

Valley ozone nonattainment area as defined in 40 CFR 81.339 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 5, 1997.  
 W. Michael McCabe,  
*Regional Administrator, Region III.*  
 Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. In § 81.339, the “Pennsylvania—Ozone” table is amended by revising the entry for “Pittsburgh-Beaver Valley Area” to read as follows:

**§ 81.339 Pennsylvania.**  
 \* \* \* \* \*

PENNSYLVANIA—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Pittsburgh-Beaver Valley Area:				
Allegheny County .....		Nonattainment		Moderate. <sup>2</sup>
Armstrong County .....		Nonattainment		Moderate. <sup>2</sup>
Beaver County .....		Nonattainment		Moderate. <sup>2</sup>
Butler County .....		Nonattainment		Moderate. <sup>2</sup>
Fayette County .....		Nonattainment		Moderate. <sup>2</sup>
Washington County .....		Nonattainment		Moderate. <sup>2</sup>
Westmoreland County .....		Nonattainment		Moderate. <sup>2</sup>

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.  
<sup>2</sup> Attainment date extended to 11/15/97.

[FR Doc. 97-4119 Filed 2-24-97; 8:45 am]  
 BILLING CODE 6560-50-P

**FEDERAL EMERGENCY  
 MANAGEMENT AGENCY**

**44 CFR Part 61**  
**RIN 3067-AC54**

**National Flood Insurance Program;  
 Standard Flood Insurance Policy**

**AGENCY:** Federal Insurance Administration (FEMA).  
**ACTION:** Final rule.

**SUMMARY:** This rule amends the National Flood Insurance Program (NFIP) regulations to add coverage under the Standard Flood Insurance Policy to pay for the increased cost to rebuild or otherwise alter flood-damaged structures to conform with State or local floodplain management ordinances or laws consistent with the requirements and guidance of the NFIP.

**EFFECTIVE DATE:** June 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Jr., Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-3422.

**SUPPLEMENTARY INFORMATION:** On September 23, 1996, FEMA published in the Federal Register, 61 FR 49717, a proposed rule to amend the National

Flood Insurance Program (NFIP) regulations by adding coverage under the Standard Flood Insurance Policy (SFIP) for the increased cost, up to a maximum liability of \$15,000, to bring structures into compliance with State or community floodplain management laws or ordinances after flood losses. This coverage, which is referred to in the proposed rule as “increased cost of construction” coverage but hereinafter referred to in this final rule as “increased cost of compliance” coverage (ICC), is mandated by § 555 of Public Law 103-325 which requires the NFIP to “enable the purchase of insurance to cover the cost of compliance with land use and control measures established under section 1361 \* \* \*.”

The following are the principal features of the September 23, 1996 proposed rule:

- (1) The limit for ICC coverage would be \$15,000.
- (2) Only flood-damaged structures would be eligible for the coverage.
- (3) Only those structures substantially or repetitively damaged by flood would be eligible for ICC coverage.
- (4) Only structures in areas of special flood hazard would be eligible for ICC payments.
- (5) ICC payments would be limited to the amount necessary to meet but not exceed the NFIP elevation requirements after flood damage. (This feature of the

proposed rule has been changed. See below.)  
 (6) Repetitive loss structures would be eligible for ICC payments when two conditions are met:

- (a) The community has adopted and is enforcing a cumulative substantial damage provision or repetitive loss provision in its floodplain management ordinance that requires action by the property owner; and
- (b) The structure has a history of flood claims under the NFIP that satisfies the statutory definition of repetitive loss structure.

During the comment period, sixteen (16) sets of comments were received by FEMA. In many cases, commenters shared similar views and recommendations on individual issues. The commenters’ recommendations, concerns, and questions have been considered and, where appropriate, incorporated into this final rule.

**\$15,000 Maximum Benefit**

Five commenters objected to the maximum benefit of \$15,000 proposed in the rule for ICC coverage. The underlying concern is that \$15,000 will be insufficient to pay for the increased costs to elevate or floodproof a structure substantially or repetitively damaged by flood. For example, one commenter concluded, “the ICC’s maximum coverage of \$15,000 is far below the \$35,000 average cost to elevate a

structure." Another commenter recommended "full Ordinance or Law coverage up to the statutory limit" which, for a single family dwelling, would be \$250,000. One commenter, however, supported this maximum benefit for ICC coverage saying, "In order to maintain fiscal control over the program the \$15,000 cap on ICC payment should be retained."

FEMA arrived at the \$15,000 cap from basic pricing considerations and the current status of the National Flood Insurance Fund. After years of surplus in the Fund, FEMA currently has in excess of \$600 million on loan from the Treasury under the program's borrowing authority as a result of unusually heavy flood losses since 1993. With this as a backdrop, FEMA had to consider several issues in establishing the coverage and in pricing ICC. First, the pricing for this coverage should be actuarially sound with premiums varying, to the extent practical, by risk. Second, § 555 of the National Flood Insurance Reform Act of 1994 sets a cap on the amount the NFIP may charge on each policy for ICC coverage. The statute says, "The Director shall impose a surcharge on each insured of *not more than \$75 per policy* to provide cost of compliance coverage." (Emphasis added.) Third, FEMA estimates that on average 3400–3700 ICC claims will be made each year to bring flood-damaged structures into compliance with State or local floodplain management laws or ordinances. Fourth, FEMA has drawn on its NFIP underwriting experience to make projections for ICC coverage, but there are uncertainties associated with the introduction of any new product, particularly one for which there is no direct experience. Fifth, aside from the NFIP's borrowing authority, there is currently no surplus of funds to provide a cushion against uncertainties.

