

**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:** Proposed rule.

SUMMARY: This proposed rule would establish an inspection procedure under the National Flood Insurance Program (NFIP) to help verify that structures in a community comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The proposed inspection procedure would require 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. FEMA proposes to undertake the inspection procedure on a pilot project basis only in two communities, Monroe County, Florida and the incorporated Village of Islamorada located in Monroe County. 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 an evaluation to determine the procedure's effectiveness.

DATES: Please send comments on or before July 6, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Don Beaton, Federal Emergency Management Agency, Federal Insurance Administration, 202-646-3442, (facsimile) 202-646-4327 or Lois Forster, Federal Emergency Management Agency, Mitigation Directorate, 202-646-2720, (facsimile) 202-646-2577.

SUPPLEMENTARY INFORMATION:**Background**

Congress created the National Flood Insurance Program (NFIP) in 1968 to provide Federally supported flood insurance coverage, which generally

had not been available from private insurance companies. The program is based on an agreement between the Federal Government and each floodprone community that chooses to participate in the program. FEMA makes flood insurance coverage available to property owners provided that a community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in part 60 of the NFIP Floodplain Management Regulations (44 CFR part 60).

Goal to reduce flood losses. A major goal of the NFIP is to reduce flood losses by implementing floodplain management regulations that protect new and substantially improved construction in floodprone areas from flood damages. Without community oversight of building activities and development in the floodplain, the best efforts of some to reduce flood losses could be undermined or destroyed by the careless building of others. Community enforcement of a floodplain management ordinance is critical in protecting a building from future flood damages, in reducing taxpayer funded disaster assistance, and also in keeping flood insurance rates affordable.

We base the NFIP flood insurance rates for new construction on the degree of the flood risk reflected by the flood risk zone on the Flood Insurance Rate Map (FIRM) that we produce for the community. Flood insurance rates also take into account a number of other factors including the elevation of the lowest floor above or below the Base Flood Elevation (the elevation of the 100-year flood frequency), type of building, number of floors, and the existence of a basement or an enclosure.

Inspection procedure. We intend to undertake the inspection procedure on a pilot project basis in Monroe County and the Village of Islamorada, Florida. The Village was formerly part of unincorporated Monroe County, and incorporated as a separate community in January 1998. We 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. The purpose of the proposed inspection procedure is to provide an additional means for the pilot communities to identify whether post-FIRM structures, i.e., those structures built after the effective date of the FIRM, are in compliance with the community's floodplain management ordinance. The proposed inspection procedure would also enable FEMA to verify that structures insured under the

NFIP are properly rated. Post-FIRM construction is charged an actuarial rate that must fully reflect the risk of flooding. Because Post-FIRM construction is actuarially rated, buildings constructed in compliance with community floodplain management regulations pay flood insurance premiums based on rates that are in most cases significantly lower than rates charged for buildings built in violation of these requirements.

We would make a decision whether to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after the pilot inspection procedure is complete within the selected communities and we complete an evaluation to determine the procedure's effectiveness.

**Selection of Communities To
Participate in the Pilot Inspection
Procedure**

We selected Monroe County and the Village of Islamorada, Florida for the proposed pilot inspection procedure due to unique circumstances in these communities and their willingness to participate in this procedure. The proposed inspection procedure would apply only to NFIP post-FIRM insured buildings in the Special Flood Hazard Areas (SFHAs) of Monroe County and the Village of Islamorada that are possible violations of the communities' floodplain management ordinance. Areas designated as SFHAs on the FIRMs are based on a flood that would have a one-percent chance of being equaled or exceeded in any given year (the 100-year flood). One-percent annual chance floods are shown on the FIRMs as A Zones or V Zones.

Susceptibility of the area to flooding. Monroe County, Florida is the southernmost county in the State of Florida and the continental United States and includes the islands of the Florida Keys. The Village of Islamorada is located in Monroe County, Florida and is a separate NFIP participating community. The entire portion of the County that is located on the mainland Florida peninsula, along with the islands located in Biscayne Bay and the northern part of Florida Bay, are a part of the Everglades National Park. Most of the development in Monroe County is located in the Florida Keys. Almost the entire County, including the Village of Islamorada, could be inundated by the base flood or 100-year flood (a flood having a one percent chance of being equaled or exceeded in any given year). We have identified velocity zones (V Zones), SFHAs associated with wave action, along the coastline of Monroe

County and the Village of Islamorada and designated the remaining portion of the SFHAs A Zones. Only portions of Key Largo, Cotton Key, and Upper Matecumbe Key have areas with ground elevations high enough to be outside of the SFHA.

