FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 64, 65, 70, and 75

RIN 3067–AC17

National Flood Insurance Program: Insurance Coverage and Rates, Criteria for Land Management, Use, Identification, and Mapping of Flood Control Restoration Zones

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new flood insurance rate zone, known as the flood control restoration zone or Zone AR, to delineate special flood hazard areas on National Flood Insurance Program (NFIP) Flood Insurance Rate Maps (FIRMs). The rule's underlying statute stipulates that flood insurance be made available at premium rates appropriate to the temporary nature of flood hazards during the period when a flood protection system is being restored. The Zone AR designation is a means to recognize that a flood protection system is being restored to provide protection during the base flood event, and to reduce the flood insurance costs and elevation requirements for properties that will be exposed to an increased risk of flooding during the restoration period. In return for the availability of flood insurance this rule also establishes minimum flood plain management requirements and provides regulatory guidance for implementing statutory requirements.

EFFECTIVE DATE: This rule is effective November 26, 1997.

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SUPPLEMENTARY INFORMATION:

Rulemaking Chronology

Directed under § 928 of Pub. L. 102–550 to publish regulations on the newly authorized flood control restoration zone, FEMA published a proposed rule on April 1, 1994, 59 FR 15351. Based on comments on the proposed rule we made changes for the interim final rule. In order to meet the statutory 2-year deadline for publishing regulations, yet to give the public and interested parties another opportunity to comment on the changes we made, we published an interim final rule on October 25, 1994, 59 FR 53592, with a 45-day comment period. We extended that comment period 13 days to December 23, 1994 in order to permit additional comments and to hold a public meeting to receive oral comments to supplement the record. On December 19, 1994 we held a public meeting at FEMA headquarters in Washington, DC to hear from diverse interest groups, including several of whom participated by teleconference.

The interim final rule contains provisions to implement a new flood insurance rate zone, Zone AR, for areas designated as a flood control restoration zone on NFIP maps. It also establishes minimum flood plain management requirements and provides regulatory guidance for implementing statutory requirements of § 928 of Public Law 102–550, 42 U.S.C. 4014(f), including procedures for delineating flood control restoration zones on FIRMs.

We sent copies of the interim final rule to members of Congress and to chief executive officers of communities affected by the rule concurrently with our submission of the rule to the **Federal Register**. We met with House Banking Committee staff (Senate Banking Committee staff members were invited but were unable to attend) to discuss the provisions in the interim final rule.

At the request of a Member of Congress representing several Los Angeles County communities, FEMA and the U.S. Army Corps of Engineers participated in an informational public meeting in Bellflower, California on April 22, 1995 to discuss the restoration of the flood protection system along the Rio Hondo and Los Angeles Rivers. No substantive new issues or comments were raised at this meeting or otherwise affected the substance of the rule published today.

Scope of Public Participation

During the comment period provided for the interim final rule, we received 47 letters, each containing multiple comments about various issues in the interim final rule. Most of the letters represented the local interests of the Los Angeles and Sacramento area communities. Those submitting formal comments on the interim final rule included: one U.S. Senator, two members of the U.S. House of Representatives, community officials and representatives of local governments and community agencies, representatives of the local business community, and private citizens from the Los Angeles and Sacramento metropolitan areas, and state and national representatives of environmental and flood plain management associations.

Twenty-five individuals participated in the December 19, 1994 public meeting, including a U.S. Representative, several Congressional staff members, local government officials from Los Angeles, Sacramento, and Stockton, representatives of national environmental and flood plain management associations, staff of private lobbying firms representing communities in the Los Angeles and Sacramento areas, one individual representing a private citizen, and a private citizen/local activist. Participation in the December 19, 1994, meeting was also available through a telephone conferencing connection. Oral comments were recorded and a written transcript was sent to each of the meeting participants.

Overview of Comments

Comments on the interim final rule expressed support for the AR Zone as a means to accommodate community participation in the NFIP during the period required to restore an existing flood protection system. Several comments approved creation of uniform criteria applicable nationwide to communities affected by decertification of an existing flood protection system, and not limited to communities in the Sacramento and Los Angeles, California areas. Another noted that the interim final rule established a reasonable procedure for such communities, but recognized the potential damages to property and threat to life, particularly where flood depths are significant.

A number of comments indicated some misunderstanding of the NFIP, its statutory authority and how the Program is administered. Created by Congress in the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, the NFIP is a voluntary program that was designed to reduce the loss of life and property and rising Federal disaster relief costs caused by flooding. The NFIP makes federally backed flood insurance available for property owners located in participating communities. Before the Congress created the NFIP, flood insurance coverage was generally not available through private insurers among other things because of adverse selection and the high cost to identify flood risks. Under the NFIP the cost of flood losses is transferred from the general taxpayer to the flood plain occupant by requiring owners of flood plain properties to purchase flood insurance coverage when obtaining Federal or federally related financial assistance for construction or acquisition purposes. Today property owners in over 18,500 participating

communities may purchase flood insurance.

A number of comments asked that FEMA withhold issuance of revised FIRMs identifying the increased flood hazard, or to issue maps showing the community as non-floodprone. Some comments questioned FEMA's mandate to identify flood hazards and questioned why FEMA needs to identify flood hazard areas. Several comments asked that FEMA withhold issuance of FIRMs for a community as long as progress is being made to restore flood protection.

The National Flood Insurance Act of 1968, as amended by Pub. L. 102–550, does not give FEMA authority to withhold publication of maps outright, or to withhold maps as long as communities are making progress toward restoration of the flood protection system. The legislation reduces flood insurance costs and elevation requirements, recognizes the added flood risk during the restoration period, and leaves intact the mapping requirements that have existed since 1968. The maps are required to identify and delineate the flood hazards, as well as to identify where flood insurance is or is not required. Withholding the maps would not be in the best interests of the residents of the community who need to be aware of the flood risk so that they can make informed decisions that will protect them and their property.

The 1968 Act requires that FEMA identify and map flood hazards nationwide and disseminate the information to local communities so that they and their residents can be aware of the flood risk and take steps to protect against future flood losses. During the last 25 years, FEMA has mapped over 165,000 square miles of floodprone areas nationwide.

In return for making flood insurance available, the community must commit to adopt and enforce NFIP flood plain management regulations to reduce the potential for future flood damages in the identified special flood hazard areas (SFHAs). Development in these areas is regulated by local flood plain ordinances that are designed to reduce future flood damages by requiring that new and substantially improved structures be protected to the base flood level at a minimum. Experience has proven these measures effective in reducing flood losses.

The NFIP's flood insurance and flood plain management requirements are based on flood insurance studies conducted under contract for FEMA by other Federal agencies and by private engineering firms that have a demonstrated expertise in hydrologic and hydraulic analyses of flood plains. From these studies, FIRMs are prepared that identify the areas of the community that will be inundated by the 1-percent annual chance flood, that is, the flood that has a 1 percent chance of being equalled or exceeded in any year. The 1-percent annual chance flood standard has been widely adopted by Federal, State and local agencies for design and regulatory purposes.

The 1-percent annual chance flood is sometimes called the 100-year flood or, as used in this rule, the ''base flood''. ''Base flood'' describes a flood of a particular magnitude, the 1-percent annual chance or 100-year flood. There is a 26-percent chance that a flood of this magnitude will occur at some point during the life of a 30-year mortgage.

A number of comments questioned the constitutionality of the flood insurance purchase requirement, while other comments expressed that it should be individual choice to buy flood insurance. Major flooding in the early 1970s prompted the Congress in 1973 to enact certain mandatory insurance purchase requirements that protect Federal financial interests in the flood plain. The mandatory flood insurance purchase requirements apply to mortgages and other financial assistance obtained from a Federal or federally regulated lender where the security for the loan is a building or manufactured housing located in a designated SFHA. Flood insurance must also be purchased by recipients of some types of flood-related disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Background on the Enactment of Zone AR Provisions

Several of those commenting indicated that they were not aware of the background that led Congress to authorize flood insurance availability for flood control restoration zones. FEMA contracts with other Federal agencies and private contractors periodically to restudy flood risks and revise flood maps when there is sufficient change in the flooding conditions to warrant such action. When the U.S. Army Corps of Engineers, for example, determines that a previously certified flood protection system, such as a levee, no longer provides protection during the base flood, under the National Flood Insurance Act FEMA must identify and map the resulting floodprone areas. Within these decertified areas, NFIP regulations require participating communities to enforce local flood plain management ordinances for elevating new construction and substantial improvements of existing buildings to the level of the base flood at a minimum in order to reduce or eliminate flood damages. These mandates are without regard to any actions being taken to restore a flood protection system.

Flood insurance premiums are calculated on the actual flood risk to the building or manufactured housing so that the cost of flood insurance for new construction placed below the base flood level will reflect the increased risk. In some cases, however, the community may be taking specific actions to restore protection to the base flood level so that the increased flood risk is considered to be a temporary situation that will be remedied when the system is fully restored.

In the 1980s the U.S. Army Corps of Engineers determined that the levee systems protecting certain parts of the Sacramento and Los Angeles areas no longer provided protection from the base flood, and decertified those systems. Under the National Flood Insurance Act FEMA remapped the areas no longer protected to the base flood level. The remapping showed large areas that would be subject to flooding from the base flood, with depths from 1–15 feet in the Los Angeles area, and as deep as 26 feet in parts of the Natomas area near Sacramento. Concern for the costs of new construction or substantial improvements to existing buildings, and concern for the cost of flood insurance required by law in these areas, caused communities and various interest groups to petition the Congress for relief while the levee systems were being restored.

To bolster the position of affected communities in the Los Angeles area, an economic study prepared at the University of Southern California (USC) in 1992 predicted major adverse economic impacts in the Los Angeles area if the NFIP flood insurance and flood plain management requirements were enforced after decertification of the levee systems on the Rio Hondo and Los Angeles Rivers. The findings of the USC study apparently were important influences in persuading the Congress to amend the National Flood Insurance Act of 1968 to assist communities, such as those in the Los Angeles and Sacramento areas, where an existing flood protection system no longer provides base flood protection but is being restored.

In October 1992 Congress enacted the Housing and Community Development Act of 1992, Public Law 102–550. Section 928 of Pub. L. 102–550, 42 U.S.C. 4014(f), created a Flood Control Restoration Zone (Zone AR) designation to meet the communities' concerns. The

Zone AR designation is a carefully crafted and balanced mechanism to recognize that a flood protection system is being restored to provide protection during the base flood event, and to reduce the flood insurance costs and elevation requirements while still providing some level of protection for properties that will be exposed to an increased risk of flooding during the restoration period. Within Zone AR, Congress reduced elevation requirements for new construction, eliminated elevation requirements for substantial improvements to existing structures, and capped the flood insurance rate for insuring such structures during the interim period when the flood protection system is being restored. By enacting § 928, Congress anticipated that the Federal government would accept some additional costs in the form of increased flood insurance liability and disaster assistance, and that communities would accept and enforce reduced flood plain management requirements in order to provide a minimal level of flood protection for new structures built while the flood protection system is being restored. In creating the Zone AR designation the Congress fully and significantly addressed the economic concerns addressed in the USC study, balancing those concerns against the national need to reduce the cost of Federal disaster assistance and to have those whose properties are at risk in the nation's flood plains bear a portion of that risk.

Issues Raised

Major issues were raised in the public comments about the definition of developed areas, the requirement to elevate or floodproof structures outside of the ''developed'' area to the base flood elevation, the federal funding requirement for the restoration project, the requirement that construction in ''developed'' areas be elevated to 3 feet above the highest adjacent grade, adherence to a maximum restoration period and the absence of a ''hold harmless'' provision for delays in achieving restoration within that time frame, and the requirement to submit information about the legal status of the project as part of the application and submittal requirements for AR Zone designation. These and other comments are addressed in the sections that follow.

Definition of ''Developed Area''

Several comments were received in support of the definition of ''developed area'' in the interim final rule. There were also several comments that expressed concerns about how the definition is to be applied to vacant land and infill sites and on issues related to how ''basic infrastructure'' is defined and what public property and facilities can be included in a ''developed area''. Comments also recommended that the regulations be modified to include multiple parcels, tracts, or lots of less than 20 acres in ''developed areas'' under subsection (b) of the definition rather than a single parcel, tract, or lot.

Specific comments concerning the definition stated that the ''developed area'' is too restrictive if all vacant land and infill sites had to have been previously developed and that redevelopment of these sites has to be supported by the infrastructure in place. Related comments stated that the supplementary information in the interim final rule pertaining to the concepts of ''infill'' and ''redevelopment'' is inconsistent with Pub. L. 102–550 and industry-recognized definitions and practices related to ''infill'' and ''redevelopment''.

Concern was expressed that the terms, ''infill'' and ''redevelopment'', which are unrelated, are being used interchangeably and that both terms require the site to have been previously developed in order to qualify a property for inclusion in a ''developed area''. The comment noted that the Real Estate Glossary, published by Kenneth Leventhal & Company, Certified Public Accountants, defines ''infill development'' as ''development of vacant, scattered sites in a developed section of a city''. According to this definition, the comment stated, ''infill'' should not presume the existence of prior structural improvements to qualify the property to be included in a ''developed area''. It was recommended that the definition be clarified to allow all vacant sites of a city to be included in the ''developed area'', including sites in a natural and undisturbed state. It was also recommended that the ''developed area'' include vacant land that has been improperly subdivided and vacant land that consists of parcels and lots of inadequate size and irregular form.

For simplification and ease of administration at the local level, FEMA established a definition for ''developed area'' rather than require communities to identify individually single parcels or lots that meet a definition for ''infill sites'', ''rehabilitation of existing structures'', or ''redevelopment of previously developed areas'', terms used in Pub. L. 102–550. ''Developed area'', as defined in the final rule at 44 CFR 59.1 (a)–(c) encompasses the larger urbanized area as well as isolated developed subdivisions beyond the urban area. ''Developed area'' further encompasses ''vested rights'' interests by recognizing land that is planned, permitted, and where construction is underway. A community must adopt a map or legal description designating the ''developed area'' and submit this information as part of the Zone AR application process.

FEMA agrees that clarification is needed regarding the distinction between ''infill sites'' and ''redevelopment'', and with regard to whether vacant, undeveloped sites can be included in ''developed areas'' as set forth in the supplementary information to the interim final rule. We do not intend to imply that ''infill sites'' and ''redevelopment'' are synonymous nor that an ''infill site'' presumes the existence of prior structural improvements or previous development. ''Infill sites'' can include: (1) land that is undeveloped (either in a natural state or in agricultural production); (2) land that contains buildings that are underused, unused, or dilapidated; or (3) land that had been previously developed and is now in a nonbuilding use (e.g., a parking lot). Redevelopment is generally associated with rebuilding a site where a building or buildings are dilapidated or have been previously torn down.

Infill sites, including vacant, undeveloped land, can be included in a ''developed area'' as long as the site meets the criteria established under paragraph (b) of the definition of ''developed area''. The ''infill site'' must be contiguous on at least 3 or more sides by a ''developed area'' meeting the criteria of paragraph (a) of the definition. This is consistent with the supplementary information contained in the proposed rule that states that subsection (b) of the definition of the ''developed area'' addresses those urban fringe areas that, because of their relationship to surrounding developed areas, should be considered ''infill site'' areas. FEMA believes that with this clarification it is unnecessary to alter the regulations.

Older subdivisions that remain undeveloped because they contain lots that are considered nonconforming under local zoning, subdivision, or planning regulations are considered ''infill sites'' and would qualify for inclusion in a ''developed area'' in accordance with paragraph (b) of the definition. This type of subdivision may also qualify under paragraph (c) for ''vested rights'' if the subdivision has been replatted and development is underway in accordance with this paragraph.

A comment was made that the term ''basic infrastructure'' is not sufficiently defined. Another comment asked FEMA to clarify whether areas that require substantial upgrading of infrastructure are still considered ''developed areas'' if all other conditions are met. In order to sustain a primarily urbanized, built-up area in accordance with paragraph (a) of the definition of ''developed area'', a certain level of infrastructure would have to be in place. The term, ''basic infrastructure'', is used because the level of infrastructure needed to sustain any combination of industrial, residential, and commercial activities will vary from community to community.

Subsection (a)(1) of the definition of ''developed area'' is designed to have the community designate an area that is generally recognized as ''urbanized'' as opposed to a land use pattern that is undeveloped or is in agriculture. Subsections (a)(2) and (a)(3) address those isolated areas beyond the urban core that are considered urbanized or developed because the land is primarily built-up in commercial, industrial, or residential uses. FEMA recognizes that infrastructure in older, urbanized areas that is in substandard or poor condition may need to be substantially upgraded in areas that are being redeveloped. As long as an area meets one of the three criteria under paragraph (a) it can be included in a ''developed area''.

Infrastructure would not have to be substantially in place within the site under paragraph (b) of the definition of ''developed area'' since the land may be undeveloped or in agriculture, but public utilities must be in place near the edge of the site and can be extended into the site. For example, the community should be able to extend sewer lines readily that are near the edge of the site. The infrastructure would have to be substantially in place under paragraph (c) of the definition in order to sustain the structures that are built already or the construction that is underway under the criteria established in this paragraph. FEMA believes that it is unnecessary to alter the regulations to clarify this point.

In addition, a comment recommended that the regulations clarify that all public property and facilities, existing and planned, including publicly-owned open space, are included in ''developed areas''.

Public facilities are included in the category of infrastructure per paragraph (a) of the definition of ''developed area'' since public facilities are needed to support and sustain a primarily urbanized, built-up area and provide public services related to the health, safety, and welfare of the population. As stated in the supplementary information to the interim final rule, the term ''public facilities'' in paragraph (a) encompasses buildings and facilities, such as municipal buildings (e.g., court houses, city halls), schools, hospitals, and publicly-owned open space, such as public parks and recreational facilities, and historic sites. The term ''public facilities'' also encompasses quasi-public facilities and services, such as museums, churches, and sports facilities. Public facilities can include existing as well as planned facilities as long as the site for the public facility meets one of the criteria established under the definition of ''developed area''. FEMA believes that it is unnecessary to alter the regulations to clarify this point further.

A comment said that it was unclear why the exception under subsection (b) of the definition of ''developed area'' pertains to only a single parcel, tract or lot and does not apply to multiple parcels, tracts, or lots of less than 20 acres. FEMA agrees that it is not necessary to require that subsection (b) of the definition of ''developed area'' be tied to a single parcel, tract or lot. We modified subsection (b) of the definition of ''developed area'' to apply to multiple parcels, tracts or lots, as long as the combined parcels, tracts, or lots are less than 20 acres and are contiguous on at least three sides to areas meeting the criteria of paragraph (a) of the definition of ''developed area'' at the time the designation is adopted.

Comments recommended that FEMA revise the regulations to recognize areas as developed when they have final zoning land use approvals from local government agencies; when they are entirely non-residential; when funding for the restoration project is provided (local or shared with the Federal Government); and when construction of the restoration project is underway, and completion is imminent.

FEMA established criteria to address concerns for development that has been planned, permitted, and construction is underway. The definition of ''developed area'' addresses ''vested rights'' by establishing criteria for determining a ''developed area'' that is planned, permitted, and where construction is underway and infrastructure and structures are being built. Paragraph (c) of the definition of ''developed area'' would recognize areas as ''developed'' where the investment in the land and infrastructure is substantial and development, residential or non-residential, is underway. FEMA believes it is unnecessary to tie the criteria under subparagraph (c) of the definition for addressing ''vested rights'' to the status of the restoration of the flood protection system since the community is only required to adopt the definition of ''developed area'' when it qualifies for the Zone AR designation.

In order for FEMA to designate a flood control restoration zone, Pub.L. 102–550 requires that the flood protection system must be deemed restorable by a Federal agency, a minimum level of protection is provided, and the restoration is scheduled to be completed within a designated time period. FEMA believes that it is unnecessary to alter the regulations to clarify this point further.

Flood Plain Management and Land Use Requirements in a Flood Control Restoration Zone

We received comments concerning the elevation requirements in the interim final rule. Comments supporting the elevation requirements noted that those requirements comply with the statutory provisions and strike a balance between development interests and the public interest in protecting new development that will be exposed to increased flood damage until the restoration is complete. Comments objecting to the elevation requirements expressed concern that the increased costs associated with elevating new construction would adversely affect development in communities. Several of these comments recommended that FEMA amend §60.3(f) to allow for elevations of less than 3 feet in developed areas when circumstances warrant a lower elevation.

Several comments stated that according to the legislative history and the requirements in Pub.L. 102–550, FEMA has the flexibility to allow for less than the 3-foot elevation. The comments also stated the opinion that the interim final rule ignores a Senate Committee report that directed FEMA to establish flexible elevation requirements where it is not practical or feasible to elevate above 2 feet citing several examples when a lower elevation might be appropriate. These examples involved considerations such as lot size, access, incremental cost relative to flood risk exposure, and length of the restoration period. Several comments recommended that the elevation requirement be lowered to 2 feet because seismic design requirements that would apply when elevating to 3 feet would increase costs significantly.

Comments were also made that the interim final rule effectively precludes development in areas outside of the ''developed area'' due to the practical limitations of elevating or floodproofing when flood depths exceed 5 feet. These

comments recommended that FEMA amend the regulations to reduce the elevation requirement for non-residential structures in areas outside of ''developed areas'' because these structures are not subject to the same risks as residential structures and can be designed to avoid collapse or movement due to flooding. That recommendation also suggested that a standard notice and waiver agreement could be executed by the owner of a commercial building and flood insurance could be required at appropriately higher rates.

The comments that cited the legislative history for flexible elevation requirements of less than 3 feet refer to the report by the Committee on Banking, Housing, and Urban Affairs United States Senate, Report 102–332, for the National Affordable Housing Act Amendments of 1992, dated July 23, 1992. This report was for an earlier legislative proposal to establish Zone AR. Subsequent to this earlier proposal, the legislation underwent a considerable change to address Congressional concern over increased risk within deep flood plains that are currently less developed or undeveloped. The concern for deep flood plains was expressed in the Congressional Record, dated October 8, 1992 (144 Cong. Rec. S17910), on the final version of Pub.L. 102–550. Furthermore, the October 8, 1992 record indicated that ''FEMA shall establish flood plain management requirements for new construction and substantial improvements for less developed areas of Los Angeles and Sacramento and for other communities that may be eligible for the Zone AR''. There were no comments in the Congressional Record of the Senate or the House (144 Cong. Rec. H11471, dated October 5, 1992) on the final version of the Pub.L. 102–550 that refer to flexible elevation requirements of less than 3 feet.

In establishing the flood plain management requirements for communities eligible for Zone AR designation, FEMA is consistent with Pub.L. 102–550. Pub.L. 102–550 stipulates that the NFIP minimum elevation requirements for new construction shall not exceed 3 feet in Zone AR for ''in-fill sites'' and ''redevelopment of previously developed areas'' no matter what the flood depth. Whether base flood depths behind a decertified flood protection system are 5 feet, 15 feet, or 25 feet in a ''developed area'' of a community, the final rule only requires that structures be elevated to 3 feet.

If base flood depths are less than 3 feet in either the ''developed area'' or areas outside the ''developed area'', the property owner need only elevate the structure to the base flood depth, (i.e., elevate the structure only to 1 or 2 feet).

Congress did not intend the flood plain management requirements in Zone AR to deter property improvements. Consistent with Pub.L. 102–550, there are no elevation requirements for ''rehabilitations to existing structures'', including substantial improvements.

FEMA believes Pub.L. 102–550 is clear in establishing flood plain management criteria for areas outside of the ''developed area''. Pub.L. 102–550 establishes that ''flood plain management criteria shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the disaccredited flood control system does not exceed 5 feet above existing grade, or the remaining new construction is limited to in-fill sites, rehabilitation of existing structures, or redevelopment of previously developed areas''. The final rule is consistent with Pub.L. 102–550.

Pub.L. 102–550 and the final rule do not preclude development in areas outside of the ''developed area'' as claimed in several comments. Residential and non-residential structures can be built in areas outside of the ''developed area'' as long as they are built in accordance with the minimum NFIP flood plain management criteria. These criteria address Congressional concern for deep flood plains. While the NFIP flood plain management criteria require the elevation of residential structures, nonresidential structures may be either elevated or floodproofed. The floodproofing criteria in the NFIP Regulations [44 CFR 60.3(c)(3) and (4)] require that walls below the base flood elevation be substantially impermeable to the passage of water and with the structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If floodproofing is used in ''developed areas'' and in other areas where flood depths are less than 5 feet, non-residential structures need only be floodproofed to 3 feet.

The argument by respondents that non-residential structures in flood plains do not pose the same risks to life-safety and to property as residential structures understates the true impacts of flooding and property loss. The flooding of non-residential structures does pose life-safety risks when flood fighting takes place. When the flooding has receded, damaged commercial or industrial areas have severe economic impacts on the community not only due to damages to insured and uninsured structures and their contents but also due to the temporary or permanent loss of jobs. This economic impact can often go beyond the community with flood losses being passed on to the taxpayer in general through a variety of programs and mechanisms, such as disaster assistance and reduction in Federal, State, and local tax revenues, including casualty loss deductions on income taxes and reductions in real property tax assessments. In addition to these impacts, exposure of the NFIP will also be extensive considering that FEMA provides insurance coverage of $500,000 for non-residential structures and $500,000 for contents for a total coverage of up to $1 million per structure.

Pub.L. 102–550 accommodates the needs of communities within ''developed areas'' through reduced elevation requirements for new construction while the flood protection system is being restored yet recognizes that properties will be exposed to an increased flood risk during the restoration period. Before this law was passed, all new construction and substantial improvements in areas protected by a flood protection system which no longer provides base flood protection were required to be elevated to the base flood elevation. Therefore, in ''developed areas'' that have deep flood plains with flood depths of, for example, 10, 15, or 20 feet, 3 feet represents a substantial reduction in elevation over what would otherwise be required.

Given the increased flood risk to which properties will be exposed during the restoration period, the 3-foot elevation requirement in ''developed areas'' and in other areas where flood depths are less than 5 feet will reduce damages to structures that would otherwise result if there were no protection. If the flood protection system is not restored, the 3-foot elevation offers protection to structures built during the time the Zone AR was in effect. The 3-foot elevation may only provide minimal protection in a total failure of the flood protection system. However, 3 feet of elevation would afford protection from flood events that may exceed the capacity of the decertified flood protection system, which at a minimum must provide protection from a 3-percent annual chance flood event. The 3-percent annual chance flood has a 60 percent probability of occurring during the life of a 30-year mortgage, and 26 percent probability in a 10-year period.

For example, where overtopping of the flood protection system results in sheet flow, surface water runoff, and localized ponding rather than deep flooding, the 3-foot elevation will

reduce damages. The elevation protection will also reduce damages from levee seepage and boil problems, and from pump failures and stormwater and sewer backups. If flood depths are higher than 3 feet, the 3-foot elevation requirement will minimize the number of structures that are substantially damaged by lowering the flood depth within the structure.

Furthermore, the impact of the 3-foot elevation on new construction in Zone AR is not significant considering that this requirement may be partially satisfied by building code requirements unrelated to the NFIP that will result in new structures being built at least 6–28 inches above grade.

For crawl space construction, all three national building codes (Uniform Building Code, National Building Code, and Standard Building Code) require a minimum clearance of 18 inches between the ground and untreated wood floor joists. Allowing for a joist height of 8 to 10 inches and an average subflooring/flooring thickness of 5/8 to 1 inch for common crawl space construction, the top of the lowest floor can be as high as 27 to 29 inches above the adjacent exterior grade. Thus, a new residential structure on a crawl space foundation in Zone AR would need to be elevated by an additional 7–9 inches, not a full 36 inches, to meet the 3-foot requirement. Additional building code requirements are not triggered by this increase even in areas subject to seismic hazards.

For slab-on-grade residential and non-residential structures, the national building codes require the top of the slab to be at least 6 inches above adjacent exterior grade to provide protection from decay due to moisture. Standard practice is to construct the slab so that its top is at least 8 inches above the adjacent grade to provide protection from insects. Therefore, a new slab-on-grade residential or nonresidential structure would need to be elevated by a maximum of 28 to 30 inches to meet the 3-foot elevation requirement.

For floodproofing a non-residential structure in accordance with the NFIP criteria (as an alternative to elevating the structure), the increased level of protection needed is again 28–30 inches.

Local code requirements for site work for slab-on-grade construction generally specify that positive drainage must be provided away from residential and non-residential structures. These code requirements, which are also unrelated to the NFIP requirements, can result in the addition of several inches to the finished grade elevation before the slab is constructed. As a result, the amount of additional elevation required to meet the 3-foot requirement may be further reduced.

We also note that where Zone AR flood depths are less than 3 feet, new crawl space and slab-on-grade structures, both residential and non-residential, may require little or no additional elevation.

The over 18,500 participating communities in the NFIP are required under their flood plain management ordinances to regulate all flood plain development. In doing so, these communities require that all new construction of residential structures in flood plains be elevated to or above the base flood elevation and that new non-residential structures in flood plains be elevated or dry floodproofed to or above the base flood elevation. The over 2 million structures built in flood plains since 1975 and the over 800,000 post-FIRM flood insurance policies for structures built following community adoption of NFIP flood plain management requirements are evidence that development does not halt when flood plains are designated and flood plain regulations are adopted and enforced by communities. Much of this development has occurred in flood plains that are subject to elevation requirements higher than the 3-foot requirement in this Final Rule.

Experience under the NFIP indicates that protecting structures to the base flood is achievable by builders, developers, architects, and engineers. Elevation on earth fill or standard foundation systems, such as solid concrete foundation walls, are typical elevation techniques that have been used since the NFIP's inception. Experience also indicates that elevation is cost-effective when the benefits of reduced flood losses are compared to the additional cost of elevating to the base flood elevation. In fact, structures elevated to or above the base flood elevation are 77 percent less likely to suffer damage than those constructed prior to community participation in the NFIP.

Federal Funding Requirement

A great number of those commenting objected to the certification requirement in § 65.14(e)(6) of the interim final rule that the design and construction of the restoration project involve Federal funds in order for the community to be eligible for the Zone AR designation.

Comments offered a number of reasons why the Federal funding requirement should be removed from the regulations and suggested various alternatives to the Federal funding requirement as a means to insure timely completion of the restoration. These include: (1) the statute does not require eligibility to be contingent on Federal funding; (2) there are adequate safeguards in the interim final rule to assure timely completion of restoration projects without the requirement of Federal funding; (3) the Federal funding requirement is unnecessary as long as the restoration project is certified by a Federal agency; (4) regardless of the project's source of funding, FEMA has the authority to replace the Zone AR designation with a Zone AE designation if the community does not meet the restoration schedule; (5) Federal funding should not be required, but design and construction standards by competent (including Federal) authorities need to be followed; (6) FEMA should promote restoration of the system by the local community because communities may be in a position to complete restoration in a timely fashion; (7) FEMA should devise criteria that would satisfy the Agency that the source of local funds was reliable, committed, and secure, such as providing for a performance bond; and (8) Federal funds for restoration projects may not be available to communities.

FEMA has carefully considered the comments on the Federal funding issue and finds merit in removing the requirement that the restoration project involve Federal funding as a prerequisite for designating Zone AR. Therefore, the final rule is revised at § 65.14(b) to extend Zone AR eligibility to communities where the restoration project does not involve Federal funds. We remain concerned that failure to complete the restoration for any reason will permanently expose structures to an increased flood risk if built below the base flood elevation while the Zone AR is in effect. However, we have balanced that concern with an understanding that communities are increasingly committed to use local funds to restore flood protection systems, particularly as Federal funding sources are reduced.

FEMA has devised criteria to ensure that the source of local funding is reliable, committed, and secure. Specifically, § 65.14(e)(2)(vi) provides that if a community does not receive Federal funds for constructing the restoration project, then the community must submit evidence that 100 percent of the total financial project cost of the completed flood protection system has been appropriated from other sources. This measure will give FEMA adequate assurance that financial resources have been committed to assure completion of the restoration project.

Note at § 65.14(h)(3) that in the application requirements for restoration projects not involving Federal funds the community must submit a copy of a study, certified by a registered Professional Engineer, that demonstrates that the restored system will meet all applicable requirements of 44 CFR Part 65.

The final rule further stipulates at § 65.14(b)(2) that a community that does not receive Federal funds for the purpose of constructing the restoration project must complete restoration of the system within 5 years from the date the community submits its application for designation of a flood control restoration zone. In FEMA's experience, a 5-year period is adequate time for planning, preliminary and final design, construction, and all review processes of locally initiated projects that do not involve Federal funds. A typical, locally funded project often takes no more than 3 years to complete from project inception through final construction. We further expect that limiting the duration of the Zone AR designation would limit the number of structures that would be built and exposed to permanent increased flood risk if, for any reason, the restoration were not completed.

A community that does not receive Federal funds for restoration of the flood protection system is not eligible for a finding of adequate progress under 44 CFR § 61.12, and is required to complete the restoration project within the 5-year period.

The final regulations provide that the Zone AR designation will apply only to the restoration of existing Federal flood protection systems. A comment was made that the NFIP is a national program and should apply in all of the country, not just in areas that have flood control systems that were built by the Federal government. We determined, however, that this provision is in the best interest of the NFIP, is consistent with the existing regulatory provisions of § 61.12 that pertain to flood protection systems involving Federal funds, and is consistent with the intent of § 928 of Pub. L. 102–550.

Maximum Restoration Period

Several comments expressed concern that the interim final rule extended the maximum restoration period from 5 to 10 years. Other comments objected to FEMA's inclusion of a specific maximum restoration period such as the 10-year maximum restoration period incorporated in the interim final rule. Others stated that a specific maximum restoration period is contrary to the statutory language and the legislative intent and that FEMA should permit the Zone AR designation as long as progress is being made to restore protection.

Since insurance rates are subsidized and structures can be built below the base flood elevation during the restoration period, a longer restoration period further increases the potential flood losses if flooding occurs before the flood protection system is restored. Some comments suggested that FEMA strictly enforce a maximum restoration period and that it aggressively negotiate as short a restoration period as possible with the Federal agency and community project sponsors. A comment noted that while the 10-year restoration period provides a more reasonable time frame for completing a federally funded project, it also increases the time that existing structures and future construction are exposed to potential damage. They suggested that to balance the increase in the maximum restoration period, FEMA should restrict the definition and designation of ''developed'' areas and require strict adherence to the Zone AR elevation requirements, or impose stricter requirements so as to limit the potential for flood damage during the restoration period.

FEMA is charged by the Congress to administer a sound and effective flood insurance program within the bounds of the authority provided by statute. Public Law 102–550 provides for the Zone AR designation when a flood protection system can be restored in a ''designated'' period of time. Since the Zone AR was intended as an interim or temporary flood hazard designation, eligibility for the benefits that the designation confers is contingent on completion of the project within a specific time frame. We concluded that the statute authorizes FEMA to designate a maximum restoration period. These regulations designate a 10-year restoration period for federally funded projects and a 5-year restoration period for non-federally funded projects.

Because it is in the Program's best interest to promote timely completion of the restoration, FEMA will negotiate as short a restoration period as possible, recognizing that there may be legitimate needs for adjusting the schedule as the work progresses. Such adjustments may not exceed the maximum applicable restoration period.

''Hold Harmless'' Provision for Delays in Complying With Restoration Schedule

Many comments urged FEMA to include a ''hold harmless'' provision whereby the Zone AR designation would be removed only if the community failed to perform its assigned responsibilities to restore flood protection.

The final rule does not incorporate a ''hold harmless'' provision for delays that exceed the applicable restoration period. The final rule retains the provision at §64.14(g) for minor adjustments in the restoration schedule. Central to this position is FEMA's belief that the flood control restoration zone was not meant to be a long-term or permanent flood insurance zone designation. A provision to extend the Zone AR designation or the inclusion of a ''hold harmless'' provision, in our opinion, would be contrary to the statute.

Requirement To Disclose Information About Litigation or Administrative Actions

Several comments concerned the requirement at §65.14(e)(1) that the community's application include a statement whether the flood protection system is the subject of pending litigation or administrative actions. Other comments suggested that if FEMA retained the disclosure requirement then the final rule should include an affirmative statement that such litigation would have no bearing on FEMA's decision to approve a community's application for Zone AR designation. Similar comments expressed the opinion that FEMA cannot anticipate the outcome of litigation or evaluate the validity of legal challenges. Some comments expressed concern that the section is ambiguous with respect to FEMA's obligation when litigation exists and the community would have no knowledge of the plaintiff's litigation plan.

One environmental organization's comment supported FEMA's position on the litigation issue. Another comment noted that the 10-year limit on the Zone AR designation is sufficient to revoke the Zone AR designation without adding the litigation issue as a decision-making clause. The 10-year restoration period limits the duration of the Zone AR designation after it has been granted, whereas the litigation issue relates to FEMA's decision-making prior to granting the designation.

We continue to maintain that FEMA needs to be fully apprised of any and all potential obstacles to the timely restoration of the flood protection system prior to granting the Zone AR designation.

The Zone AR designation permits new construction and substantial improvements to existing structures to be built below the base flood elevation

despite knowledge that those structures will be exposed to an increased risk of flood damage. FEMA must insure such structures at a subsidized rate that does not reflect the actual flood risk to which the structure is exposed.

In contrast, new structures and substantial improvements to existing structures in SFHAs that are not designated as Zone AR are required to be elevated to the base flood level. Flood insurance for any structures that might be built below the level of the base flood would be insured at actuarial rates that reflect the actual flood risk.

The Zone AR elevation and insurance provisions are justified only if there is a clear expectation that the increased flood risk is of short duration and that full protection will be restored in a timely fashion. Protracted litigation could significantly impede a community's progress in completing the restoration according to schedule and could even cause the restoration never to be completed. As a result, those structures built below the base flood level while the Zone AR was in effect would be exposed permanently to a greater risk of flooding, with the NFIP assuming a considerable potential liability when insuring those structures.