For these reasons, FEMA has determined that a \$15,000 limit on ICC coverage is a prudent amount for the introduction of this new product. FEMA recognizes that \$15,000 generally will not be sufficient to pay all of the costs to bring the structure into compliance with state and community floodplain management laws and ordinances, but it will make a significant contribution toward those costs. Although the individual property owner will have to bear a portion of the cost of the selected mitigation measure (elevation, floodproofing, relocation or demolition or combinations thereof), there should be a commensurate increase in the value of the property that will offset at least part of those costs. FEMA will review its experience with ICC from time to time to determine whether adjustments

should be made in the pricing, the amount of the benefit, or other aspects of the coverage.

Furthermore, other mitigation resources and programs from FEMA, as well as other Federal, State and local resources, can be used to supplement the ICC payment to help property owners comply with State and community laws and ordinances. For example, currently, the Hazard Mitigation Grant Program available pursuant to § 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended, could be used to supplement the ICC benefit in communities which initiate mitigation projects.

#### Limitation of ICC to Flood Damaged Structures

One commenter recommended that ICC coverage not be limited to flood damages. This recommendation, however, cannot be incorporated in the final rule since § 555 of the National Flood Insurance Reform Act of 1994 authorizes ICC coverage only for flood-damaged structures. The statute authorizes ICC coverage for "(1) properties that are repetitive loss structures; (2) properties that have *flood damage* in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the *flood event*; and (3) properties that have sustained *flood damage* on multiple occasions \* \* \*." "Repetitive loss structure" is defined at § 512 of Pub. L. 103–325 as "a structure covered by a contract for flood insurance under this title that has incurred *flood-related damage* on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of *each such flood event*." (Emphasis added.) The final rule limits the benefit of ICC coverage under Coverage D of the Standard Flood Insurance Policy to bring *flood-damaged structures* into compliance with State or local floodplain management laws or ordinances.

#### ICC Benefits Within the Maximum Limits of Insurance Coverage

One commenter objected that the \$15,000 ICC benefit was included within, and not in addition to, the maximum statutory limits of flood insurance coverage available to property owners for direct, physical damage from flood, which for a single family dwelling is \$250,000. The commenter felt that the maximum liability of \$250,000 for a single family dwelling for

Coverage A (direct, physical loss from flood), combined with the new Coverage D (increased cost of compliance), effectively denied \$15,000 of flood insurance benefits to the policyholder who has purchased the statutory limits of coverage.

FEMA considered this objection but concluded it does not have the authority to exceed the maximum statutory limits set by Congress for the NFIP in the Act, as amended (42 U.S.C. 4013). Consequently, as stated in the proposed rule, the ICC benefit would be added to the policy limit for direct loss from flood, but the total payment for the ICC benefit and the direct loss payment for flood would not be greater than the maximum limits of coverage for that class of structure authorized under the Act, as amended. In that connection, § 573 of Pub. L. 103–325 increased the maximum limit of flood insurance coverage for a single family dwelling from \$185,000 to \$250,000 and for non-residential structures from \$250,000 to \$500,000. For structures insured to the statutory limit, FEMA's pricing of ICC coverage, however, reflects the possibility that, under some conditions, a full \$15,000 could not be collected.

#### Types of Mitigation Allowed

One commenter stated that the proposed rule centers on elevation and floodproofing and does not address relocation or demolition. The Proposed Rule for ICC coverage indicated in the Standard Flood Insurance Policy and in the "Supplementary Information" section that the allowable mitigation measures under ICC include elevation, floodproofing, relocation, and demolition, or any combination thereof. These allowable mitigation activities have been retained in the final rule. It is the property owner's decision which mitigation measure will be undertaken provided that he or she complies with applicable State or community floodplain management laws or ordinances. However, FEMA expects that States or communities will work closely with the property owner to determine the most technically feasible and cost effective mitigation measure for the damaged structure. It is also expected that States or communities that have adopted a mitigation plan will ensure that the selection of the mitigation measure will be consistent with the approved plan and coordinated with other mitigation programs and activities.

Another commenter asked whether ICC is available for floodproofing residential buildings in those communities that are permitted by FEMA to adopt standards for residential

floodproofed basements. Under 44 CFR 60.6 (b) or (c) of the NFIP's Floodplain Management Regulations, communities that have been approved for residential basement exceptions by FEMA may adopt standards for floodproofed residential buildings. The ICC benefit can be used to floodproof a residential basement only if the building is located in one of these communities approved for residential basements exceptions. The final rule says this and also indicates that ICC payments will be made in connection with non-residential floodproofing to meet State or local floodplain management requirements.

#### Payments for Elevating or Floodproofing to Elevations Which Exceed NFIP Minimum Requirements

Seven comments objected to the limitation in the proposed rule that ICC pay for the cost of elevation or floodproofing flood-damaged structures only to the base flood elevation, the NFIP minimum standard, and not to a higher elevation required in some State and community laws and ordinances. The comments pointed out that some States and communities, in the interest of sound floodplain management and in recognition of future floodplain development, exceed the NFIP's minimum standards by requiring new or substantially improved structures to be elevated or floodproofed to one or more feet above the base flood elevation. This more restrictive elevation requirement is generally referred to as "freeboard." Furthermore, the comments noted that FEMA has, as a matter of policy, encouraged communities to exceed the NFIP's minimum standards, and that FEMA's Community Rating System (CRS) in fact provides premium rate discounts to communities that exceed the minimum requirements.

FEMA agrees with these comments that the cost to elevate or floodproof structures to higher State or community floodplain management standards should be eligible for ICC benefits. The final rule has, therefore, been revised to permit ICC payments, up to the \$15,000 limit of coverage, to elevate or floodproof structures to the "freeboard" established and enforced in the State or community's floodplain management law or ordinance.

#### ICC Benefits for Map Revisions and Areas Designated as Zone A

Two aspects of ICC that should be clarified are: (1) How ICC coverage will respond to situations where FEMA issues an advisory map or has issued a preliminary or draft Flood Insurance Study, and (2) how ICC will respond to

elevation requirements in areas designated as Zone A. If FEMA issues an advisory map and increases the base flood elevation, and the community adopts the map and the higher base flood elevations, ICC benefits will be paid to elevate or floodproof flood-damaged structures to these preliminary or advisory base flood elevations. ICC benefits will be paid even if the zone was previously designated Zone B, C, X, or D. Also, in communities that have areas designated as unnumbered A Zones on their Flood Insurance Rate Map, ICC benefits will be paid on a flood damaged structure for elevation, floodproofing, demolition, relocation, or any combination thereof. The community must obtain, review and reasonably utilize any base flood elevation data available from a Federal, State, or other sources in accordance with 44 CFR 60.3(b)(4) and require that the structure be elevated or floodproofed to that elevation. The base flood elevation data should be used as long as the data: (1) Reasonably reflect flooding conditions expected during the base (100-year) flood, (2) are not known to be scientifically or technically incorrect, and (3) represent the best data available.

#### Demolition

An issue needing clarification is where a structure is demolished, and a replacement structure is built at the same or another site. In this situation, ICC coverage will pay for the cost of demolition as well as for the incremental costs to elevate or floodproof the structure during the course of rebuilding to meet elevation requirements at the same site or another location provided the elevation or floodproofing is to comply with State or community floodplain management laws or ordinances. The ICC payment, within the \$15,000 limit, will also be made when the structure, after demolition, is rebuilt at a new site even if the base flood elevations are higher there than at the original location. FEMA's decision to permit ICC benefits to pay for the incremental costs of elevation or floodproofing after a structure has been demolished is based on the statutory language of § 555 of Public Law 103-325, i.e., that the new coverage is to pay for "increased cost of compliance" with land use and control measures being enforced by the State or community that meet the standards of 44 CFR 60.3 established under § 1361 of the National Flood Insurance Act of 1968, as amended.

In sum, ICC benefits will be paid to perform mitigation activities to help bring a structure into compliance with

State and community floodplain management laws or ordinances. Not included in any ICC payment for demolition will be the residual value of the undamaged portion of the structure.

FEMA considered whether to pay for loss of residual value when the demolition option is selected. Offering ICC benefits for loss of residual value is a potentially costly initiative—one that could undermine FEMA's ability to raise the initial cap of \$15,000 at some later date if program experience warrants such an increase. Hence, FEMA has decided to gain experience with ICC and to analyze that program experience in order to determine the feasibility of providing ICC benefits for loss of residual value. FEMA will initiate this analysis after nine months from the effective date on this final rule.

#### Market Value versus Replacement Cost and Substantial Improvements

One commenter stated that "market value" was not defined and recommended the use of "replacement cost" instead. Another commenter asked how States or communities that use "replacement cost" instead of "market value" implement the substantial damage requirement.

While the statute does not specify what value should be used in determining substantially damaged or repetitive loss structures, "market value" is currently used in the definitions of "substantial damage" and "substantial improvement" in the NFIP's Regulations (44 CFR 59.1). For this reason, "market value" will be used for consistency for ICC substantial damage and repetitive loss determinations. Under the NFIP, substantially damaged structures must be elevated or floodproofed (non-residential structures only) to or above the Base Flood Elevation. States and communities participating in the NFIP are required to use market value in determining whether a structure has been substantially damaged. Use of "replacement cost" is not permitted under the NFIP's floodplain management regulations.

A related issue that should be clarified is how ICC coverage will respond to situations involving improvements that are made to a damaged structure at the same time that it is being repaired. The final rule provides that payment be made to help policyholders comply with State and community floodplain management laws and ordinances after a flood loss. Unless the flood loss alone constitutes "substantial damage" or the loss meets the criteria for a "repetitive loss", ICC will not provide coverage even if the

combination of the cost of the repair and the cost of the improvement exceeds the 50 percent of market value threshold for a "substantial improvement" under the community's ordinance. The improvement represents a voluntary decision by the individual to improve or add on to an existing structure in a special flood hazard area and is not a flood loss as required by the statute. In addition, ICC will not cover the costs to bring into compliance with State or community elevation or floodproofing requirements any improvements or additions to damaged structures at the time repairs are made, such as a new addition. Although ICC benefits are not paid for substantial improvements, substantially improved structures and improvements made along with repairs to a substantially damaged structure must still meet all the minimum requirements of the NFIP.

#### Repetitive Loss Structures

A number of comments were received on implementation of the repetitive loss coverage under ICC. These comments relate to ordinance adoption, timing of the flood losses relative to the effective date of the final rule, and how losses are counted toward a repetitive loss determination.

There were several questions and comments on whether States and communities will be required to amend their floodplain management ordinances to include a repetitive loss provision. One commenter suggested that communities be given a reasonable time frame within which to adopt this provision before the coverage goes into effect. One commenter recommended that the requirement to adopt a repetitive loss provision be eliminated as a condition for receiving the benefit. Two other commenters noted that very few communities currently have a repetitive loss provision in their floodplain management ordinance and that the requirement to adopt such a provision would be at great expense and difficulty. A commenter also asked what the effect would be on a policyholder if a community did not adopt a repetitive loss provision.

Based on a review of the statute and the NFIP's other authorities, FEMA has concluded that the statute does not mandate that it change the NFIP's floodplain management regulations at 44 CFR 59.1 and 60.3 to require States and communities to adopt a repetitive loss requirement. Therefore, adoption of a cumulative substantial damage provision or a repetitive loss provision is voluntary and will be at the discretion of the State or community. Making adoption of such a provision voluntary

recognizes that very few of the approximately 18,500 participating NFIP communities have adopted a cumulative substantial damage provision or repetitive loss provision in their floodplain management laws or ordinances. Furthermore, FEMA recognizes that there is an added administrative burden to communities in adopting and administering these types of provisions. Finally, not all NFIP communities have a history of repetitive flood losses to existing structures. Making this feature of ICC implementation voluntary will allow States and communities to evaluate historic flood losses carefully to determine whether such a provision would significantly mitigate the flood risk to existing structures. While the ICC benefit will not be paid for a repetitive loss structure if the State or local government has not adopted a cumulative substantial damage or repetitive loss provision in its floodplain management law or ordinance, the ICC benefit will still be paid for substantially damaged structures whether or not the community adopts a repetitive loss provision. A State or community can adopt a law or ordinance addressing repetitive loss structures at any time before or after this final rule becomes effective.

FEMA has concluded that since the statute ties the availability of ICC to the land use and control measures under § 1361 of the Act (42 U.S.C. 4102), as amended, ICC coverage is intended to respond only to State or local ordinances or laws requiring repetitive loss structures to be rebuilt to at least NFIP floodplain management requirements for substantially damaged structures. Therefore, one of the conditions for the ICC benefit to be paid under the SFIP for repetitive loss structures is for the State or community to be enforcing a repetitive loss provision or a cumulative substantial damage provision requiring action by the property owner. The second condition that must be met is that the structure have a history of claims payments that satisfy the statutory definition of repetitive loss structure.

Several commenters recommended that ordinance language be flexible to meet local concerns. One commenter noted that communities may already have a cumulative substantial damage requirement that is inconsistent with the repetitive loss definition in the proposed rule. The State or community's requirement for a property owner to bring a building into compliance can be triggered by a cumulative substantial damage or

repetitive loss ordinance that deviates from the National Flood Insurance Reform Act's definition; however, a policyholder will only be eligible for ICC payments when the Act's repetitive loss definition is satisfied. With either type of provision, the State or community must apply it consistently to all structures regardless of whether or not the structure is covered by a contract for flood insurance. At a minimum, structures that met the definition of a "repetitive loss structure" would be required to meet the minimum floodplain management requirements that apply to substantially damaged structures.

FEMA will develop model ordinance language for addressing repetitive loss structures consistent with the statute's definition. FEMA also will be developing guidance on adoption of the repetitive loss provision; however, States or communities with questions concerning whether an existing repetitive loss or cumulative substantial damage provision in a community's law or ordinance is consistent with the definition in the final rule can contact their respective FEMA Regional Offices for assistance.

Questions were raised concerning the timing of the first and second loss relative to when the ICC coverage takes effect and when the community adopts a repetitive loss provision for determining if a structure has been repetitively damaged. Specifically, the comments questioned why the first qualifying loss has to occur after the State or community amends its law or ordinance to include a repetitive loss provision or why both claims have to occur after ICC coverage takes effect. In a related comment, it was asked how FEMA intends to treat a loss after the effective date of the final rule on ICC coverage, but before community adoption of a repetitive loss provision.

The proposed rule stated that the benefit of ICC under the SFIP for repetitive loss structures requires that two conditions be met. First, the State or community must be enforcing a cumulative substantial damage or repetitive loss provision requiring action by the property owner. Second, the NFIP must have a history of claims payments for the structure that satisfies the statutory definition of repetitive loss structure.

FEMA is implementing the repetitive loss provision of the statute by providing ICC coverage when a property owner is required to rebuild in compliance with a community's substantial damage or repetitive loss provision and the accumulated damage based on two losses within a 10-year

period that, combined, total more than 50% of the value of the structure. The date on which the first loss occurred is immaterial as to eligibility, even if the loss occurred before the effective date of this final rule since ICC coverage will respond to enforceable State or community floodplain management laws or ordinances for compliance.

Several comments and questions were received on how repetitive losses are counted toward a repetitive loss determination. One commenter asked whether each of the two losses have to equal at least 25% of the value of the structure for a total of 50% in order to qualify as a repetitive loss structure. Another commenter suggested that the determination should be flexible to reach a 50% loss, whether the first loss is only 10% and the second is 40%.