FEMA findings in Monroe County. In August 1995, we conducted a Community Assistance Visit (CAV) in Monroe County, Florida. At that time, the Village of Islamorada was not incorporated and was still part of Monroe County. The purpose of a CAV is to assess an NFIP community's floodplain management program and to provide whatever assistance the community needs to administer its floodplain management ordinance effectively when program deficiencies or violations are identified. One of the more serious problems that we identified through the 1995 CAV was the widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking, access, or storage. CAVs that we conducted in 1982 and 1987 also identified the use of enclosed areas below elevated buildings as living space as a problem.

NFIP floodplain management regulations. Under the NFIP Floodplain Management Regulations at 44 CFR 60.3, all new construction and substantial improvements of structures in A Zones on the community's FIRM that have fully enclosed areas below the lowest floor of an elevated building can only be used for parking, access, or storage. The enclosed area must be designed to include openings to equalize hydrostatic flood pressure on exterior walls by allowing for the automatic entry and exit of floodwaters [44 CFR 60.3(c)(5)]. In V Zones, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with open wood lattice-work, insect screening, or non-supporting breakaway walls, intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The area below the lowest floor of an elevated building in V Zones can only be used for parking, access, or storage.

In addition, owners must build the area below the lowest floor of an elevated building using flood resistant materials and must use construction methods and practices that minimize flood damages. Owners must also build with electrical, heating, ventilation, plumbing, and air conditioning

equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Flood damages potential. Allowing uses other than parking, access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential to the area below the lowest floor of the elevated building. 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 elevated portion of the building with the potential for catastrophic damage. If a flood disaster occurs, the impact will go beyond the building itself. If the ground level enclosure is finished with living spaces, there is an increased risk to lives. Residents who live in these ground level enclosures may not be fully aware of the flood risk. Along with significant flood damages to the building and the potential for loss of life, the community, the State, and the Federal Government will face costly outlays for flood fighting and rescue operations, response, and recovery as well as taxpayer funded disaster assistance.

Limited flood insurance coverage. Because the area below the lowest floor of an elevated building has a greater exposure to flood waters, there is limited coverage in this area for elevated post-FIRM buildings, as provided for in the Standard Flood Insurance Policy (SFIP) under Article 6—Property Not Covered. This provision of the SFIP, effective since October 1, 1983, limits coverage for enclosures, including personal property contained therein. However, we provide coverage for enclosures below the elevated floors of elevated buildings for essential building elements, namely, sump pumps, well water tanks and pumps, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, electrical junction and circuit breaker boxes, elevators, natural gas tanks, pumps or tanks related to solar energy, cisterns, and stairways and staircases attached to the building. Also, foundation elements that support the building are insurable under the NFIP. We do not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture.

In 1983, we limited the coverage for enclosed areas below elevated buildings and in basement areas due to the financial losses we experienced when

we provided full coverage in these areas. In order to provide insurance coverage for the items that we exclude under the SFIP, we would have to charge significantly higher insurance rates, which would make flood insurance on the building and its contents unaffordable for many property owners.

In spite of the limited coverage afforded for these enclosed areas, they affect the rating of the policy. As previously mentioned in "Flood damages potential", flood forces can be transferred to the elevated portion of the building causing severe damages. This damage potential is recognized in the rates by adding rate loadings based on the size of the enclosure and whether the enclosure contains covered machinery or equipment. The proposed inspection procedure will ensure that the policyholders with buildings that have enclosures are paying premiums commensurate with their flood risk.

Floodplain management criteria. The limitation of flood insurance coverage for the enclosed area of an elevated building is consistent with the NFIP floodplain management criteria. These criteria limit the use of the enclosed space to parking, access, and storage, require use of flood resistant materials, require openings in foundation walls in A Zones, require the area below the lowest floor of an elevated building in V Zones to be free of obstruction, and require that mechanical, electrical, and utility equipment be designed or located to prevent flood waters from entering or accumulating within the components. Buildings built in compliance with NFIP floodplain management criteria will have minimal damage potential to the building and its contents.