The Zone AR designation increases the risk that the NFIP assumes by insuring buildings and manufactured housing built or installed below the base flood level. FEMA must carefully assess the projected viability of the restoration project and weigh any obstacles to that completion before granting a flood control restoration zone designation. Notice of the litigation or administrative action would alert FEMA to be cautious in evaluating the community's application.

The community may not be able to predict with full accuracy the litigation or administrative action plan or their outcomes. Given that the Zone AR designation is applicable for a fixed maximum time and can be applied only once for a given restoration, community officials should carefully consider litigation and administrative action times before applying for the Zone AR designation.

The existence of litigation would not necessarily result in the denial of the community's application. However, we are not prepared to include within the regulation an affirmative statement that the existence of litigation will have no bearing on FEMA's decision with regard to a community's application. We do not consider the rule to be ambiguous as to FEMA's obligation when it is determined that the restoration project is the subject of litigation or administrative action because there is no specific action mandated by such a finding. The existence of litigation is one of several elements that FEMA will consider in making the decision whether to grant Zone AR designation. The final rule retains the litigation disclosure provision at §65.14(e)(1)(i) as one of the several application requirements.

Limitations on Zone AR Designation

We received a number of comments that FEMA include regulatory language to specify that communities will be eligible for the Zone AR designation should the restored flood protection system be decertified again. Although we clarified our position in the supplementary information to the interim final rule, the comments expressed concern that we did not change the regulatory text. Those commenting believed that the regulatory text could be interpreted to exclude subsequent Zone AR designations in the event that a fully restored system were to be decertified again and that the clarification contained in the supplementary text would not be binding upon the agency.

We made minor revisions to the rule at §65.14(b) to accommodate the concerns. Communities will be eligible for the Zone AR designation should the restored flood protection system be decertified again.

Issuance of FIRMs Delineating Zone AE Before Community Eligibility for Zone AR Designation

We received comments objecting to FEMA's statement that communities may be mapped as an AE Zone before becoming eligible for Zone AR designation as being contrary to the intent of the legislation. The interim final rule simply provided one scenario for potential Zone AR eligibility. Some communities may require an extended period of time to meet eligibility criteria. We anticipate that such communities will receive maps delineating AE, A1–30, AO, AH and A Zones, which will be revised when the statutory conditions for Zone AR eligibility are met. Other communities, particularly those who are active in obtaining federal financial support or in raising local funds for a restoration project, may make sufficient progress to be designated Zone AR before issuance of revised FIRMs that reflect the increased flood hazard.

One of these comments encouraged FEMA to develop a parallel process in mapping communities where an existing flood protection system has been decertified so that the community is going through the Federal planning process for restoring protection while the revised FIRM is being prepared. In response, we anticipate that most communities will be aware of the potential decertification of an existing flood protection system at some time during the restudy process. In fact, the restudy may have been triggered by a flood event nearly causing a failure or overtopping of the system. Therefore, the community may begin to investigate a restoration project so that they can meet the Zone AR eligibility requirements before or concurrent with the preparation of revised flood hazard maps. In such cases, the revised FIRM would show the increased flood hazard areas as a Zone AR rather than another flood hazard zone.

Another comment proposed that the regulations incorporate a provision that gives communities a reasonable period of time to meet the Zone AR requirements, suggesting that FEMA withhold maps for potentially eligible communities until the community is eligible for a Zone AR designation. FEMA is statutorily required to identify and map flood hazard areas. Therefore, if the community does not meet the eligibility criteria when FEMA has completed the remapping process, including the statutory appeal period and resolution of appeals, FEMA will be required to delineate those areas as AE, A1–30, AO, AH and A Zones on the revised FIRM. FEMA does not have the statutory authority to withhold issuance of maps whether they delineate Zone AR or other flood hazard zones. Furthermore, communities and their residents have the right to be informed of the increased risk and such information should not be withheld. A FEMA policy of withholding the issuance of FIRMs would jeopardize individuals' ability to make informed decisions about the flood hazard to which they are exposed.

Use of Terms

One comment stated that there is no definition of the term ''adequate progress'' as used in the regulation. The term refers specifically to the provision in §61.12 that permits a federal flood protection system to be certified as complete when it satisfies certain specific ''adequate progress'' criteria that are set out in that section of the regulations at §61.12(b). There is no need for further definition.

Another comment stated that the regulation should define the terms ''satisfactory progress'' and ''reasonable certainty'' at 44 CFR 65.14(i). This section of the interim final rule describes the conditions under which FEMA would take action to remove the

Zone AR designation for noncompliance with the restoration schedule.

FEMA disagrees because the terms or words used in this rule do not have a specific meaning separate from the meaning they would have if used in general discourse. Any attempt to define the terms used in the law and the rule would merely expand the rule unnecessarily, fail to accommodate all conditions that would be encountered, and limit discretion under the NFIP in administering the law and the rule.

Another comment objected to the use of the term ''shall'' in 44 CFR §64.14(i) when referring to revising maps and removing the Zone AR designation for reasons of noncompliance. In response, FEMA states that the use of the term ''shall'' directly relates to the agency's mandate to identify and map flood hazards and to employ the statutory appeals process, provided for in §110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104(c); see also 44 CFR Part 67. The term ''shall'' is accurate.

Insurance Rating Procedures

Some comments expressed concern that flood insurance premiums are too expensive. The NFIP applies actuarial rates to all new construction. These rates are determined by the zone on the FIRM, and by national loss experience and loss probabilities. The rates for existing construction in SFHAs are subsidized. The basis for this subsidy is the fact that the buildings were constructed in these areas without full knowledge of the hazard. In deep flooding areas, the actuarial rate would be greater than the subsidized rate that will be charged under Zone AR. Congress has extended the benefit of this subsidy to risks in Zone AR, even though the full extent of the hazard is known. In the law that established Zone AR, Congress limited the rate that could be charged to the equivalent of the pre-FIRM Zone A rate that is subsidized, and placed limits on elevation requirements. The NFIP pre-FIRM rate is subject to change. Any change will affect the Zone AR rate.

Role of Insurance Companies

Several comments expressed the opinion that the NFIP's mandatory purchase requirements were set up to benefit insurance companies and were not being applied elsewhere in the country. Mandatory purchase requirements were established by the Congress in 1973 in response to escalating Federal costs of flooding disasters and low voluntary participation by property owners in the NFIP. The NFIP mandatory purchase requirements are enforced on a national basis, and apply to all Federal and federally regulated lenders.

The National Flood Insurance Act, as amended, authorizes qualified insurance companies to sell flood insurance under an arrangement with FEMA. The companies are paid a fee to cover their costs for issuing and servicing policies and for adjusting claims. The net premiums collected from the sale of flood insurance are turned over to the Federal government and are placed in the National Flood Insurance Fund in the United States Treasury. This fund is used to pay future flood losses and other NFIP related expenses.

Homeowner Protection

A comment stated that the NFIP mandatory purchase requirements were not intended to protect the homeowner, but rather the mortgagee, and this is why contents coverage is not available. We disagree for at least two reasons. First, contents coverage is available; it can be purchased as separate coverage or together with building coverage, and may be required if the contents are part of the security for the loan. Second, when a mortgaged home is destroyed by an uninsured peril, the obligation to repay the mortgage still exists. Consequently, any insurance that covers this peril benefits the policyholder and the mortgagee.

Relation to Earthquake Insurance

Some comments stated that while mandatory purchase requirements exist for flood insurance, there are none for earthquake insurance. Congress mandated the flood insurance purchase requirements under the provisions of the Flood Disaster Protection Act of 1973. As yet, Congress has not enacted Federal legislation on earthquake insurance. Several bills on the subject were introduced in the 103d Congress, in the 104th Congress, and again in the first session of the 105th Congress, but none have passed.

