

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59, 61, and 62

[Docket ID FEMA-2018-0026]

RIN 1660-AA95

National Flood Insurance Program (NFIP): Conforming Changes To Reflect the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) and the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA), and Additional Clarifications for Plain Language

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, as amended, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. This proposed rule would revise the NFIP's implementing regulations to codify certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014 that FEMA has already implemented and to clarify certain existing NFIP rules relating to NFIP operations and the Standard Flood Insurance Policy.

DATES: Submit comments on or before September 14, 2018.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA-2018-0026, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street SW, Washington, DC 20472-3100.

To avoid duplication, please use only one of these methods. FEMA will post all comments received without change to <http://www.regulations.gov>, including any personal information provided. For instructions on submitting comments, see the Public Participation portion of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kelly Bronowicz, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C

Street SW, Washington, DC 20472, (202) 557-9488.

SUPPLEMENTARY INFORMATION:

I. Public Participation

The Federal Emergency Management Agency encourages the public to participate in this rulemaking by submitting comments and related materials. The Agency will consider all comments and material received during the comment period.

When submitting a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies and give the reason for each comment. The public may submit comments and materials by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted without change to the Federal e-Rulemaking Portal at <http://www.regulations.gov> and will include any personal information the commenter provides. Therefore, submitting this information makes it public. Those considering commenting may wish to read the Privacy and Security notice that is available via a link on the homepage of <http://www.regulations.gov>.

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 8NE, 500 C Street SW, Washington, DC 20472-3100.

Public Meeting: We do not plan to hold a public meeting, but you may submit a request for one at the address under the **ADDRESSES** section explaining why one would be beneficial. If FEMA determines that a public meeting would aid this rulemaking, it will hold one at a time and place announced by a notice in the **Federal Register**.

II. Background and Authorities

A. National Flood Insurance Program

Congress created the National Flood Insurance Program (NFIP) through enactment of the National Flood Insurance Act of 1968 (NFIA) (Title XIII of Pub. L. 90-448, 82 Stat. 476), found at 42 U.S.C. 4001 *et seq.* The NFIP is a Federal program enabling property owners in participating communities to

purchase insurance as a protection against flood losses in exchange for State and community floodplain management requirements that reduce the risk of future flood damages. Communities participate in the NFIP based on an agreement between the community and FEMA. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, FEMA will make flood insurance available within the community as a financial protection against flood losses. Accordingly, the NFIP is comprised of three key activities: Flood insurance, floodplain management, and flood hazard mapping.

1. Flood Insurance

The NFIP makes flood insurance available to property owners or lessees in communities that participate in the NFIP through the adoption and enforcement of community-wide floodplain management requirements. If a community adopts and enforces a floodplain management ordinance that meets certain minimum floodplain management requirements to reduce future flood risks within an area known as the Special Flood Hazard Area (SFHA) the Federal Government will make flood insurance available to property owners in that community. NFIP flood insurance indemnifies property owners from flood losses, reducing the need for Federal disaster assistance. NFIP floodplain management requirements reduce future flood damages, thus further reducing the need for Federal disaster assistance. In addition to providing flood insurance and reducing flood damages through floodplain management, the NFIP identifies and maps the nation's floodplains. FEMA disseminates maps depicting flood hazard information to create broad-based awareness of flood hazards, to provide data for rating flood insurance policies, and to apply the appropriate minimum floodplain management requirements for flood-prone areas.

Prior to enactment of the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), the NFIA made federally subsidized flood insurance available to property owners or lessees of buildings in NFIP-participating communities.¹ Subsidized flood insurance rates were available for policies covering existing buildings or buildings built prior to the community's adoption of its initial Flood Insurance Rate Maps (FIRMs),

¹ Flood insurance is also available to cover the contents owned by tenants in a rental property.

generally referred to as “pre-FIRM buildings.” Subject to certain short-term statutory exceptions, FEMA offers only actuarial rates to all buildings constructed, or substantially damaged or improved, on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later, generally referred to as “post-FIRM buildings.” See 42 U.S.C. 4014(a)(1), 4015(b). In addition, building owners must purchase flood insurance as a condition of receiving federally-backed or federally-regulated loans and Federal assistance in SFHAs of participating communities. See Flood Disaster Protection Act of 1973, sec. 103 (Pub. L. 93–234, 87 Stat. 975 (codified as amended at 42 U.S.C. 4001 *et seq.*)).

As discussed in more detail below, with the passage of BW–12, Congress mandated that FEMA phase out subsidies for certain pre-FIRM properties. These pre-FIRM properties include non-primary residences, business properties, severe repetitive loss properties, substantially damaged properties, substantially improved properties, and properties for which the cumulative claims payments exceed the fair market value of the property.

The Homeowner Flood Insurance Affordability Act of 2014 (Pub. L. 113–89, 128 Stat. 1020) (HFIAA) requires a phase-out of subsidies on all pre-FIRM properties at a rate of no less than 5 percent and no more than 15 percent premium increases per year, subject to certain exceptions established by statute (such as the BW–12 provisions) requiring a quicker phase-out for certain types of pre-FIRM properties. Accordingly, FEMA will likely phase out subsidies on all pre-FIRM properties within the next 12 to 17 years.

A prospective policyholder may purchase an NFIP flood insurance policy either: (1) Directly from the Federal Government through a direct servicing agent (referred to as “NFIP Direct”), or (2) from a participating private insurance company through the Write Your Own (WYO) Program. The Standard Flood Insurance Policy (SFIP) sets out the terms and conditions of insurance. See 44 CFR part 61, Appendix A. FEMA establishes terms, rate structures, and premium costs of SFIPs. The terms, coverage limits, and flood insurance premiums are the same whether purchased from the NFIP Direct or the WYO Program. See 44 CFR 62.23(a).

The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are three forms of the SFIP: The Dwelling Form, the General Property Form, and the Residential Condominium Building

Association Policy (RCBAP) Form. The Dwelling Form insures a one to four family residential building or a single-family dwelling unit in a condominium building. See 44 CFR part 61, Appendix A(1). Policies under the Dwelling Form offer coverage for building property, up to \$250,000, and personal property up to \$100,000. The General Property Form insures a five or more family residential building or a non-residential building. See 44 CFR part 61, Appendix A(2). The General Property Form offers coverage for building and contents up to \$500,000 each. The RCBAP Form insures residential condominium association buildings and offers building coverage up to \$250,000 multiplied by the number of units and contents coverage up to \$100,000 per building. See 44 CFR part 61, Appendix A(3). RCBAP contents coverage insures property owned by the insured condominium association. Individual unit owners must purchase their own Dwelling Form policy in order to insure their own contents.

In addition to coverage for building or contents losses, most NFIP policies also include Increased Cost of Compliance (ICC) coverage. ICC coverage applies when flood damages are so severe that the local government declares the building “substantially damaged,” thus requiring the building owner to bring the building up to current community standards. If a community has a repetitive loss ordinance, ICC coverage will also cover compliance requirements for a repetitive loss structure. ICC coverage provides up to \$30,000 of the cost to elevate, demolish, floodproof, or relocate an insured building or any combination thereof.

FEMA publishes a Flood Insurance Manual with detailed explanations of the terms and conditions of the SFIP and relevant program policies and procedures. The Flood Insurance Manual is primarily used by insurers and agents selling and servicing Federal flood insurance. FEMA normally publishes the Flood Insurance Manual twice a year and 6 months prior to a new manual version becoming effective. The current version became effective on October 1, 2017. The current flood insurance manual, as well as previous versions, is available at <https://www.fema.gov/flood-insurance-manual>. Page numbering restarts for each section of the Flood Insurance Manual, so FEMA cites to both the section and page number. For the purposes of this notice, all citations to the Flood Insurance Manual are to the version that became effective on October 1, 2017, which is available at <https://www.fema.gov/>

[media-library/assets/documents/133846](https://www.fema.gov/media-library/assets/documents/133846).

Additionally, FEMA publishes policy statements and underwriting bulletins to further explain and clarify the coverage under the SFIP. These are available at www.fema.gov/library and www.nfipservice.com.

2. Floodplain Management

A local community with land use authority may elect to participate in the NFIP. Communities participate under a voluntary agreement with FEMA. In order to participate in the NFIP, a community must adopt and enforce floodplain management requirements that incorporate the NFIP minimum floodplain management requirements. See 44 CFR 59.2(b), 59.22(a)(3), 60.1(d). The intent of these standards is to reduce flood risk and prevent loss of life and property. Communities incorporate these requirements into their zoning codes, subdivision ordinances, and building codes, or they adopt special purpose floodplain management ordinances. These NFIP requirements apply to areas mapped as SFHAs. The community ordinances must also include effective enforcement provisions. 44 CFR 59.2(b). The NFIP will suspend a participating community from the NFIP if the community fails to adopt the minimum NFIP floodplain management requirements within 6 months from the date the NFIP provides the flood map. 44 CFR 59.24(a), 60.13. Moreover, the NFIP may suspend or put on probation any participating community that does not adequately enforce its floodplain management ordinance. 44 CFR 59.24(b)–(c).

3. Flood Hazard Mapping

Through its Flood Hazard Mapping Program, FEMA identifies flood hazards, assesses flood risks, and collaborates with States and communities to provide accurate flood hazard and risk data to guide them to mitigation actions. Congress requires FEMA to identify flood-prone areas and then subdivide them into flood risk zones. 42 U.S.C. 4101(a). FEMA then uses this data to support community floodplain management requirements and rate flood insurance policies. Mapping of flood hazards also promotes public awareness of the degree of hazard within such areas and provides for the expeditious identification and dissemination of flood hazard information. FEMA maintains and updates data through FIRMs and Flood Insurance Studies (FISs).

B. Recent Legislative Changes

1. Biggert-Waters Flood Insurance Reform Act of 2012

Congress enacted BW-12 (Title II, Subtitle A of Pub. L. 112-141, 126 Stat. 405) to extend the NFIP's authorities through September 30, 2017, and to adopt significant program reform. The law requires changes to all major components of the program, including flood insurance, flood hazard mapping, and the management of floodplains.

The provisions of BW-12 relevant to this rulemaking include the following. First, BW-12 requires FEMA to increase the maximum coverage amount for multi-family properties to the same amount as that allowed for commercial properties. Second, BW-12 establishes a minimum deductible amount for NFIP policies. Third, BW-12 prohibits FEMA from denying payment to policyholders for damage or loss to a condominium unit under the Dwelling Form based solely on the fact that the condominium association has inadequate flood insurance coverage on the entire condominium. Fourth, BW-12 requires FEMA to review, among other things, the processes and procedures for making flood in progress determinations. See SFIP Article V.B. FEMA implemented these requirements by updating the Flood Insurance Manual after BW-12's enactment. The NFIP described these program changes in WYO Bulletin W-13070 (Dec. 16, 2013). FEMA also issued WYO Bulletin W-12045 (July 10, 2012), which implemented BW-12 section 100241's waiver of the standard 30-day waiting period for coverage of flood damage due to flood on Federal land caused, or exacerbated, by post-wildfire conditions. FEMA now proposes to codify these changes in the NFIP regulations.

2. Homeowner Flood Insurance Affordability Act of 2014

Congress enacted HFIAA to address flood insurance affordability concerns related to BW-12. Accordingly, HFIAA repealed some provisions of BW-12, mostly related to establishing premium rates. HFIAA also made a number of new program changes. The provisions of HFIAA relevant to this rulemaking include a requirement in Section 8 of HFIAA that FEMA offer a high deductible option of \$10,000, which FEMA discusses below.

III. Discussion of Proposed Rule

FEMA proposes to amend parts 59, 61, and 62 of 44 CFR. These parts contain regulations implementing the NFIP. In addition, FEMA proposes to

amend Appendices A(1)–A(3) of part 61, containing the three forms of the SFIP: The Dwelling Policy Form, the General Property Form, and the Residential Condominium Building Association Form. These forms are used in NFIP policies.

FEMA proposes this rulemaking for three purposes. First, it intends to make several non-substantive changes designed to improve the readability, uniformity, and clarity of the NFIP regulations. Second, FEMA proposes to make several non-substantive updates to regulations to align with the requirements of BW-12 and HFIAA. Third, FEMA proposes two substantive, albeit minimally so, changes to its regulations codifying the requirements of BW-12 and HFIAA.

A. Part 59: General Provisions

1. Part 59 Authority Citation

FEMA proposes to update the authority citation for Part 59 to reflect changes to FEMA's source of authority. Currently, the authority citation is 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. FEMA proposes to replace the citations to Reorganization Plan No. 3 and Executive Order 12127 with a citation to the current codification of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.* The authority citation would therefore read, "42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*" FEMA proposes this change because Reorganization Plan No. 3 and Executive Order 12127 originally created FEMA as an executive agency and provided the legal basis for FEMA's existence until the passage of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109-295, 120 Stat. 1394 (PKEMRA). PKEMRA amended the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, to establish FEMA in statute and define the Agency's authorities and responsibilities. A citation to the codification of the Homeland Security Act after the citation to the NFIA is therefore more appropriate.

2. Section 59.1 Definitions

44 CFR part 59 contains general provisions applicable to the NFIP's regulations. Section 59.1 contains a list of definitions generally applicable throughout the NFIP regulations. FEMA proposes to add 13 new definitions and modify three definitions in this section to make this section consistent with its proposed rule changes to parts 61 and 62.

First, FEMA proposes to revise the definition of "act." Currently, the regulation defines "act" to mean "statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001–4128." However, the NFIA now extends to section 4131. Rather than revise the citation to "42 U.S.C. 4001–4131," FEMA proposes to change the citation to "42 U.S.C. 4001 *et seq.*" As the NFIA is amended often, it makes more sense to use "*et seq.*" so that the citation stays current and FEMA will not have to revise it every time sections are added.

Second, FEMA proposes to revise the definition of "deductible." Currently, "deductible" is defined as "the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability." FEMA proposes to revise the definition of "deductible" to mean "the amount of an insured loss that is the responsibility of the insured and that is incurred before any amounts are paid for the insured loss under the insurance policy." While there is no substantive difference between the two definitions, FEMA believes the proposed definition is clearer and more consistent with the language in Article VI.A of the SFIP, as well as the language in proposed section 61.5, which would provide guidance on deductibles available for NFIP policies (discussed in further detail below).

Third, FEMA proposes to revise the definition of "Emergency Flood Insurance Program or emergency program." Currently, "Emergency Flood Insurance Program or emergency program" is defined as "the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM." FEMA proposes to remove "Emergency Flood Insurance Program" so the term only reads "Emergency Program," and revise the definition to mean "the initial phase of a community's participation in the National Flood Insurance Program, as prescribed by Section 1306 of the Act." FEMA proposes this change because although the new definition is substantively the same as the current definition, it is clearer and more consistent with the definition of this term in the SFIP.

FEMA also proposes to add definitions for several terms. These terms are: "condominium building," "mixed use building," "multifamily building," "non-residential building," "non-residential property," "other residential building," "other residential property" "residential building,"

“residential property,” “single family dwelling,” and “two to four family building.” The NFIP already uses these terms when describing the program to the public because they align with the terminology used in the private insurance industry and addresses important nuances not adequately addressed in statute and regulation. FEMA proposes defining these terms in regulation because they support the consistent interpretation and application of the NFIA and its regulations. Accordingly, codifying them in regulation will support greater uniformity and clarity for the public. FEMA provides further explanation of these definitions elsewhere in this preamble, under discussion of the relevant sections where these terms appear.

B. Part 61: Insurance Coverage and Rates

1. Part 61 Authority Citation

The current authority citation for part 61 is 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. FEMA proposes to replace the citations to Reorganization Plan No. 3 and Executive Order 12127 with a citation to the current codification of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.* The authority citation would therefore read 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.* FEMA proposes this change because while Reorganization Plan No. 3 and Executive Order 12127 originally created FEMA as an executive agency, PKEMRA amended the Homeland Security Act of 2002, Public Law 107–296, by establishing the Agency in statute and defining the Agency’s authorities and responsibilities. Accordingly, a citation to the codification of the Homeland Security Act is more appropriate.

2. Section 61.1 Purpose of Part

Section 61.1 describes the overall purpose of part 61. It states that part 61 describes the types of properties eligible for flood insurance coverage under the NFIP, the limits of such coverage, and the premium rates actually to be paid by insureds. It states that the specific communities eligible for coverage are designated by the Federal Insurance Administrator from time to time as applications are approved under the Emergency Program and as ratemaking studies of communities are completed prior to the regular program. Finally, it states that lists of such communities are

periodically published under part 64 of this subchapter. FEMA proposes to remove the last two sentences of Section 61.1 addressing the specific communities eligible for coverage and publication of the list of communities because they provide information relevant to part 64, not part 61. Removing these sentences would therefore avoid possible confusion regarding the subjects covered in part 61.

3. Section 61.3 Types of Coverage

Section 61.3 states that insurance coverage under the NFIP is available for structures and their contents, and that coverage for each may be purchased separately.

FEMA proposes to change the title of this section from “Types of coverage” to “Coverage and benefits provided under the Standard Flood Insurance Policy” because this new title provides a more accurate description of the proposed revisions to this section.

FEMA proposes to replace “structure” with “building” because in current practice the program uses the term “building” rather than “structure” throughout its guidance documents and other communications. The term “building” is a more precise and accurate term, because the SFIP insures buildings, not structures. While the term “structure” encompasses the term “building,” it also includes things that are not buildings, such as carports and gas or liquid storage tanks, and thus not insurable under the terms and conditions of the SFIP. Consistent use of this terminology will improve the overall clarity and accuracy of the regulation when viewed within the larger context of FEMA’s communications and guidance documents regarding the NFIP, as “building” rather than “structure” is more commonly used outside of the CFR.

FEMA proposes to add two new provisions to this section to provide a more accurate depiction of the coverages and benefits available under the SFIP and to improve the Section’s overall clarity. First, FEMA proposes to add paragraph (b) stating that in addition to building and contents coverage, each form of the SFIP provides coverage for other flood-related expenses. The Dwelling Form of the SFIP covers debris removal, loss avoidance measures, and condominium loss assessments. The General Property Form of the SFIP covers debris removal, loss avoidance measures, and pollution damage. The Residential Condominium Policy Form of the SFIP covers debris removal and loss avoidance measures.

Second, FEMA proposes to add paragraph (c) stating that with the purchase of building coverage, the SFIP also covers costs associated with bringing the building into compliance with local floodplain ordinances. FEMA believes this information may be useful to a reader of the CFR.

4. Section 61.4 Limitations on Coverage

Section 61.4 provides that coverage obtained through the NFIP is subject to the NFIA, relevant regulations, the SFIP, and each individual policy’s declaration page, and the maximum limits of coverage. FEMA proposes to remove this section because it duplicates the provisions of current section 61.5(e), which provide that the SFIP “is authorized only under terms and conditions established by Federal statute, the program’s regulations, the Administrator’s interpretations and the express terms of the policy itself.” As section 61.5(e) conveys the same information as section 61.4, FEMA finds that section 61.4 is not necessary. (Note that FEMA proposes to move 61.5(e) to proposed 61.13, discussed below.)

5. Section 61.5 Special Terms and Conditions

Paragraph (a) of section 61.5 states that no new flood insurance or renewal of flood insurance policies shall be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (*i.e.*, mudflow), or flood-related erosion area management or control law, regulation, or ordinance. FEMA proposes to change “shall” to “will” to avoid ambiguity.

Paragraph (b) of section 61.5 states that to reduce the administrative costs of the NFIP, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application. FEMA proposes to reword “payment of the full policyholder premium” to state “applicants must pay the full policy premium” because premiums are associated with policies, not policyholders. No substantive change is intended.

FEMA proposes to retain the substance of paragraphs (a) and (b), but proposes to move them to their own section (proposed 61.4) but retaining the current title of the section (“Special terms and conditions”).

Paragraph (c) of section 61.5 states that because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if the insurer ceases to have an ownership interest in the

covered property at the location described in the policy. It further states that refunds of premiums for any other reason are subject to the conditions set forth in 62.5 of this subchapter. FEMA proposes to remove paragraph (c) and add the substance of it to paragraph (b) of proposed 62.5 (the proposed changes to which are discussed more fully later in this preamble). Section 62.5 addresses policy cancellations and nullifications, and thus the substance of current section 61.5(c) is more appropriate for section 62.5.

Similar to current section 61.4, paragraph (e) of section 61.5 states that the SFIP is authorized only under terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Section 61.5 also states that representations regarding the extent and scope of coverage which are not consistent with the NFIA or with NFIP regulations are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent. As noted above, FEMA proposes to move 61.5(e) to proposed 61.13. The provisions appear in proposed paragraph (e) of section 61.13 ("Authorized only under terms and conditions established by the Act and Regulation") and paragraph (f) ("Agent acts only for policyholder"). These provisions are more appropriate for proposed section 61.13 because the section contains general provisions about the SFIP, and 61.5(e) also constitutes general provisions concerning the SFIP. These changes would improve the overall organization and cohesiveness of part 61. FEMA does not intend any substantive changes with these proposed revisions.

6. Proposed Section 61.5 Deductibles (Formerly Paragraph (d) of Current Section 61.5)

Current paragraph (d) of section 61.5 states that optional deductibles are available in all zones for four categories of properties, and presents those categories as four tables. The Category One table lists some of the deductible options for one to four family building and contents coverage policies. The Category Two table lists some of the deductible options for one to four family building coverage only or contents coverage only policies. The Category Three table lists some of the deductible options for "other residential" (residential buildings with five or more units) and nonresidential policies. The Category Four table lists some of the

deductible options for residential condominium building policies. A note to these tables indicates that policyholders may submit any other deductible combination for rating to the NFIP. This note allows FEMA to offer deductibles listed in the deductible tables in the Rating Section of Flood Insurance Manual, pages 17–18.

FEMA proposes several revisions to paragraph (d). First, FEMA proposes to remove the number for the paragraph because, as noted above, paragraphs (a) and (b) would be moved to a new section 61.4 and paragraph (c) would be incorporated into section 62.5. As a result, paragraph (d) would be the only paragraph in the section, thus making the paragraph number unnecessary.

FEMA proposes to replace the current contents of paragraph (d) (proposed unnumbered paragraph) with a requirement that FEMA must provide policyholders with deductible options in various amounts, up to and including \$10,000, subject to certain minimum deductibles. FEMA proposes this change because the current regulation's listing of deductible options may give readers the impression that the list is exhaustive even though the note following the Category Four table allows for FEMA to offer deductible options not listed in the table. The proposed text would make clear that FEMA may offer various options, subject to other restrictions.

The proposed text would require FEMA to offer deductible options up to and including \$10,000 to comply with the requirements of Section 1306(d) of the NFIA, as amended by section 12 of HFIAA (42 U.S.C. 4013(d)), which requires FEMA to offer deductibles up to \$10,000 for residential properties. As previously explained, current regulations allow policyholders to request deductible amounts not currently listed in regulation (including the \$10,000 deductible option required under HFIAA). Thus, this proposed change would clarify the regulatory text consistent with statutory requirements, but not expand or contract the deductible options offered by the NFIP under current regulations.

FEMA also proposes to limit deductible options in accordance with section 1312(b) of the NFIA, as added by section 100210 of BW–12 (42 U.S.C. 4019(b)). Per this provision, FEMA proposes to establish minimum deductibles as follows: (1) \$1,500 for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts less than or equal to \$100,000; (2) \$2,000 for policies covering pre-FIRM buildings charged less than full risk rates with building

coverage amounts greater than \$100,000; (3) \$1,000 for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates with building coverage amounts equal to or less than \$100,000; and (4) \$1,250 for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates with building coverage amounts greater than \$100,000.

