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PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

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AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 53 FR 36975, Sept. 23, 1988, unless otherwise noted.

Subpart A—General

§ 63.1 Purpose of part.

The purpose of this part is to implement section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) amended the Act by adding subsection (c) to section 1306

of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This part establishes criteria by which States can obtain the approval of the Administrator to make these certifications and sets forth the procedures and data requirements to be used by those States in making these certifications. This part also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

§ 63.2 Condemnation in lieu of certification.

(a) The condemnation required by section 1306(c)(6)(B) of the Act in lieu of certification need not be grounded in a finding that the structure is subject to imminent collapse or subsidence as a result of erosion, but may be issued for other reasons deemed sufficient by the State or local authority.

(b) The condemnation may be in the form of a court order or other instrument authorized by State or local law, e.g., a notification to the property owner of an unsafe condition, or unsanitary condition, or other deficiency at the property address, coupled with a statement that the property owner must vacate the property if the condition giving rise to the condemnation notice is not cured by repair, removal, or demolition of the building by a date certain.

(c) In addition to a condemnation in accordance with paragraphs (a) and (b) of this section, a structure must be

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found by the Administrator to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels to be eligible for benefits under section 1306(c) of the Act.

§ 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.

The requirement in section 1306(c)(4)(C)(i) of the Act that a structure be “covered by a contract for flood insurance under this title—(i) on or before June 1, 1988” was met if presentation of the appropriate premium and a properly completed flood insurance application form was made to the National Flood Insurance Program or a Write Your Own (WYO) Company on or before June 1, 1988.

§ 63.4 Property not covered.

Benefits under section 1306(c) of the Act do not include compensation for items excluded under the provisions of the Standard Flood Insurance Policy (SFIP).

§ 63.5 Coverage for contents removal.

Whenever a structure is subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels and otherwise meets the requirements of section 1306(c) of the Act so that benefits are payable under those provisions, the coverage in the definition of “Direct Physical Loss by or from Flood” in the SFIP for the expense of removing contents, up to the minimum deductible of \$500.00, to protect and preserve them from flood or from the imminent danger of flood, applies if contents coverage is in effect.

§ 63.6 Reimbursable relocation costs.

In addition to the coverage described in § 63.5 of this part, relocation costs for which benefits are payable under section 1306(c) of the Act include the costs of:

- (a) Removing the structure from the site,
- (b) Site cleanup,
- (c) Debris removal,

(d) Moving the structure to a new site, and

(e) At the new site, a new foundation and related grading, including elevating the structure as required by local flood plain management ordinances, and sewer, septic, electric, gas, telephone, and water connections at the building.

§ 63.7 Amount of coverage and deductible on effective date of condemnation or certification.

The amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act are what was in effect on the date of condemnation or the date of application for certification.

[53 FR 36975, Sept. 23, 1988, as amended at 53 FR 44193, Nov. 2, 1988]

§ 63.8 Limitation on amount of benefits.

(a) In section 1306(c)(3)(C) of the Act, the phrase *under the flood insurance contract issued pursuant to this title* means the value of the structure under section 1306(c)(3)(C) of the Act is limited to the amount of building coverage provided by the insured's policy.

(b) Where the amount payable under section 1306(c)(1)(A)(ii) of the Act for the cost of demolition, together with the amount payable under section 1306(c)(1)(A) of the Act for the value of the structure under the demolition option, exceeds the amount of building coverage provided by the insured's policy, such amounts will be paid beyond the amount of that building coverage, even if this payment exceeds the limits of coverage otherwise authorized by section 1306(a) of the Act for the particular class of property.

§ 63.9 Sale while claim pending.

If a claimant sells a structure prior to its demolition or relocation, no benefits are payable to that claimant under section 1306(c) of the Act, and any payments which may have been made under those provisions shall be reimbursed to the insurer making them.

§ 63.10 Demolition or relocation contractor to be joint payee.

If a demolition or relocation contractor is used, the instrument of payment for benefits under section 1306(c) of the Act for the fee of that contractor, shall include that contractor as a joint payee, unless that contractor has already been paid when the instrument of payment is issued.