Factors affecting compliance determinations. There are several factors that have limited Monroe County's ability to determine whether a building with an enclosure complies with the County's floodplain management ordinance. It is often difficult from the street to determine whether the enclosed area below an elevated building contains uses other than parking, access, or storage. Although the County can seek consent and approval of the owner to inspect their property, the community has had limited success in identifying violations using this method. The volume of possible violations is also a contributing factor in the community's ability to address this problem. Monroe County estimates that there are several thousand buildings with illegal enclosures below the lowest floor of an elevated building. Furthermore, a provision in Florida law exempts "owner-occupied family

residences" from the administrative warrant inspection procedure provided under State law for identifying building-safety issues. Under Florida State law, entry by local officials into owner-occupied single family homes without consent of the owner requires a search warrant, which is extremely difficult to obtain. Consequently, the community has had little success in identifying possible violations so that it could then require actions to remedy the violations to the maximum extent possible.

Monroe County agreement to participate. Given these circumstances, Monroe County indicated its interest in participating in the inspection procedure. In January 1997, a Monroe County Citizen's Task Force, which was appointed by the Monroe County Board of County Commissioners to address the issue of illegal enclosures below the lowest floor of an elevated building, recommended establishment of a procedure to require an inspection and a compliance report before the renewal of a flood insurance policy. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that requested FEMA to establish an inspection procedure for the County as a means of verifying that insured buildings in the SFHA under the NFIP comply with the County's floodplain management ordinance.

Village of Islamorada's agreement to participate. 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 of Islamorada encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the Village of Islamorada, the community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998, in its application to join the NFIP.

Continuing community responsibilities. Nothing that would be established through this proposed pilot inspection procedure would modify Monroe County or the Village of Islamorada's responsibility under the NFIP to enforce their floodplain management ordinance. That responsibility includes new construction and substantial improvements within the SFHAs pertaining to non-insured buildings or to insured buildings in which an inspection was not obtained by the policyholder. We intend that the proposed inspection procedure assist Monroe County and the Village of

Islamorada materially in identifying and correcting violations. We do not intend that this procedure be a substitute or alternative for these communities to enforce provisions within their own laws or ordinances. When Monroe County and the Village of Islamorada identify violations, they would continue to have the responsibility to remedy the violations to the maximum extent possible for all buildings in the SFHA.

Awareness program for interested people. We envision that we, Monroe County, and the Village of Islamorada will coordinate efforts to conduct an awareness program with property owners, mortgage lenders, real estate agents, insurance agents, appraisers, and local officials on this inspection procedure.

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 an evaluation to determine how effective the procedure is in achieving NFIP building compliance. The evaluation would examine the level of effort required for the communities, insurance companies, and us to implement the procedure, how many non-compliant structures are brought into compliance, and whether the procedure enabled us to determine whether structures insured under the NFIP are properly rated.

Description of the Pilot Inspection Procedure

The proposed rule would establish a pilot inspection procedure that would be built around the flood insurance policy renewal process and would apply only to NFIP insured buildings in SFHAs in Monroe County and the Village of Islamorada. The proposed inspection procedure would require owners of insured buildings to obtain an inspection from local officials and submit an inspection report as a condition of renewing flood insurance on the building.

Proposed Endorsement. Flood insurance policies with renewal effective dates on and after the implementation date of the pilot inspection procedure would contain the endorsement established in proposed Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61. The endorsement would provide that an inspection by the community may be required before a subsequent renewal of the flood insurance policy. Policies issued as new policies after the effective date for implementing the pilot inspection procedure would also contain the

endorsement established in proposed Appendices (A)(4), (A)(5), and (A)(6). The proposed endorsement would amend all flood insurance policies (pre-FIRM and post-FIRM) on buildings in Monroe County and the Village of Islamorada, Florida. The proposed changes to the SFIP would revise the Avoidance, Reduction or Reformation of the Coverage provision and the Policy Renewal provision. A notice describing the purpose of the inspection procedure would accompany the new endorsement to the SFIP regarding the inspection procedure.