Community-Wide Flood Insurance Coverage

A comment suggested that we develop a flood insurance policy that would cover an entire community, and be paid for by the community. This suggestion is not workable under the National Flood Insurance Act. The NFIP has a statutory limit on the amount of insurance that can be written on an individual building and its contents. Consequently, the specific risk information required to rate a flood insurance policy is gathered on an individual basis, and separate policies are issued. However, there is nothing to prevent a community from arranging with one or more insurance agents or companies to write the required policies for its citizens, and list the community as the payor.

National Environmental Policy Act

FEMA has determined, based on an Environmental Assessment, that this final rule will not have a significant impact upon the quality of the human environment. An Environmental Impact Statement will not be prepared. A Finding Of No Significant Impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Comments received on the interim final rule urged FEMA to revise the Environmental Assessment to reflect the changes that had been made in the interim final rule and to address the regulatory impact on minority and low-income populations in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Comments also disagreed with FEMA's finding that the regulations would have no significant impact on the environment. These issues are addressed in supplemental information prepared and appended to the Environmental Assessment for this rule. These revisions do not alter FEMA's Finding of No Significant Impact.

Regulatory Flexibility Act

The Director certifies that this final rule is exempt from the requirements of the Regulatory Flexibility Act because the proposed flood control restoration zone is required by statute, 42 U.S.C. 4014(f), and is required to enhance and maintain community eligibility in the NFIP during the period needed to restore flood protection systems to provide a minimum protection from the base flood required for accreditation on FIRMs. A regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

This final rule contains collections of information as described the Paperwork Reduction Act that are covered by the following OMB Control Numbers: 3067–0020; 3067–0022; 3067–0127; and 3067–0147.

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

Executive Order 12866, Regulatory Planning and Review

Promulgation of this final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this rule adheres to the principles of regulation set forth in Executive Order 12866. This rule was reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not 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.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Parts 59, 60, 64, 65, 70, and 75

Administrative practice and procedure, Flood insurance, Flood plains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 59, 60, 64, 65, 70, and 75 are amended as follows:

PART 59—GENERAL PROVISIONS

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

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

2. Section 59.1 is amended as follows: The definitions of *Area of shallow flooding, Area of special flood hazard, Developed area, and Special hazard area are revised to read as follows:*

§ 59.1 Definitions.

* * * * *

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

* * * * *

Area of special flood hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1–30, AE, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1–30, VE, or V. For purposes of these regulations, the term ''special flood hazard area'' is synonymous in meaning with the phrase ''area of special flood hazard''.

* * * * *

Developed area means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual ''start of construction'' of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

* * * * *

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1–30, VE, V, M, or E.

3. Section 59.24(a) is revised to read as follows:

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of §60.3 or paragraph (b) of §60.4 or §60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Administrator shall provide written notice to the community and to the state

and assure publication in the **Federal Register** under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

* * * * *

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

4. The authority citation for Part 60 is revised to read as follows:

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

5. Section 60.2(a) is revised to read as follows:

§ 60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of §60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3(b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in §60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3(c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

* * * * *

6. Section 60.3(f) is revised to read as follows:

§ 60.3 Flood plain management criteria for flood-prone areas.

* * * * *

(f) When the Administrator has provided a notice of final base flood elevations within Zones A1–30 or AE on the community's FIRM, and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified flood protection restoration areas by designating Zones AR, AR/A1–30, AR/AE, AR/AH, AR/AO, or AR/A, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (14) and (d)(1) through (4) of this section.

(2) Adopt the official map or legal description of those areas within Zones AR, AR/A1–30, AR/AE, AR/AH, AR/A, or AR/AO that are designated developed areas as defined in §59.1 in accordance with the eligibility procedures under §65.14.

(3) For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is 5 feet or less:

(i) Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and

(ii) Using this elevation, require the standards of paragraphs (c)(1) through (14) of this section.

(4) For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:

(i) Determine the AR base flood elevation; and

(ii) Using that elevation require the standards of paragraphs (c)(1) through (14) of this section.

(5) For all new construction of structures in areas within Zone AR/A1–30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the applicable elevation for Zone AR from paragraphs (a)(3) and (4) of this section;

(ii) Determine the base flood elevation or flood depth for the underlying A1–30, AE, AH, AO and A Zone; and

(iii) Using the higher elevation from paragraphs (a)(5)(i) and (ii) of this section require the standards of paragraphs (c)(1) through (14) of this section.

(6) For all substantial improvements to existing construction within Zones AR/A1–30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the A1–30 or AE, AH, AO, or A Zone base flood elevation; and

(ii) Using this elevation apply the requirements of paragraphs (c)(1) through (14) of this section.

(7) Notify the permit applicant that the area has been designated as an AR, AR/A1–30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

7. The authority citation for Part 64 is revised to read as follows:

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

8. Section 64.3 is amended by revising the ''AR'' entry in the chart in paragraph (a)(1) and revising paragraph (b) to read as follows:

§ 64.3 Flood insurance maps.

(a) * * *

(1) * * *

Zone symbol	
*	* * * * * * *
AR	Area of special flood hazard that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.
*	* * * * * * *

* * * * *

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1–30, AE, A99, AO, AH, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, V1–30, VE, V, VO, M, and E.

* * * * *

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

9. The authority citation for Part 65 is revised to read as follows:

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

§ 65.14 [Redesignated as §65.15]

10. Part 65 is amended by revising §65.14 to read as follows:

§65.14 Remapping of areas for which local flood protection systems no longer provide base flood protection.

(a) *General.* (1) This section describes the procedures to follow and the types of information FEMA requires to designate flood control restoration zones. A community may be eligible to apply for this zone designation if the Administrator determines that it is engaged in the process of restoring a flood protection system that was:

(i) Constructed using Federal funds;

(ii) Recognized as providing base flood protection on the community's effective FIRM; and

(iii) Decertified by a Federal agency responsible for flood protection design or construction.

(2) Where the Administrator determines that a community is in the process of restoring its flood protection system to provide base flood protection, a FIRM will be prepared that designates the temporary flood hazard areas as a flood control restoration zone (Zone AR). Existing special flood hazard areas shown on the community's effective FIRM that are further inundated by Zone AR flooding shall be designated as a ''dual'' flood insurance rate zone, Zone AR/AE or AR/AH with Zone AR base flood elevations, and AE or AH with base flood elevations and Zone AR/AO with Zone AR base flood elevations and Zone AO with flood depths, or Zone AR/A with Zone AR base flood elevations and Zone A without base flood elevations.

(b) *Limitations.* A community may have a flood control restoration zone designation only once while restoring a flood protection system. This limitation does not preclude future flood control restoration zone designations should a fully restored, certified, and accredited system become decertified for a second or subsequent time.

(1) A community that receives Federal funds for the purpose of designing or constructing, or both, the restoration project must complete restoration or meet the requirements of 44 CFR 61.12 within a specified period, not to exceed a maximum of 10 years from the date of submittal of the community's application for designation of a flood control restoration zone.

(2) A community that does not receive Federal funds for the purpose of constructing the restoration project must complete restoration within a specified period, not to exceed a maximum of 5 years from the date of submittal of the community's application for designation of a flood control restoration zone. Such a community is not eligible for the provisions of §61.12. The designated restoration period may not be extended beyond the maximum allowable under this limitation.

(c) *Exclusions.* The provisions of these regulations do not apply in a coastal high hazard area as defined in 44 CFR 59.1, including areas that would be subject to coastal high hazards as a result of the decertification of a flood protection system shown on the community's effective FIRM as providing base flood protection.

(d) *Effective date for risk premium rates.* The effective date for any risk premium rates established for Zone AR shall be the effective date of the revised FIRM showing Zone AR designations.