The definition of "repetitive loss structure" in the statute, states that "the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event". In the proposed rule, FEMA stated that the two losses, when combined, must equal or exceed 50 percent of the market value of the structure within a 10-year period ending on the date of the event for which the second claim is made. Therefore, if the first loss is only 10% and the second loss is 40% and the State or community enforces the repetitive loss ordinance for these losses, the structure qualifies for the ICC payment. However, two or more losses that when combined are less than 50 percent of the market value of the structure do not qualify under the statutory definition of a "repetitive loss structure."

#### ICC Coverage for Multiple Flood Damages

Two commenters mentioned that specific guidance should be developed as soon as possible for the third category of flood-damaged structures eligible under the statute for ICC coverage. The third category consists of structures damaged by flood "on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures" (42 U.S.C. 4011). As mentioned in the "Supplementary Information" section of the September 23, 1996 proposed rule, since the statute does not specify a specific loss threshold for the third category of multiple losses, the NFIP needs specific experience with this new coverage to determine what multiple loss situations would be reasonable, cost-effective candidates for compliance with State or local land use and control

measures after a flood loss. FEMA will review the loss history for ICC coverage and the status of the National Flood Insurance Fund after the first several years of implementation of this coverage. At that point, FEMA will decide whether ICC coverage should be implemented for the third category of structures "damaged by flood on multiple occasions where the FEMA Director had determined it is in the best interests of the National Flood Insurance Fund to require compliance with land use and control measures (42 U.S.C. 4011)." The decision will be based on the best interests of the NFIP's financial status at that time, and whether the pricing constraints imposed by the statute can accommodate an expansion of coverage.

#### Adjustment of ICC Claims

Three commenters raised specific questions about the adjustment process for ICC claims under the SFIP. FEMA is drafting detailed procedures to be used by adjusters for ICC claims. The final loss adjustment procedures implementing ICC coverage will be distributed to the companies participating in the Write Your Own program as well as the adjusters servicing the NFIP business written directly by the Government approximately 30-60 days before the effective date of this final rule. Also, FEMA in conjunction with the NFIP Bureau and Statistical Agent will conduct approximately 30 workshops for insurance adjusters to address ICC.

#### ICC: Optional vs. Mandatory Coverage

Two commenters recommended that ICC coverage should be made optional. Section 555 of Public Law 103-325 requires the NFIP to "enable the purchase of this coverage \* \* \*" What makes any coverage under an insurance contract possible, however, is the spread of the risk over a sufficiently large population exposed to a common peril. For this reason, and the high potential that only the worst risks would purchase ICC coverage if it were optional, it is necessary to provide this coverage by incorporating it as a standard coverage for every flood insurance policy. Reasonable pricing would be impossible otherwise.

One commenter raised a related question whether policyholders outside areas of special flood hazard could ever be eligible to make an ICC claim. ICC coverage for policies in zones B, C, X, and D insures against the possibility that, after the rating of policies in those zones, the Flood Insurance Rate Map (FIRM) is changed and the community requires such structures to be in

compliance after substantial or cumulative substantial flood damage. Because of the lower potential for ICC claims from policies rated outside of the current special flood hazard area, the premium charges are considerably less, at \$6 per year, than for the higher risk, i.e., pre-FIRM properties in the special flood hazard area at \$75 per year.

#### Range of Premiums Charged for ICC Coverage

On a related issue, four commenters asked how the premiums charged for ICC would be calculated and whether the maximum surcharge of \$75 would be applied to all structures. As explained above, the surcharge for ICC coverage ranges from \$6 to \$75 and is based on the likelihood of loss payments for each risk zone. The underlying concern was that surcharges would be assessed of policyholders who would not be eligible for the ICC coverage. As indicated above, all structures regardless of risk zone are eligible for ICC coverage, and premium surcharges, reflective of the risk, have been set for ICC coverage.

#### Exclusions

The September 23, 1996 proposed rule was silent on the availability of ICC coverage in Emergency Program communities and for those recipients of Individual and Family Grant (IFG) awards insured under a Group Flood Insurance Policy (GFIP). FEMA's pricing considerations for ICC coverage have never included policyholders in Emergency Program communities or IFG recipients insured under the GFIP since any premium surcharge would be onerous in light of the limited amount of structure coverage available to these categories of policyholders. (The maximum amount of structure coverage authorized by the Act for a single family dwelling under the Emergency Program is \$35,000 which would also be the limit on the combined building and ICC loss payment.)

With regard to the GFIP, FEMA is considering whether to issue a proposed rule soliciting comments on adding ICC coverage to the certificate holders covered under the GFIP. At this juncture, however, those insured under the GFIP are excluded from ICC coverage.

This final rule addresses the omissions by excluding from ICC coverage "the cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program" and "for any structure insured under a Group Flood

Insurance Policy issued pursuant to 44 CFR 61.17.”

#### Appurtenant Structures

One commenter asked whether ICC coverage would apply to appurtenant structures. Only the SFIP's Dwelling Form provides coverage against direct, physical loss from flood for appurtenant structures. As indicated in the "Exclusions" section of the Dwelling Form of the SFIP (see new Article 4 of Appendix A (1) being added by this final rule), ICC coverage does not apply to appurtenant structures. No similar exclusionary language is needed for ICC coverage in the General Property Form (Appendix A (2)) and the Residential Condominium Building Association Policy Form (Appendix A (3)) since there is no coverage for direct physical loss from flood for appurtenant structures in these forms. ICC coverage is available for appurtenant structures only when a separate flood insurance policy is written on an appurtenant structure, since ICC coverage will be included as Coverage D in every SFIP written or renewed on and after June 1, 1997.

