



NATIONAL FLOOD INSURANCE PROGRAM

Bureau and Statistical Agent

W-02010

MEMORANDUM TO: Write Your Own Company Principal Coordinators and
NFIP Servicing Agent

FROM: WYO Clearinghouse

DATE: February 11, 2002

SUBJECT: Interim Final Rule: Inspection of Insured Structures
by Communities

Attached is a copy of an Interim Final Rule that clarifies inspection procedures in Monroe County, FL.

If you have any questions, please contact your Program Coordinator.

cc: Vendors, IBHS, FIPNC, WYO Marketing Committee, Government Technical Representative

Suggested Routing: Marketing, Underwriting

Billing Code 6718-05-P

Federal Emergency Management Agency

44 CFR Parts 59 and 61

RIN 3067-AD16

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

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim Final Rule.

SUMMARY: This interim final rule would amend the NFIP regulations at 44 CFR 59.30 and Appendices (A)(4), (A)(5), and (A6) of 44 CFR part 61 to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedure as a condition of joining the NFIP. We established the inspection procedure to help the communities of Monroe County and the Village of Islamorada verify that structures comply with the community's floodplain management ordinance, and to ensure that property owners pay flood insurance premiums to the NFIP commensurate with their flood risk.

DATES: 44 CFR 59.30 is effective (insert date of publication in the **Federal Register**).

Appendices (A)(4), (A)(5), and (A6) of 44 CFR part 61 are effective on (insert date 90 days from the date of publication in the **Federal Register**). Please submit comments on or before (insert date 90 days from the date of publication in the **Federal Register**).

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

FOR FURTHER INFORMATION CONTACT: Donald Beaton, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, 202-646-3442, (facsimile) 202-646-4327 or (email) donald.beaton@fema.gov, or Lois Forster, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 202-646-2720, (facsimile) 202-646-2577, or (email) lois.forster@fema.gov.

SUPPLEMENTARY INFORMATION:

We established a pilot inspection procedure and the criteria to implement it under 44 CFR 59.30 in a final rule published in the **Federal Register** on June 27, 2000, 65 FR 39726. The inspection procedure is to help the communities of Monroe County, Florida and the Village of Islamorada, also located within Monroe County, verify that structures comply with the community's floodplain management ordinance, and to ensure that property owners pay flood insurance premiums to the NFIP commensurate with their flood risk. The inspection procedure requires owners of insured buildings to obtain an inspection from community officials and to submit a Community Inspection Report as a condition of renewing the Standard Flood Insurance Policy on the building. Specifically, the inspection procedure is designed to help the communities determine whether buildings with an enclosure comply with the community's floodplain management ordinance.

The community inspection procedure applies only to insured post-FIRM (Flood Insurance Rate Map) buildings located in the Special Flood Hazard Areas of the communities participating in the inspection procedure.

On November 2, 1999, the City of Marathon incorporated and on October 16, 2000 the City became an NFIP participating community. We notified the City of Marathon of the inspection procedure before it applied to join the NFIP. The community agreed to participate in the pilot inspection procedure in a resolution titled, "A Resolution of the City Council of the City of Marathon, Florida, Providing for Approval of the City's Participation in the National Flood Insurance Program's Pilot Inspection Program and Providing for an Effective Date", which was passed and adopted on September 13, 2000.

In the Supplementary Information in both the proposed rule (published in the **Federal Register** on May 5, 1999, 64 FR 24256) and the final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726), we stated that as a condition of joining the NFIP the inspection procedure would be undertaken in areas within Monroe County that incorporate and become a separate community on or after January 1, 1999.

We established the following requirement in 44 CFR 59.30(a), Purpose, which requires areas within Monroe County that incorporate after January 1, 1999, to implement the inspection procedure: "(a) This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999, and is eligible for the sale of flood insurance." The City of Marathon is the only community in Monroe County that has incorporated after January 1, 1999.

This interim final rule would amend 44 CFR 59.30 and Appendices (A)(4), (A)(5), and (A6) of 44 CFR part 61 to clarify that areas in Monroe County that become communities by incorporating on or after January 1, 1999, are required to participate in

the inspection procedure as a condition of joining the NFIP. We will publish notices in the **Federal Register** when communities in Monroe County incorporate, agree to implement the pilot inspection procedure, and become eligible for the sale of flood insurance.

The same factors that make the conditions unique in Monroe County and the Village of Islamorada for implementation of the inspection procedure also apply to the City of Marathon and to other areas in Monroe County that incorporate. They include:

- The nature of the flood hazard,
- The number of possible violations (an estimated 2,000-4,000 illegally built enclosures in the entire County, the Village of Islamorada, and any areas in Monroe County that become communities by incorporating after January 1, 1999).