(e) *Application and submittal requirements for designation of a flood control restoration zone.* A community must submit a written request to the Administrator, signed by the community's Chief Executive Officer, for a flood plain designation as a flood control restoration zone. The request must include a legislative action by the community requesting the designation. The Administrator will not initiate any action to designate flood control restoration zones without receipt of the formal request from the community that complies with all requirements of this section. The Administrator reserves the right to request additional information from the community to support or further document the community's formal request for designation of a flood control restoration zone, if deemed necessary.

(1) At a minimum, the request from a community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project must include:

(i) A statement whether, to the best of the knowledge of the community's Chief Executive Officer, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and if so, the purpose of that litigation;

(ii) A statement whether the community has previously requested a determination with respect to the same subject matter from the Administrator, and if so, a statement that details the disposition of such previous request;

(iii) A statement from the community and certification by a Federal agency responsible for flood protection design or construction that the existing flood control system shown on the effective FIRM was originally built using Federal funds, that it no longer provides base flood protection, but that it continues to provide protection from the flood having at least a 3-percent chance of occurrence during any given year;

(iv) An official map of the community or legal description, with supporting documentation, that the community will adopt as part of its flood plain management measures, which designates developed areas as defined in §59.1 and as further defined in §60.3(f).

(v) A restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates;

(C) Identify the date on which ''as built'' drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system, or;

(D) Identify the date on which the community will submit a request for a finding of adequate progress that meets all requirements of §61.12. This date may not exceed the maximum allowable restoration period for the flood protection system;

(vi) A statement identifying the local project sponsor responsible for restoration of the flood protection system;

(vii) A copy of a study, performed by a Federal agency responsible for flood protection design or construction in consultation with the local project sponsor, which demonstrates a Federal interest in restoration of the system and which deems that the flood protection system is restorable to a level of base flood protection.

(viii) A joint statement from the Federal agency responsible for flood protection design or construction involved in restoration of the flood protection system and the local project sponsor certifying that the design and construction of the flood control system involves Federal funds, and that the restoration of the flood protection

system will provide base flood protection;

(2) At a minimum, the request from a community that receives no Federal funds for the purpose of constructing the restoration project must:

(i) Meet the requirements of §65.14(e)(1)(i) through (iv);

(ii) Include a restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates; and

(C) Identify the date on which ''as built'' drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system;

(iii) Include a statement identifying the local agency responsible for restoration of the flood protection system;

(iv) Include a copy of a study, certified by registered Professional Engineer, that demonstrates that the flood protection system is restorable to provide protection from the base flood;

(v) Include a statement from the local agency responsible for restoration of the flood protection system certifying that the restored flood protection system will meet the applicable requirements of Part 65; and

(vi) Include a statement from the local agency responsible for restoration of the flood protection system that identifies the source of funds for the purpose of constructing the restoration project and a percentage of the total funds contributed by each source. The statement must demonstrate, at a minimum, that 100 percent of the total financial project cost of the completed flood protection system has been appropriated.

(f) *Review and response by the Administrator.* The review and response by the Administrator shall be in accordance with procedures specified in § 65.9.

(g) *Requirements for maintaining designation of a flood control restoration zone.* During the restoration period, the community and the cost-sharing Federal agency, if any, must certify annually to the FEMA Regional Office having jurisdiction that the restoration will be completed in accordance with the restoration plan within the time period specified by the plan. In addition, the community and the cost-sharing Federal agency, if any, will update the restoration plan and will identify any permitting or construction problems that will delay the project completion from the restoration plan previously submitted to the Administrator. The FEMA Regional Office having jurisdiction will make an annual assessment and recommendation to the Administrator as to the viability of the restoration plan and will conduct periodic on-site inspections of the flood protection system under restoration.

(h) *Procedures for removing flood control restoration zone designation due to adequate progress or complete restoration of the flood protection system.* At any time during the restoration period:

(1) A community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project shall provide written evidence of certification from a Federal agency having flood protection design or construction responsibility that the necessary improvements have been completed and that the system has been restored to provide protection from the base flood, or submit a request for a finding of adequate progress that meets all requirements of §61.12. If the Administrator determines that adequate progress has been made, FEMA will revise the zone designation from a flood control restoration zone designation to Zone A99.

(2) After the improvements have been completed, certified by a Federal agency as providing base flood protection, and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood control system.

(3) A community that receives no Federal funds for the purpose of constructing the restoration project must provide written evidence that the restored flood protection system meets the requirements of Part 65. A community that receives no Federal funds for the purpose of constructing the restoration project is not eligible for a finding of adequate progress under §61.12.

(4) After the improvements have been completed and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood protection system.

(i) *Procedures for removing flood control restoration zone designation due to non-compliance with the restoration schedule or as a result of a finding that satisfactory progress is not being made to complete the restoration.* At any time during the restoration period, should the Administrator determine that the restoration will not be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is not being made to restore the flood protection system to provide complete flood protection in accordance with the restoration plan, the Administrator shall notify the community and the responsible Federal agency, in writing, of the determination, the reasons for that determination, and that the FIRM will be revised to remove the flood control restoration zone designation. Within thirty (30) days of such notice, the community may submit written information that provides assurance that the restoration will be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is being made to restore complete protection in accordance with the restoration plan, or that, with reasonable certainty, the restoration will be completed within the maximum allowable restoration period. On the basis of this information the Administrator may suspend the decision to revise the FIRM to remove the flood control restoration zone designation. If the community does not submit any information, or if, based on a review of the information submitted, there is sufficient cause to find that the restoration will not be completed as provided for in the restoration plan, the Administrator shall revise the FIRM, in accordance with 44 CFR Part 67, and shall remove the flood control restoration zone designations and shall redesignate those areas as Zone A1–30, AE, AH, AO, or A.

PART 70—PROCEDURE FOR MAP CORRECTION

11. The authority citation for Part 70 is revised to read as follows:

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

12. Section 70.1 is revised to read as follows:

§70.1 Purpose of part.

The purpose of this part is to provide an administrative procedure whereby the Administrator will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical

difficulty of accurately delineating the curvilinear line on either an FHBM or FIRM. These procedures shall not apply when there has been any alteration of topography since the effective date of the first NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of part 65 of this subchapter.

13. Section 70.3(a) is revised to read as follows:

§70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, and V Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for the Administrator's review.

* * * * *

14. Paragraphs (a) and (b) of §70.4 are revised to read as follows:

§70.4 Review by the Administrator.

* * * * *

(a) The property is within a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, or V Zone, and shall set forth the basis of such determination; or

(b) The property should not be included within a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, or V Zone and that the FHBM or FIRM will be modified accordingly; or

* * * * *

15. Paragraph (c) of section 70.5 is revised to read as follows:

§70.5 Letter of map amendment.

* * * * *

(c) The identification of the property to be excluded from a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, or V Zone.

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

16. The authority citation for Part 75 is revised to read as follows:

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

17. Section 75.1 is revised to read as follows:

§75.1 Purpose of part.

The purpose of this part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

18. Section 75.10 is revised to read as follows:

§75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

19. Paragraphs (a)(4), (a)(5), and (a)(7) of § 75.11 are revised to read as follows:

§75.11 Standards.

(a) * * *

(4) Consist of a self-insurance fund, or a commercial policy of insurance or reinsurance, for which provision is made in statute or regulation and that is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage that would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E zones. The inventory shall:

(i) Include the location of individual structures;

(ii) Include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and

(iii) Include an estimate of the anticipated annual loss due to flood damage.

* * * * *

(7) Include, pursuant to § 60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones.

* * * * *

20. Paragraph (c) of § 75.13 is revised to read as follows:

§75.13 Review by the Administrator.

* * * * *

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in §75.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the

Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

* * * * *

Dated: October 22, 1997.

James L. Witt,

Director.

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