Procedure established under new section. Under a new section, 44 CFR 59.30, the proposed rule would establish criteria for implementing a pilot inspection procedure in the selected community. Monroe County and the Village of Islamorada previously indicated their interest to participate in the inspection procedure. Based upon the communities' willingness to participate in the pilot inspection procedure, the Associate Director for Mitigation and the Federal Insurance Administrator would establish a starting date and termination date based on the recommendation of the FEMA Regional Director in consultation with Monroe County and the Village of Islamorada.

Information we would provide. We would provide Monroe County and the Village of Islamorada a list of pre-FIRM and post-FIRM policies in SFHAs to use in implementing the inspection procedure before the effective date for implementing the pilot inspection procedure. We would also provide a list of any policies issued as new policies after the effective date for implementing the pilot inspection procedure to the appropriate community.

Community reviews. The communities would agree to undertake a review of the pre-FIRM policies and provide a list of insured buildings in SFHAs to FEMA that were incorrectly identified as a pre-FIRM building because they were built or substantially improved on or after the effective date of the initial FIRM. We would provide the list of buildings that may be incorrectly rated as pre-FIRM to the insurers for possible rerating under the post-FIRM rating rules. The communities would also agree to undertake a review of all insured post-FIRM buildings in SFHAs, including those incorrectly identified as pre-FIRM, to determine whether the building is a possible violation of the community's floodplain management ordinance and provide this list to us. We would expect the community to identify possible violations of insured post-FIRM buildings in SFHAs from a visual street

inspection of the building, from tax records and other documents on file in the community pertaining to the property, and through other community procedures.

We would also expect the communities to review the list of pre-FIRM and post-FIRM flood insurance policy information before the effective date established for implementing the inspection procedure.

Coordination of timeframe for inspections. We would coordinate with each community to determine the appropriate timeframe to implement the inspection procedure to give each community adequate time to complete the inspections and undertake enforcement actions. Our determination would be based on the number of pre-FIRM and post-FIRM policies in each community's SFHAs and the number of potential inspections and enforcement actions the community may need to undertake.

Public notice. Before the effective date for implementing the pilot inspection procedure, Monroe County and the Village of Islamorada would have to provide adequate public notice. This notice would take the form of an announcement in a prominent local newspaper and other community notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator would publish a notice in the **Federal Register** that an inspection procedure is to be undertaken on a pilot project basis. This notice would provide the reason and the starting date and the termination date for implementing the inspection procedure.

Notice to policyholders. For those buildings identified by Monroe County and the Village of Islamorada as possible violations, the insurer would send a notice to policyholders approximately 6 months before the policy expiration date. This notice would 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 date of the policy expiration). The insurer would send a reminder notice to the policyholder with the Renewal Notice about 45 to 60 days before the policy expires.

Property inspection. The policyholder would be responsible for contacting the community to arrange for an inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document its findings in an inspection

report. The community would provide two copies of the inspection report to the property owner. The community would use its copy of the inspection report to begin enforcement actions on a building identified as violating the community's floodplain management ordinance.

Renewal of flood insurance after inspection. If the policyholder obtained a timely inspection and sent the community's inspection report and the renewal premium payment to the insurer by the end of the renewal grace period, the insurer would renew the flood insurance policy whether or not the building has been identified as a violation by the community. The insurer would review the flood insurance policy for rating. If the building was not properly rated to reflect the building's risk of flooding, the policy would be rerated to reflect that risk.

Community enforcement. If the community's inspection did not find a violation, the community would take no other action. However, if the community inspected the building and identified a violation under its floodplain management ordinance, the community would have to undertake an enforcement action to remedy the violation to the maximum extent possible. For 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.

Failure to obtain a community inspection. If the policyholder did not obtain an inspection and submit an inspection report with the renewal payment by end of the renewal grace period (30 days after date of expiration), the flood insurance policy would not be renewed. We would establish a procedure for the insurer to send appropriate notices to the insured, to the agent, and to the mortgagee that the flood insurance policy expired and cannot be re-issued without the community inspection report. All flood insurance policies that were not renewed under the inspection procedure would be identified on a list of ineligible properties for the sale of

flood insurance that would be sent to insurers that write and service NFIP flood insurance policies. Flood insurance policies sold on buildings ineligible in accordance with the proposed inspection procedure would be void in accordance with the proposed SFIP endorsement. If a property owner subsequently obtained an inspection from the community and an inspection report was submitted with the premium payment at the time the property owner applies for a flood insurance policy, a new policy would be issued on the building.