Overall, the proposed deductible section would provide readers with a clear understanding of available deductible options, including minimum deductibles required under Section 1312(b) of the NFIA, as added by Section 100210 of BW–12 (42 U.S.C. 4019(b)) and the \$10,000 deductible option required by Section 1306(d) of the NFIA, as amended by Section 12 of HFIAA (42 U.S.C. 4013(d)). However, it would not expand or contract the deductibles available to policyholders under current law.

FEMA also proposes to rename the section heading of 61.5 to "Deductibles" because section 61.5 would only address deductible amounts.

7. Section 61.6 Maximum Amounts of Coverage Available

Current section 61.6 details the maximum amounts of coverage available under the NFIA. *See* 42 U.S.C. 4013(b). The current table shows varying coverage amounts available, depending on whether a policy is under the Emergency Program or the Regular Program, the use and occupancy of the building, and the building's location. As provided under the NFIA, for residential occupancies, the table lists coverage limits of \$250,000 for buildings and \$100,000 for contents. *See id.* For nonresidential occupancies, the table lists coverage limits of \$500,000 for buildings and \$500,000 for contents. *See id.* FEMA proposes to revise the table to more closely conform it to the one currently in the Rating Section of the Flood Insurance Manual, page 1. The Manual more clearly describes the different coverage limits based on occupancy by using terminology that more accurately conveys relevant statutory requirements. In comparison, the current table in the CFR includes terminology and distinctions that are no longer programmatically relevant.

i. Title of Table

The current table does not have a title. FEMA proposes to entitle the table "Maximum Amounts of Coverage Available." While the Flood Insurance Manual uses the title "Amount of insurance available," FEMA proposes to use "coverage" instead of "insurance" to conform to the current section title of

section 61.6. There is no substantive difference between the two titles in this context.

ii. Vertical Axis of Maximum Coverage Table

The current table has one vertical axis that lists the different categories of occupancy applicable to both building and contents coverages. These categories are, in order: “Single Family Residential,” “Other Residential,” “Nonresidential,” and “Contents.” Although the table provides a “contents” heading on this axis, there is no corresponding label for the building coverages. FEMA proposes to add “Building Coverage” to the vertical axis to distinguish between “building coverage” and “contents coverage.” This “Building Coverage” category would encompass “Single Family Residential,” “Other Residential,” and “Nonresidential.” FEMA believes this change would prevent confusion by improving the table’s overall clarity and internal consistency.

As noted above, the current table lists the different categories of occupancy applicable to each coverage—“Single Family Residential,” “Other Residential,” and “Nonresidential.” The current table further divides the “Single Family Residential” and “Other Residential” categories by whether or not a subject property is located within Hawaii, Alaska, Guam, or the U.S. Virgin Islands. It divides the “Nonresidential” category into either “Small business” or “Churches and other properties.” Similarly, the “Contents” coverage category only distinguishes between “Residential,” “Small business,” and “Churches, other properties.” The proposed table would make several changes to the categorization to use standardized terminology, improve the overall design and readability of the table, and use occupancy categories that more accurately reflect statutory and program differences in available coverages.

FEMA proposes to substitute the current use of “Single Family Residential” with “Single Family Dwelling” to describe a property. FEMA proposes this change because although the two terms (“dwelling” and “residential”) are interchangeable within the NFIP, “Single Family Dwelling” is the term used most often in the NFIP, as reflected in the Rating section of the Flood Insurance Manual. The Flood Insurance Manual has used this term for many years. *See Flood Insurance Manual* (May 1, 2005).²

Because “single family dwelling” is not currently defined, FEMA proposes to define “single family dwelling” in section 59.1 to mean “either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building’s total floor area, or (b) a single-family residential unit within a two to four family building, other residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit’s total floor area.” FEMA adopted this definition in the Flood Insurance Manual as early as 1978 to align with common industry practices in non-flood property insurance policies and it is the same definition found in the Definitions Section of the Flood Insurance Manual. This proposed definition reflects current NFIP practice and will not result in any substantive changes to the program.

FEMA proposes to add a new occupancy category, “two to four family building.” (The table would list the same maximum coverage amounts as those for a Single Family Dwelling, \$35,000 for Emergency Program and \$250,000 for the Regular Program.) FEMA proposes to include this category because it would be clearer to provide the public with a complete spectrum of occupancy categories so that the coverage limits for all occupancy types are more transparent. This does not reflect a substantive change to the program.

Because “two to four family building” is not currently defined, FEMA proposes to define it in section 59.1 to mean “a residential building, including an apartment building, containing two to four residential spaces and in which commercial uses are limited to less than 25 percent of the building’s total floor area.” FEMA proposes to define “two to four family building” in this manner because it is the same definition used in the Flood Insurance Manual. This definition supports the NFIA’s distinctions between residential and non-residential properties.

While FEMA proposes to maintain the “Other Residential” occupancy category that is in the current table, FEMA proposes to revise the category to read, “Other Residential Building (including Multifamily Building).” FEMA proposes to do this to make clear to the reader that “Other Residential Building” encompasses “Multifamily Buildings,” a term used in section 1305 of the NFIA, as added by section 100204 of BW–12 (42 U.S.C 4012(d)).

Because neither “other residential building” nor “multifamily building” is defined, FEMA proposes to define these

in section 59.1. It proposes to define “other residential building” to mean “a residential building that is designed for use as a residential space for 5 or more families or a mixed use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building.” It proposes to define “multifamily building” to mean “an Other Residential Building that is not a condominium building.” FEMA proposes to define these terms in this manner because the program currently defines them as such; these definitions appear in the Definitions Section of the Flood Insurance Manual. FEMA believes this definition of “Other Residential Building” fairly distinguishes the term from the “single family dwelling” and “two to four family building” occupancy categories, in terms of either residential spaces or square-footage. Defining “multifamily building” this way enables easier reference to condominium-building specific policies that will be discussed below.

FEMA proposes to add the “Condominium Building” occupancy category to the table (with maximum coverage amounts of “\$250,000 times the number of units in the building” under the Regular Program, and nothing available under the Emergency Program). FEMA proposes this addition to integrate into the table information contained in current section 61.6(b). Section 61.6(b) states that “[i]n the insuring of a residential condominium building in a regular program community, the maximum limit of building coverage is \$250,000 times the number of units in the building (not to exceed the building’s replacement cost).” By adding the “Condominium Building” occupancy category to the table, FEMA plans to incorporate all the information in section 61.6(b) except the language in parentheses, “not to exceed the building’s replacement cost.” FEMA proposes to omit this language because Article V of the RCBAP form (44 CFR 61, Appendix A(3)) already provides that FEMA will not pay beyond the replacement cost of the building.

While FEMA proposes to maintain the “Nonresidential” occupancy category, FEMA proposes to revise the category to read “Non-Residential Building.” This category would continue to have building limits of \$100,000 in the Emergency Program and \$500,000 in the Regular Program.

In order to provide greater clarity, FEMA proposes to incorporate the existing definition of “non-residential building” into regulation. Current regulations and statute do not define the

² <http://www.fema.gov/text/nfip/manual200505.txt>.

extent of the term “nonresidential” used in maximum coverage limits found at NFIA 1306(b)(4) (42 U.S.C. 4013(b)(4)) and 44 CFR 61.6(a). However, 42 U.S.C. 4013(b)(3) does make clear that “nonresidential building” includes churches. Accordingly, FEMA has previously defined the term “non-residential building” as “a commercial or mixed-use building where the primary use is commercial or non-habitational.” Definitions Section of Flood Insurance Manual, page 7. FEMA proposes to incorporate this definition into regulation because it aligns with the common understanding of the term and encompasses churches and other houses of worship.

FEMA proposes to adjust the occupancy categories under the “Contents Coverage” portion of the coverage limits table. Currently, the table at section 61.6(a) divides the contents coverage portion amongst three categories: “Residential,” “Small business,” and “Churches, other properties.” FEMA proposes to remove the distinction between “Small business” and “Churches, and other properties,” and divide contents coverage into just two categories: “Residential Property” and “Non-Residential Property.” FEMA proposes this change to reflect the current practice of the program. Although NFIA section 1306(b)(1)(B) (42 U.S.C. 4013(b)(1)) provides a specific method for determining the maximum coverage available to small businesses, FEMA has opted to provide all other non-residential properties with the same coverage limits available to small businesses. Accordingly, while the statute may still distinguish small businesses from all other properties, current NFIP practice does not.

In addition to the adjustments to the categories of occupancy described above, FEMA proposes two changes to the footnotes. In the current table, there are two footnotes. Footnote 1 appends “Emergency program” in “Emergency Program first layer” and provides that “[o]nly [the] first layer [is] available under the emergency program.” Footnote 2 appends the “Contents” label and reads, “Per unit.”

FEMA proposes to revise footnote 1 by appending it to the title of the table, “Maximum Amount of Coverage Available,” to describe the table generally. It would read, “This Table provides the maximum coverage amounts available under the Emergency Program and the Regular Program, and the columns cannot be aggregated to exceed the limits in the Regular Program, which are established by statute. The aggregate limits for building

coverage are the maximum coverage amounts allowed by statute for each building included in the relevant Occupancy Category.” FEMA proposes this revision because, as described in greater detail below in subsection iv., *Horizontal Axis of Maximum Coverage Table*, the current footnote 1 is associated with the “layer” language FEMA proposes to remove, and the revised footnote’s language more accurately reflects the NFIP’s intent.

FEMA proposes to leave footnote 2 in the same place (after “Contents Coverage”—the term replacing “Contents” in the current table), but expand it from “Per unit” to instead read, “The policy limits for contents coverage are not per building. Although a single insured may not have more than one policy covering contents in a building, several insureds may have separate policies of up to the policy limits.” FEMA proposes this revision to footnote 2 to more clearly reflect the restriction that the current footnote 2 attempts to convey, which is that the coverage limits apply to each unit of the building.

For instance, the tenants of a building with two independent living units may obtain separate contents policies for each unit. Each policy could have limits up to \$100,000 and a contents claim for one unit would not affect the contents claim of the other unit. However, the existing NFIP rule—not reflected in the current footnote—is that the owner of the building cannot obtain two separate contents policies themselves. Instead, they could only obtain one contents policy with coverage up to \$100,000. FEMA’s proposed language in footnote 2 seeks to more clearly explain NFIP statutory authority that even though the contents coverage limits are per unit rather than per building, an insured cannot have more than one policy in a building.

FEMA proposes to append a new footnote—footnote 3—to the “Residential Property” occupancy category under “Contents Coverage.” Footnote 3 would explain that “[t]he Residential Property occupancy category includes the Single Family Dwelling, Two to Four Family Building, Other Residential Building, and Condominium Building occupancies categories.” FEMA proposes appending this new footnote to help improve the overall clarity of the table by linking the building coverage occupancy categories with the contents coverage occupancy categories.

iii. Special Provisions for Property in Hawaii, Alaska, Guam, and the U.S. Virgin Islands

The current maximum coverage table in section 61.6(a) lists separate increased limits in the Emergency Program within the “Single Family Residential” and “Other Residential” occupancy categories for residential structures located in Hawaii, Alaska, Guam, and the U.S. Virgin Islands. This is because the NFIP provides increased building coverage to these structures pursuant to 42 U.S.C. 4013(b)(1)(A)(iii). FEMA proposes to remove these lines referencing Hawaii, Alaska, Guam, and the U.S. Virgin Islands and place them instead in asterisked footnotes. FEMA does not intend any substantive change in these limits, but believes this design will improve the overall readability of the table.

iv. Horizontal Axis of Maximum Coverage Table

FEMA also proposes to make several clarifying, nonsubstantive changes to the horizontal axis of the table in section 61.6(a). The current table’s horizontal axis is one label, “Regular program.” Under that label are three sub-labels: “Emergency program first layer,” “Second layer,” and “Total amount available.” As noted above, “Emergency program first layer” has a footnote (footnote 1) that reads, “Only first layer available under emergency program.”

FEMA’s proposed replacement table would dispense with the “layer” language and use only two columns, “Emergency Program” and “Regular Program.” Each column would list the applicable coverage limit for each occupancy type under each type of program. (The values under “Emergency Program” and “Regular Program” would be independent of each other and not subject to aggregation).

FEMA proposes these simpler horizontal axis labels for two reasons. The first reason is to improve overall clarity, as the “layer” language is unclear and inaccessible to the reader. The second reason is to more accurately reflect the NFIP’s intent. This is because the current table reflects a previous approach for describing the NFIP’s coverage limits. The idea was that the NFIP divided the Regular Program’s coverage limits into two layers. The first layer was available for all NFIP policies, whether under the Emergency Program or the Regular Program. The NFIP only made the second layer of coverage available through the Regular Program. The current table attempts to capture this by placing the “Emergency program

first layer” and “Second layer” under the “Regular program” label. However, the table also combines the two layers under the “Total amount available” column, which is also under the “Regular program” label. A person could read this formulation as indicating that the three sub-headings combined provided the maximum amount of coverage under the “Regular program.” This is not FEMA’s intent. The proposed replacement table conveys the same limits described in the current table, but it in a much clearer and concise way.

Moreover, it is for this reason that FEMA proposes to revise footnote 1, as described above, to clarify that the maximum coverage amounts listed for the Emergency Program and the Regular Program are not cumulative. Rather, the maximum amounts listed under the Regular Program are the maximum amounts authorized under the NFIA and include the amounts for the Emergency Program. (In other words, the amounts for the Emergency Program are not in addition to the amounts for the Regular Program).

v. Paragraph (b): Application of Limits to Additional Coverages

As noted above, current paragraph (b) is being removed and its contents are being incorporated into the proposed table. FEMA proposes to add a new paragraph (b) that would state, “[c]overage and benefits payable under the SFIP pursuant to sections 61.3(b) and 61.3(c) are included in, not in addition to, the coverage limits provided by the Act or stated in paragraph (a) of this section.” The purpose of this new paragraph is to explain that the coverage limits described in the table in section 61.6(a) apply to all coverages payable under the SFIP, including mitigation, and debris removal coverage described in proposed section 61.3(b) and ICC coverage described in proposed section 61.3(c).

This revision would not make any substantive change to NFIP policy, but rather would provide a clarifying link to the coverage and benefits listed in proposed section 61.3 and how coverage limits relate to those coverages and benefits.

Overall, FEMA intends for the proposed changes to section 61.6 to improve the clarity of the Section and ensure that it uses terminology consistent with that currently used by the NFIP. The Agency does not intend for the proposed changes to 61.6 to modify the substance of the NFIP flood insurance policies or the maximum coverage limits available for buildings

and contents covered under such policies.

8. Section 61.10 Requirements for Issuance or Renewal of Flood Insurance Coverage

FEMA proposes to add a new section, 61.10, entitled “Requirements for Issuance or Renewal of Flood Insurance Coverage.” The proposed section would state that FEMA will not issue or renew flood insurance unless FEMA receives: (1) The full amount due (including applicable premiums, surcharges, and fees); and (2) a complete application, including the information necessary to establish a premium rate for the policy, or submission of corrected or additional information necessary to calculate the premium for the renewal of the policy. FEMA proposes this new section because these requirements are already implicitly indicated in current sections 61.5(b) and 61.11(b), but are nowhere explicitly stated. Pursuant to section 61.5(b), “payment of the full policyholder premium must be made at the time of application.” Section 61.11(b) provides that coverage is effective at the time of loan closing, “provided the written request for the coverage is received by the NFIP and flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the loan closing.” Further, the statutory 30-day waiting period begins on the “date that all obligations for [flood insurance] coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed.” NFIA 1306(c)(1) (42 U.S.C. 4013(c)(1)). FEMA believes that explicitly stating the requirements for issuance or renewal of a policy will provide policyholders with clearer descriptions of these requirements.

9. Section 61.11 Effective Date and Time of Coverage Under the Standard Flood Insurance Policy—New Business Applications and Endorsements

Section 61.11 describes the methods for calculating the effective dates of new policies. In general, under current paragraph (c), the effective date and time of any new policy or added coverage is “12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium.” Current paragraphs (a) and (b) provide two exceptions to this 30-day waiting period. Section 61.11(a) provides for an effective date of 12:01 a.m. on the first calendar day after application and payment for the initial purchase of flood insurance pursuant to a revision or update of floodplain areas or flood risk

zones under section 1360(f) of the NFIA, if such purchase took place within 1 year of the notice of such revision or updating under section 1360(h). *See also* 42 U.S.C. 4013(c)(2). Section 61.11(b) provides that for the initial purchase of flood insurance in connection with the making, increasing, extension, or renewal of a loan, coverage is effective as of the date of the loan closing as long as application and payment were made prior to that. *See also* 42 U.S.C. 4013(c)(2)(A). FEMA does not propose any changes to these exceptions in current paragraphs (a) and (b), as neither BW-12 nor HFIAA made any changes to these exceptions.

FEMA proposes to add a third exception to the 30-day waiting period relating to flooding linked to post-wildfire conditions in proposed paragraph (c), and proposes to redesignate current paragraph (c) as paragraph (d). The proposed provision would allow for a next-day effective date where (1) the FEMA Administrator determines that the property was affected by flooding on Federal land as a “result of, or is exacerbated by, post-wildfire conditions,” and (2) that coverage was purchased no later than 60 calendar days after the fire containment date of the wildfire relating to the post-wildfire conditions described in clause (1). FEMA proposes adding this exception pursuant to BW-12. *See* NFIA section 1306 (42 U.S.C. 4013), as amended by BW-12 section 100241. FEMA has already implemented this provision, *see* the General Rules Section of the Flood Insurance Manual, and now proposes to codify the exception into regulation to provide a comprehensive list of effective date exceptions.

As stated above, FEMA proposes to redesignate current paragraph (c) as paragraph (d). FEMA also proposes to make two minor changes to current paragraph (c). First, FEMA proposes to add a reference to new paragraph (c) to indicate that in addition to paragraphs (a) and (b), paragraph (c) is one of the exceptions to the 30-day waiting period. Second, FEMA proposes to change “shall” to “will.” FEMA proposes this change to incorporate plainer language. This change would not change the substantive meaning of the provision.

Current paragraph (d) allows policyholders to add new coverage or increase the amount of coverage in force during the term of any policy. FEMA proposes to redesignate current paragraph (d) as paragraph (e), and proposes to add the language “subject to any applicable waiting periods.” FEMA proposes adding this language to make it clear that unless the policy change qualifies under one of the exceptions in

sections 61.11(a)–(c), such changes would be subject to the 30-day waiting period. This ensures that policyholders cannot suddenly expand their coverage immediately before needing it, for instance before a hurricane strikes. This requirement is already stated in current 61.11(c) (proposed 61.11(d)), but its inclusion in proposed 61.11(e) would add additional clarity to this provision and ensure that 61.11(e) will not be mistakenly read without the limitations imposed by proposed 61.11(d). FEMA also proposes to change “shall” to “will.” FEMA proposes this change to incorporate plainer language.

Current paragraph (e) states that with respect to any submission of an application in connection with new business, the payment of the premium by an insured to an agent or the issuance of premium payment by the agent does not constitute payment to the NFIP. It further states that it is important that an application for flood insurance and its premium be mailed to the NFIP promptly to have the effective date of coverage based on the application date plus the waiting period.

It states that if the application and the appropriate premium payment are received at the office of the NFIP within ten (10) calendar days from the date of application, the waiting period will be calculated from the date of application. FEMA proposes to revise this paragraph slightly to state that it is important that an application for flood insurance and the “full amount due” be mailed to the NFIP promptly. FEMA proposes to change “premium” to “full amount due” in the sentence following it as well. Making this change would make clear that the policyholder must pay the full amount due at that time (including any surcharges and fees), not just a portion thereof.

FEMA proposes to redesignate current paragraph (e) as paragraph (f). Current paragraph (f) describes the method for determining the effective date when a WYO company receives a proper application, but decides to refer the application to the NFIP’s Direct Servicing Agent rather than write the policy itself. FEMA proposes to remove this paragraph because it describes the business model of a WYO company that is no longer participating in the WYO Program. FEMA is not aware of any other WYO company that is using this model, and therefore the provision is unnecessary. Any new companies entering the WYO Program would need to conform their practices to the resulting regulation. Accordingly, FEMA proposes to remove these provisions to avoid confusion. Because

FEMA proposes to remove this paragraph, FEMA also proposes to remove the last two clauses of the first sentence of current paragraph (e) (proposed paragraph (f)) that addresses the application of applicable waiting periods for this model, as it too would no longer be necessary. Finally, FEMA proposes to make minor revisions to current paragraph (g) to reflect the removal of current paragraph (f).

10. Section 61.13 Standard Flood Insurance Policy

Section 61.13 describes the applicable sources of terms and conditions associated with policies issued through the NFIP, including the SFIP forms, endorsements, and applications.

FEMA proposes to add new paragraphs (e) and (f), and redesignate current paragraphs (e) and (f) as (g) and (h). FEMA’s proposed new paragraph (e) would explain that flood insurance policies issued through the NFIP are subject to the NFIA, its regulations, and the terms and conditions of the SFIP. As discussed previously, similar language is in current sections 61.4(a) and (b), which FEMA proposes to remove. Moving this language into section 61.13 provides a more logical organization. Further, FEMA proposes to add additional language that any representations not consistent with these sources are void. While implicit in the current regulations, this explicit language would make clear the sources of law applicable to NFIP policies.

FEMA’s proposed new paragraph (f) would specify that the property or casualty agent acts on the behalf of the policyholder and never on behalf of the Federal Government, FEMA, or the WYO company. This language is similar to that which FEMA proposes to remove from 61.5(e), but would cover WYO companies as well. FEMA intends that the proposed provision would ensure that policyholders know that the representations of agents involved in the program do not bind the NFIP. Also, while current 61.5(e) uses the word “insured,” FEMA proposes to substitute the word with “policyholder” in proposed section 61.13(f). “Policyholder” refers specifically to the individual or business named in the policy itself, whereas the word “insured” can refer to the policyholder as well as anyone who submits payment on behalf of the policyholder and/or who has the right to a claim payment under the policy (e.g., the mortgagee). “Policyholder” is the more appropriate term in this context because FEMA is only referring to an agent’s relationship with the policyholder specifically, not any other party who may be submitting

payment on behalf of the policyholder and/or who has a right to claims payments under the policy.

Current paragraph (f) (proposed paragraph (h)), provides that private sector WYO property insurance companies may issue SFIPs. FEMA proposes to revise proposed paragraph (h) to provide that WYO companies will issue NFIP policies in their own name, rather than the current language providing that WYO companies may issue NFIP policies in their own name. This change would conform to the current FEMA–WYO company relationship described in Article I of Appendix A of 44 CFR part 62. Further, FEMA proposes to add language at the end of the paragraph stating that the risk of loss is borne by the NFIP, rather than the WYO company. This language would further clarify the existing relationship between FEMA and WYO companies.

Overall, the proposed changes to 61.13 would provide greater clarity to the public regarding the existing relationship between FEMA, policyholders, and WYO companies.