#### Cancellations and Refunds

Two commenters asked specific questions on cancellations and refunds. One commenter asked, since it will be possible for the owners of 3-year policies to cancel on the anniversary date and purchase a new policy with ICC coverage on and after the effective date of the final rule on ICC coverage, will the owners of 1-year policies have the option of canceling mid-term. Cancellations in connection with ICC will be subject to the NFIP's current rules. A policyholder of a 1-year policy will have to wait until the policy is renewed at which time the premium surcharge will automatically be charged for ICC coverage. A policyholder of a 3-year policy written before this coverage becomes effective may cancel and rewrite on the anniversary date of the policy on and after June 1, 1997 in order to add ICC coverage. To ensure continuous coverage, policyholders must submit policy applications and premium payments 30 days before the anniversary date of the policy since "cancel-rewrite" situations for 3-year policies are subject to the statutory 30-day waiting period.

One commenter also asked about whether a refund of premium for ICC coverage is available when a policy is canceled. Refunds for ICC coverage will also be subject to the NFIP's current rules for premium refunds.

#### Interim Final Rule vs. Final Rule

Three commenters recommended that, in implementing ICC coverage, FEMA publish this rule as an "interim final" rule rather than a "final rule" which would conceivably permit more time by States to recommend adjustments to the implementation of ICC coverage.

The Office of the Federal Register, National Archives and Records Administration, has issued guidance to Federal agencies on the appropriate type of action, i.e., proposed, interim, or final rule, to be selected for any rule making activity. The following selection from the Federal Register's Document Drafting Handbook says, "An interim rule is usually issued without prior notice of proposed rule making. An immediate effective date is generally specified and comments on the interim rule may be requested. The interim rule is designed to respond to an emergency situation and is usually followed by a final rule which confirms that the interim rule is final and may include further amendments." (p. 39). The particulars of this final rule do not warrant publication as an interim final rule since proposed rule making has been conducted, comments have been solicited on the proposed rule, substantive changes have been made to this final rule based on comments received during the comment period, and no emergency situation exists.

Consistent with agency policy, FEMA considers State and local governments to be essential partners in the implementation of a national emergency management program, and mitigation is the cornerstone of that program. As a result, during the first years of implementing ICC coverage, FEMA expects to benefit from the experience of States, local governments, policyholders, insurance agents, insurance adjusters, and the Write Your Own companies selling and servicing a majority of the SFIPs and make any necessary changes to the rule implementing ICC coverage as necessary.

#### Increased Cost of Compliance Coverage

One commenter from the insurance industry recommended that the title for Coverage D read "increased cost of compliance" coverage rather than "increased cost of construction" as reflected in the September 23, 1996 proposed rule. FEMA agrees with this recommendation since the new coverage mandated by § 555 of Pub. L. 103-325 is described as "compliance coverage" in the statute. "Increased cost of compliance" more accurately describes

the kind of coverage being added to the SFIP and is consistent with the terminology in the industry's Law and Ordinance coverage.

#### Guidance and Technical Assistance

Questions were also raised on how FEMA intends to inform policyholders as well as States and communities and others impacted on the availability of this new coverage. Several commenters stated that implementation procedures will need to be developed for State and local officials who may potentially have increased responsibility as a result of this new coverage. In addition, it was recommended that a model ordinance on the repetitive loss aspect of ICC be developed and assistance be provided to communities regarding this provision. It was also recommended that FEMA provide an explanatory letter or brochure to accompany each policy which fully explains the new coverage.

It is FEMA's intention to inform policyholders in the renewal notice on the new ICC coverage. All future insurance adjuster and agents workshops will include a segment explaining the new coverage. It is also FEMA's intention to develop before the effective date of the final rule a publication for use by State and local officials explaining the details of the new coverage, their responsibilities under their floodplain management laws and ordinances as it pertains to the ICC coverage, their relationship to the flood insurance adjustment process, as well as information on cost effective mitigation measures. FEMA will also include in this guidance model ordinance language on a repetitive loss provision. FEMA Regional Office will provide technical assistance to States and communities on technically feasible and cost-effective mitigation measures. Existing opportunities, such as Community Assistance Visits, workshops, conferences, and FEMA sponsored flood mitigation courses will be utilized to explain this new coverage. There are also a number of FEMA publications available to assist States, communities, architects, engineers, builders, and contractors, as well as individual property owners on various mitigation measures and techniques for elevation, floodproofing, and relocation (e.g., Engineering Principles and Practices for Retrofitting Flood Prone Residential Structures", "Elevated Residential Structures", "Floodproofing Non-Residential Structures", and "Technical Bulletins" on NFIP building standards).

### Technical Corrections to the Policy Language

The final rule clarifies coverage issues and corrects several technical inconsistencies in the policy language as it appeared in the September 23, 1996 proposed rule. For example, to make it clear for the policyholder, community officials, and insurance adjusters precisely what floodproofing activities are eligible for ICC coverage, eligible floodproofing have been related to the applicable NFIP floodplain management standards at 44 CFR 60.3(b) or (c). As mentioned above, the proposed rule was silent on several exclusions, and the final rule has been revised to correct that omission. Also, Coverage A was incorrectly referred to in the proposed rule as "Dwelling" in the proposed addition to Appendix A (1) and "Building" in the proposed addition to Appendices A (2) and (3). The final rule has been revised to correctly identify Coverage A in each of the SFIP's Forms as "Building Property." Also, the reference to "other insurance" which was contained in the proposed rule has been removed from Coverage D since the SFIP already treats the issue of "other insurance" in Article 9 of the Dwelling Form, Article 8 of the General Property Form, and Article 10 of the Residential Condominium Building Association Policy Form.