National Environmental Policy Act

We are currently reviewing this proposed rule under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. We will make a determination whether we need an environmental assessment or environmental impact statement before we publish the final rule.

Executive Order 12898, Environmental Justice

We are also reviewing this proposed rule under E.O. 12898, Environmental Justice, and will make appropriate determinations before publishing the final rule.

Executive Order 12866, Regulatory Planning and Review

We are submitting this proposed rule to the Office of Management Budget for review under sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. We will make a determination whether this is a significant regulatory action before we publish the final rule.

Paperwork Reduction Act

We have submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We prepared an Information Collection Request (ICR) and you may obtain a copy from Muriel Anderson by mail at FEMA, 500 C Street, SW., room 316, Washington, DC 20472, by email at muriel.anderson@fema.gov, or by calling (202) 646-2625. Highlights of the ICR follow.

Purpose of the proposed rule. The proposed rule would establish an inspection procedure in Monroe County and the Village of Islamorada that would be built around the flood insurance policy renewal process. The purpose of the inspection procedure and need for the community inspection report is:

- To help the communities of Monroe County and the Village of Islamorada, Florida, verify and document that post-FIRM structures in their communities comply with the community's floodplain management ordinance; and
- To ensure that property owners pay flood insurance premiums commensurate with their flood risk due to their increased exposure to flood damages.

The requirement that a community inspect a building as a condition of renewing the flood insurance policy on

the building would *only* apply to NFIP insured buildings in Special Flood Hazard Areas that the communities identify as possible violations. The Special Flood Hazard Areas (SFHA) is an area that is based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, often referred to as the 100-year flood.

Estimated number of inspections. We expect a total of 2,000 to 4,000 respondents (policyholders) to obtain an inspection from their respective communities. This is the total estimated

number of insured buildings that are possible violations of the community's floodplain management ordinance in both Monroe County and the Village of Islamorada. We estimate that Monroe County will inspect 500–700 insured buildings per year and the Village of Islamorada will inspect 200–400 insured buildings per year.

Previous OMB approval. The flood insurance renewal notice and flood insurance application have previously been approved by OMB (OMB 3067–0022).

NUMBERS AND TYPES OF RESPONSES, FREQUENCY, AND BURDEN HOURS

Number of respondents/type of response	Frequency of response	Burden hours	Total burden hours
4,000 policyholders to receive & read a notice that an inspection is required in order for the flood insurance policy to be renewed. These 4,000 policyholders will also receive a reminder notice about 45–60 days before the policy expires.	1	15 minutes (total for both notices).	1,000
4,000 policyholders contact respective community to arrange for an inspection of the property. Local official inspects the property with the policyholder or his/her designee. (Note: in any given year we expect several hundred policyholders to receive the notice and contact their community.) Compliant buildings should take less time to inspection compared to an insured building that is non-compliant.	1	1–2.5 hours**	10,000
4,000 policyholders submit a copy of the inspection report with the renewal premium payment	1	8 minutes	533
800 estimated no. of respondents that did not obtain an inspection. These respondents will be sent a notice at time of policy expiration that their flood insurance policy expired. (FEMA estimates that less than 20% of the 4,000 respondents will not obtain an inspection and as a result their flood insurance policy will not be renewed.)	1	8 minutes	107

* Total number of Burden Hours to implement the inspection procedure over a multi-year period: 11,640 hours.

Annual (one-time) total burden hours for each policyholder is approximately: 3 hours.

Total annual burden for approximately 500–700 inspections per year in Monroe County: 2,100 hours.

Total annual burden for approximately 200–400 inspections per year in the Village of Islamorada: 1,200 hours.

* We estimate that 2,000–4,000 buildings will need to be inspected over a several-year period. On an annual basis, we estimate that the communities will inspect 700–1,100 buildings each year.

** We estimate that the amount of time to contact the community to arrange for the inspection and for the policyholder or his/her designee to be available to let the community official into the building to conduct the inspection will range from 1 hour to 2.5 hours.

Community fees for permits and inspections. Communities generally charge a fee for permits and inspections as part of their administration of their zoning ordinance, building code, and floodplain management ordinance. We estimate that the cost per policyholder will range between \$35 to \$50.00 for each inspection, and that there may be expenses of about \$15 per policyholder for telephone calls and arranging for someone to be available when the local officials inspect the building, for an estimated average cost of \$65.00 per policyholder.