C. Appendix A(1) to Part 61: Standard Flood Insurance Policy Dwelling Form

Appendix A(1) to part 61 contains the Dwelling Form of the SFIP. This form, as well as the other two SFIP policy forms (the General Property Form and the RCBAP), defines the relationship between FEMA or the WYO company, as the insurers, and the insured.

Throughout Appendix A(1), FEMA proposes to replace the word “covered” with the word “insured” because “covered” is a generic and undefined term that does not conform to common industry or Agency usage. The use of “insured” better conveys the application of the SFIP to property.

1. Prefatory Paragraph and Article I “Agreement”

The prefatory paragraph states that the policy insures (1) a non-condominium residential building designed for principal use as a dwelling place of one to four families, or (2) a single-family dwelling unit in a condominium building. FEMA proposes to revise (1) to read “a one to four family residential building, not under a condominium form of ownership” because this language is clearer and more consistent with the wording used in the Definitions section for condominium buildings. FEMA proposes to add (3) “personal property in a building” to clarify that personal property is also insured under this policy. FEMA has always insured personal property under this policy, but

proposes to make this fact more explicit in this initial coverage statement.

In the current policy, Article I “Agreement” begins after the prefatory paragraph. It states in the first paragraph that FEMA provides flood insurance under the terms of the NFIA, its amendments, and 44 CFR. It states in the second paragraph that FEMA will pay for direct physical loss by or from flood to the insured property if the insured has paid the correct premium, complied with all terms and conditions of the policy, and furnished accurate information and statements. It states in the last paragraph that FEMA has the right to review the information provided by the insured at any time and to revise the policy based on this review.

FEMA proposes to begin Article I before the prefatory paragraph, and to relabel the prefatory paragraph as Section A, current Article I’s first paragraph as Section B, the second paragraph as Section C, and the third paragraph as Section D. This is to clarify that the prefatory paragraph, which is actually an initial coverage statement, is part of the policy and not just an introduction to the policy.

FEMA also proposes to modify proposed Section C (currently the second paragraph in Article I) and add three new sections to Article I (proposed sections E, F, and G) to clarify existing rules and limitations under the SFIP.

i. Proposed Section C

As previously described, FEMA proposes to renumber the second paragraph in Article I as Section C of Article I. This provision currently states that FEMA will pay for direct physical loss by or from flood to the insured property if (1) the insured has paid the correct premium; (2) complied with all terms and conditions of the policy; (3) and furnished accurate information and statements. FEMA proposes to modify the first prong of this statement by stating that coverage is contingent on the policyholder paying the “full amount due (including applicable premiums, surcharges, and fees)” instead of “the correct premium.” FEMA proposes this change to make clear that policyholders must pay any applicable surcharges, such as the one required under 42 U.S.C. 4015a, in addition to applicable premiums.

ii. Proposed Section E

Proposed Section E would state that the policy insures only one building. If the insured owns more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application. While the SFIP’s limitation on coverage to one

dwelling is already implied by current Article III.A, FEMA proposes to clarify this limitation here to allow policyholders to better understand the extent of coverage, particularly where an insured may own more than one building on the same land.

iii. Proposed Section F

Proposed Section F would state that multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if separate policies were issued through different NFIP insurers. It would also state that payment for damages may only be made under a single policy for building damages under Coverage A—Building Property. This proposed section would incorporate current Article VII.U’s general language stating that there may not be more than one NFIP policy on a property. Proposed section F would be subject to the exception in proposed Section G involving condominiums, which provides that a condominium unit may be covered by an RCBAP policy and a dwelling policy.

FEMA proposes this clarification because there have been several instances where multiple persons have taken out multiple, overlapping building policies. This in turn may leave policyholders to believe they have more coverage than is allowed by the NFIA. This is most common in instances where both a building owner and a tenant obtain building policies. As described in WYO Bulletin W–15001 (Jan. 13, 2015),³ FEMA has taken steps to identify such instances and inform policyholders as needed. FEMA believes that the language in proposed Section F would help avoid such situations.

iv. Proposed Section G

FEMA proposes to add Section G, which would define the relationship between a Dwelling Form policy and an RCBAP policy that insures the same condominium unit. Section G would state that a Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under an RCBAP. However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form policy and the RCBAP. This would explicitly state FEMA’s application of the statutory maximum coverage limits for one to four family residential buildings, found at 42 U.S.C. 4013(b)(2), as applied to condominium units.

³ Available at <http://bsa.nfipstat.fema.gov/wyobull/2015/w-15001.pdf>.

FEMA proposes this section to clarify instances where a condominium unit is covered by both a Dwelling Form policy and an RCBAP policy, and to codify its current practice (pursuant to BW–12) of waiving the requirement found in current regulation to limit payments to affected policyholders. Current Article VII (“Coinsurance”) of the RCBAP policy (Appendix A(3) to Part 61) restricts payments for damage to condominium associations that insure less than 80 percent of the full replacement cost of the RCBAP insured condominium building, or less than the maximum amount of insurance available. In turn, current Article III.C.3.b.4 of the Dwelling Form policy precludes payment for a loss assessment if the reason for the shortage is application of the RCBAP’s coinsurance penalty provision. Current Article VII.C.2 of the Dwelling Form policy provides that where a condominium unit is covered by both the Dwelling Form policy and an RCBAP (or other flood insurance coverage purchased by the condominium association), the Dwelling Form policy will be in excess over the RCBAP (or other insurance).

Since 2007, FEMA has issued individual waivers of these provisions’ requirements to limit payments to affected policyholders. Section 100214 of BW–12 (42 U.S.C. 4019(c)) validated this policy by prohibiting FEMA from limiting payments pursuant to Article III.C.3.b.4. FEMA implemented this prohibition through a general waiver. See WYO Bulletin W–16024 (April 7, 2016).⁴ Accordingly, FEMA now seeks to codify this change in the SFIP by adding Section G.

Proposed Section G would also state that FEMA will only pay for damage once, and items of damage paid for under an RCBAP cannot also be claimed under the Dwelling Form policy. FEMA proposes to add this language to clarify the existing rule under current Article VII.C.2 that if a single property is insured by both policies forms, the Dwelling Form will only pay what is not covered under the RCBAP policy.

2. Article II Definitions

i. General Changes

FEMA proposes to remove the last sentence of the second paragraph in Article II.A which states, “The precise definitions are intended to protect you.” FEMA proposes removal of this sentence because it is an incorrect statement of the purpose of providing the definitions. The definitions are to provide clarity to the language of the

⁴ Available at <https://bsa.nfipstat.fema.gov/wyobull/2016/w-16024.pdf>.

Dwelling Form policy so that both FEMA and the policyholder will know the terms and conditions under which payments will be made under the policy.

FEMA also proposes to move the definition of “flood,” which is currently in the third paragraph of Article II.A, to a separate Section B. Accordingly, FEMA also proposes to redesignate current Section B as Section C.

ii. Proposed Removal of Definition

FEMA proposes to remove one definition, “expense constant,” from the Dwelling Form. The term describes a flat charge assessed on all policies to defray expenses to the Federal Government related to flood insurance. FEMA proposes to remove this definition because FEMA no longer charges an expense constant and FEMA does not use this term in the Dwelling Form.

iii. Proposed Addition of Definitions

FEMA proposes to add a definition of “condominium building” to mean a type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building. FEMA intends for this addition to conform with the addition of the definition to 44 CFR 59.1. FEMA proposes to add this definition because it is used throughout the Dwelling Form.

FEMA also proposes to define the term “deductible” as “the fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.” This definition aligns with the definition of “deductible” currently proposed for 44 CFR 59.1. FEMA proposes to include this definition in the SFIP to support related provisions in Article VI.

iv. Proposed Changes to Existing Definitions

FEMA proposes to modify several definitions currently in the Dwelling Form. First, FEMA proposes to revise the definition of “application” by striking the last sentence. FEMA proposes this change because the last sentence is not a definition, but rather a separate requirement. Further, the sentence does not align with proposed Article I.C, which states that policyholders must submit “the full amount due” which includes applicable premiums, surcharges, and fees.

FEMA proposes to revise the definition of the term “basement.” Currently, “basement” is defined as “any area of the building, including any

sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.” FEMA proposes to replace the word “the” before the word “building” with the word “a” to correct a grammar error in the current Dwelling Form SFIP. FEMA also proposes to remove the word “subgrade” because, due to the many and varying definitions of this word, its use is causing confusion. Removal of the term “subgrade” is not intended to have any substantive effect.

FEMA proposes to revise the term “condominium.” Currently, “condominium” is defined as “that form of ownership of real property in which each unit owner has an undivided interest in common elements.” FEMA proposes to replace the term “real property” with the phrase “one or more buildings” because FEMA believes that this nonsubstantive change uses plainer language that the public can more easily understand.

Similarly, FEMA proposes to adjust the definition of “condominium association.” Currently, this term is defined as the entity made up of the unit owners responsible for the maintenance and operation of (a) common elements owned in undivided shares by unit owners; and (b) other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership. FEMA proposes to replace the term “real property” with “buildings” because FEMA believes that this change uses plainer language that the public can more easily understand while maintaining the substantive meaning of the definition.

FEMA proposes to revise the definition of “dwelling.” Currently, “dwelling” is defined as “a building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.” FEMA proposes to replace the phrase “building under a condominium form of ownership” with “condominium building” to integrate the defined term “condominium building” while maintaining the substance of the current definition.

FEMA proposes to revise the definition of “emergency program.” Currently, “emergency program” is defined as the initial phase of a community’s participation in the National Flood Insurance Program. The definition also states that during this phase, only limited amounts of insurance are available under the NFIA. FEMA proposes to retain this definition but add at the end the phrase “and the regulations prescribed pursuant to the

Act.” FEMA proposes to add this phrase to align the SFIP definition of this term with its definition at 44 CFR 59.1.

FEMA proposes minor revisions to the definition of “improvements.” Currently, this term is defined as “fixtures, alterations, installations, or additions comprising a part of the insured dwelling or the apartment in which you reside.” FEMA proposes to remove the word “insured” because it is not necessary. It proposes to remove the word “the” from before the word “apartment” for readability.

FEMA proposes to move the definition of “principal residence” from Art. VII.V.1.a.1 (“Loss Settlement”) of the Dwelling Form to the Definitions Section (Article II). Currently, under Article VII.V.1 a principal residence means the single-family dwelling where the policyholder or the policyholder’s spouse has lived for at least 80 percent of (a) the 365 days immediately preceding the time of loss; or (b) the period of ownership, if either the policyholder or policyholder’s spouse owned the dwelling for less than 365 days immediately preceding the time of loss. FEMA proposes to move the substantively unchanged definition to the Definitions Section of Article II because that is the more appropriate place to define terms used in the Dwelling Form.

FEMA proposes to revise the definition for “probation premium” by replacing the defined term “probation premium” with the term “probation surcharge.” “Probation surcharge” would retain the same definition as the current definition for “probation premium,” which is a flat charge the policyholder must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24. FEMA proposes this revision because there is no such thing as a “probation premium;” this incorrect term was intended to reference the probation surcharge that is applied to policies in NFIP communities that have been placed on suspension from the NFIP.

FEMA proposes to amend the definition of “regular program.” Currently, “regular program” is defined as the final phase of a community’s participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the NFIA. FEMA proposes to add the phrase “and the regulations prescribed pursuant to the Act” at the end to clarify, without changing the substance of the definition, that the coverage amounts for NFIP policies are

subject to the rules established in both statute and regulation, not just statute.

FEMA also proposes to modify the definition of “Special Flood Hazard Area” to include the appropriate acronym, “SFHA.”

FEMA proposes to revise the term “unit.” Currently, “unit” is defined as “a single-family unit you own in a condominium building.” FEMA proposes to replace the word “unit” with “residential space” so that the word “unit” would not be used to define itself.

3. Article III Property Covered

Article III of the Dwelling Form (“Property Covered”) is divided into four sections, each addressing different types of property: Section A, “Coverage A—Building Property,” Section B, “Coverage B—Personal Property,” Section C, “Coverage C—Other Coverages,” and Section D, “Coverage D—Increased Cost of Compliance.”

i. Coverage A—Building Property

Article III.A.5.b.2 describes the zones above which the lowest floor of a non-walled or roofed building under construction, alteration, or repair must be to be covered. FEMA proposes to replace “levels are” with “level is” to improve readability. FEMA also proposes to replace “and” with “or,” also to improve readability. No substantive changes are intended.

In Article III.A.6, FEMA proposes to replace the reference to “II.B.6.b and II.B.6.c” with a reference to “II.C.6” to reflect the renumbering proposed for Article II.

Article III.A.7 provides a list of items of property covered under Coverage A only. FEMA proposes to replace “covered” with “insured” because “covered” is a generic and undefined term that does not conform to common industry or Agency usage. The use of “insured” better conveys the application of the SFIP to property.

Article III.A.8 limits coverage on items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building in specified zones. FEMA proposes to remove the phrase “in a building enclosure” to clarify that the section only insures items of property that are below the lowest elevated floor, not the building enclosure itself. This has always been the case, but removing this language would make this clearer. Removing the language would also clarify that FEMA insures any property identified in Article III.A.8 that is below the lowest elevated floor within the footprint of the building, regardless of

whether such property is located in a building enclosure.

ii. Coverage B—Personal Property

Article III.B.1 describes the conditions under which the policy covers personal property inside a building. Current Article III.B.1.b contains two unnumbered paragraphs. FEMA proposes to number these two unnumbered paragraphs as “1.” and “2.” respectively, and to renumber subsequent paragraphs accordingly, to improve readability and organization.

Article III.B.3 (renumbered B.5 in the proposed text) limits coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in specified zones or a basement. FEMA proposes to remove the phrase “in a building enclosure” to clarify that the section only insures items of property that are below the lowest elevated floor, not the building enclosure itself. While FEMA has always interpreted this provision this way, removing this language would make this clearer to policyholders. In addition, this proposed change would also clarify that FEMA insures certain property identified in Article III.B.3 (proposed B.5) that is below the lowest elevated floor within the footprint of the building, regardless of whether such property is located in a building enclosure.

iii. Coverage C—Other Coverages

Article III.C describes other coverages under the SFIP, including for debris removal, property relocation, and condominium loss assessments. In III.C.2.b, FEMA proposes to number the currently unnumbered paragraphs immediately following III.C.2.b.2 as III.C.2.b.3 and III.C.2.b.4, respectively, to improve organization and readability.

Article III.C.3.a describes the terms of coverage for condominium loss assessments. FEMA proposes to revise the first sentence of Article III.C.3.a to add the phrase “Subject to III.C.3.b below” to the beginning of the sentence to clarify that the general statement in III.C.3.a that FEMA would pay for condominium loss assessments would be limited by the restrictions established in III.C.3.b. FEMA also proposes to add “condominium” before “unit” in that sentence, for the sake of clarity. The second sentence in Article III.C.3.a states that the assessment must be made as a result of direct physical loss by or from flood during the policy term, to the building’s common elements. FEMA proposes to replace “as a result of” with “because of” and “to the building’s common elements” with “to the unit or

to the common elements of the NFIP insured condominium building in which this unit is located.” FEMA proposes to revise this language for greater clarity and consistency with the “condominium building” definition added in Article II.

Article III.C.3.b describes scenarios where FEMA will not pay any loss assessment charged against the policyholder. Article III.C.3.b.1 provides that FEMA will not pay any loss assessment charged against the policyholder “and the condominium association by any governmental body.” FEMA proposes to relocate the phrase “charged against you” from III.C.3.b to III.C.3.b.1 to improve the sentence structure of the provision.

Article III.C.3.b.4 states that the NFIP would not insure any loss assessments on units in a condominium building that were underinsured as described in this paragraph. FEMA proposes to remove this paragraph, as these restrictions were superseded by section 100214 of BW-12, which prohibits FEMA from denying coverage for a condominium unit under a Dwelling Form policy based solely, or in part, on the flood insurance coverage of the condominium association or others on the overall property insured by the condominium association. Accordingly, to implement this requirement, FEMA proposes to remove Article III.C.3.b.4 as it prevents unit owners from recovering under the Dwelling Form policy for loss assessments charged against them because the condominium building in which the unit is located is underinsured. FEMA has waived this provision in current practice for affected individual policies. The proposed change would conform the language of the Dwelling Form to FEMA’s current practice and allow FEMA to discontinue use of the individual waiver process.

Current Article III.C.3.b.5 provides that FEMA will not pay for loss assessments to the extent that payment under this policy for a condominium loss, in combination with payments under any other NFIP policies for the same building loss, exceeds the maximum amount of insurance permitted under the NFIA for that kind of building. Similarly, current section III.C.3.b.6 provides that FEMA will not pay for loss assessments to the extent that payment under this policy, in combination with any recovery available to the tenant in common under any NFIP condominium association policies for the same building loss, exceeds the amount of insurance permitted under the NFIA for a single family dwelling. FEMA proposes to renumber these subsections as (4) and

(5) respectively due to FEMA's proposed removal of current subsection (4). In addition, FEMA proposes to revise current subsection (5) (proposed subsection (4)) to state "[i]n which the total payment combined under all policies exceeds the maximum amount of coverage available under the Act for a single unit in a condominium building where the unit is insured under both a Dwelling Policy and a RCBAP." FEMA also proposes to revise current subsection (6) (proposed subsection (5)) to state "[o]n any item of damage that has already been paid under a RCBAP where a single unit in a condominium building is insured by both a Dwelling Policy and a RCBAP." FEMA proposes this revised language to streamline these provisions and to make the same points more clearly.

The last sentence of current III.C.3.b.6 states that "[l]oss assessment coverage does not increase the Coverage A Limit of Liability." FEMA proposes to renumber this sentence as III.C.3.c. FEMA also proposes to revise the language so that it reads "Condominium Loss Assessment coverage does not increase the Coverage A Limit of Liability and is subject to the maximum coverage limits available for a single family dwelling under the Act, payable between all policies issued and covering the unit, under the Act." This would clarify that the combined payments under the Dwelling Form and the RCBAP, or any other payment issued under the Dwelling Form to a unit owner where there is also an RCBAP that covers the property, are subject to the \$250,000 coverage limit on the combined payments under both policies. Congress only authorized a maximum coverage of \$250,000 on a single dwelling, and both the RCBAP and Dwelling Forms rely upon that single authority for establishing the available policy limits. As such, the unit owner and the condominium association each filing separate claims under their separate policies cannot circumvent the limit imposed by Congress. FEMA proposes to add this language to emphasize the point that even though a condominium unit may be insured by both a Dwelling Form policy and an RCBAP, this fact does not alter the statutory coverage limits.

iv. Coverage D—Increased Cost of Compliance

Article III.D ("Increased Cost of Compliance") describes the terms of coverage for costs associated with complying with State or local floodplain management laws or ordinances affecting repair or reconstruction of a structure suffering flood damage. FEMA

proposes to revise the language in this section so that the word "structure" is replaced by the word "building" throughout the section. The reason for this change is the NFIP insures SFIP defined "buildings," not structures. FEMA also proposes to replace the phrase "this coverage" with the phrase "Coverage D in III.D.3.d and III.D.3.e" to clarify that the coverage referred to in these provisions is Coverage D.

4. Article V Exclusions

Article V of the Dwelling Form ("Exclusions") provides the terms and conditions of the SFIP relating to what losses are excluded from coverage under the SFIP. Article V.B excludes coverage for losses resulting from a flood that began prior to the effective date of a policy; this is referred to as the "flood in progress" exclusion. If the SFIP covered losses for policies obtained after a flood became imminent, people could avoid paying for insurance during the times they did not need to make a claim. FEMA would then have to increase rates to compensate for the lost premiums and higher losses. This would in turn drive more people out of the program, which would require higher rates.

Currently, the exclusion specifies that FEMA will not pay for a loss that was "directly or indirectly caused by a flood that is already in progress" prior to the effective date of the policy. FEMA is proposing changes to Article V because the current language does not describe how a policyholder could determine when a flood was in progress. This ambiguous provision has historically caused significant confusion among the public. As a result, FEMA made several attempts to clarify the provision and apply it to the specific attributes of certain floods. *See* WYO Bulletin W-11030 (May 17, 2011); WYO Bulletin W-11034 (June 6, 2011); WYO Bulletin W-11045 (June 30, 2011); Definitions Section of the Flood Insurance Manual, page 4.

While these clarifications provided workable guidance on the issue, BW-12 directed the FEMA Administrator to review "the processes and procedures for determining that a flood event has commenced or is in progress for purposes of flood insurance coverage made available under the National Flood Insurance Program." BW-12 section 10227(a)(1)(A) (42 U.S.C. 4011 note). Accordingly, FEMA now proposes to modify the Flood in Progress Exclusion to maintain its practical impact, but to provide clearer terms for its application.

FEMA proposes to revise the language of Article V.B to allow for two separate exclusions for floods in progress,

depending on how the policyholder applied for the policy. If the policy became effective at the time of a loan closing, as provided by 44 CFR 61.11(b), then FEMA would not pay for losses caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, FEMA would not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day the policyholder submitted the application for coverage and paid the full amount due. This exclusion would apply to new policies subject to the 30-day waiting period, as well as those for which the overnight waiting period is applied, as provided by 42 U.S.C. 4013(c)(2)(b).

FEMA believes the proposed formulation provides a more thorough understanding of what constitutes a flood in progress, providing greater clarity to policyholders, without altering the actual effect of the provision because the proposed language captures the principles underlying the previous agency guidance. FEMA also believes the proposed language would successfully prevent a policyholder from waiting until flooding becomes imminent to apply for coverage, as well as prevent a person facing imminent flooding from obtaining a small mortgage to avoid the otherwise 30-day effective date waiting period required by 42 U.S.C. 4013(c)(1).

In article V.C.6, regarding gradual erosion, FEMA proposes to replace "insured" with "covered" because "covered" is a generic and undefined term that does not conform to common industry or Agency usage. The use of "insured" better conveys the application of the SFIP to property. Also in article V.C.6, FEMA proposes to update the reference to the definition of flood to articles II.B.1.c and II.B.2.

5. Article VII General Conditions

Article VII ("General Conditions") provides the general terms and conditions of the Dwelling Form SFIP, such as provisions related to other insurance; amendments, waivers, and assignments; policy reformation; policy renewal; requirements if there is a loss; and loss payments.

i. Section B—Concealment or Fraud and Policy Avoidance

Article VII.B ("Concealment or Fraud and Policy Avoidance") provides the general terms and conditions of the Dwelling Form SFIP related to concealment or fraud and policy avoidance. FEMA proposes to move Article VII.B to a new Article VIII.A ("Policy Nullification for Fraud,

Misrepresentation, or Making False Statements”) and make some revisions, which are explained in the discussion of new Article VIII below.

ii. Section C—Other Insurance

Article VII.C (“Other Insurance”) discusses terms related to instances where property is covered by more than one insurance policy with flood coverage. FEMA proposes to redesignate Article VII.C as Article VII.B due to FEMA’s proposed removal of VII.B. Current Article VII.C.2 (proposed VII.B.2) states that where there is other insurance in the name of the policyholder’s condominium association covering the same property covered by this policy, then this policy will be in excess over the other insurance. FEMA proposes to replace the word “covered” with “insured.” FEMA proposes to replace the word “covered” with the word “insured” because “covered” is a generic and undefined term that does not conform to common industry or Agency usage. The use of “insured” better conveys the application of the SFIP to property. FEMA also proposes to add the phrase “issued under the Act” directly following the phrase “other insurance” to clarify that the language referring to other insurance is referring to other NFIP insurance, not other non-NFIP insurance.