§ 63.11 Requirement for a commitment before October 1, 1989.

The requirement in section 1306(c)(7) of the Act that a commitment be made on or before September 30, 1989 as a necessary condition to making any payments after September 30, 1989, is met if before October 1, 1989,

(a) There is either a condemnation in accordance with § 63.2 of this part or a certification in accordance with subpart B of this part, and

(b) A policyholder's notice of claim for benefits under section 1306(c) of the Act is received by the insurer.

§ 63.12 Setback and community flood plain management requirements.

(a) Where benefits have been paid under section 1306(c) of the Act, the setback requirements in section 1306(c)(5) of the Act, which if not met result in a prohibition against subsequently providing flood insurance or assistance under the Disaster Relief Act of 1974, shall apply:

(1) To the structure involved wherever it is located, and

(2) To any other structure subsequently constructed on or moved to the parcel of land on which the structure involved was located when the claim under section 1306(c) of the Act arose.

(b) In addition, any structures relocated under section 1306 of the Act must comply with the flood plain management criteria set forth in § 60.3 of this chapter.

Subpart B—State Certification of Structures Subject to Imminent Collapse

§ 63.13 Purpose of subpart.

The purpose of this subpart is to establish criteria under the provisions of section 1306(c) of the National Flood

Insurance Act of 1968, as amended, by which States can obtain approval from the Administrator to certify that structures are subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. The subpart also sets forth the procedures and data requirements to be utilized by those States in certifying structures as subject to imminent collapse. The State certification procedure represents an option to the use of the procedure whereby a structure is condemned by a State or local authority as a prerequisite to consideration for imminent collapse insurance benefits.

§ 63.14 Criteria for State qualification to perform imminent collapse certifications.

In order to qualify under this subpart, the State must be administering a coastal zone management program which includes the following components, as a minimum:

(a) A state-wide requirement that prohibits new construction and the relocation of structures seaward of an adopted erosion setback. Such setback must be based in whole or in part on some multiple of the local mean annual erosion (recession) rate; and

(b) An established, complete and functional data base of mean annual erosion rates for all reaches of coastal shorelines subject to erosion in the State, which is used as the basis to enforce these setback requirements.

§ 63.15 State application for eligibility to certify structures subject to imminent collapse.

(a) Application pursuant to this part shall be made by the Governor or other duly authorized official of the State.

(b) The application must be submitted to the Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472.

(c) Documents to be included in the application are as follows:

(1) Copies of all applicable State statutes and regulations verifying the existence of a coastal zone management

program including setback requirements for new and relocated construction which are based in whole or in part on mean annual erosion rates established for the State's shorelines.

(2) A copy of the State's mean annual erosion rate data base, if not already provided, showing such rates for all reaches of coastal shorelines subject to erosion within the State.

(3) The title, address and phone number of a contact person within the State agency having authority for administering the coastal zone management program.

(4) A statement that adequate resources are available to carry out the certification services, and that certifications will be performed in accordance with the procedures described in § 63.17.

§ 63.16 Review of State application by the Administrator.

(a) The Administrator may return the application for eligibility upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the coastal zone management program and erosion rate data base.

(b) Upon determining that the State's program and/or data base does not meet the criteria set forth in § 63.14, the Administrator shall in writing reject the application for eligibility and indicate in what respects the State program and/or data base fails to comply with the criteria.

(c) Upon determining that the State program and data base meets the criteria set forth in § 63.14, the Administrator shall approve the State as eligible to certify structures subject to imminent collapse. Such approval, however, is in all cases provisional. The Administrator shall review the State program and data base for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the program and/or data base 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 approval.

§ 63.17 Procedures and data requirements for imminent collapse certifications by States.