- The potential for loss of life in the event of a flood, and
- Several factors that have limited the community's ability to determine whether a building with an enclosures complies with the local floodplain management ordinance.

We will give the City of Marathon and other areas of Monroe County that incorporate after January 1, 1999, the same assistance that we are providing the Monroe County and the Village of Islamorada to address these violations.

National Environmental Policy Act

When we conducted the environmental review for the proposed rule on the inspection procedure (published in the **Federal Register** on May 5, 1999, 64 FR 24256), the City of Marathon was not a participating NFIP community. However, we covered the City of Marathon's incorporated areas in the environmental review as if Marathon was a

part of Monroe County. That environmental review also covers any additional area within Monroe County that may incorporate in the future. Therefore, the determination that the action in the May 5, 1999 proposed rule qualifies for the exclusion on rulemaking relating to actions that themselves are excludable applies to this interim final rule.

We reviewed the May 5, 1999 proposed rule on the inspection procedure under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. We determined that the action in that proposed rule qualifies for the exclusion on rulemaking relating to actions that themselves are excludable. The exclusions are in 44 CFR 10.8(d)(2)(ii) and (iv) regarding inspections, monitoring activities, and actions to enforce local regulations.

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

We also determined that no extraordinary circumstances existed regarding the May 5, 1999 proposed rule, as defined in 44 CFR 10.8(d)(3). We considered these potential extraordinary circumstances: Greater scope or size than normally experienced for a particular category action; high level of public controversy; presence of endangered or threatened species and their critical habitat; presence of hazardous substances; and

actions with the potential to affect special status areas adversely or other critical resources.

You may obtain a copy of the Record of Environmental Review documenting the findings through our website at www.FEMA.gov, or by writing to the Federal Emergency Management Agency at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

Executive Order 12898, Environmental Justice

When we conducted the environmental review for the May 5, 1999 proposed rule, the City of Marathon was not a participating NFIP community. We covered the City of Marathon's incorporated areas in the environmental review, however, as if Marathon were a part of Monroe County. The environmental review covers any additional area within Monroe County that incorporates. Therefore, the determination that the inspection procedure would not have a disproportionate adverse impact on low-income populations and minority populations applies to this interim final rule since the areas are already covered under the previous environmental review.

We reviewed the May 5, 1999 proposed rule under E.O. 12898, Environmental Justice, and determined that the inspection procedure would not have a disproportionate adverse impact on low-income populations and minority populations. We also determined that this action would have some adverse effects on low-income populations because some of the illegal enclosures are used as full-living units and the residents would have to find replacement housing. The effect would be caused by the illegal activity, not by this regulatory action. We determined, further, that there would be a greater adverse health and safety impact on the affected low-income populations if they

stayed in these illegally built ground level enclosures. The enclosures are located in flood hazard areas below the Base Flood Elevation where there is a significant risk of flooding.

You may obtain a copy of the Record of Environmental Review documenting the findings through our website at www.FEMA.gov, or by writing to the Federal Emergency Management Agency at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

Executive Order 12866, Regulatory Planning and Review

We prepared and reviewed the final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) under the provisions of E.O. 12866, Regulatory Planning and Review. For the reasons that follow we concluded that the June 27, 2000 rule is neither an economically significant nor a significant regulatory action under the executive order. Therefore, since this interim final rule does not change the requirements of the June 27, 2000 final rule, this rule is neither an economically significant nor a significant regulatory action under the executive order and the following reasons also apply:

- The June 27, 2000 final rule and this interim final rule apply to a pilot program that applies to Monroe County and the Village of Islamorada. The rules would apply to the City of Marathon and to other communities in Monroe County that incorporate after January 1, 1999, and become eligible for the sale of flood insurance. The rules address flood insurance and floodplain management issues that the law requires for communities to remain eligible for flood insurance and to avoid probation and potential suspension from the NFIP;

- We estimate that the costs to these communities to enforce the rule would be in the range of \$48,000 to \$250,000 per year, over a few years;

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

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

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

- The inspection procedure adopted in the June 27, 2000 rule arises out of work done by a Citizen's Task Force that the Monroe County Board of County Commissioners appointed. We have worked closely with County, Village and State officials in preparing the rule [see Executive Order 13132, Federalism, below]; and

- The inspection procedure under this rule is the best available method to achieve the NFIP regulatory objective while taking into account State statutory

constraints on inspections, State rate of growth mandates, housing limits within the two communities, and related factors.