FEMA proposes to add language to Article VII.C.2 (proposed VII.B.2) to provide that the section does not apply where a condominium loss assessment to the unit owner results from a loss sustained by the condominium association that was not reimbursed under an RCBAP because the building was not insured for an amount equal to the lesser of: (a) 80 percent or more of its full replacement cost; or (b) the maximum amount of insurance permitted under the NFIA. FEMA proposes to add this exception to codify the existing implementation of section 100214 of BW-12. Under the terms and conditions of the Dwelling Form policy and the RCBAP, the RCBAP is primary, and the Dwelling Form policy acts as an excess flood insurance policy. In order to allow the Dwelling Form to respond as if the RCBAP coverage has in fact been exhausted, FEMA must revise Article VII.C.2 (proposed VII.B.2) so that it does not apply in those situations in which the coinsurance provision of the RCBAP has been triggered.

FEMA also proposes to add language to proposed Article VII.B.2 clarifying that even when a condominium unit is insured by two policies, the maximum statutory coverage limit available under the NFIA of \$250,000 still applies.

FEMA proposes to add this language to emphasize that the fact that a condominium unit is insured by both a Dwelling Form policy and an RCBAP does not alter or permit payments to exceed the statutory coverage limits.

iii. Section D—Amendments, Waivers, Assignment

Article VII.D (“Amendments, Waivers, Assignment”) provides that any amendments or waivers to the policy require express written consent of the Federal Insurance Administrator. It allows a policyholder to assign this policy when transferring title of his or her property except when the policy (1) covers only personal property, or (2) covers a structure during the course of construction. FEMA proposes to redesignate Article VII.D as Article VII.C due to the proposed removal of VII.B and subsequent renumbering discussed above. FEMA proposes to replace the phrase “structure during the course of construction” with “building under construction” both to correspond with the replacement of the word “structure” with “building” throughout Article V of the policy, and also because “building under construction” is the proper term of art, as used in Article III.A.5.a and Article VI.A. Also, FEMA proposes to replace “covers” with “insures” because “covered” is a generic and undefined term that does not conform to common industry or Agency usage. The use of “insured” better conveys the application of the SFIP to property.

iv. Section E—Cancellation of the Policy by You

Article VII.E (“Cancellation of the Policy by You”) authorizes a policyholder to cancel the policy in accordance with the applicable rules and regulations of the NFIP and provides that a policyholder who cancels may be entitled to a full or partial refund of premium. FEMA proposes to move Article VII.E to a new Article VIII discussing policy nullifications, cancellations, and non-renewals. The new Article VIII is discussed below.

v. Section F—Non-Renewal of the Policy by Us

Article VII.F (“Non-Renewal of the Policy by Us”) states that a policy will not be renewed if the community where the covered property is located stops participating in the NFIP, or the building has been declared ineligible under section 1316 of the NFIA. FEMA proposes to move Article VII.F to a new Article VIII discussing policy nullifications, cancellations, and non-

renewals. The new Article VIII is discussed below.

vi. Section G—Reduction and Reformation of Coverage

Article VII.G (“Reduction and Reformation of Coverage”) describes the terms and conditions of the policy related to situations in which it is discovered that the premium paid on an annual policy, or the information used to rate the policy, is insufficient. Specifically, this section details how coverage under the policy would be reformed in such situations and the policyholder’s options upon reformation.

FEMA proposes to redesignate Article VII.G as Article VII.D to conform to the relocation and redesignation of preceding sections described above. FEMA proposes to change the title of the section from “Reduction and Reformation of Coverage” to “Insufficient Premium or Rating Information.” FEMA proposes this change to the title because it is clearer than the current section title. Additionally, FEMA proposes to add the term “insufficient” before “rating information” to make it clear that this provision applies to both cases: Where the information needed to rate the policy is incomplete and where it is incorrect. With respect to the premium, the term “insufficient” applies to situations in which the premium paid is incorrect. With respect to the rating information, the term “insufficient” applies to situations in which the rating information provided for determining the premium rate is incomplete, such as when an elevation certificate is not provided or is incorrect. FEMA proposes to make corresponding language changes throughout this section to ensure that the provisions of this section are applied in both of these situations.

FEMA proposes to add a new Article VII.D.1, entitled “Applicability.” The proposed Article would state that the provisions in proposed Article VII.D, Insufficient Premium or Rating Information, apply to all instances where the premium paid on a policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided. This change reflects FEMA’s current policies and would not substantively impact the NFIP.

Current Article VII.G.1 provides that if the premium received was not enough to buy the kind and amount of coverage requested, FEMA will provide only the amount of coverage that can be purchased for the premium payment received. FEMA proposes to redesignate

this section as Article VII.D.2 to correspond to the redesignations described above, and add a title, “Reforming the Policy with Reduced Coverage,” for improved clarity. FEMA proposes to add the phrase “Except as otherwise provided in VII.D.1” at the beginning of the paragraph. FEMA proposes this change to correspond to the exception established in the new proposed language at VII.D.1. FEMA also proposes to replace the phrase “not enough” with the phrase “not sufficient,” the word “amount” to “amounts,” and replace “only the amount of coverage” with “only the kinds and amounts of coverage.” FEMA believes that these non-substantive changes would improve readability.

FEMA proposes to add three paragraphs to this section. Proposed paragraph D.2.a clarifies that, for determining whether the premium is sufficient to buy the kinds and amounts of coverage requested, FEMA will first deduct all applicable fees and surcharges. Proposed paragraph D.2.b clarifies that if the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, the Program will refund the policyholder’s payment and there will be no coverage under the policy. FEMA proposes to add these clarifications because they are not explicitly stated in the current regulations, although FEMA has previously interpreted regulations to require this. Thus this is not a substantive change but merely reflects existing practice. Proposed paragraph D.2.c states that “[c]overage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.” FEMA proposes this paragraph to codify its current practice. When FEMA calculates the total policy cost, it knows how much of the total cost will be allocated to premium, surcharges, fees, etc. Under FEMA’s current practice, it tries to preserve the ratio of building coverage to contents coverage, regardless of how much premium the policyholder intended to allocate to each type of coverage. For example, if a policyholder originally requested \$200,000 in building coverage and \$100,000 in contents, FEMA would try to preserve the 2 to 1 ratio when reducing the coverage through reformation. The proposed rule seeks to clarify that FEMA’s practice is to reflect the policyholder’s intent by considering the amount of premium the policyholder intended to allocate to each type of coverage. Using the example above,

therefore, if the policyholder paid a total of \$600 premium, wishing to allocate \$500 for the \$200,000 in building coverage and \$100 for the \$100,000 in contents, FEMA would provide the amount of building coverage that \$500 would purchase under the reformed rate, and the amount of contents coverage that \$100 would purchase under the reformed rate.

Current Article VII.G.2 discusses how a policy can be reformed to increase the amount of coverage where insufficient premium or incomplete rating information is discovered before a loss (current paragraph (a)), and where insufficient premium or incomplete rating information is discovered after a loss (current paragraph (b)). FEMA proposes to redesignate current Article VII.G.2 as VII.D.3 and to restructure it to improve organization and readability. Specifically, FEMA proposes to combine the provisions on discovery of insufficient premium or rating information before a loss and discovery of insufficient premium or rating information after a loss. To that end, the Agency proposes to title proposed Article VII.D.3 as “Discovery of Insufficient Premium or Rating Information.” The proposed subsection would state that if the Program discovers that the premium or rating information is insufficient, the Program would reform the policy as described in proposed Article VII.D.2. The proposed subsection also gives policyholders the option of increasing the amount of coverage resulting from the reformation to the amount he or she requests in accordance with the rest of the section. This does not constitute a substantive change from the current regulations and procedure; rather, it is a streamlining of the current regulations without altering the substance.

Proposed Article VII.D.3.a would be entitled “Insufficient Premium” and would address situations where FEMA discovers that the premium is insufficient. This section would retain the first sentence in current VII.G.2.a.1 providing that where FEMA discovers the policyholder has not paid enough premium, the policyholder, and any mortgagee or trustee of which the insurer has written notice, will be sent a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). From the current language, FEMA proposes to replace “enough” with “sufficient” to align with current program usage and proposes to add commas after “you” and “us” to improve readability.

The last sentence in current VII.G.2.a.1 provides that where the policyholder pays the additional premium within 30 days from the date the bill is sent, the Program will reform the policy to the originally requested amount of coverage. FEMA proposes to relocate this last sentence to its own separate subsection (proposed VII.D.3.a.1) and replace it with language stating that if it is discovered that the initial amount charged for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill. FEMA proposes this sentence because in addition to the premium, policyholders must pay additional fees and surcharges, which can vary based on the characteristics of the property and its use; this language reflects its existing practice that FEMA adjusts the total bill for overpayment or underpayment of fees and surcharges.

As mentioned above, FEMA proposes to relocate the last sentence in current Article VII.G.2.a.1 to its own separate subsection (proposed VII.D.3.a.1). Because this language only addresses what happens if the policyholder pays the additional premium within 30 days from the date the bill is sent, FEMA proposes to add additional language (proposed VII.D.3.a.2) clarifying that if the policyholder does not pay the premium within 30 days from the date of the bill, the Program would settle any flood insurance claim based on the reduced amount of coverage (as reduced pursuant to Article VII.D.2). This is already implicitly in the current regulation and FEMA’s current practice, but FEMA proposes to add it to improve the clarity of the regulation.

FEMA proposes to add a third subsection (proposed VII.D.3.a.3) allowing the policyholder the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage. Though not explicitly anticipated in the SFIP, FEMA currently provides this option to policyholders through coordination of disbursement of claim proceeds and additional premium collections with the insurer. FEMA proposes to incorporate this option into the SFIP to provide policyholders with a comprehensive understanding of their options after FEMA discovers a misrating after a loss.

Proposed Article VII.D.3.b would be entitled “Insufficient Rating Information” and would address situations where it is discovered that the rating information is insufficient. This section would retain the substance of the first sentence in VII.G.2.a. stating that if it is determined that the rating

information for the policy is insufficient and prevents the insurer from calculating the additional premium, the policyholder would be required to provide this information within 60 days of a request by the insurer. The last sentence in current VII.G.2.a.2 provides that once the amount of additional premium for the current policy term is determined, the procedures outlined in G.2.a.1 will be followed. FEMA proposes to relocate this sentence to its own subsection (proposed VII.D.3.b.1) and revise it to state that where information is received within 60 days, the amount of additional premium for the current policy term would be determined and the procedures in VII.D.3.a would be followed.

Current VII.G.2.a.3 and G.2.b.3 address situations where the additional premium or information is not received by the date it is due. FEMA proposes to replace these sections with proposed VII.D.3.b.2 to state that where information is not received within 60 days of the request, no claims would be paid until the requested information is provided. Coverage would be limited to the amount of coverage that could be purchased for the payments received, as determined when the requested information is provided. The proposed provision reflects FEMA's existing interpretation of the SFIP, as reflected in the General Rules Section of the Flood Insurance Manual, page 13. FEMA proposes this provision to clearly reflect FEMA's policy.

FEMA proposes to add a new Article VII.D.4, entitled "Coverage Increases," which would incorporate the language in current Articles VII.G.2.a.3 and VII.G.2.b.3. The proposed language states that if the policyholder does not submit the amounts requested in Article VII.D.3.a or the additional information requested in Article VII.D.3.b by the date it is due, the amount of coverage could only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases would be allowed until the information requested in Article VII.D.3.b is provided. FEMA proposes this additional language to explicitly state the currently implied consequence of not providing the necessary payment or information.

Finally, FEMA proposes to redesignate current Article VII.G.3 as Article VII.D.5, which would be entitled "Falsifying Information." Currently, this paragraph states that if the policyholder or their agent intentionally did not tell FEMA about, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions allowing policy cancellations

for fraud will apply. FEMA proposes to update the references to other policy provisions to align with the citations as revised under this proposed rule.

In section J (proposed section G) ("Requirements in Case of Loss"), section L (proposed section I) ("No Benefit to Bailee"), and section T (proposed section Q) ("Continuous Lake Flooding"), FEMA proposes to replace "covers" with "insures" because "covered" is a generic and undefined term that does not conform to common industry or Agency usage. The use of "insured" better conveys the application of the SFIP to property.

As a consequence of the changes proposed above, FEMA also proposes to renumber sections H through T as sections E through Q. No other changes were made to these sections other than conforming cross-references.

vii. Section U—Duplicate Policies Not Allowed

Article VII.U ("Duplicate Policies Not Allowed") currently describes restrictions on insuring property with more than one NFIP policy. FEMA proposes to remove the Section and incorporate the language into the new language at Articles I.F and VIII.D (discussed in III.C.1.ii and III.C.6.iv of this document, respectively). FEMA further proposes to redesignate all subsequent sections in Article VII, starting with section "VII.V" as "VII.R."

viii. Section V—Loss Settlement

Current Article VII.V ("Loss Settlement") (proposed VII.R) describes the three methods for settling losses under the SFIP: Replacement cost loss settlement, special loss settlement, and actual cash value loss settlement. Article VII.V.1.a.1 (proposed VII.R.1.a.1) provides that replacement cost loss settlement applies to a single-family dwelling provided that it is the policyholder's principal residence within the meaning described further in the paragraph. As discussed in III.C.2, FEMA proposes to remove the definition of "principal residence" currently embedded in this provision and move it to the Definitions article of the SFIP. This change would improve readability of the provision without substantive impact.

Throughout proposed section VII.R, FEMA proposes to update internal references to this section (*i.e.*, replacing "V" with "R").

ix. Internal Citation Updates Within Article VII

FEMA proposes to redesignate the letter identifiers for the following sections due to the redesignation of

earlier sections of Article VII. The changes are as follows: Current Article VII.J (proposed VII.G), Requirements in Case of Loss; current Article VII.M (proposed VII.J), Loss Payment; current Article VII.T (proposed VII.Q), Continuous Lake Flooding; and current Article VII.V (proposed VII.R), Loss Settlement.

6. Article VIII Policy Nullification, Cancellation, and Non-Renewal

As discussed above, FEMA proposes to add a new Article VIII ("Policy Nullification, Cancellation, and Non-Renewal"), which would address in one place all the current reasons for which a policy may be nullified, cancelled, or non-renewed. This would consolidate the policy nullification, cancellation, and non-renewal reasons currently in the Dwelling Form at Article VII.B ("Concealment or Fraud and Policy Voidance"), VII.E ("Cancellation of the Policy by You"), and VII.F ("Non-Renewal of the Policy by Us"), and VII.U ("Duplicate Policies Not Allowed"). It would also incorporate the reasons that are being codified into regulation at 44 CFR 62.5 (discussed below). This consolidation would improve the organization and structure of the document. This new article would also improve transparency to the policyholder regarding the reasons for which a policy may be nullified, cancelled, or non-renewed.

i. Section A—Policy Nullification for Fraud, Misrepresentation, or Making False Statements

Current Article VII.B.1–3 provides that a policy is void, has no legal force or effect, cannot be renewed, and cannot be replaced by a new NFIP policy if the policyholder (or another insured or agent) has intentionally concealed or misrepresented any material fact or circumstance, engaged in fraudulent conduct, or made false statements related to this or any other NFIP policy. It also provides that the policy would be void as of the date the wrongful acts were committed, and that fines, civil penalties, and imprisonment may also apply. FEMA proposes to move these sections to Article VIII.A, rename it "Policy Nullification for Fraud, Misrepresentation, or Making False Statements," and reorganize it without substantive change for greater clarity.

ii. Section B—Policy Nullification for Reasons Other Than Fraud

Current Article VII.B.4 provides that the policy is void and has no legal force where the property is located in a community not participating in the NFIP on the policy's inception date and

did not join or reenter the program during the policy term and before the loss occurred, or if the property is not otherwise eligible for NFIP coverage. FEMA proposes to establish a new Article VIII.B, entitled “Policy Nullification for Reasons Other Than Fraud” which would incorporate the provisions of current VII.B.4 but add additional reasons that a policy may be void. These are: (1) The applicant or policyholder never had an insurable interest (proposed VIII.B.1.c); (2) the policyholder provided an agent with an application and payment, but the payment did not clear (proposed VIII.B.1.d); and (3) the insurer received notice from the policyholder, prior to the policy effective date, that the policyholder has decided not to take the policy and the policyholder is not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract. These added reasons for policy voidance reflect current agency interpretations and practices, as reflected in the Cancellation/Nullification Section of the Flood Insurance Manual.

FEMA proposes to add Article VIII.B to state that the applicant or policyholder would be entitled to a full refund of all premium, fees, and surcharges received, but if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed. This reflects current agency interpretations and procedures, as reflected in the Cancellation/Nullification Section of the Flood Insurance Manual.

iii. Section C—Cancellation of the Policy by You

Current Article VII.E (“Cancellation of the Policy by You”) provides that a policyholder may cancel the policy in accordance with the NFIP’s rules and regulations, in which event they may be entitled to a full or partial refund of premium under those same rules and regulations. FEMA proposes to incorporate the provisions of current Article VII.E into a new Article VIII.C, entitled “Cancellation of the Policy by You.” The proposed section C would retain the same language except for two changes. First, instead of stating “in accordance with the applicable rules and regulations of the NFIP,” it would state “in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.” Second, it would replace the phrase “premium also under the applicable rules and regulations of the

NFIP” with “premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.” No substantive change is intended.

iv. Section D—Cancellation of the Policy by Us

FEMA proposes to establish a new Article VIII.D, entitled “Cancellation of the Policy by Us,” which would state four reasons for which a policy may be cancelled by the insurer: 1. Cancellation for underpayment of amounts owed on the policy, 2. cancellation due to lack of an insurable interest, 3. cancellation of duplicate policies, and 4. cancellation due to physical alteration of property.

The first reason for which the insurer may cancel a policy is in proposed Article VIII.D.1, entitled “Cancellation for Underpayment of Amounts Owed on Policy.” This provision would state that the insurer may cancel the policy if, pursuant to VII.D.2, it is determined that the amounts paid by the policyholder were not sufficient to buy any amount of coverage, and the policyholder did not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period. FEMA proposes to add this cancellation reason to align with current practice, as reflected in proposed VII.D.2, that FEMA will cancel a policy where the policyholder has paid a premium that is insufficient to buy a policy with the lowest available coverage limits.

FEMA proposes to add the second reason for which the insurer may cancel a policy in proposed Article VIII.D.2, entitled “Cancellation Due to Lack of an Insurable Interest.” Proposed Article VIII.D.2.a would state that if the policyholder no longer has an insurable interest in the insured property, the insurer will cancel the policy, and that the policyholder would cease to have an insurable interest if (1) for building coverage, the building was sold, destroyed, or removed, and (2) for contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location. Proposed Article III.D.2.b would state that if a policy is cancelled for these reasons, the policyholder may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP. This reflects FEMA’s current practice and interpretations, as shown in the Cancellation/Nullification section of the Flood Insurance Manual, pages 1–2 (“1. Building Sold or Removed, Destroyed or Physically Altered to no Longer Meet the Definition of an Eligible Building”).

FEMA proposes to add the third reason for which the insurer may cancel a policy in proposed Article VIII.D.3, entitled “Cancellation of Duplicate Policies.” Article VIII.D.3 would have three subsections. Subsection (a) would state that except as allowed under Article I.G (*i.e.*, for a Dwelling Form policy on a condominium unit that is also insured by an RCBAP policy), property may not be insured by more than one NFIP policy. This would incorporate the language in the current Article VII.U, stating that duplicate policies are not allowed under the NFIP, as well as the exception to that rule created in Article I.G. FEMA also proposes to add that payment for damages will only be made under one policy. This would align with current Article VII.U, which prevents coverage under more than one NFIP policy and VII.U.2, which states which one policy will pay for a loss in the case of duplicate policies. This proposed language would improve the clarity of the policy by explicitly stating what is currently strongly implied in the SFIP.

Subsection (b) would state that except as allowed under Article I.G, if the property is insured by more than one NFIP policy, all but one of the policies will be cancelled, and that the policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP. FEMA proposes to add this provision in conjunction with its proposed revisions to the cancellation provisions at 44 CFR 62.5 (discussed below).

Subsection (c) would state that if a policy is cancelled pursuant to VIII.D.4.b, the policyholder may be entitled to a full or partial refund of premium, surcharges, or fees. FEMA proposes to add the third subsection in conjunction with the refund rules proposed at 44 CFR 62.5.

FEMA proposes to add the fourth reason for which the insurer may cancel a policy in proposed Article VIII.D.4, entitled “Cancellation Due to Physical Alteration of Property.” The proposed provision states that the insurer may cancel the policy if the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, and that if the policy is cancelled for this reason, the policyholder may be entitled to a partial refund of premium under the terms and conditions of the policy and the applicable regulations of the NFIP. This reflects current agency practice and interpretations, as shown in the Cancellation/Nullification section of the Flood Insurance Manual, pages 1–2.

v. Section E—Non-Renewal of the Policy by Us

Current Article VII.F (“Non-Renewal of the Policy by Us”) provides that a policy will not be renewed if the community where the covered property is located stops participating in the NFIP, or if the building has been declared ineligible under the section 1316 of the NFIA. FEMA proposes to incorporate these provisions into proposed Article VIII.E, entitled “Non-Renewal of the Policy by Us.” FEMA proposes to retain both provisions stating that the property is located in a suspended or non-participating community and the building is ineligible for NFIP coverage, but proposes to move the words “if” from the beginning of each subsection and instead put the word “if” directly after the phrase “will not be renewed”; to replace the word “covered” with “insured,” and replace the phrase “has been declared” with the phrase “is otherwise.” FEMA proposes these revisions to improve the language.

FEMA also proposes to add a new provision stating that the policy will not be renewed if the policyholder has not provided the information necessary to rate the policy within the required deadline. FEMA proposes to add this third reason for which a policy will not be renewed to clarify that a policyholder has an obligation to provide the information needed to rate the policy and that failure to provide this information within the required deadline will result in that policy not being renewed. This is implicit in the language of Article I of the SFIP and reflects FEMA’s current practices, but the proposed language is a more explicit statement needed to increase the transparency and clarity of the policy.

FEMA further proposes to renumber current Articles VIII and IX as IX and X, respectively, due to the renumbering of prior articles.

7. Article IX What Law Governs

Current Article IX (“What Law Governs”) describes which law applies to the SFIP. FEMA proposes to redesignate current Article IX as Article X and to add “the insurer’s policy issuance” and “policy administration” to the list of insurer activities taken under the NFIP that must be governed exclusively by the National Flood Insurance Act of 1968, the regulations prescribed pursuant to the Act, and Federal common law. FEMA proposes this change to clarify that the NFIP insurer’s policy issuance and policy administration operations are also

governed solely by the Act, the NFIP’s regulations, and Federal common law.

8. Signing Statement

The Dwelling Form of the Standard Flood Insurance Policy concludes with a signing statement that references the “Federal Insurance Administration.” FEMA proposes to changes this to the “Federal Insurance and Mitigation Administration” to align with the current organizational title.

D. Appendix A(2) to Part 61: General Property Form

FEMA proposes to revise the General Property Form of the SFIP in a manner consistent with the revisions to the Dwelling Form of the SFIP described above. Except as indicated in the sections below, the changes FEMA is proposing to the General Property Form are identical to those in the Dwelling Form.