Total annual cost burden to respondents. For approximately 700 to 1,100 inspections per year, the total annual cost burden to respondents is estimated to range between \$45,500 and \$71,500. This information collection places no greater burden on small business or other small entities than that required of any other policyholder in Monroe County and the Village of Islamorada.

Community inspection report critical to effective implementation. The community inspection report is critical to the effective implementation of the proposed inspection procedure. Without the inspection procedure, the Village of Islamorada and Monroe County would continue to have limited ability to inspect properties for illegal enclosures that violate their floodplain management ordinance. Allowing uses other than parking of vehicles, building access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential to the building, and there is an increased risk to lives.

Premium rates commensurate with flood risk. The increase in flood damage potential to the building must be recognized in the rates by adding rate loadings based on the size of the enclosure. Collection of information from the policyholder in this inspection procedure will help ensure that

policyholders are paying premiums commensurate with their flood risk.

Consultation with the communities; use of existing inspection documents. We consulted with Monroe County and Village of Islamorada officials on the type of existing building inspection reports they currently use to implement their floodplain management ordinance and we determined that the current community inspection documents could be used for purposes of implementing the inspection procedure and for purposes of determining whether the building needs to be ratered.

Starting and ending dates; coordination. After we publish the final rule on the inspections, we will work closely with local officials from Monroe County and the Village of Islamorada to establish a start and end dates for the inspections. We will also coordinate and provide assistance to local officials from both communities in preparation of and during implementation of the inspection procedure. We anticipate

that the County and Village will apply the inspection procedure over a several-year period.

Confidentiality. Confidentiality is provided under the Privacy Act. The information collection will not be disclosed outside the Federal Emergency Management Agency except to the servicing office, acting as the government's fiscal agent, to the policyholders insurer, any mortgagee named on the policy, and to other routine users.

Request for your comments. We ask for your comments on our need for this information, the accuracy of our burden estimates, and any methods you can suggest for minimizing the burden on respondents, including automated collection techniques. Please send comments on the Information Collection Request to the Information Collection Officer, FEMA, 500 C Street, SW., room 316, Washington, DC 20472, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for FEMA." Please include the ICR number in your correspondence. Since OMB must make a decision about the ICR between 30 and 60 days after May 5, 1999, OMB should receive your comments by June 4, 1999 to assure that your comments will have full effect. We will respond in the final rule to any OMB or public comments on the information collection requirements contained in this proposed rule.

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 59 and Part 61

Flood insurance, reporting, and recordkeeping requirements.

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

PART 59—GENERAL PROVISIONS

The authority citation for Part 59 is revised 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. Part 59 is amended 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 us, 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) 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, who will consult with each community.

(2) 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.

(3) The communities participating in the pilot inspection procedure must review a list of all pre-FIRM and post-FIRM flood insurance policies in SFHA to confirm that the start of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974, and 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.

(4) 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)].

(5) For a building identified as a possible violation under paragraph (3) of this subsection, 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.

(6) If a policyholder receives a notice under paragraph (C)(5) of this section that an inspection is necessary in order to renew the Standard Flood Insurance Policy the following applies:

(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.

(7) 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 adequately floodplain management regulations 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) 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.

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

Appendix A (4) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Dwelling Form

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the 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 includes 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.

3. 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 Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the 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* includes 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 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*.

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. 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.

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 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.

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* 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.

P. *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.

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 S. 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.

R. *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.

S. *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.

T. *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.

U. *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.

V. *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 V. 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.

W. *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 W., 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 W. 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.

5. 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 Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the 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. *Avoidance, Reduction or Reformation of the Coverage:*

1. *Avoidance:* 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* includes 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.

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. Mortgage 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).

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.

P. *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* 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:

- Show the Insurer, or its designee, the damaged property;
- Be examined under oath by the Insurer or its designee;
- Sign any transcripts of such examinations; and
- 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.

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 S. 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.

R. *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.

S. *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:

- 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.
- 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.
- 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 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.
- 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.

T. *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.

U. *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.

V. *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 V. 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.

W. *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 W., 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 W. 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: April 8, 1999.

James L. Witt,

Director.

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