The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Executive Order 13132, Federalism

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

In the May 5, 1999 proposed rule, we stated that that rule had no policies that have federalism implications under E.O. 12612, Federalism.

We reviewed the June 27, 2000 final rule for federalism implications under E.O. 13132. Based on our review, we determined the rule does not have federalism implications as defined in E.O. 13132 as it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The June 27, 2000 final rule imposes no mandates on State or local governments.

We reviewed this interim final rule for federalism implications under E.O. 13132. Based on our review, we determined that this interim final rule also does not have federalism implications as defined in E.O. 13132.

In addition to Monroe County, the Village of Islamorada, and the State of Florida, we have consulted with the City of Marathon and will continue to consult and coordinate with the City of Marathon and any other area in Monroe County that incorporates and

becomes eligible for the sale of flood insurance after January 1, 1999, that will participate in the inspection procedure.

Paperwork Reduction Act

We submitted the information collection requirements in the May 5, 1999 proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements were approved by the OMB under Control Number 3067-0275. Under this interim final rule, the number and type of respondents would remain substantially the same. This interim final rule would not likely revise the number and types of responses, frequency, and burden hours. The number and types of responses, frequency, and burden hours for the City of Marathon or any other area in Monroe County that incorporates after January 1, 1999, and is eligible for the sale of flood insurance will offset the number and types of responses, frequency, and burden hours in Monroe County.

Executive Order 12778, Civil Justice Reform

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

Justification for Interim Final Rule.

In general, FEMA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 533, and 44 CFR 1.12. The Administrative Procedure Act, however, does provide an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. This interim final rule provides for a clarification in the final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) that areas in

Monroe County that become communities by incorporating on or after January 1, 1999, are required to participate in the inspection procedure as a condition of joining the NFIP. This requirement was specifically stated in the supplementary of the proposed rule (published in the **Federal Register** on May 5, 1999) and the final rule. We also established the following requirement in 44 CFR 59.30(a), Purpose which requires areas within Monroe County that incorporate after January 1, 1999 to implement the inspection procedure: "(a) This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999, and is eligible for the sale of flood insurance." However, this requirement was not clearly stated in the Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61, the endorsements to the Standard Flood Insurance Policy. This interim final rule would amend 44 CFR 59.30 and the Appendices to make clearer that participation in the inspection procedure is a requirement for any area within Monroe County that incorporates on or after January 1, 1999. Because this is a clarification to the final rule and not a new or modified requirement, we believe it is in the public interest to publish this amendment as an interim final rule.

List of Subjects in 44 CFR Parts 59 and 61

Flood Insurance, Reporting and recordkeeping requirements.

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

PART 59--GENERAL PROVISIONS

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

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

2. Revise section 59.30(a) to read as follows:

Subpart C--Pilot Inspection Program

Sec. 59.30 A Pilot inspection procedure. [Amended]

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

PART 61 – INSURANCE COVERAGE AND RATES

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

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

4. Revise the heading and first paragraph in Appendix (A)(4) to Part 61 to read as follows:

Appendix A(4) to Part 61

**Federal Emergency Management Agency,
Federal Insurance Administration**

**Standard Flood Insurance Policy
Endorsement to Dwelling Form**

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies in Monroe County and the Village of Islamorada, Florida. This endorsement also applies to communities within Monroe County, Florida that incorporate on or after January 1, 1999, agree to participate in the inspection procedure, and become eligible for the sale of flood insurance.

5. Revise the heading and first paragraph in Appendix (A)(5) to Part 61 to read as follows:

Appendix A(5) to Part 61

**Federal Emergency Management Agency,
Federal Insurance Administration**

**Standard Flood Insurance Policy
Endorsement to General Property Form**

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies in Monroe County and the Village of Islamorada, Florida. This endorsement also applies to communities within Monroe

County, Florida that incorporate on or after January 1, 1999, agree to participate in the inspection procedure, and become eligible for the sale of flood insurance.

6. Revise the heading and first paragraph in Appendix (A)(6) to Part 61 to read as follows:

Appendix A(6) to Part 61

**Federal Emergency Management Agency,
Federal Insurance Administration**

**Standard Flood Insurance Policy
Endorsement to Residential Condominium Building Association Policy**

This endorsement replaces the provisions of VIII.B.4 and VIII.H.2, and also adds a new paragraph, VIII.H.5. This endorsement applies in Monroe County and the Village of Islamorada, Florida. This endorsement also applies to communities within Monroe County, Florida that incorporate on or after January 1, 1999, agree to participate in the inspection procedure, and become eligible for the sale of flood insurance.

Dated:

Joe M. Allbaugh,
Director.