1. Article I Agreement

In the current General Property Form, the first paragraph is a prefatory statement regarding what the policy does not cover, and it is outside of Article I. As FEMA proposed above in Article I of the Dwelling Form of the SFIP, FEMA proposes to move this statement so that it is included in Article I and labeled section “A.” FEMA proposes to further revise this section in the General Property Form to include a statement about what the General Property Form does cover. FEMA proposes to add language stating that except as provided in Article I.A.2 (the current language stating what the policy does not cover), “this policy provides coverage for multifamily buildings (residential buildings designed for use by 5 or more families that is not a condominium building), non-residential buildings, and their contents.” This clear statement would help differentiate the General Property Form from the other SFIP policy forms.

In addition, the proposed General Property Form would not include the proposed Dwelling Form’s Art. I.G, which provides that a building may be covered under both a Dwelling Form policy and a RCBAP. General Property Form policies may only insure non-residential buildings, while RCBAP may only insure residential condominium buildings. Accordingly, Art. I.G would not apply similarly in the General Property Form.

2. Article II Definitions

The definitions FEMA proposes to add, delete, or revise in Article II of the General Property Form of the SFIP, “Definitions,” would be the same as

those in the Dwelling Form of the SFIP, insofar as those terms are also defined in the General Property Form, with one exception. FEMA proposes to revise the definition of “unit” in the General Property form to mean “a single-family residential or non-residential space you own in a condominium building.” Although this is different from the definition used in the Dwelling Form (the Dwelling Form covers only residential properties, whereas the General Property Form covers both residential and non-residential properties), the reason for this proposed revision is the same—to remove the word “unit” within the definition of “unit.”

3. Article III Property Covered

Article III.A. describes the conditions under which the policy covers building property. Article III.A.2 provides that the policy covers building property at a location other than the one described on the Declarations Page according to certain conditions. FEMA proposes to replace the phrase “We also insure building property . . .” with “Building property located at another location . . .” to reduce redundancy and improve readability with the first sentence of the paragraph, which states “We insure against direct physical loss by or from flood to:”. Article III.A.6.a provides the conditions for coverage where the structure is not yet walled or roofed as described in the definition for “building.” The subsection erroneously cites to “II. 6.a.” rather than to “II.B.6.a.” as the location for the definition of “building.” FEMA proposes to add “B” to the citation to correct the typographical error.

Article III.B.1 describes the conditions under which the policy covers personal property inside a building. Current Article III.B.1.b contains an unnumbered paragraph after paragraph B.1.b. FEMA proposes to number this unnumbered paragraphs as “2”, and to renumber subsequent paragraphs accordingly, to improve readability and organization.

E. Appendix A(3) to Part 61: Residential Condominium Building Association Policy

FEMA proposes to amend the Residential Condominium Building Association Policy (RCBAP) Form of the SFIP in a manner consistent with the revisions to the Dwelling Form of the SFIP. The changes made to the RCBAP Form would be identical to those in the Dwelling Form for all provisions that these two forms have in common. Additionally, FEMA proposes to replace reference to the “FEMA Regional

Director” with “FEMA Regional Administrator” in current VIII.T.2.h (proposed VIII.Q.2.h) to align with the current organizational title.

F. Part 62: Sale of Insurance and Adjustment of Claims

Part 62 sets forth the manner in which NFIP flood insurance is made available to the public in participating communities, prescribes the general method by which FEMA exercises its responsibility regarding the manner in which claims for losses are paid, and states reasons for which a policy may be nullified or cancelled and the associated refunds.

1. Part 62 Authority Citation

The current authority citation for part 62 is 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. FEMA proposes to replace the citations to Reorganization Plan No. 3 and Executive Order 12127 with a citation to the codification of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.* The authority citation would therefore read 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.* FEMA proposes this change because while Reorganization Plan No. 3 and Executive Order 12127 originally created FEMA as an executive agency, PKEMRA amended the Homeland Security Act of 2002, Public Law 107–296, by establishing the Agency in statute and defining the Agency’s authorities and responsibilities. Accordingly, a citation to the codification of the Homeland Security Act is more appropriate.

2. Section 62.3 Servicing Agent

Section 62.3 currently describes the Flood Insurance Administrator’s authority to enter into an agreement with a servicing agent that can service policies and claims on behalf of the Agency. Paragraph (a) currently states that the Federal Insurance Administrator “has entered into the Agreement” with a servicing agent. Section 62.3(b) currently names National Con-Serv, Inc. (NCSI) as FEMA’s servicing agent for its direct side policies. FEMA proposes to make a change to paragraphs (a), remove paragraph (b), and renumber paragraph (c) as paragraph (b) to better describe the present status of the direct servicing agent.

In section 62.3(a), FEMA proposes to replace the words “has entered into the Agreement” with the words “may enter into an agreement.” The current formulation states a current fact, rather

than defining the Agency’s powers and duties, which is a traditional role of a rule. Further, the use of “the Agreement” seems to imply that a particular agreement must be entered into with the servicing agent. However, no such standard agreement exists in regards to contracting with a direct servicing agent. FEMA contracts with servicing agents in accord with the Federal Acquisition Regulations.⁵ This adjustment better describes the Administrator’s authority to decide whether or not to use the services of a servicing agent, and if choosing to do so, the terms of the agreement.

FEMA proposes to remove section 62.3(b) because the current regulation lists NCSI as the NFIP Direct Servicing Agent even though this is not accurate and it is unnecessary to name a government contractor in the Code of Federal Regulations. Contact information for the Direct Servicing Agent is provided to each policyholder sold NFIP flood insurance through the Direct Servicing Agent. FEMA also provides this information on its website.⁶ Removing this from regulation would reduce the burden on FEMA to undertake a rulemaking each time the Direct Servicing Agent changes, while not materially impacting the public.

After removing current paragraph (b), FEMA proposes to renumber current paragraph (c) as paragraph (b).

With respect to section 62.3(b), FEMA proposes to remove the paragraph because the named servicing agent is no longer accurate—NCSI is no longer FEMA’s direct servicing agent. FEMA proposes to add a new paragraph (b) stating that FEMA will provide public notice of the name of the servicing agent in the **Federal Register**. This change will allow the agency greater flexibility in providing public notice of the identity of its direct servicing agent without having to undertake a full rulemaking to do so.

3. Section 62.5 Premium Refund

Section 62.5 describes reasons for which FEMA will allow cancellation of a policy. Section 62.5 currently allows a policyholder to cancel a policy for two reasons. First, the policyholder may cancel a policy that covers property for which the policyholder is no longer required to maintain flood insurance because a Letter of Map Amendment issued under part 70 has determined that the property is not located in an SFHA. Second, the policyholder may cancel a policy that is a three-year policy where the policyholder has either obtained a replacement flood insurance

policy or the lender has provided the NFIP with actual notice that the mortgage has been paid off and/or the lender no longer requires the policyholder to maintain flood insurance.

In addition to section 62.5, section 61.5(c) and certain sections of the SFIP also describe the reasons for which FEMA will allow cancellation of a policy. FEMA proposes to remove current section 62.5 and replace these various regulatory provisions with a comprehensive new section 62.5 codifying all the reasons for which FEMA allows a policyholder to cancel or nullify a policy, as well as the handling of associated premium refunds. FEMA proposes to entitle section 62.5 “Nullifications, Cancellations, and Premium Refunds.” In this new section 62.5, FEMA proposes to incorporate the first policy cancellation reason (e.g., the property is no longer in a SFHA), discussed in more detail below. FEMA proposes to remove the second reason because it refers to a three-year insurance policy the NFIP no longer uses. FEMA proposes to consolidate the remaining reasons for which the NFIP may nullify or cancel a policy in section 62.5.

i. Paragraph (a): Nullification

Paragraph (a) of this new section, entitled “Nullification,” would describe all the reasons for which FEMA may terminate a policy. Subparagraph (1), entitled “Property Ineligible at Time of Application,” would state that a policy for a property that was not eligible for coverage at the time of the initial application will be considered void from commencement. This paragraph would also provide the rules and limitations governing the applicability of this nullification reason, as well as the associated premium refunds. FEMA has previously handled situations where property was ineligible for flood insurance at the time of application via NFIP procedures. FEMA proposes to codify existing practice, found at Reason Code 6 from the Nullification/Cancellation section of the Flood Insurance Manual, into regulation to ensure consistent application of the procedures and to provide a comprehensive nullification section in regulation.

Subparagraph (2), entitled “Property Later Becomes Ineligible,” would state that a policy for a property that was eligible for coverage at the time of the initial application, but later became ineligible for coverage, may not be renewed and will be void from the first renewal date after the property became ineligible. This paragraph would also

⁵ See 48 CFR part 37.

provide the rules and limitations governing the applicability of this nullification reason, as well as the associated premium refunds. This would further codify Reason Codes 1 and 6 from the Nullification/Cancellation section of the Flood Insurance Manual into regulation.

Paragraph (3), entitled “Nullification Prior to Policy Effective Date,” would clarify that in cases where a policy is nullified before it becomes effective, the NFIP will void the policy from the beginning of the policy term. Such a situation may arise where a policyholder’s premium payment check is returned for insufficient balance or where a policyholder cancels his or her policy before it becomes effective. The provision would also clarify that in the rare instance where the NFIP pays a claim for a policy that was actually nullified before the policy’s effective date, the policyholder would have to either return the claim payment or pay the premium using the claim payment. This paragraph would also provide the rules and limitations governing the applicability of this nullification reason, as well as the associated premium refunds. Overall, this provision will codify existing Reason Codes 5, 7, and 13 from the Nullification/Cancellation section of the Flood Insurance Manual into regulation. These reason codes are based on basic principles of insurance that the program has applied with regulatory instruction. FEMA proposes to codify these cancellation/nullification reasons in regulation to provide stakeholders with a comprehensive regulatory basis for nullification.

ii. Section 62.5(b): Cancellation Due to Lack of an Insurable Interest

Section (b), entitled “Cancellation Due to Lack of an Insurable Interest,” would be taken from the current 61.5(c) and would allow policy cancellations when a policyholder ceases to have an insurable interest in the insured property (*i.e.*, because the property was sold, destroyed, or removed). This subsection would state that for building coverage, a policyholder ceases to have an insurable interest if the building has been sold, destroyed, or removed. This subsection would further state that for contents coverage, a policyholder ceases to have an insurable interest if the contents were sold, transferred ownership, or have been removed from the described location. This paragraph would also provide the rules and limitations governing the applicability of this cancellation reason, as well as the associated premium refunds. This will codify Reason Codes 1 and 2 from the Nullification/Cancellation section of

the Flood Insurance Manual into regulation. Reason Codes 1 and 2 are necessitated by basic principles of insurance that prevent an insurer from insuring property in which the policyholder does not have an insurable interest. FEMA proposes to codify these cancellation/nullification reasons in regulation to provide stakeholders with a comprehensive regulatory basis for nullification.

iii. Section 62.5(c): No Insurance Coverage Requirement

Paragraph (c), entitled “No Insurance Coverage Requirement,” would allow cancellation in cases where the policyholder is no longer required to maintain flood insurance on the property. The new paragraph would state that a policyholder may cancel a policy if there was a requirement by a lender, loss payee, or other Federal agency to obtain and maintain flood insurance pursuant to statute, regulation, or contract, but there no longer is such a requirement. Such situations would include where (i) the policyholder has paid off his or her mortgage, (ii) the policy was required by the mortgagee in error, or (iii) the property has been removed from the SFHA, and accordingly from the mandatory purchase requirement, through a revision or amendment to the FIRM, including the issuance of a Letter of Map Amendment (LOMA) removing a property from an SFHA.

The paragraph will further state that in such instances, FEMA would only provide a pro rata refund of the premium for the current policy year, as calculated from the date of the cancellation request. Surcharges or other fees would not be refunded. This will codify into regulation FEMA’s interpretation of 44 CFR 62.5, which is currently found in Reason Codes 9, 12, 15, 18, and 19 from the Nullification/Cancellation section of the Flood Insurance Manual.

iv. Subsection 62.5(d): Establishment of a Common Expiration Date

Subsection (d), entitled “Establishment of a Common Expiration Date,” would codify parts of current Article VII.U of the SFIP. The provision would allow policyholders to create duplicate policies, and then cancel the policy with the earlier effective date, to establish common expiration dates with other coverage. This paragraph would also provide the rules and limitations governing the applicability of this nullification reason, as well as the associated premium refunds. This would codify into regulation the NFIP’s existing cancellation reason found

under Reason Code 3 in the Nullification/Cancellation section of the Flood Insurance Manual.

v. Subsection 62.5(e): Cancellation or Nullification of Duplicate NFIP Policies

Subsection (e) would be entitled “Cancellation or Nullification of Duplicate NFIP Policies.” The subsection would incorporate provisions of current Article VII.U, which allow for cancellation of duplicate NFIP policies. The proposed subsection would include two paragraphs. Paragraph (1), entitled “Generally,” would have two paragraphs. Paragraph (i) would state that if more than one policy covers the same building not in accordance with applicable regulation and SFIP terms and conditions, FEMA must nullify the policy with the later effective date. This paragraph would also provide the rules and limitations governing the applicability of this nullification reason, as well as the associated premium refunds.

Paragraph (ii) would state that if both policies have the same effective date, the policyholder may choose which policy will remain in effect, at which point the same refund rules laid out in paragraph (i) apply. This paragraph would also provide the rules and limitations governing the applicability of this nullification reason.

Paragraph (2), entitled “Exceptions,” would establish the exceptions to Paragraph (1) and would state that in certain cases, the policy with the earlier effective date may be cancelled instead of the policy with the later effective date. The first exception, contained in paragraph (i) and entitled “Earlier Policy Expired” would allow the policy with the earlier effective date to be cancelled where that policy has expired for more than 30 days. The second exception, in paragraph (ii) entitled “Group Flood Insurance Policy (GFIP)” would provide that the policy with the earlier effective date may be cancelled if that policy is a GFIP. The third exception, in paragraph (iii) entitled “Cancellations to Establish a Common Expiration Date” would provide that the policy with the earlier effective date may be cancelled pursuant to paragraph (d) of this proposed section (*i.e.*, to establish a common expiration date). The fourth exception, in paragraph (iv) entitled “Force-Placed Policy” would allow the policy with the earlier effective date to be cancelled if the mortgagee buys a flood insurance policy through the Mortgage Portfolio Protection Program after the property owner fails to obtain a flood insurance policy on their own. This is often

referred to as “force placing” a policy. The last exception, in paragraph (v) entitled “Condominium Unit Covered by a Dwelling Form Policy and an RCBAP” would provide that if the policy with the earlier effective date is a Dwelling Form policy with building coverage on a condominium unit that is also covered by an RCBAP with coverage that equals the statutory maximum building coverage limit, the Dwelling Form Policy may be cancelled.

Each paragraph establishing an exception would also provide the premium refunds associated with cancellations falling under the exception. This proposed section would clarify, in regulation, how FEMA has interpreted Article VII.U of the SFIP in practice. This cancellation reason is currently found in Reason Code 4 in the Nullification/Cancellation section of the Flood Insurance Manual.

vi. Subsection 62.5(f): Other Cancellations and Nullifications

Subsection (f) would be entitled “Other Cancellations and Nullifications,” and clarify the other current reasons for which a policy may be cancelled. This section would also state that the policyholder will not receive a refund of any premium, fees, or surcharges for policies cancelled pursuant to this section. Paragraph (1), entitled “Fraud,” would state that FEMA will cancel a policy for fraud committed by the policyholder or agent and may cancel a policy for misrepresentation of a material fact by the policyholder or agent. In either case, the cancellation would take effect as of the date of the fraudulent act or material misrepresentation of fact. This is taken from current Article VII.B of the SFIP, which states that fraud by the agent or the insured voids a policy. This nullification reason may be found under Reason Code 23 in the Nullification/Cancellation section of the Flood Insurance Manual.

Paragraph (2), entitled “Administrative Cancellation,” would allow a policy to be cancelled and rewritten to correct an administrative error, such as when the policy is written with the wrong effective date, and any excess premium, fees, or surcharges would be refunded. This cancellation reason may be found under Reason Code 20 in the Nullification/Cancellation section of the Flood Insurance Manual.

Paragraph (3), entitled “Nullification for Properties Ineligible Due to Physical Alteration of Property,” would state that a policy insuring a building or its contents, or both, may be cancelled if the building has been physically altered

so that the building and its contents are no longer eligible for flood insurance coverage. This paragraph would also provide the rules and limitations governing the applicability of this nullification reason, as well as the associated premium refunds. This nullification may be found under Reason Codes 1 and 2 in the Nullification/Cancellation section of the Flood Insurance Manual.

4. Section 62.6 Minimum Commissions

Current section 62.6 contains provisions applicable to insurance agents and brokers writing NFIP policies through the NFIP Direct Services Agent. It does not apply to agents or brokers associated with WYO companies. FEMA proposes several nonsubstantive changes designed to clarify the existing section.

i. Section Heading

Currently, section 62.6 is titled, “Minimum Commissions.” FEMA proposes to revise the title of section 62.6 to “Brokers and Agents Writing NFIP Policies through the NFIP Direct Servicing Agent” because the section covers more than just commissions. FEMA believes the proposed title better reflects the contents of the section.

ii. Paragraph (a): Agent and Broker Licensing Requirements

Currently, section 62.6(a) defines the commissions paid to agents and brokers participating in the Direct Servicing Agent (DSA) portion of the NFIP. However, it also includes a requirement that such agents and brokers are “duly licensed by a state insurance regulatory authority.” FEMA proposes to move this important requirement from within the minimum commission provision and set it out in its own paragraph. Accordingly, FEMA proposes to add a new paragraph (a) that only includes the requirement and to redesignate current paragraphs (a) and (b) as paragraphs (b) and (c), respectively. Accordingly, FEMA also proposes to make corresponding changes to proposed paragraph (b) by removing the existing references to state licensing requirements. FEMA does not intend to substantively change the licensing requirements of DSA agents, but rather intends to separate this requirement from other subject matter to improve overall clarity of the section. FEMA also proposes to change the uses of “shall” to “will” to incorporate plainer language without making substantive change.

5. Section 62.22 Judicial Review

Section 62.22 provides that actions for disallowed claims must be instituted in the U.S. District Court for the district in which the insured property was situated and describes service of process requirements. FEMA proposes to revise section 62.22 to replace references to the “Federal Insurance Administration” with the current organizational title, “Federal Insurance and Mitigation Administration.”

IV. Regulatory and Economic Analysis

A. Executive Order 12866, Regulatory Planning and Review & Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

In this rule, FEMA proposes to make several nonsubstantive changes to the National Flood Insurance Program’s (NFIP) regulations at Parts 59, 61, and 62, as well as the Appendices to Part 61. FEMA proposes to codify in regulation certain provisions of the Biggert Waters Flood Insurance Reform Act of 2012 (BW-12) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) that have already been

implemented. FEMA implemented these changes via the Flood Insurance Manual or other related guidance documents as they were unambiguous changes that left no discretion on the part of the agency to implement. Now FEMA proposes to update the regulations accordingly. FEMA also proposes to clarify certain existing NFIP regulations relating to NFIP operations and the Standard Flood Insurance Policy unrelated to recent legislation by consolidating and stylistically updating the regulatory text and standardizing key terminology.

Overall, there are 34 identified proposed regulatory changes in this rule (itemized in Table 1 below). The vast majority of these changes are limited to nonsubstantive clarifications. The remaining provisions are considered “Codifications,” that codify in regulation either an existing practice or

policy, or a process heretofore requiring special waiver by FEMA.

Following guidance in OMB Circular A–4, FEMA assesses the impacts of this rule against the no-action baseline as well as a pre-statutory baseline. The no action baseline is an assessment against what the world would be like if the proposed rule is not adopted. The pre-statutory baseline is an assessment against what the world would be like if the relevant statute(s) had not been adopted. By considering both baselines we are able to consider full costs of the action.

Under a no-action baseline, this proposed rule would carry no transfers or quantifiable costs. The proposed rulemaking would make material improvements to the language and organization of the NFIP’s regulations, but such clarifications and codifications would not result in any quantifiable burden or benefit. The proposed rule also would codify certain changes

pursuant to BW–12 and HFIAA that FEMA has already implemented via the Flood Insurance Manual or other related guidance documents. WYO companies would, however, incur opportunity costs as they spend time becoming familiar with the proposed changes. The proposed rule would result in cost savings associated with no longer requiring individual waivers for condominium loss assessment restrictions.

The below analysis adopts a consistent pre-statutory baseline of 2012 in order to capture the effects of the proposed rule, including those of modifications already implemented through interim actions. The summary table below (Table 1) presents the proposed rule’s components based on the two categorizations above, including the related statutory mandates (BW–12, HFIAA or both), a description of their effects and their likely impact.

TABLE 1—SUMMARY OF PROPOSED CHANGES

Current section No./ subject matter	Proposed change	Mandatory or discretionary action	Impact
Nonsubstantive Clarifications & Consolidations			
1. § 59 Definitions	FEMA proposes to add and revise definitions to support clarifications and codifications described below. This is a nonsubstantive change that clarifies existing definitions and does not alter the administration of the program.	Discretionary	No change in compliance burden.
2. § 61.1 Purpose of part	FEMA proposes to remove irrelevant second sentence that does not relate to the substantive content of part 61. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
3. § 61.3 Coverage and benefits provided under the SFIP.	FEMA proposes to clarify language to provide a more complete statement of coverage and benefits provided by the SFIP. The coverage and benefits provided under the SFIP are already stated in regulations; this is just a consolidated, unified statement of coverage and benefits under the SFIP. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
4. § 61.5 Deductibles	An application of BW–12 section 100210 and HFIAA section 12, that would clarify existing policy/practice by moving content of 61.5 to new unified cancellation/nullification section in 44 CFR 62.5 (discussed below). FEMA also proposes to replace the current deductible tables with provisions describing the minimum deductibles required by BW–12 section 100210 and the \$10,000 deductible option required by HFIAA section 12. This is a nonsubstantive change because FEMA has always had this authority and has always made these deductible options available to policyholders despite not being explicitly provided for in the CFR.	Mandatory	No change in compliance burden.
5. § 61.6 Maximum amounts of coverage available.	FEMA proposes to clarify the maximum coverage limit tables in section 61.6 with nonsubstantive changes to improve readability and conformance with standard program terminology and terminology introduced by BW–12. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
6. § 61.10 Requirements for Issuance or Renewal of Flood Insurance Coverage.	FEMA proposes to clarify/consolidate existing regulation language. This new provision would clarify that no flood insurance coverage will be issued unless there is (a) receipt of full amount due and (b) submission of a complete application with all the required rating information. Although this has always been the case, and these concepts are covered in sections 61.5 and 61.11, FEMA believes that increased clarity is needed by adding a consolidated statement in the regulations. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.