### National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental assessment has been prepared.

### Executive Order 12898, Environmental Justice

The socioeconomic conditions to this final rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

### Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

### Paperwork Reduction Act

This final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

### Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

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

### List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Part 61 is amended as follows:

### PART 61—INSURANCE COVERAGE AND RATES

1. 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.

#### Appendix A(1)—[Amended]

2. Paragraph A.6. of Article 3 of Appendix A (1) is amended to add the following phrase at the end:

\* \* \* \* \*  
\* \* \* except as provided in Coverage D—Increased Cost of Compliance.  
\* \* \* \* \*

3. A new section is added to Article 4 of Appendix A (1) to read as follows:

\* \* \* \* \*

#### Coverage D—Increased Cost of Compliance Coverage

Increased Cost of Compliance coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, floodproofing, relocation, or demolition (or any combination thereof) of a structure, after a direct loss caused by a "flood" as defined by this policy. (Floodproofing activities eligible for Coverage D and referred to hereafter in this policy are limited to residential structures with basements that satisfy the criteria of 44 CFR 60.6 (b) or (c) and to non-residential structures.)

The limit of liability under this Coverage D (Increased Cost of Compliance) will not exceed \$15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declarations Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance), however, cannot exceed the maximum permitted under the Act.

### Eligibility

A structure covered under Coverage A—Building Property—sustaining a loss caused by a "flood" as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A "repetitive loss structure" means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its flood plain management law or ordinance being enforced against the structure; or

2. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

This Coverage D will not pay for Increased Cost of Compliance to meet State or community floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in 1. above or a. or b. as follows:

a. elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not respond to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

b. elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

Under the minimum NFIP criteria at 44 CFR 60.3(b) (4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data are obtained from a Federal, State, or other source. Such compliance activities are also eligible for this Coverage D.

This coverage will also pay for the incremental cost, after demolition, or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion (7).

This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

**Conditions**

(1) When a structure covered under Coverage A—Building Property—sustains a loss caused by a “flood” as defined by this policy, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, demolish, or any combination thereof, caused by enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

(2) When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

**Exclusions**

*Under this Coverage D (Increased Cost of Compliance), we will not pay for:*

(1) The cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program.

(2) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants include but are not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

(3) The loss in value to any covered building or other structure due to the requirements of any ordinance or law.

(4) The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

(5) Any increased cost of compliance under this Coverage D:

(a) Until the covered building is actually elevated, floodproofed, demolished or relocated on the same or to another premises; and

(b) Unless the covered building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

(6) For any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

(7) For any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

(8) Loss due to any ordinance or law that you were required to comply with before the current loss.

(9) For any rebuilding activity to standards that do not meet the NFIP’s minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

(10) Increased cost of compliance for appurtenant structure(s).

(11) For any structure insured under a Group Flood Insurance Policy issued pursuant to 44 CFR 61.17.

(12) Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

**Other Provisions**

(1) Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for replacement cost coverage under Article 8 or for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

(2) All other conditions and provisions of the policy apply.

\* \* \* \* \*

**Appendix A(2)—[Amended]**

4. Paragraph A.6. of Article 3 of Appendix A (2) is amended to add the following phrase at the end:

\* \* \* \* \*

\* \* \* except as provided in Coverage D—Increased Cost of Compliance.

\* \* \* \* \*

5. A new section is added to Article 4 of Appendix A (2), to read as follows:

\* \* \* \* \*

**Coverage D—Increased Cost of Compliance Coverage**

Increased Cost of Compliance coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, floodproofing, relocation, or demolition (or any combination thereof) of a structure, after a direct loss caused by a “flood” as defined by this policy. (Floodproofing activities eligible for Coverage D and referred to hereafter in this policy are limited to residential structures with basements that satisfy the criteria of 44 CFR 60.6 (b) or (c) and to non-residential structures.)

The limit of liability under this Coverage D (Increased Cost of Compliance) will not exceed \$15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the

Building limit you selected on your application, and appears on the Declarations Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance), however, cannot exceed the maximum permitted under the Act.

**Eligibility**

A structure covered under Coverage A—Building Property—sustaining a loss caused by a “flood” as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A “repetitive loss structure” means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its flood plain management law or ordinance being enforced against the structure; or

2. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

This Coverage D will not pay for Increased Cost of Compliance to meet State or community floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in 1. above or a. or b. as follows:

a. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not respond to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

b. Elevation or floodproofing above the base flood elevation to meet State or local “freeboard” requirements, i.e., that a structure must be elevated above the base flood elevation.

Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures to the base flood elevation where elevation data are obtained from a Federal,

State, or other source. Such compliance activities are also eligible for this Coverage D.

This coverage will also pay for the incremental cost, after demolition, or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion (7).

This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

#### Conditions

(1) When a structure covered under Coverage A—Building Property—sustains a loss caused by a “flood” as defined by this policy, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, demolish, or any combination thereof, caused by enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

(2) When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

#### Exclusions

*Under this Coverage D (Increased Cost of Compliance), we will not pay for:*

(1) The cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program.

(2) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants include but are not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

(3) The loss in value to any covered building or other structure due to the requirements of any ordinance or law.