Any State that has been determined to be eligible by the Administrator may certify that a coastal structure is subject to imminent collapse. Such certification requires that the State collect scientific or technical information relative to the structure and its site and provide such information to the insured to be filed with a claim for insurance benefits under Section 1306 of the National Flood Insurance Act of 1968, as amended. The information which is provided to the insured shall include, but is not limited to, the following:

(a) Certification from the State agency that the structure is subject to imminent collapse. The certification shall cite the property address, legal description (e.g., lot, block), the date of application for certification, and the date of and basis for the certification, and

(b) Supporting scientific and technical data to substantiate the certification consisting of the following:

(1) Photographs of the structure in relation to the obvious peril. All photographs should be labeled with the location, direction, date and time from which they were taken. The collection of photographs should adequately display the following:

(i) Any evidence of existing damage. The damage can include loss or erosion of soil near or around the foundation, or structural damage to the foundation components.

(ii) Structure and waterbody. These photographs shall show both the structure and the waterbody that presents the peril. If the structure is on a high bluff or dune and not accessible from the water side, the top edge of the bluff or dune will be sufficient. These will usually be taken from one or both sides of the structure.

(iii) Physical reference features used in the measurements discussed below. The reference feature shall be in or near the area affected by normal tides, when applicable. If a reference is not clearly distinguishable on the photograph, it should be annotated to identify the feature. If possible, all reference features described below should

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be photographed showing their relationship to the site of the threatened structure.

(2) Identification and selection of reference features. The following reference features are presented according to priority. If the first feature is not present, the next feature shall be located and photographed, and so forth.

(i) Top edge of bluff (cliff top).

(ii) Top edge of escarpment on an eroding dune (i.e., a nearly vertical erosional cut at the seaward face of the dune). The normal high tide should be near the toe of the dune and there should be indications that the dune is actively eroding.

(iii) The normal high tide limit may be indicated by one of the following:

(A) Vegetation line (the seaward most edge of permanent vegetation).

(B) Beach scarp (erosion line on beach, usually a sharp, nearly vertical drop of 0.5 to 3.0 feet at the upper limit of high tide).

(C) Debris line deposited by the normal high tide, not by a recent storm.

(D) Upper limit of wet sand.

(3) Distance measurements from the threatened structure to the nearest points on the reference features. These measurements should be taken from all photographed reference features to the closest point on the supporting foundation. For purposes of making this measurement, decks, stairs, and other exterior attachments that do not contribute to the structural support of the building are not considered part of the structure. The measurements shall be taken horizontally with a tape and recorded to the nearest foot. The date and time of the measurement shall be noted. The location of the measurements (i.e., reference feature and closest structural member) shall be identified on the appropriate photograph or sketch of the site. If some or all of the reference features coincide, this shall also be noted and identified on the photographs. Reference features landward of the structure need not be measured, but shall be noted on the photographs.

(4) A determination of the average annual erosion rate at the site and a copy of the pertinent section of the reference document used to obtain the annual erosion rate at the site.

(5) Copy of the effective Flood Insurance Rate Map panel annotated with the location of the threatened structure.

(6) In the event that a structure is not situated within a “zone of imminent collapse” using the criteria and procedures in paragraphs (b) (1) through (5) of this section, then the State may submit other scientific and technical data, in addition to the information described in paragraphs (b) (1) through (5) of this section, that would reveal unusual erosive or stability conditions at the site. Such data must include engineering analyses or reports performed on the structure or site which evaluates local rates of erosion, or the condition or stability of the structure’s foundation including supporting soil.

(c) In the case of structures planned to be relocated, a certification as to whether the proposed relocation site is outside the 30-year setback for 1–4 family residential structures, or outside the 60-year setback for all other structures, must also be submitted by the State.

[53 FR 36975, Sept. 23, 1988, as amended at 53 FR 44193, Nov. 2, 1988]

§63.18 Review of State certification by the Administrator.

The Administrator, after a claim has been filed by the property owner, will review the certification and data prepared by the State. Upon completion of the review, the State will be notified that:

(a) The structure has been determined to be subject to imminent collapse, or

(b) The structure has not been determined to be subject to imminent collapse and the basis for such determination, or

(c) Additional data are needed to verify that the procedures and criteria for imminent collapse certification have been met.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Sec.

64.1 Purpose of part.

64.2 Definitions.

64.3 Flood Insurance Maps.