TABLE 1—SUMMARY OF PROPOSED CHANGES—Continued

Current section No./ subject matter	Proposed change	Mandatory or discretionary action	Impact
7. § 61.13 Standard Flood Insurance Policy.	This provision would clarify that SFIP is authorized only under terms and conditions established by Act, regulations, SFIP, and Administrator interpretations. FEMA also proposes to clarify that the agent acts only for policyholder and that the risk of loss is borne by the National Flood Insurance Fund, not the WYO company. This does not represent a substantive change in policy or terms and conditions of the SFIP, but instead would make terms clearer.	Discretionary	No change in compliance burden.
8. § 62.5 Policy Nullification and Cancellation.	FEMA proposes to make changes that would clarify and consolidate the existing reasons for which a policy may be cancelled or nullified. The current reasons for which a policy may be cancelled or nullified are spread throughout the regulations and FEMA's interpretations of those regulations in the Flood Insurance Manual. This would consolidate those reasons into one section for greater clarity and transparency to the public. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
9. § 62.6 Broker and Agents for Servicing Agent.	This provision would clarify FEMA's existing policy by adding it to regulation that a broker or agent selling NFIP policies must be licensed in the state in which the property is located. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
10. SFIP Article I	FEMA proposes changes to SFIP Article I that would clarify the types of property covered by the SFIP. Proposed clarifications are about coverage limits and multiple policies covering one building. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
11. SFIP Article II-Definitions.	FEMA proposes to revise and add some definitions for clarity. In particular, the proposed changes would clarify that the named insured must also include the building owner if building coverage is purchased. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
12. SFIP Article III	FEMA proposes to clarify that references to insured property do not extend coverage to any type or item of property not otherwise insured in accordance with the terms and conditions of SFIP. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
13. SFIP Article III.A	FEMA proposes minor nonsubstantive changes to Article III.A.5.b.2 to improve the grammar of the section; revise Article III.A.8 to remove the phrase "in a building enclosure." This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
14. SFIP Article III.B	FEMA proposes to revise the numbering in this section to improve readability and organization; revise Article III.B.3 by removing the phrase "in a building enclosure." This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
15. SFIP Article III.D	FEMA proposes to revise the language in this section so that the word "structure" is replaced by the word "building" throughout the section except at III.D.5.c. The reason for this change is the NFIP insures SFIP defined "buildings," not any structure that does not meet the definition of "building" as defined in the SFIP. FEMA also proposes to improve the language in III.D.3.d and III.D.3.e by replacing the phrase "this coverage" with the phrase "Coverage D" to clarify that the coverage referred to in these provisions is Coverage D. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
16. SFIP Article V.B	FEMA proposes a nonsubstantive, clarifying adjustment to the Flood in Progress Exclusion at SFIP Art. V.B to align with reports required by BW-12 section 100227. This change does not impact the application of the exclusion, but will help support more consistent reading of the provision.	Discretionary	No change in compliance burden.
17. SFIP Article VII.B	FEMA proposes to move the provision on concealment of fraud and policy avoidance for consolidation into unified section on policy cancellations and nullifications (discussed below). This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
18. SFIP Article VII.E	FEMA proposes to remove Article VII.E, Cancellation of the Policy by You, and incorporate the language into a new consolidated section on policy nullifications, cancellations, and non-renewals. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.

TABLE 1—SUMMARY OF PROPOSED CHANGES—Continued

Current section No./ subject matter	Proposed change	Mandatory or discretionary action	Impact
19. SFIP Article VII.F	FEMA proposes to remove Article VII.F, Non-Renewal of the Policy by Us, and incorporate the language into a new Article VIII discussing policy nullifications, cancellations, and non-renewals. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
20. SFIP Article VII.G	This provision would revise the reformation section for clarity/readability. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
21. SFIP Article VII.U	FEMA proposes to move the provision on duplicate policies for consolidation into unified section on policy cancellations and nullifications (discussed below). This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
22. SFIP Article VII.V	FEMA proposes to revise Article VII.V.1.a.1 of the current policy to remove all the language after “It is your principal residence.” The reason for this proposed change is that this language, which is essentially a definition of the term “principal residence,” has been incorporated into the new definition of “principal residence” being added to Definitions section in Article II. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
23. SFIP Article VIII	FEMA proposes to clarify the existing reasons for which a policy may be cancelled, nullified, or not renewed. This would mirror similar section being established at 44 CFR 62.5 (discussed above). This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
24. SFIP Article IX	FEMA proposes to clarify that the SFIP and all disputes arising from the insurer’s policy issuance, policy administration, or the handling of any claim under the SFIP are governed by the National Flood Insurance Act and the regulations. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
25. Entire SFIP—Global Language Replacements.	FEMA proposes to replace the word “covered” with the word “insured” because the word “covered” does not conform to common industry or Agency usage. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
26. 62.22 Judicial Review (preamble sec. III.F.5).	FEMA proposes to replace references to the “Federal Insurance Administration” with the current organizational title, “Federal Insurance and Mitigation Administration.” This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
27. SFIP Article VII.D	FEMA proposes to redesignate Article VII.D as Article VII.C. Replaces the phrase “structure during the course of construction” in Article VII.D.2 of the current rule with “building under construction,” which is the proper term of art, as used in Article III.A.5.a and Article VI.A. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
28. § 61.4 Limitations on Coverage.	FEMA proposes to delete this provision because some of the language is duplicative with language in other sections, and the rest of the language is more appropriately moved to other sections of the regulation. Move 61.5(a) and (b) to become a new 44 CFR 61.4. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
29. § 62.3 Servicing agent.	FEMA proposes to remove the name of specific direct servicing agent. This is a nonsubstantive change that codifies current practices that began more than a decade before the baseline regarding the public announcement of the direct servicing agent.	Discretionary	No change in compliance burden.
30. Part 59 Authority Citation.	FEMA proposes to replace the citations to Reorganization Plan No. 3 and Executive Order 12127 with a citation to the codification of the Homeland Security Act of 2002, 6 U.S.C. 101 <i>et seq.</i> This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
31. Part 61 Authority Citation.	FEMA proposes to update authority citations to reflect changes to FEMA’s source of authority from Executive orders to statute. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.
32. Part 62 Authority Citation.	FEMA propose to update authority citations to reflect changes to FEMA’s source of authority from Executive orders to statute. This is a nonsubstantive change that does not alter the administration of the program but rather provides greater clarity for the reader.	Discretionary	No change in compliance burden.

TABLE 1—SUMMARY OF PROPOSED CHANGES—Continued

Current section No./ subject matter	Proposed change	Mandatory or discretionary action	Impact
Codification of Existing Policy and Practice			
33. § 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.	FEMA proposes to codify BW–12's addition of the Post-Wildfire Exception to the 30-day waiting period required by 42 U.S.C. 4013(c). This change does not alter the current administration of the program because FEMA immediately complied with the law. FEMA also proposes a clarification by removing the second clause of the first sentence of 61.11(e) and 61.11(f) because these clauses accommodate a business model that the WYO companies no longer use. This change does not alter the current administration of the program but rather provides greater clarity for the reader.	Mandatory	No change in compliance burden.
34. SFIP Article III.C	FEMA proposes to codify BW–12 section 100214, which prohibits the application of SFIP Article III.C.3.b.4 (disallowing the payment of a condominium loss assessment on a unit policy if the condominium building is underinsured). Prior to BW–12, FEMA issued individual waivers of this provision as the need arose. The proposed changes would delete Article III.C.3.b.4, thus no longer requiring FEMA to issue individual waivers.	Mandatory	Cost savings of \$2,048 over 10 years (\$1,799 at 3 percent and \$1,539 at 7 percent discount rates).

1. Costs of Rulemaking

While the proposed rulemaking would make material improvements to the language and organization of the NFIP's regulations, such changes would not result in any quantifiable burden or benefit. WYO companies would, however, incur opportunity costs as they spend time becoming familiar with the proposed changes.

FEMA proposes to revise section 61.11 to codify an additional exception to the 30-day waiting period before coverage on a flood insurance policy takes effect. Prior to BW–12, there were only two exceptions to this 30-day waiting period. The first exception was for the initial purchase of flood insurance in connection with the making, increasing, extension, or renewal of a loan. The second exception was for the initial purchase of flood insurance pursuant to a revision or updating of floodplain areas or flood risk zones, if such purchase took place within one year of the notice of such revision.

The proposed rule would codify in regulation Section 100241 of BW–12, which amended Section 1306(c) of the NFIA (42 U.S.C. 4013(c)), by placing a third exception to the 30-day new policy waiting period in regulation. This new exception applies to situations where the flooding to an insured privately owned property is the result of flooding on Federal land that was caused or exacerbated by post-wildfire conditions, also on Federal land. FEMA implemented this new exception via bulletin. See WYO Bulletin W–12045 (July 10, 2012) (announcing the implementation of Section 100241), *see also*, WYO Bulletin W–18001 (Jan. 16,

2018) (replacing WYO Bulletin W–12045). To date, circumstances have not existed requiring FEMA to apply this exception. The proposed change updates the regulations to reflect the revised statutory language and existing Agency practice.

When looking at the NFIP claim data from FEMA, since implementation of this exception in July 2012, no parties have made claims that would apply to this provision. Additionally, due to both the brief window of applicability (the 30-day waiting period after initial enrollment in the NFIP) and the narrow circumstances to which this exception applies (flood damage due to flood on Federal land caused, or exacerbated, by post-wildfire conditions), FEMA believes the exception would continue to be rarely invoked. This provision serves as an added enticement to potential enrollees of the NFIP to join the NFIP if they believe that a wildfire on Federal land may cause, or exacerbate, flooding on their property. This provision serves mostly as an added comfort to potential enrollees of the NFIP. In accordance with the data examined, there has not been and FEMA estimates that there would continue to be no additional burden on any party. This provision would ensure that FEMA's regulation concerning the application of the 30-day waiting period includes all statutory exceptions. FEMA requests comments regarding this assumption and estimated frequency of applicable occurrence.

2. Benefits of Rulemaking

The vast majority of provisions represent clarifications to the regulation or program documents, or remove

regulations that are no longer applicable. The few non-clarifying provisions reflect in regulations certain provisions that have already been implemented through policy that streamline operations, or meet greater potential needs of policyholders (codifications). It is only with codifications where any quantifiable impacts appear. This analysis considers the following as possible benefits of this rule:

i. Clarification of NFIP Terms and Conditions

This analysis looks at the many efficiencies of the proposed rule, however, the bulk of these benefits are unquantifiable. Although they have not been quantified, they are essential to the justification of the proposed rule and should be considered as they provide significant benefits that will be seen for all stakeholders involved.

Under current conditions, the NFIP-related sections of the CFR contain inconsistencies or vague language that may cause confusion to stakeholders. The following are selected examples of proposed changes presented in Table 1 that would be introduced by the rule:

a. Making Explicit the Implicit

The NFIP deductible charts currently in the regulations at 44 CFR 61.5(d) show several possible deductible options, but not all the deductible options available under the program. A note to these tables indicates that policyholders may submit any other deductible amounts not currently listed in this chart (including the \$10,000 deductible option required under HFIAA). Notwithstanding this note, the current regulation's listing of

deductible options may give readers the impression that the list is exhaustive. FEMA proposes to remove the deductible charts and replace them with a requirement that FEMA must provide policyholders with deductible options in various amounts, up to and including \$10,000, subject to certain minimum deductibles. This change would not expand or contract the deductible options offered by the NFIP under current regulations; rather, it would clarify that FEMA offers various options, including the \$10,000 deductible, subject to other restrictions.

FEMA also proposes to change the language in Appendix A(1) of Part 61 to clarify that personal property is also insured under this policy. FEMA has always insured personal property under this policy, but the proposed change will make this more explicit in the initial coverage statement. Also under Appendix A(2) to Part 61, FEMA would state that the policy will only cover one building and that the building covered is the one specifically described in the Flood Insurance Application. Coverage under the SFIP has always been limited to one building, but FEMA is proposing that this language be clearly stated at the very beginning of the SFIP.

b. Modifying, Adding or Removing Definitions

FEMA proposes to revise definitions such as “deductible,” “emergency program,” “act,” or “basement.” FEMA believes these non-substantive changes will be clearer and more consistent with the language in the Articles of the SFIP. The same can be said of the proposed changes to add acronyms for ease of repetitive use (such as that for the Special Flood Hazard Area as “SFHA”) or to remove a term or definition that is no longer used (*e.g.*, “Expense Constant” which no longer applies, or “Probation Premium” which is better changed to “Probation Surcharge”).

FEMA believes that this increased precision and consistent use of terms would increase clarity of FEMA’s NFIP regulations for the insurance companies, flood insurance policyholders, academic researchers, and private citizens. This improved accuracy will help to minimize confusion.

ii. Codification of Dwelling Policy Underinsurance Exception

Presently, Article III.C.3.b.4 of the SFIP, found in Appendix A(1) to Part 61, prevents payment of condominium loss assessments on a unit policy if the condominium building itself is underinsured. The SFIP also requires the coverage limits of the RCBP policy (the primary policy) to be exhausted before the Dwelling Policy (the secondary policy). This poses a challenge in the event the primary policy was disallowed in the above circumstance. Since 2007, policyholders facing such a predicament were required to obtain a waiver from FEMA to process such claims.

As directed by Section 100214 of BW-12, the proposed changes would delete Article III.C.3.b.4 of the SFIP, which would otherwise prohibit such claim payments and necessitate the submission and processing of waivers. As a result, waivers for this prohibition would no longer be required.

To estimate the cost savings that would result from omitting this process, FEMA considered the frequency these specific circumstances have occurred. Between 2007, when FEMA began issuing the waivers, and 2013 when FEMA terminated the waiver process (following the passage and FEMA’s provisional implementation of BW-12), there have been four occurrences of the aforementioned conditions. The applicable cases were reported twice in Illinois, once in Texas and once in Tennessee. Four occurrences over six years equate to an estimated frequency of 0.667 instances each year, assuming that the rate remains consistent in the future.

The reported time required for FEMA to process the resulting waiver requests is around three hours per waiver. This process is undertaken by two General Schedule (GS) Federal employees in the National Capital Region, at the GS-14 and GS-15 levels, in equal proportion. Obtaining 2018 GS scale⁷ published

⁷ GS Scale based on 2018 OPM tables, hourly basic wage rates by grade and step for the locality pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Accessed March 1st, 2018. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/18Tables/html/DCB_h.aspx.

hourly wage rates from the Office of Personnel Management (OPM) for the midpoint (step 5) of these grade levels produces fully loaded⁸ wage rates of \$90.85 and \$106.87 per hour, respectively. At approximately 90 minutes per officer for each expected waiver, the subtotal is \$136.28⁹ and \$160.30,¹⁰ respectively. The waivers also require concurrence, cleared by the appropriate Assistant Administrator. This review and approval takes approximately five minutes at the estimated midpoint in the Senior Executive Service (SES).¹¹ FEMA estimates that a fully loaded SES hourly rate is \$126.66 per hour.¹² The subtotal of the SES time is \$10.56.¹³ The total opportunity cost of FEMA processing each waiver is \$307.16.¹⁴

⁸ Bureau of Labor Statistics, Employer Cost for Employee Compensation News Release, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation; civilian workers, by major occupational and industry group, December 2017. https://www.bls.gov/news.release/archives/eccec_03202018.htm.

The per hour benefits multiplier is calculated by dividing total compensation for all workers (\$35.87) by wages and salaries for all workers (\$24.49), which yields a per hour benefits multiplier of 1.46. ($\$35.87 \div \$24.49 = 1.46468$). Fully-loaded wage rates are calculated by multiplying the per hour benefits multiplier by the applicable wage rate. GS-14: $\$62.23 \times 1.46 = \90.85 and GS-15: $\$73.20 \times 1.46 = \106.87 .

⁹ $\$90.85$ (hourly wage rate of $\$62.23 \times 1.46$) * 1.5 hours = \$136.28.

¹⁰ $\$106.87$ (hourly wage rate of $\$73.20 \times 1.46$) * 1.5 hours = \$160.30.

¹¹ FEMA bases SES salary estimates on OPM’s Senior Executive Service Report. The latest report available is for 2016. Across all agencies the median SES pay is \$173,882 (see table 13 at the following link) <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/ses-summary-2016.pdf>. Accessed June 4, 2018.

¹² $\$173,882$ annual wage/2087 annual hours = \$83.32 hourly wage rate * 1.46 benefits multiplier = \$121.65 fully loaded hourly wage * 1.04115 inflation adjustment = \$126.66 fully loaded 2018 hourly wage.

We calculated the inflation adjustment by subtracting the July 2016 CPI-U (240.6) from the April 2018 CPI-U (250.5). We divided the result (9.9) by the July 2016 CPI-U (240.0). Calculation: $(250.5 - 240.6) / 240.0 = 0.04115$. BLS CPI-U data is available at <http://data.bls.gov/cgi-bin/surveymost?bls>. Select CPI for All Urban Consumers (CPI-U) 1982–84 = 100 (Unadjusted) – CUUR0000SA0 and click the Retrieve data button. Accessed June 8, 2018.

¹³ $\$126.96 \times 5$ minutes = \$10.56.

¹⁴ $\$136.28 + \$160.30 + \$10.56 = \307.14 .

Table 2: Projected Cost Savings of Codification of Dwelling Policy Underinsurance Exception

	Avg Frequency of Waivers	Total Cost Per Waiver	Annual Cost Savings	NPV at 3% (m)	NPV at 7% (m)
Year 1	0.67	\$ 307	\$ 205	205	205
Year 2	0.67	\$ 307	\$ 205	199	191
Year 3	0.67	\$ 307	\$ 205	193	179
Year 4	0.67	\$ 307	\$ 205	187	167
Year 5	0.67	\$ 307	\$ 205	182	156
Year 6	0.67	\$ 307	\$ 205	177	146
Year 7	0.67	\$ 307	\$ 205	171	136
Year 8	0.67	\$ 307	\$ 205	166	128
Year 9	0.67	\$ 307	\$ 205	162	119
Year 10	0.67	\$ 307	\$ 205	157	111
TOTAL	\$ 6.67	\$ 3,072	\$ 2,048	\$ 1,799	\$ 1,539

Applying this cost to the estimated frequency of occurrence of 0.67 waivers per year and extending the avoided costs over a ten-year period would project a total undiscounted cost savings of \$2,048. The ten-year total would equate to \$1,799 and \$1,539, when discounted at three percent and seven percent respectively.

3. Alternatives Considered

Given that this rule has no direct compliance costs, no less burdensome alternatives to the proposed rule are available. In the absence of this proposed rule, stakeholders would continue to experience the negative repercussions of inconsistencies between the statutes, regulations, and agency policy documents.

FEMA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FEMA will consider all comments received in the public comment process.

4. Summary

For the 10-year period analyzed, FEMA does not anticipate any costs resulting from the selected provisions of BW-12 and HFIAA that the rule is implementing. During that same period analyzed, the estimated quantified benefits total \$2,048. The present value, discounted at 7 percent, of the estimated quantified benefits is approximately \$1,539 and \$1,799 discounted at 3 percent. FEMA's ability to administer the NFIP in a more streamlined manner, and the public's enhanced understanding of the terms and conditions of the program would justify the proposed rule, compliant with the respective Congressional mandates.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agency review of proposed and final rules to

assess their impact on small entities. When an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule, the agency must prepare an initial regulatory flexibility analysis (IRFA) or have the head of the agency certify pursuant to 5 U.S.C. 605(b) that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. FEMA believes this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the potential impacts of the proposed requirements in this NPRM on small entities. FEMA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process when making a final determination.

In accordance with the Regulatory Flexibility Act, an IFRA must contain: (1) A description of the reasons why the action by the agency is being considered; (2) A succinct statement of the objectives of, and legal basis for, the proposed rule; (3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply; (4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record; (5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and (6) A

description of significant alternatives to the rule.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

The proposed rule would revise the NFIP implementing regulations at parts 59, 61, and 62, as well as the Appendices to part 61, to codify in regulation certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014 that FEMA has already implemented and to clarify certain existing NFIP rules relating to NFIP operations and the SFIP.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The proposed changes to the regulation would codify FEMA's implementation of the legislative requirements of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, and clarify existing rules. These required changes have already been implemented and this rule would conform NFIP regulations with existing policies and practices.

FEMA anticipates that this rulemaking will result in a more streamlined operation of the NFIP and enhance customer service because of greater information and clarity for policyholders and all stakeholders.

The NFIA authorizes FEMA to "enter into any contracts, agreements, or other arrangements" with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. *See* 42 U.S.C. 4081. Pursuant to this authority, FEMA enters into a standard Financial Assistance/ Subsidy Arrangement with private sector property insurers, also known as the WYO companies. Under this

arrangement, WYO companies sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the policy. It is in reference to these specific authorities to administer the NFIP, and the WYO program that is encompassed within it, that FEMA is proposing to continue to streamline operations and remove confusing obsolete or redundant language that may confuse stakeholders, including its policyholders, the WYO companies, and FEMA.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

“Small entity” is defined in 5 U.S.C. 601. The term “small entity” can have the same meaning as the terms “small business,” “small organization” and “small governmental jurisdiction.” Section 601(3) defines a “small business” as having the same meaning as “small business concern” under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) defines a “small organization” as any not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. Section 601(5) defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. No small organization or governmental jurisdiction is a party to the WYO program and therefore would be affected.

The SBA stipulates in its size standards the largest business may be and still be classified as a “small entity.”¹⁵ The small business size standard for North American Industry Classification System (NAICS) code 524126 (direct property and casualty insurance carriers) is 1,500 employees. The size standard for 524210 (Insurance Agencies and Brokerages) is \$7.5 million, and \$32.5 million for 524292 (Third Party Administration of Insurance and Pension Funds). For the two remaining applicable codes of 524113 (Direct Life Insurance Carriers), and 524128 (Other Direct Insurance), the threshold is \$38.5 million in

revenue as modified by the SBA, effective October 1, 2017.

There are currently 67 companies¹⁶ participating in the WYO Program. These 67 companies are subject to the terms of the Arrangement and the standards and requirements in the Financial Control Plan. FEMA researched each WYO company to determine the NAICS code, number of employees, and revenue for the individual companies. FEMA used the open-access database, www.manta.com, as well as www.cortera.com to find this information for the size determination. The database was used to help determine the metric of company size, compliant with the SBA thresholds based on the assigned NAICS code. Of the 67 WYO companies, we found a majority of 46 firms were under code 524210 (Insurance Agencies and Brokerages), of which 17 firms, or 37 percent, were small (with only one lacking full data but presumed to be small). The second largest contingent of 16 firms were under 524126 (direct property and casualty insurance carriers), of which 10 firms, or 63 percent, were small (with only one missing data points but presumed to be small). Of the other three aforementioned industry codes, 524113, 524292 and 524128, there was one firm under each and none were small. Finally, two firms were missing industry classifications, and FEMA assumes these are small firms. In total, we found that 29 of the 67 companies are below this maximum, and therefore would be considered small entities. Consequently, small entities comprise 43 percent of participating companies.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

FEMA believes that the rule would impose no burdens on any participating company because it does not consist of any substantive policy changes, but instead would make changes for clarity and to accurately reflect current FEMA policies and practices. There may be familiarization costs incurred by WYO companies as they review these changes, despite the lack of any substantive changes that would ultimately affect them. Therefore, FEMA anticipates that the rule would not have

a significant economic impact on a substantial number of small entities.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Given that this rule has no direct compliance costs, no less burdensome alternatives to the proposed rule are available. In the absence of this proposed rule, small entities would continue to experience the negative repercussions of inconsistencies between the statutes, regulations and agency policy documents.

FEMA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FEMA will consider all comments received in the public comment process.

C. Unfunded Mandates Reform Act

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and Tribal governments and the private sector. The proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

¹⁵ U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes effective October 1, 2017. Available at <https://www.sba.gov/content/small-business-size-standards>.

¹⁶ Number of firms participating in the WYO Program as of May 2018. https://www.fema.gov/wyo_company.

D. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts of their proposed actions on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 *et seq.*, require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. The List of exclusion categories at DHS Instruction Manual 023-01-001-01, Appendix A excludes the promulgation of rules that are of a strictly administrative or procedural nature and rules that implement, without substantive change, statutory or regulatory requirements from the preparation of an EA or EIS. (Catex A3(a) and (b)). The purpose of this rule is to implement some statutory requirements of BW-12 and HFIAA, along with making non-substantive clarifications designed to improve overall clarity and readability. These changes are administrative-related changes that are categorically excluded under Catex A3(a) and (b) of DHS Instruction Manual 023-01-001-01, Appendix A. No extraordinary circumstances exist that will trigger the need to develop an EA or EIS. See DHS Instruction Manual 023-01-001-01 V(B)(2). An EA will not be prepared because a categorical exclusion applies to this rulemaking action and no extraordinary circumstances exist.

E. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A "record" is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited

to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A "system of records" is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbols, or other identifying particular assigned to the individual. An agency cannot disclose any record that is contained in a system of records except by following specific procedures. The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this proposed rule. DHS/FEMA has determined that this proposed rulemaking does not affect the 1660-0006 OMB Control Number's current compliance with the E-Government Act of 2002 or the Privacy Act of 1974, as amended. As a result, DHS/FEMA has concluded that the 1660-0006 OMB Control Number is covered by the DHS/FEMA/PIA-011—National Flood Insurance Program Information Technology Systems (NFIP ITS) Privacy Impact Assessment (PIA). Additionally, DHS/FEMA has decided that the 1660-0006 OMB Control Number is covered by the DHS/FEMA-003 National Flood Insurance Program Files, 79 FR 28747, May 19, 2014 System of Records Notice (SORN).

F. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501-3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. This proposed rulemaking does not call for a new collection of information under the PRA. There is an

existing collection of information, 1660-0006, the National Flood Insurance Program Policy Forms, Public Law 90-448 (1968) (expanded by Pub. L. 93-234 (1973)) included in this rulemaking. BW-12 and HFIAA require modifications to the NFIP. Program changes resulting from BW-12 and HFIAA necessitated revision of the NFIP Policy Forms to assure proper classification of properties for rating purposes and to rate and issue the policies in accordance with the provisions of BW-12 and HFIAA. However, this proposed rule will not impact this collection because the forms have already been updated as needed.

G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government in complying with the regulation are provided by the Federal Government or the agency consults with Tribal officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. This proposed rule involves no policies that have Tribal implications under Executive Order 13175. This rulemaking makes limited changes to the comprehensive, longstanding National Flood Insurance Program regulations applicable to communities, including participating Indian Tribal governments and Tribes, which voluntarily choose to participate in the program. Because these program updates are limited, they will not have substantial direct effects on Indian Tribes, on the relationship between the national government and Indian Tribes, or the distribution of power between the Federal Government and Indian Tribes.

H. Executive Order 13132 Federalism

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” For the purposes of this Executive Order, the term States also includes local governments or other subdivisions established by the States. Under this Executive Order, Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States. Further, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal Government provides funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation, or the agency consults with State and local officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has federalism implications and preempts State law, unless the agency consults with State and local officials.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rulemaking makes limited changes to the comprehensive, longstanding National Flood Insurance Program regulations governing the communities’ participation in the program. Because these program updates are limited, they will not have substantial direct effects on the States or participating communities, on the relationship between the national government and the States or participating communities, or the distribution of power among the various levels of government.

I. Executive Order 11988 Floodplain Management

Pursuant to Executive Order 11988, “Floodplain Management,” 42 FR 26951

(May 24, 1977), each agency must provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency’s floodplain management regulations. It must also prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The purpose of this proposed rule is to implement insurance-related administrative changes to clarify coverage, rates, and terms and conditions. The changes proposed in this rule would not have an effect on land use, floodplain management, or wetlands.

J. Executive Order 11990 Protection of Wetlands

Executive Order 11990, “Protection of Wetlands,” 42 FR 26961 (May 24, 1977) sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities. These responsibilities

include (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal’s effect on the survival and quality of the wetlands. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this proposed rule is to implement insurance-related administrative changes to clarify coverage, rates, and terms and conditions. The changes proposed in this rule would not have an effect on land use, floodplain management, or wetlands.

K. Executive Order 12898 Environmental Justice

Under Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381, (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying

persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not have a disproportionately high or adverse effect on human health or the environment, nor will it exclude persons from participation in FEMA programs, deny persons the benefits of FEMA programs, or subject persons to discrimination because of race, color, or national origin.

L. Congressional Review of Agency Rulemaking

Before a rule can take effect, the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, requires the Federal agency promulgating the rule to submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant Executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. This proposed rule is not a “major rule” within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more or result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

44 CFR Parts 59 and 61

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 62

Claims, Flood insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FEMA proposes to amend 44 CFR Chapter I as follows:

PART 59—GENERAL PROVISIONS

■ 1. Revise authority citation for part 59 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

■ 2. In section 59.1, add definitions, in alphabetical order, for “Condominium Building,” “Mixed Use Building,” “Multifamily Building,” “Non-Residential Building,” “Non-Residential Property,” “Other Residential Building,” “Other Residential Property,” “Residential Building,” “Residential Property,” “Single Family Dwelling,” and “Two to Four Family Building” and revise the definitions for “Act,” “Deductible,” and “Emergency Program” to read as follows:

§ 59.1 Definitions.

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001—*et seq.*

Condominium Building means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

Deductible means the amount of an insured loss that is the responsibility of the insured and that is incurred before any amounts are paid for the insured loss under the insurance policy.

Emergency Program means the initial phase of a community's participation in the National Flood Insurance Program, as prescribed by Section 1306 of the Act.

Mixed Use Building means a building that has both residential and non-residential uses.

Multifamily Building means an other residential building that is not a condominium building.

Non-Residential Building means a commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-Residential Property means either a non-residential building, the contents within a non-residential building, or both.

Other Residential Building means a residential building that is designed for use as a residential space for 5 or more families or a mixed use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building.

Other Residential Property means either an other residential building, the

contents within an other residential building, or both.

Residential Building means a non-commercial building designed for habitation by one or more families or a mixed use building that qualifies as a single-family, two to four family, or other residential building.

Residential Property means either a residential building or the contents within a residential building, or both.

Single Family Dwelling means either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, or (b) a single-family residential unit within a two to four family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

Two to Four Family Building means a residential building, including an apartment building, containing two to four residential spaces and in which commercial uses are limited to less than 25 percent of the building's total floor area.

PART 61—INSURANCE COVERAGE AND RATES

■ 3. Revise the authority citation for part 61 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

■ 4. Revise § 61.1 to read as follows:

§ 61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds.

■ 5. Revise § 61.3 to read as follows:

§ 61.3 Coverage and benefits provided under the Standard Flood Insurance Policy.

(a) Insurance coverage under the Program is available for buildings and their contents. Coverage for each may be purchased separately.

(b) In addition to building and contents coverage, the Dwelling Form of the Standard Flood Insurance Policy (SFIP) covers debris removal, loss avoidance measures, and condominium loss assessments. The General Property Form of the SFIP covers debris removal, loss avoidance measures, and pollution damage. The Residential Condominium Policy Form of the SFIP covers debris removal and loss avoidance measures.

(c) With the purchase of building coverage, the Standard Flood Insurance Policy covers the costs associated with bringing the building into compliance with local floodplain ordinances.

■ 6. Revise § 61.4 to read as follows:

§ 61.4 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies will be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (*i.e.*, mudflow), or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, applicants must pay the

full policy premium at the time of application.

■ 7. Revise § 61.5 to read as follows:

§ 61.5 Deductibles.

FEMA must provide policyholders with deductible options in various amounts, up to and including \$10,000, subject to the following minimum deductible amounts:

(a) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts less than or equal to \$100,000 is \$1,500.

(b) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts greater than \$100,000 is \$2,000.

(c) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts equal to or less than \$100,000 is \$1,000.

(d) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts greater than \$100,000 is \$1,250

■ 8. Revise § 61.6 to read as follows:

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

MAXIMUM AMOUNTS OF COVERAGE AVAILABLE ¹

Occupancy	Emergency program	Regular program
	Amount	Amount
Building Coverage:		
Single Family Dwelling	* \$35,000	\$250,000.
Two to Four Family Building	* 35,000	\$250,000.
Other Residential Building (including Multifamily Building)	** 100,000	\$500,000.
Condominium Building	N/A	\$250,000 times the number of units in the building.
Non-Residential Building	** 100,000	\$500,000.
Contents Coverage:²		
Residential Property ³	10,000	100,000.
Non-Residential Property	\$100,000	\$500,000.

¹ This Table provides the maximum coverage amounts available under the Emergency Program and the Regular Program, and the columns cannot be aggregated to exceed the limits in the Regular Program, which are established by statute. The aggregate limits for building coverage are the maximum coverage amounts allowed by statute for each building included in the relevant Occupancy Category.

² The policy limits for contents coverage are not per building. Although a single insured may not have more than one policy covering contents in a building, several insureds may have separate policies of up to the policy limits.

³ The Residential Property occupancy category includes the Single Family Dwelling, Two to Four Family Building, Other Residential Building, and Condominium Building occupancies categories.

* In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$50,000.

** In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$150,000.

(b) Coverage and benefits payable under the SFIP pursuant to § 61.3(b) and § 61.3(c) are included in, not in addition to, the coverage limits provided by the Act or stated in paragraph (a) of this section.

■ 9. Add § 61.10 to read as follows:

§ 61.10 Requirements for issuance or renewal of flood insurance coverage.

FEMA will not issue or renew flood insurance unless FEMA receives:

(a) The full amount due (including applicable premiums, surcharges, and fees); and

(b) A complete application, including the information necessary to establish a premium rate for the policy, or submission of corrected or additional information necessary to calculate the premium for the renewal of the policy.

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

■ 10. Amend § 61.11 by revising paragraphs (c) through (g) to read as follows:

* * * * *

(c) Where the following conditions are met, the effective date and time of any initial purchase of flood insurance coverage for any privately-owned property will be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium or initial installment payment:

(1) The Administrator has determined that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land

on which the wildfire that caused the post-wildfire conditions occurred; and

(2) The flood insurance coverage was purchased not later than 60 calendar days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that caused the post-wildfire conditions described in clause (1).

(d) Except as provided by paragraphs (a), (b), and (c) of this section, the effective date and time of any new policy or added coverage or increase in the amount of coverage will be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

(e) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy,

subject to any applicable waiting periods. The additional premium for any new coverage or increase in the amount of coverage will be calculated pro rata in accordance with the rates currently in force.

(f) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium payment by the agent does not constitute payment to the NFIP. Therefore, it is important that an application for flood insurance, as well as the full amount due, be mailed to the NFIP promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the full amount due are received at the office of the NFIP within ten (10) calendar days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of application even though the application and full amount due are received at the office of the NFIP after ten (10) calendar days following the date of application. Thus, if the application and premium payment are received after ten (10) calendar days from the date of the application or are not mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of receipt at the office of the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term *endorsement* for the term *application* in this paragraph (f).

(g) The rules set forth in paragraphs (a) through (f) of this section apply to Write Your Own (WYO) companies, except that agents must mail the premium payments and accompanying applications and endorsements to the WYO company and the WYO company must receive the applications and endorsements, rather than the NFIP.

§ 61.13 Standard Flood Insurance Policy.

■ 11. Amend § 61.13 by revising paragraphs (e) and (f) and adding paragraphs (g) and (h) to read as follows:

* * * * *

(e) *Authorized only under terms and conditions established by the Act and Regulation.* The Standard Flood Insurance Policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Federal Insurance

Administrator's interpretations, and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage that are not consistent with Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself, are void.

(f) *Agent acts only for policyholder.* The duly licensed property or casualty agent acts for the policyholder and does not act as agent for the Federal Government, the Federal Emergency Management Agency, the Write Your Own (WYO) program participating insurance company authorized by part 62 of this chapter, or the NFIP servicing agent.

(g) *Oral and written binders.* No oral binder or contract will be effective. No written binder will be effective unless issued with express authorization of the Federal Insurance Administrator.

(h) The Standard Flood Insurance Policy and endorsements may be issued by private sector Write Your Own (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO company, wherever the names "Federal Emergency Management Agency" and "Federal Insurance and Mitigation Administration" appear, a WYO company must substitute its own name therefor. Standard Flood Insurance Policies issued by WYO companies may be executed by the issuing WYO company as Insurer, in the place and stead of the Federal Insurance Administrator, but the risk of loss is borne by the National Flood Insurance Fund, not the WYO company.

■ 12. Revise Appendix A(1) to part 61 to read as follows:

Appendix A(1) to Part 61

Federal Emergency Management Agency, Federal Insurance and Mitigation Administration

Standard Flood Insurance Policy

Dwelling Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. This policy covers the following types of property only:

1. A one to four family residential building, not under a condominium form of ownership;
2. A single family dwelling unit in a condominium building; and

3. Personal property in a building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if separate policies were issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form policy and the RCBAP. We will only pay for damage once. Items of damage paid for under an RCBAP cannot also be claimed under the Dwelling Form policy.

II. Definitions

A. In this policy, "you" and "your" refer to the named insured(s) shown on the Declarations Page of this policy and the spouse of the named insured, if a resident of the same household. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters,
- b. Unusual and rapid accumulation or runoff of surface waters from any source,
- c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding

anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood*. A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement*. Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*.

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation*. The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium*. That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association*. The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building*. A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page*. A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible*. The amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location*. The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood*. Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Dwelling*. A building designed for use as a residence for no more than four families or a single-family unit in a condominium building.

16. *Elevated Building*. A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

17. *Emergency Program*. The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

18. *Federal Policy Fee*. A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

19. *Improvements*. Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

20. *Mudflow*. A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

21. *National Flood Insurance Program (NFIP)*. The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

22. *Policy*. The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one dwelling, which you specifically described in the application, may be insured under this policy.

23. *Pollutants*. Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

24. *Post-FIRM Building*. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

25. *Principal Residence*. The dwelling in which you or your spouse have lived for at least 80 percent of (a) the 365 days immediately preceding the time of loss; or (b) the period of ownership of you or your spouse, if either you or your spouse owned

the dwelling for less than 365 days immediately preceding the time of loss.

26. *Probation Surcharge*. A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

27. *Regular Program*. The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

28. *Special Flood Hazard Area (SFHA)*. An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

29. *Unit*. A single-family residential space you own in a condominium building.

30. *Valued Policy*. A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured.

Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and cannot be separately insured.

3. A detached garage at the described location. Coverage is limited to no more than 10 percent of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of liability. We do not cover any detached garage used or held for use for residential (i.e., dwelling), business, or farming purposes.

4. Materials and supplies to be used for construction, alteration, or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a) then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the

lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

6. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Built-in dishwashers;
- d. Built-in microwave ovens;
- e. Carpet permanently installed over unfinished flooring;
- f. Central air conditioners;
- g. Elevator equipment;
- h. Fire sprinkler systems;
- i. Walk-in freezers;
- j. Furnaces and radiators;
- k. Garbage disposal units;
- l. Hot water heaters, including solar water heaters;
- m. Light fixtures;
- n. Outdoor antennas and aerials fastened to buildings;
- o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;
- p. Plumbing fixtures;
- q. Pumps and machinery for operating pumps;
- r. Ranges, cooking stoves, and ovens;
- s. Refrigerators; and
- t. Wall mirrors, permanently installed.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- (1) Central air conditioners;
- (2) Cisterns and the water in them;
- (3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
- (4) Electrical junction and circuit breaker boxes;
- (5) Electrical outlets and switches;

(6) Elevators, dumbwaiters and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:

a. The property is owned by you or your household family members; and

b. At your option, the property is owned by guests or servants.

2. Personal property is also insured for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

3. Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case, there is no coverage for such property.

4. Coverage for personal property includes the following property, subject to B.1 above, which is insured under Coverage B only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. "Cook-out" grills;
- f. Food freezers, other than walk-in, and food in any freezer; and
- g. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- a. Air conditioning units, portable or window type;
- b. Clothes washers and dryers; and
- c. Food freezers, other than walk-in, and food in any freezer.

6. If you are a tenant and have insured personal property under Coverage B in this

policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment in which you reside, but for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

7. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor, and ceiling (not otherwise insured under a flood insurance policy purchased by your condominium association) for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

8. Special Limits. We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;
 - b. Rare books or autographed items;
 - c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;
 - d. Furs or any article containing fur that represents its principal value; or
 - e. Personal property used in any business.
9. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal.

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures.

a. Sandbags, Supplies, and Labor.

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

- (a) Your reasonable expenses to buy:
 - (i) Sandbags, including sand to fill them;
 - (ii) Fill for temporary levees;
 - (iii) Pumps; and
 - (iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.

(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

- (a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety.

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

(3) Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Condominium Loss Assessments.

a. Subject to III.C.3.b below, if this policy insures a condominium unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed.

The assessment must be made because of direct physical loss by or from flood during the policy term, to the unit or to the common elements of the NFIP insured condominium building in which this unit is located.

b. We will not pay any loss assessment:

(1) Charged against you and the condominium association by any governmental body;

(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;

(3) That results from a loss to personal property, including contents of a condominium building.

(4) In which the total payment combined under all policies exceeds the maximum amount of coverage available under the Act for a single unit in a condominium building where the unit is insured under both a Dwelling Policy and a RCBAP.

(5) On any item of damage that has already been paid under a RCBAP where a single unit in a condominium building is insured by both a Dwelling Policy and a RCBAP.

c. Condominium Loss Assessment coverage does not increase the Coverage A Limit of Liability and is subject to the maximum coverage limits available for a single family dwelling under the Act, payable between all policies issued and covering the unit, under the Act.

D. Coverage D—Increased Cost of Compliance

1. General.

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: Elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

a. Non-residential buildings.

b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limit of Liability.

We will pay you up to \$30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. Eligibility.

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

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

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

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is

enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "free-board" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

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

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Coverage D Exclusion 5.g below.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions.

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

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

5. Exclusions.

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

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any

insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

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

e. Any Increased Cost of Compliance under this Coverage D:

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

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

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

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

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

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

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

6. Other Provisions.

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80 percent insurance-to-value requirement for replacement cost coverage as set forth in Art. VII.R ("Loss Settlement") of this policy.

b. All other conditions and provisions of this policy apply.

IV. Property Not Covered

We do not insure any of the following:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the Definitions section

(see II.B.6.c) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts;

16. Personal property you own in common with other unit owners comprising the membership of a condominium association.

V. Exclusions

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including

removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the full amount due. We will determine the date of application using 44 CFR 61.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (*see* II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling;

or

b. That is within your control, including but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump or related equipment; or

c. Seeps or leaks on or through the insured property; unless there is a flood in the area

and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspire to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures;
2. III.C.3. Condominium Loss Assessments;
3. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation, or
2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this

policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance issued under the Act in the name of your condominium association covering the same property insured by this policy, then this policy will be in excess over the other insurance, except where a condominium loss assessment to the unit owner results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:

- a. 80 percent or more of its full replacement cost; or
- b. The maximum amount of insurance permitted under the Act;

The combined coverage payment under the other NFIP insurance and this policy cannot exceed the maximum coverage available under the Act, of \$250,000 per single unit.

C. Amendments, Waivers, Assignment

This policy cannot be changed, 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 constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

- a. When this policy insures only personal property; or
- b. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy

the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pays the additional premium amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term, and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, 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.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain an expired policy as of the expiration date shown on the Declarations Page.

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

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
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;
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
 - a. The date and time of loss;
 - b. A brief explanation of how the loss happened;
 - c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
 - d. Details of any other insurance that may cover the loss;
 - e. Changes in title or occupancy of the insured property during the term of the policy;
 - f. Specifications of damaged buildings and detailed repair estimates;
 - g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
 - h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in G.3 above.

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

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. 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 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.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

- a. Show us or our representative the damaged property;
- b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
- c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

- a. Quantities and costs;
- b. Actual cash values or replacement cost (whichever is appropriate);
- c. Amounts of loss claimed;
- d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
- e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
 - b. There is an entry of a final judgment; or
 - c. There is a filing of an appraisal award with us, as provided in VII.M.
2. If we reject your proof of loss in whole or in part you may:
- a. Accept our denial of your claim;
 - b. Exercise your rights under this policy; or
 - c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon to us damaged or undamaged property insured under this policy.

L. Salvage

We may permit you to keep damaged property insured under this policy 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.

M. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word "mortgagee" includes trustee.
2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and

you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
- b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All of the terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

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 one year after the date of the written denial of all or part of the 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. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. 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.

Q. Continuous Lake Flooding

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible 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:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

- a. Lake floodwaters must damage or imminently threaten to damage your building.
- b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above, and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in paragraphs a-c below.

a. Replacement Cost Loss Settlement, described in R.2 below, applies to a single family dwelling provided:

(1) It is your principal residence and (2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80 percent or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement, described in R.3 below, applies to a single family dwelling that is a manufactured or mobile home or a travel trailer.

c. Actual Cash Value loss settlement applies to a single family dwelling not subject to replacement cost or special loss settlement, and to the property listed in R.4 below.

2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in R.1.a above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The building limit of liability shown on your Declarations Page;

(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than \$1,000, or more than 5 percent of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under R.2.a above or R.4.a.2 below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for any additional liability according to R.2.a, b, and c above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term, then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a single family dwelling that:

(1) is a manufactured or mobile home or a travel trailer, as defined in II.C.6.b and c,

(2) is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled, and

(3) is your principal residence as specified in R.1.a.1 above.

b. If such a dwelling is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damage condition, we will, at our discretion pay the least of the following amounts:

(1) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value, or

(2) The building limit of liability shown on your Declarations Page.

c. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damage condition, we will settle the loss according to the Replacement Cost conditions in R.2 above.

4. Actual Cash Value Loss Settlement

The types of property noted below are subject to actual cash value (or in the case of R.4.a.2., below, proportional) loss settlement.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80 percent of its full replacement cost immediately before the loss and less than the maximum amount of insurance available under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

(1) The actual cash value, as defined in II.C.2, of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80 percent of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the amount of insurance that represents 80 percent of its full replacement cost. But if 80 percent of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

b. A two-, three-, or four-family dwelling.

c. A unit that is not used exclusively for single-family dwelling purposes.

d. Detached garages.

e. Personal property.

f. Appliances, carpets, and carpet pads.

g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.

h. Any property insured under this policy that is abandoned after a loss and remains as debris anywhere on the described location.

i. A dwelling that is not your principal residence.

5. Amount of Insurance Required

To determine the amount of insurance required for a dwelling immediately before the loss, we do not include the value of:

a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;

b. Those supports listed in R.5.a above, that are below the surface of the ground inside the foundation walls if there is no basement; and

c. Excavations and underground flues, pipes, wiring, and drains.

Note: The Coverage D—Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

VIII. Policy Nullification, Cancellation, and Non-Renewal*A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements*

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;

b. Engaged in fraudulent conduct; or

c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Except as allowed under Article I.G, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.4.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property.

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of

rating the policy within the required deadline.

IX. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

■ 13. Revise Appendix A(2) to Part 61 to read as follows:

Appendix A(2) to Part 61

**Federal Emergency Management Agency,
Federal Insurance and Mitigation
Administration**

Standard Flood Insurance Policy**GENERAL PROPERTY FORM**

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. Coverage Under This Policy.

1. Except as provided in I.A.2, this policy provides coverage for multifamily buildings (residential buildings designed for use by 5 or more families that are not condominium buildings), non-residential buildings, and their contents.

2. There is no coverage for a residential condominium building in a regular program community, except for personal property coverage for a unit in a condominium building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage

will apply to the single building specifically described in the Flood Insurance Application.

F. Multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

II. Definitions

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy and the spouse of the named insured, if a resident of the same household. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters,
- b. Unusual and rapid accumulation or runoff of surface waters from any source,
- c. Mudflow

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood*. A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement*. Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*.

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent

foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

- a. Common elements owned in undivided shares by unit owners; and
- b. Other buildings in which the unit owners have use rights where membership in the entity is a required condition of unit ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

- a. This printed form;
- b. The application and Declarations Page;
- c. Any endorsement(s) that may be issued; and
- d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building.* A condominium building, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

28. *Stock* means merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping. Stock does not include any property not covered under Section IV. Property Not Covered, except the following:

- a. Parts and equipment for self-propelled vehicles;
- b. Furnishings and equipment for watercraft;
- c. Spas and hot-tubs, including their equipment; and
- d. Swimming pool equipment.

29. *Unit.* A single-family residential or non-residential space you own in a condominium building.

30. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The building described on the Declarations Page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. Building property located at another location for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery, and equipment, which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Carpet permanently installed over unfinished flooring;
- d. Central air conditioners;
- e. Elevator equipment;
- f. Fire extinguishing apparatus;
- g. Fire sprinkler systems;
- h. Walk-in freezers;
- i. Furnaces;
- j. Light fixtures;
- k. Outdoor antennas and aerials attached to buildings;
- l. Permanently installed cupboards, bookcases, paneling, and wallpaper;
- m. Pumps and machinery for operating pumps;
- n. Ventilating equipment; and
- o. Wall mirrors, permanently installed;
- p. In the units within the building, installed:

- (1) Built-in dishwashers;
- (2) Built-in microwave ovens;
- (3) Garbage disposal units;
- (4) Hot water heaters, including solar water heaters;
- (5) Kitchen cabinets;
- (6) Plumbing fixtures;
- (7) Radiators;
- (8) Ranges;
- (9) Refrigerators; and
- (10) Stoves.

5. Materials and supplies to be used for construction, alteration, or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a.) then coverage applies:

(1) Only while such work is in progress; or
(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- (1) Central air conditioners;
- (2) Cisterns and the water in them;
- (3) Drywall for walls and ceilings in a

basement and the cost of labor to nail it, unfinished and unfloats and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and

anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2–4 below, against direct physical loss by or from flood to personal property inside the fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. When this policy covers personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy covers household personal property, it will insure household personal property usual to a living quarters, that:

(1) Belongs to you, or a member of your household, or at your option:

(a) Your domestic worker;

(b) Your guest; or

(2) You may be legally liable for.

b. If this policy covers other than household personal property, it will insure your:

(1) Furniture and fixtures;

(2) Machinery and equipment;

(3) Stock; and

(4) Other personal property owned by you and used in your business, subject to IV, Property Not Covered.

4. Coverage for personal property includes the following property, subject to B.1.a and B.1.b above, which is insured under Coverage B, only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. “Cook-out” grills;

f. Food freezers, other than walk-in, and food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

6. Special Limits. We will pay no more than \$2,500 for any loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur that represents its principal value.

7. We will pay only for the functional value of antiques.

8. If you are a tenant, you may apply up to 10 percent of the Coverage B limit to improvements:

a. Made a part of the building you occupy; and

b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a condominium unit owner, you may apply up to 10 percent of the Coverage B limit to cover loss to interior:

a. Walls,

b. floors, and

c. ceilings,

that are not covered under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

10. If you are a tenant, personal property must be inside the fully enclosed building.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described

location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

(3) Any property removed, including a moveable home described in II.6, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Pollution Damage

We will pay for damage caused by pollutants to covered property if the discharge, seepage, migration, release, or escape of the pollutants is caused by or results from flood. The most we will pay under this coverage is \$10,000. This coverage does not increase the Coverage A or Coverage B limits of liability. Any payment under this provision when combined with all other payments for the same loss cannot exceed the replacement cost or actual cash value, as appropriate, of the covered property. This coverage does not include the testing for or monitoring of pollutants unless required by law or ordinance.

D. Coverage D—Increased Cost of Compliance

1. General.

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: Elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

a. Non-residential buildings.

b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limits of Liability.

We will pay you up to \$30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of

claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. However, the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

3. Eligibility.

a. A building covered under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

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

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

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

(3) Elevation or floodproofing above the base flood elevation to meet State or local "free-board" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must

require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to the exclusion at III.D.5.g.

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

4. Conditions.

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

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

5. Exclusions.

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

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

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

e. Any Increased Cost of Compliance under this Coverage D:

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

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

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not

specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

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

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

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

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

6. Other Provisions.

All other conditions and provisions of the policy apply.

IV. Property not Covered

We do not insure any of the following property:

1. Personal property not inside the fully enclosed building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the II.C.6.c, whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads and are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts;

16. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy;

17. A residential condominium building located in a Regular Program community.

V. Exclusions

A. We only pay for "direct physical loss by or from flood," which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 61.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (*see* II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump or related equipment; or

c. Seeps or leaks on or through the insured property; unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspires to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the

deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation, or
2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. Where this policy covers a condominium association and there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that insures the same loss as this policy, then this policy will be primary.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or
2. When this policy covers a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1 and VII.D.4, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b is provided.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, 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.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

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

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
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;

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;

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

- a. The date and time of loss;
- b. A brief explanation of how the loss happened;
- c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
- d. Details of any other insurance that may cover the loss;
- e. Changes in title or occupancy of the insured property during the term of the policy;
- f. Specifications of damaged buildings and detailed repair estimates;
- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
- h. Details about who occupied any insured building at the time of loss and for what purpose; and
- i. The inventory of damaged personal property described in G.3 above.

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

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. 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 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.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

- 1. At such reasonable times and places that we may designate, you must:
 - a. Show us or our representative the damaged property;
 - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
 - c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

- a. Quantities and costs;
- b. Actual cash values or replacement cost (whichever is appropriate);
- c. Amounts of loss claimed;
- d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
- e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
 - b. There is an entry of a final judgment; or
 - c. There is a filing of an appraisal award with us, as provided in VII.M.
2. If we reject your proof of loss in whole or in part you may:
- a. Accept our denial of your claim;
 - b. Exercise your rights under this policy; or
 - c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon damaged or undamaged insured property to us.

L. Salvage

We may permit you to keep damaged insured property 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.

M. Appraisal

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that

the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

- 1. Pay its own appraiser; and
- 2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word "mortgagee" includes trustee.

2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
 - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

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 one year of the date of the written denial of all or part of the 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. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your

right to re-cover 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.

Q. Continuous Lake Flood

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible 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:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

- a. Lake floodwaters must damage or imminently threaten to damage your building.
- b. Before approval of your claim, you must:
 - (1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and
 - (2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood

damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title,

any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above, and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

We will pay the least of the following amounts after application of the deductible:

- 1. The applicable amount of insurance under this policy;
- 2. The actual cash value; or
- 3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

- a. Concealed or misrepresented any material fact or circumstance;
- b. Engaged in fraudulent conduct; or
- c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have

determined not to take the policy and you are not subject a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. If the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.4.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property.

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not re-quire any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

■ 14. Revise Appendix A(3) to Part 61 to read as follows:

Appendix A(3) to Part 61

Federal Emergency Management Agency, Federal Insurance and Mitigation Administration

Standard Flood Insurance Policy

RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in Section I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form and the RCBAP. We will only pay for damage once. Items of damage paid for under a RCBAP cannot also be claimed under the Dwelling Form policy.

II. Definitions

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy. The named insured must also include the building owner if building coverage is purchased. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to have an existing interest at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters,
b. Unusual and rapid accumulation or runoff of surface waters from any source,
c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of

insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building.* A building, condominium, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

28. *Unit.* A single-family residential space in a residential condominium building.

29. *Valued Policy.* A policy in which the insured and the insurer agree on the value of

the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The residential condominium building described on the Declarations Page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery and equipment, including its units, which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Carpet permanently installed over unfinished flooring;
- d. Central air conditioners;
- e. Elevator equipment;
- f. Fire extinguishing apparatus;
- g. Fire sprinkler systems;
- h. Walk-in freezers;
- i. Furnaces;
- j. Light fixtures;
- k. Outdoor antennas and aerials fastened to buildings;
- l. Permanently installed cupboards, bookcases, paneling, and wallpaper;
- m. Pumps and machinery for operating pumps;
- n. Ventilating equipment;
- o. Wall mirrors, permanently installed; and
- p. In the units within the building,

installed:

- (1) Built-in dishwashers;
- (2) Built-in microwave ovens;
- (3) Garbage disposal units;
- (4) Hot water heaters, including solar water heaters;

- (5) Kitchen cabinets;
- (6) Plumbing fixtures;
- (7) Radiators;
- (8) Ranges;
- (9) Refrigerators; and
- (10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a.) then coverage applies:

(1) Only while such work is in progress; or
(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloats and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and

anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2 and B.3 below, against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is:

a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest; or

b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. Coverage for personal property includes the following property, subject to B.1. above, which is covered under Coverage B only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

4. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

5. Special Limits. We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur which represents its principal value.

6. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal.

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your

work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures.

a. Sandbags, Supplies, and Labor.

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

b. Property Removed to Safety.

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there.

(3) The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements. Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

D. Coverage D—Increased Cost of Compliance

1. General.

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage.

Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

a. Non-residential buildings.

b. Residential buildings with basements that satisfy FEMA's standards published in

the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to \$30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But, the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. *Eligibility.*

a. A building covered under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

(1) Be a “repetitive loss building.” A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

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

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

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

(3) Elevation or floodproofing above the base flood elevation to meet State or local “freeboard” requirements, *i.e.*, that a building must be elevated above the base flood elevation.

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

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g below relating to improvements.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

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

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

5. *Exclusions.*

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

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

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

e. Any Increased Cost of Compliance under this Coverage D:

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

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

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

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

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

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

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

6. *Other Provisions.*

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under Art. VIII.R. (“Loss Settlement”).

b. All other conditions and provisions of this policy apply.

IV. *Property Not Covered*

We do not insure any of the following:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.C.6.c) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts;

16. Personal property used in connection with any incidental commercial occupancy or use of the building.

V. Exclusions

A. We only pay for “direct physical loss by or from flood,” which means that we do not pay you for:

1. Loss of revenue or profits;
2. Loss of access to the insured property or described location;
3. Loss of use of the insured property or described location;
4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress*. If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under

this policy and the correct premium. We will determine the date of application using 44 CFR 611.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;
4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or
6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

- (1) Design, structural, or mechanical defects;
- (2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or
- (3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

- a. Backs up through sewers or drains;
- b. Discharges or overflows from a sump, sump pump or related equipment; or
- c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

VII. Coinsurance

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:

1. At least 80 percent of its replacement cost; or
2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in accordance with the terms of VII.B above, then loss payment is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.

2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1 above.

3. Subtract the deductible from the figure determined in C.2 above.

We will pay the amount determined in C.3 above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

Examples

Example #1 (Inadequate Insurance)

Replacement value of the building—\$250,000
Required amount of insurance—\$200,000
(80 percent of replacement value of \$250,000)
Actual amount of insurance carried—
\$180,000

Amount of the loss—\$150,000

Deductible—\$500

Step 1: $180,000/200,000 = .90$

(90 percent of what should be carried.)

Step 2: $150,000 \times .90 = 135,000$

Step 3: $135,000 - 500 = 134,500$

We will pay no more than \$134,500. The remaining \$15,500 is not covered due to the coinsurance penalty (\$15,000) and application of the deductible (\$500).

Example #2 (Adequate Insurance)

Replacement value of the building—\$500,000
Required amount of insurance—\$400,000
(80 percent of replacement value of \$500,000)

Actual amount of insurance carried—
\$400,000

Amount of the loss—\$200,000

Deductible—\$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than \$199,500 (\$200,000 amount of loss minus the \$500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any covered building property will be included;
2. The replacement cost value of any building property not covered under this policy will not be included; and
3. Only the replacement cost value of improvements installed by the condominium association will be included.

VIII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation, or
2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VIII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VIII.B.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

C. Amendments, Waivers, Assignment

This policy cannot be changed, 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 constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or
2. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VIII.D.1 and VIII.D.4, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VIII.E.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VIII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of

a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VIII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amount requested in VIII.D.3.a or VIII.D.4.a, or the additional information requested in VIII.D.3.b or VIII.D.4.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VIII.D.3.b or VIII.D.4.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of IX.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, 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.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

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

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
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;
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
 - a. The date and time of loss;
 - b. A brief explanation of how the loss happened;
 - c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
 - d. Details of any other insurance that may cover the loss;
 - e. Changes in title or occupancy of the insured property during the term of the policy;
 - f. Specifications of damaged buildings and detailed repair estimates;
 - g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
 - h. Details about who occupied any insured building at the time of loss and for what purpose; and
 - i. The inventory of damaged personal property described in G.3 above.

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

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. 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 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.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
 - a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

- a. Quantities and costs;
- b. Actual cash values or replacement cost (whichever is appropriate);
- c. Amounts of loss claimed;
- d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
- e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us, as provided in VIII.M.

2. If we reject your proof of loss in whole or in part you may:

- a. Accept our denial of your claim;
- b. Exercise your rights under this policy; or
- c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon damaged or undamaged insured property to us.

L. Salvage

We may permit you to keep damaged insured property 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.

M. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word "mortgagee" includes trustee.
2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
- b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

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 one year of the date of the written denial of all or part of the 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. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. 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.

Q. Continuous Lake Flood

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible 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:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or this paragraph Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even

though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that even if a certified project protects the property, the land use

restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above, and

(2) The date by which you must have flood insurance in effect.

*R. Loss Settlement**1. Introduction*

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a-c below.

a. Replacement Cost Loss, Settlement described in R.2 below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement, described in R.3 below applies to a residential condominium building that is a travel trailer or a manufactured home.

c. Actual Cash Value loss settlement applies to all other property covered under this policy, as outlined in R.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The amount of insurance in this policy that applies to the building;

(2) The replacement cost of that part of the building damaged, with materials of like kind and quality, and for like occupancy and use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and

until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, subject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a residential condominium building that is:

(1) A manufactured home or travel trailer, as defined in II.C.6.b and c, and

(2) at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled.

b. If such a building is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion, pay the least of the following amounts:

(1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or

(2) The Building Limit of liability shown on your Declarations Page.

c. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in R.2 above.

4. Actual Cash Value Loss Settlement

a. The types of property noted below are subject to actual cash value loss settlement:

(1) Personal property;

(2) Insured property abandoned after a loss and that remains as debris at the described location;

(3) Outside antennas and aerials, awning, and other outdoor equipment;

(4) Carpeting and pads;

(5) Appliances; and

(6) A manufactured home or mobile home or a travel trailer as defined in II.C.6.b or c that does not meet the conditions for special loss settlement in R.3 above.

b. We will pay the least of the following amounts:

(1) The applicable amount of insurance under this policy;

(2) The actual cash value, as defined in II.C.2; or

(3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

IX. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;

b. Engaged in fraudulent conduct; or

c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on This Policy. This policy will be cancelled, pursuant to VIII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Except as allowed under Article I.F, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.3.a, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property.

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

X. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

XI. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 15. Revise the authority citation for Part 62 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

■ 16. Revise § 62.3 to read as follows:

§ 62.3 Servicing Agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Federal Insurance Administrator may enter into an agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Federal Insurance Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Federal Insurance Administrator.

(b) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

■ 17. Revise § 62.5 to read as follows:

§ 62.5 Nullifications, Cancellations, and Premium Refunds.

(a) Nullification.

(1) Property Ineligible at Time of Application. FEMA will void a policy for a property that was not eligible for coverage at the time of the initial application from the commencement of the policy. FEMA must pay the policyholder a refund of all premium, fees, and surcharges paid from the date of commencement of the policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was ineligible for coverage at the time of the initial application. If FEMA paid a claim for an ineligible property, the policyholder must return the claim payment to FEMA, or offset the payment from the premiums to be refunded, before FEMA will process the refund.

(2) Property Later Becomes Ineligible. FEMA may not renew a policy for a property that was eligible for coverage at the time of the initial application, but later became ineligible for coverage. In such instances, the FEMA must nullify the policy from the first renewal date after the property became ineligible. FEMA must refund all premium, fees, and surcharges paid from the first renewal date after the property became ineligible, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was eligible

for coverage at the time of the initial application, but later became ineligible for coverage. If FEMA paid a claim for a property after it became ineligible for coverage, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before FEMA may process the refund.

(3) Nullification Prior to Policy Effective Date. If FEMA nullifies a policy prior to the policy effective date, that policy will be void from the commencement of the nullified policy term. In such case, FEMA will refund all premium, fees, and surcharges paid for the current policy term only. If FEMA paid a claim for a policy that was improperly issued, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before the NFIP may process the refund.

(b) Cancellation Due to Lack of an Insurable Interest. If the policyholder had an insurable interest, but no longer has an insurable interest, in the insured property, FEMA must cancel the policy on the insured property. If FEMA cancels a policy for this reason, FEMA must refund the policyholder a pro rata share of the premium from the date the policyholder lost an insurable interest in the property, but no more than 5 years prior to the date of the cancellation request. FEMA must pay the policyholder a refund of all fees or surcharges for any full policy term during which the policyholder had no insurable interest in the insured property, but no more than 5 years prior to the date of the cancellation request. A policyholder ceases to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

(c) No Insurance Coverage Requirement. A policyholder may cancel a policy if the policyholder was subject to a requirement by a lender, loss payee, or other Federal agency to obtain and maintain flood insurance pursuant to statute, regulation, or contract, but there is no longer such a requirement. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, calculated from the date of the cancellation request, but will not receive a refund of any fees or surcharges.

(d) Establishment of a Common Expiration Date. A policyholder may

purchase a new policy and cancel an existing policy in order to establish a common expiration date between flood insurance coverage and other coverage. The policyholder will receive a refund of a pro rata share of the premium calculated from the effective date of the new policy to the end date of the previous policy. The policyholder will not receive a refund of any fees or surcharges. In order to rewrite and cancel the policy, the following conditions must apply:

(1) The new policy must be written with the same company for the same or higher amount of coverage. If the policy is written for a higher amount or different type of coverage, the waiting period in § 61.11 will apply.

(2) The other insurance coverage for which the common expiration date is being established must be for coverage on the same building that is insured by the flood policy being cancelled and rewritten.

(3) The coverage for the new policy must be effective prior to the cancelling the existing policy.

(e) Cancellation or Nullification of Duplicate NFIP Policies.

(1) Generally.

(i) Except as described in 44 CFR 62.5(e)(2), if an insured property is covered by more than one NFIP policy not in accordance with applicable regulations and the Standard Flood Insurance Policy, FEMA must nullify the policy with the later effective date. The policy with the earlier effective date will continue. The policyholder will receive a pro rata refund of all premium for the nullified policy from the effective date of the nullified policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is covered by more than one NFIP policy. The policyholder will receive a refund of all fees or surcharges for any full policy term during which the policyholder was covered by more than one policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is covered by more than one NFIP policy.

(ii) If both policies have the same policy effective date, the policyholder may choose which policy will remain in effect, and the policyholder will receive a refund of all premium, fees, and surcharges for the cancelled policy from the effective date of the cancelled policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is covered by more than one NFIP policy.

(2) Exceptions. In the following cases, the policyholder may maintain the policy with the later policy effective

date while cancelling the policy with the earlier policy effective date:

(i) **Earlier Policy Expired**—The policy with the earlier effective date has expired for more than 30 days. In such cases, the policyholder will receive a refund of a pro rata share of the premium, calculated from the effective date of the policy with the later effective date to the end date of the policy with the earlier effective date, but no more than 5 years prior to the date of cancellation. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the insured property is covered by both policies, but no more than 5 years prior to the date of the cancellation request.

(ii) **Group Flood Insurance Policy (GFIP)**—The policy with the earlier policy effective date is a Group Flood Insurance Policy. In such cases, there will be no refund of any premium, fees, or surcharges.

(iii) **Cancellations to Establish a Common Expiration Date**—The policy with the earlier effective date is cancelled to establish a common policy expiration date pursuant to paragraph (d) of this section. In such cases, refunds will be provided in accordance with paragraph (d) of this section.

(iv) **Force-Placed Policy**—The policy with the earlier effective date was force placed pursuant to 42 U.S.C. 4012a using the NFIP's Mortgage Portfolio Protection Program. In such cases, the policyholder will receive a refund of the pro rata share of the premium calculated from the policy effective date of the new policy to the expiration date of the cancelled policy. There will be no refund of any fees or surcharges.

(v) **Condominium Unit Covered by a Dwelling Form Policy and an RCBAP**—The policy with the earlier effective date is a Dwelling Form Policy with building coverage on a condominium unit that is

also covered by a Residential Condominium Building Association Policy (RCBAP) that is issued at the statutory maximum coverage limit for buildings. In such cases, the policyholder will receive a refund of a pro rata share of the premium for the building coverage issued under the Dwelling Form policy, as calculated from the effective date of the RCBAP policy to the end date of the Dwelling Form policy. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the condominium unit is covered by both a Dwelling Form policy and an RCBAP in which the coverage equals the statutory maximum coverage limits for buildings, but no more than 5 years prior to the date of the cancellation request.

(f) **Other Cancellations and Nullifications.** Except as indicated below, FEMA will not refund premiums, assessments, fees, or surcharges if FEMA cancels a policy for any of the following reasons:

(1) **Fraud.** FEMA will cancel a policy for fraud committed by the policyholder or the agent. FEMA may cancel a policy for misrepresentation of a material fact by the policyholder or agent. Such cancellations will take effect as of the date of the fraudulent act or material misrepresentation of fact.

(2) **Administrative Cancellation.** FEMA may cancel and rewrite a policy to correct an administrative error, such as when the policy is written with the wrong policy effective date. In such cases, FEMA will apply any premium, assessments, fees, or surcharges to the new policy. FEMA will refund any excess premium, fees, surcharges, or assessments paid.

(3) **Nullification for Properties Ineligible Due to Physical Alteration of Property.** A policy insuring a building

or its contents, or both, may be cancelled if the building has been physically altered in such a manner that the building and its contents are no longer eligible for flood insurance coverage. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, but the policyholder will not receive a refund of any fees or surcharges.

■ 18. Revise § 62.6 to read as follows:

§ 62.6 Brokers and Agents Writing NFIP Policies through the NFIP Direct Servicing Agent.

(a) A broker or agent selling policies of flood insurance placed with the NFIP at the offices of its servicing agent must be duly licensed by the state insurance regulatory authority in the state in which the property is located.

(b) The earned commission which will be paid to any property or casualty insurance agent or broker, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this Part, will not be less than \$10 and is computed as follows:

* * * * *

§ 62.22 [Amended]

■ 19. In § 62.22, amend paragraph (a) by removing the two instances of the words “Federal Insurance Administration” and replacing them with “Federal Insurance and Mitigation Administration.”

Brock Long,

Administrator, Federal Emergency Management Agency.

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