(4) The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

(5) Any increased cost of compliance under this Coverage D:

(a) Until the covered building is actually elevated, floodproofed, demolished or relocated on the same or to another premises; and

(b) Unless the covered building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

(6) For any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

(7) For any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

(8) Loss due to any ordinance or law that you were required to comply with before the current loss.

(9) For any rebuilding activity to standards that do not meet the NFIP’s minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

(10) For any structure insured under a Group Flood Insurance Policy issued pursuant to 44 CFR 61.17.

#### Other Provisions

(1) Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

(2) All other conditions and provisions of the policy apply.

\* \* \* \* \*

#### Appendix A (3)—[Amended]

6. Paragraph A.6. of Article 3 of Appendix A (3) is amended to add to the end the following phrase:

\* \* \* \* \*

\* \* \* except as provided in Coverage D—Increased Cost of Compliance.

\* \* \* \* \*

7. A new section is added to Article 4 of Appendix A (3), to read as follows:

\* \* \* \* \*

#### Coverage D—Increased Cost of Compliance Coverage

Increased Cost of Compliance coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, floodproofing, relocation, or demolition (or any combination thereof) of a structure, after a direct loss caused by a “flood” as defined by this policy. (Floodproofing activities eligible for Coverage D and referred to hereafter in this policy are limited to residential structures with basements that satisfy the criteria of 44 CFR 60.6 (b) or (c) and to non-residential structures.)

The limit of liability under this Coverage D (Increased Cost of Compliance) will not exceed \$15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your

application, and appears on the Declarations Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance), however, cannot exceed the maximum permitted under the Act.

#### Eligibility

A structure covered under Coverage A—Building Property—sustaining a loss caused by a “flood” as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A “repetitive loss structure” means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its flood plain management law or ordinance being enforced against the structure; or

2. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

This Coverage D will not pay for Increased Cost of Compliance to meet State or community floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in 1. above or a. or b. as follows:

a. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not respond to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

b. Elevation or floodproofing above the base flood elevation to meet State or local “freeboard” requirements, i.e., that a structure must be elevated above the base flood elevation.

Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures to the base flood elevation where elevation data are obtained from a Federal, State, or other source. Such compliance activities are also eligible for this Coverage D.

This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion (7).

This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

**Conditions**

(1) When a structure covered under Coverage A—Building Property—sustains a loss caused by a “flood” as defined by this policy, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, demolish, or any combination thereof, caused by enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

(2) When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

**Exclusions**

*Under this Coverage D (Increased Cost of Compliance), we will not pay for:*

(1) The cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program.

(2) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants include but are not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

(3) The loss in value to any covered building or other structure due to the requirements of any ordinance or law.

(4) The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

(5) Any increased cost of compliance under this Coverage D:

(a) Until the covered building is actually elevated, floodproofed, demolished or relocated on the same or to another premises; and

(b) Unless the covered building is elevated, floodproofed, demolished, or relocated as

soon as reasonably possible after the loss, not to exceed two years.

(6) For any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

(7) For any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

(8) Loss due to any ordinance or law that you were required to comply with before the current loss.

(9) For any rebuilding activity to standards that do not meet the NFIP’s minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

(10) For any structure insured under a Group Flood Insurance Policy issued pursuant to 44 CFR 61.17.

**Other Provisions**

(1) Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% replacement cost requirement under Article 9 or for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

(2) All other conditions and provisions of the policy apply.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance No. 83.100, “Flood Insurance”)

Dated: February 18, 1997.

Spence W. Perry,

*Executive Administrator, Federal Insurance Administration.*

[FR Doc. 97-4640 Filed 2-24-97; 8:45 am]

**BILLING CODE 6718-03-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 0**

[FCC 96-467]

**Commission Organization; Cable Services Bureau**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Order, we amend the Commission’s rules regarding the functions of the Cable Services Bureau and the delegated authority of the Chief of the Cable Services Bureau. This action is necessary to permit the Cable Services Bureau to oversee pole attachment matters and administration and enforcement of relevant provisions of the Telecommunications Act of 1996.

**EFFECTIVE DATE:** February 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** For additional information concerning this rulemaking contact Meryl S. Icovie, Cable Services Bureau, (202) 418-7200.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Order, FCC 96-467, adopted December 3, 1996 and released December 5, 1996. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission’s copy contractor, International Transcription Services, Inc. (“ITS Inc.”) at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

**Synopsis of Order**

In this Order, we amend the Commission’s rules regarding the functions of the Cable Services Bureau and the delegated authority of the Chief of the Cable Services Bureau.

This action is necessary to permit the Cable Services Bureau to oversee pole attachment matters and administration and enforcement of relevant provisions of the Telecommunications Act of 1996. The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the requirements of notice and comment rulemaking contained in 5 U.S.C. 553(b) and the effective date provisions of 5 U.S.C. 553(d) of the Administrative Procedure Act do not apply. Authority for the amendments adopted herein is contained in section 4(i), 5(c)(1), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1), 303(r).

*It is ordered that* §§ 0.91, 0.101 and 0.321 of the Commission’s rules, 47 CFR 0.91, 0.101, 0.321 are amended as set forth below, effective February 25, 1997.

**Lists of Subjects in 47 CFR Part 0**

Organization and functions (Government agencies).

Federal Communications Commission. William F. Caton, *Acting Secretary.*

**Rule Changes**

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.91 is amended by revising the introductory text, removing