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PART 71—IMPLEMENTATION OF COASTAL BARRIER LEGISLATION

Sec.

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AUTHORITY: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; 42 U.S.C. 4028; secs. 9 and 14, Pub. L. 101-591, 42 U.S.C. 4028(b).

SOURCE: 48 FR 37039, Aug. 16, 1983, unless otherwise noted.

§ 71.1 Purpose of part.

This part implements section 11 of the Coastal Barrier Resources Act (Pub. L. 97-348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591), as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22661, May 29, 1992]

§ 71.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and

(ii) The start of construction (see part 59) took place prior to October 18, 1982; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and

(ii) The structure constituted an insurable building, having walls and a

roof permanently in place no later than October 1, 1983.

(c) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(2) The start of construction (see 44 CFR part 59) took place prior to November 16, 1990.

(d) For the purpose of this part, a structure located in an "otherwise protected area" is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(ii) The start of construction took place prior to November 16, 1990; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1991; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991.

(e) For the purpose of this part, a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, is a "substantial improvement" if the substantial improvement (see 44 CFR part 59) of such structure took place on or after October 1, 1983.

(f) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is a "substantial improvement" if the substantial improvement of such structure took place on or after November 16, 1990.

(g) For the purpose of this part, a structure located in an "otherwise protected area" is a "substantial improvement" if the substantial improvement of such structure took place after November 16, 1991.

(h) For the purpose of this part, a *policy of flood insurance* means a policy

issued pursuant to the National Flood Insurance Act of 1968, as amended. This includes a policy issued directly by the Federal Government as well as by a private sector insurance company under the Write Your Own Program as authorized by 44 CFR part 62.

(i) For the purpose of this part, *new policy of flood insurance* means a policy of flood insurance other than one issued by an insurer (Write Your Own insurer or the Federal Government as the direct insurer) effective upon the expiration of a prior policy of flood insurance issued by the same insurer without any lapse in coverage between these two policies.

(j) For the purpose of this part, *new flood insurance coverage* means a new or renewed policy of flood insurance.

(k) For the purpose of this part, *otherwise protected area* means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes and identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990, as an area that is:

- (1) Not within the CBRS and
- (2) In an "otherwise protected area."

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984; 57 FR 22661, May 29, 1992]

§ 71.3 Denial of flood insurance.

(a) No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990.

(b) No new flood insurance coverage may be provided on or after November 16, 1990, for any new construction or substantial improvement of a structure located in any area newly identified as being in the CBRS as of November 16, 1990.

(c) No new flood insurance coverage may be provided after November 16, 1991, for any new construction or substantial improvement of a structure

which is located in an "otherwise protected area."

(d) Notwithstanding paragraph (c) of this section, new flood insurance coverage may be provided for a structure which is newly constructed or substantially improved in an "otherwise protected area" if the building is used in a manner consistent with the purpose for which the area is protected.

[57 FR 22662, May 29, 1992]

§ 71.4 Documentation.

(a) In order to obtain a new policy of flood insurance for a structure which is located in an area identified as being in the CBRS as of November 16, 1990, or in order to obtain a new policy of flood insurance after November 16, 1991, for a structure located in an "otherwise protected area," the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance. However, if the new policy of flood insurance is being obtained from an insurer (Write Your Own or the Federal Government as direct insurer) that has previously obtained the documentation described in this section, the property owner need only submit a signed written certification that the structure has not been substantially improved since the date of the previous documentation.

(b) The documentation must be submitted along with the application for the flood insurance policy.

(c) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 18, 1982;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu