurer:* No suit or action on this policy for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this policy will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

T. *Subrogation:* If any payment is made under this policy, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

U. *Continuous Lake Flooding:* Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. Make no further claim under this policy; and

2. Not seek renewal of this policy; and

3. Not apply for any flood insurance under the Act for property at the property location of the insured building.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph U still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

V. *Duplicate Policies Not Allowed:* Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which policy is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.

2. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect.

For purposes of this paragraph V, the term effective date means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph V. for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

6. We amend Part 61 by adding Appendix A(6) as follows:

Appendix A(6) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Residential Condominium Building Association Policy

[Issued under the National Flood Insurance Act of 1968, as amended (Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 10 of the Standard Flood Insurance Policy, Residential Condominium Building Association Policy, only in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This policy will be void, nor can this policy be renewed or any new flood insurance coverage be issued to the Insured if any person insured under Article 1, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a ''Recertification Questionnaire,'' which causes the Insurer to issue a policy based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this policy is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance made available under the Act, in the name of a unit owner that provides coverage for the same loss covered by this policy, this policy's coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this policy can constitute a waiver of any of its rights. Except in the case of 1. a contents only policy, and 2. a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This policy will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the property is located ceases, in which case the policy will be deemed void effective at the end of the last day of the policy year in which such cessation occurred and will not be renewed. If the voided policy included 3 policy years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy will be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the Insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

f. The Insured has not submitted a community inspection report, cited in ''F. Policy Renewal'' below that was required in a notice sent to the Insured previously in conjunction with the community inspection procedure established under National Flood Insurance Program Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the policy will be deemed to provide only such coverage as can be purchased for the entire term of the policy, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer before a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured remits and the Insurer receives the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy,* the Insurer will give a notice of premium due, and if the Insured remits and the Insurer receives the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the policy, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this policy begins on its inception date and ends on its expiration date, as shown on the declarations page that is attached to the policy. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that policy changes reflected in endorsements submitted during the Policy term are included in any renewal notice or new policy sent to the Insured. Policy changes include the addition of any increases in the amounts of coverage.

This policy will not be renewed and the coverage provided by it will not continue into any successive policy term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the National Flood Insurance Program within 30 days of the expiration date of this policy, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the expiration date, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this policy will terminate as of the expiration date, of the last policy term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice.

In connection with the renewal of this policy, the Insured may be requested during the policy term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent application for or renewal of insurance. The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for policy renewal. The Insured may be required to submit such an inspection report completed by a community official certifying whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the policy being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent application or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the National Flood Insurance Program, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, if the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If we do not receive the renewal payment requested by reason of the second bill by the revised due date, no renewal will occur and the policy will remain as an expired policy

as of the expiration date prescribed on the policy.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this policy or within 45 days prior to the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this policy to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this policy.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this policy at any time but a refund of premium money will only be made when:

1. The Insured cancels a policy having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1., will be pro rata but with retention of the expense constant and the Federal policy fee.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a special hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable National Flood Insurance Program regulations.

K. *Loss Clause:* Payment of any loss under this policy will not reduce the amount of insurance applicable to any other loss during the policy term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to building coverage only and effective only when the policy is made payable to a mortgagee or trustee named in the application and declarations page attached to this policy or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy.)

Loss, if any, under this policy, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this policy, *provided,* that it in case the mortgagor or owner will neglect to pay any premium due under this policy, the mortgagee or trustee will, on demand, pay the same.

5. *Provided, also,* that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the building or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this policy, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy will be null and void.

If this policy is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such cancellation and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this policy and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only):* Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a flood loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the policy signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, ''owner'') and the interests, if any, of others in the damaged property;

d. The actual cash value or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued;

h. Details as to who occupied any insured building at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the policy; and

(2) The cost to repair or replace the damaged property (whichever costs less).

Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

4. Document the loss with all bills, receipts, and related documents for the amount being claimed;

5. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

6. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

7. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after a loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values or replacement cost (whichever is appropriate), amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any condominium documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the condominium, property insurance policies, and other condominium documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace*: The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

Adjustment Options: The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable*: Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph R. below. If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

Abandonment: The Insured may not abandon damaged or undamaged insured property to the Insurer. However, the Insurer may permit the Insured to keep damaged, insured property (''salvage'') after a loss and reduce the amount of the loss proceeds payable to the Insured under the policy by the value of the salvage.

R. *Appraisal*: If at any time after a loss, the Insurer is unable to agree with the Insured as to the actual cash value—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

S. *Action Against the Insurer*: No suit or action on this policy for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this policy will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

T. *Subrogation*: If of any payment under this policy, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

U. Continuous Lake Flooding: Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. Make no further claim under this policy; and

2. Not seek renewal of this policy; and

3. Not apply for any flood insurance under the Act for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph U still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

V. *Duplicate Policies Not Allowed*: Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which policy is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.

2. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy of those of the later policy, as of the effective date of the later policy.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect.

For purposes of this paragraph V the term effective date means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph V for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

Dated: June 20, 2000.

James L. Witt,

Director.

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