

Court for the district in which the property will have been situated.

T. *Subrogation*: If of any payment under this policy, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

U. *Continuous Lake Flooding*: Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. Make no further claim under this policy; and
2. Not seek renewal of this policy; and
3. Not apply for any flood insurance under the Act for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph U still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

V. *Duplicate Policies Not Allowed*: Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which policy is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.
2. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy of those of the later policy, as of the effective date of the later policy.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect.

For purposes of this paragraph V the term effective date means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph V for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

[65 FR 39755, June 27, 2000]

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A—Issuance of Policies

Sec.

- 62.1 Purpose of part.
- 62.2 Definitions.
- 62.3 Servicing agent.
- 62.4 Limitations on sale of policies.
- 62.5 Premium refund.
- 62.6 Minimum commissions.

Subpart B—Claims Adjustment and Judicial Review

- 62.21 Claims adjustment.
- 62.22 Judicial review.

Subpart C—Write-Your-Own (WYO) Companies

- 62.23 WYO Companies authorized.
- 62.24 WYO Company participation criteria: new applicants.

APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT

APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

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.

SOURCE: 43 FR 2573, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Issuance of Policies

§ 62.1 Purpose of part.

The purpose of this part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under part 64 of this subchapter, and to prescribe the general method by which the Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

§ 62.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

§ 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Administrator has entered into the Agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) National Con-Serv, Inc., whose offices are located in Rockville, Maryland, is the servicing agent for the Federal Insurance Administration.

(c) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 58 FR 62447, Nov. 26, 1993]

§ 62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, in any area

the Administrator designates in part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this part, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Administrator.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 62.5 Premium refund.

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. A Standard Flood Insurance Policyholder may cancel a policy having a term of three (3) years, on an anniversary date, where the reason for the cancellation is that a policy of flood insurance has been obtained or is being obtained in substitution for the NFIP policy and the NFIP obtains a written concurrence in the cancellation from any mortgage of which the NFIP has actual notice; or

Federal Emergency Management Agency

§ 62.22

the policyholder has extinguishing the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be pro rata but with retention of the expense constant.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 49 FR 33658, Aug. 24, 1984; 53 FR 16279, May 6, 1988]

§ 62.6 Minimum commissions.

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than \$10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First \$2,000 of Premium	15
Excess of \$2,000	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amount	Commissions (percent)
First \$2,000 of Premium	15
Excess of \$2,000	5

(b) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission; and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis. In such cases, the policy shall be imme-

diately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

[46 FR 13515, Feb. 23, 1981, as amended at 53 FR 15221, Apr. 28, 1988; 57 FR 19541, May 7, 1992]

Subpart B—Claims Adjustment and Judicial Review

§ 62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and parts 61 and 62 of this subchapter.

§ 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the Federal Insurance Administrator in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate

United States Attorney, the Attorney General of the United States, and the Federal Insurance Administrator of the Federal Emergency Management Agency.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 43061 Sept. 30, 1982; 49 FR 33879, Aug. 27, 1984]

Subpart C—Write-Your-Own (WYO) Companies

§ 62.23 WYO Companies authorized.

(a) Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies whereby such companies may offer flood insurance coverage under the Program to eligible applicants for such insurance, including policyholders insured by them under their own property business lines of insurance pursuant to their customary business practices including their usual arrangements with agents and producers, in any State in which such WYO Companies are licensed to engage in the business of property insurance. Arrangements entered into by WYO Companies under this subpart shall be in the form and substance of the standard arrangement, entitled “Financial Assistance/ Subsidy Arrangement”, a copy of which is included in appendix A of this part and made a part of these regulations.

(b) Any duly licensed insurer so engaged in the Program shall be a WYO Company.

(c) A WYO Company is authorized to arrange for the issuance of flood insurance in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, as Insurer, to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the WYO Company; coverage shall be issued under the Standard Flood Insurance Policy.

(d) A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and conditions of the Standard Flood Insurance Policy.

(e) In carrying out its functions under this subpart, a WYO Company shall use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act and regulations prescribed by the Administrator under the Act.

(f) To facilitate the marketing of flood insurance coverage under the Program to policyholders of WYO Companies, the Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor in which the primary relationship between the WYO Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. In furtherance of this end, the Administrator has established “A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program”, a copy of which is included in appendix B of this part and made a part of these regulations.

(g) WYO Companies shall not be agents of the Federal Government and are solely responsible for their obligations to their insureds under any flood insurance policies issued under agreements entered into with the Administrator.

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be used by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance through the NFIP WYO Program.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan. Transactions reported by the WYO Company under the WYO Transaction Record Reporting and Processing Plan will be analyzed by the NFIP Bureau & Statistical Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions that have not passed systems edits and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reconciliation reports.

(5) If a WYO Company rejects an application from an agent or a producer, the agent or producer shall be notified so that the business can be placed through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company's other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium will not produce a pro rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrent expiration dates with other policies covering the property.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be used by WYO Companies.

(1) Under the terms of the Arrangement set forth at appendix A of this part, WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement also provides that claim adjustments shall

be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the WYO Company. The responsibility for providing a proper adjustment for combined wind and water claims is to be conducted by listing in concert with the Single Adjuster provisions listed in appendix A.

(2) The WYO Company may use its staff adjusters, independent adjusters, or both. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure currently operated by a WYO Company should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility for defending claims will be upon the Write Your Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff counsel or an outside attorney handles the defense of the matter. Claims in litigation will be reported by WYO Companies to FIA upon joinder of issue and FIA may inquire and be advised of the disposition of such litigation.

(7) The claim reserving procedures of the individual WYO Company can be used.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit of subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be

made). FIA, after consultation with FEMA's Office of the General Counsel (OGC), will forward the cause of action to OGC or to the NFIP Bureau and Statistical Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as: nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claim files will include coverage verification, normal adjuster investigations, including statements where necessary, police reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(11) The WYO Company will extend reasonable cooperation to FEMA's Office of the General Counsel on matters pertaining to litigation and subrogation, under paragraph (i)(8) of this section.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Have a biennial audit of the flood insurance financial statements conducted by an independent Certified Public Accountant (CPA) firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with the generally accepted auditing standards (GAAS) and Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must file with us (the Federal Insurance Administration) a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

(2) Participate in a WYO Company/FIA Operation review. We will conduct

a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing (TRPP) Plan (Part 5). We will file a report of the Operation Review with the Standards Committee.

(3) Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual. Transactions reported to the National Flood Insurance Program's (NFIP's) Bureau and Statistical Agent by the WYO Company under the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual will be analyzed by the Bureau and Statistical Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the totals generated from transaction reports with those submitted on WYO Company reconciliation reports.

(4) Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

(5) Cooperate with FIA in the implementation of a claims reinspection program.

(6) Cooperate with FIA in the verification of risk rating information.

(7) Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this title relative to the administration of the NFIP.

(l)(1) WYO Companies may, on a voluntary basis, elect to participate in the

Federal Emergency Management Agency

§ 62.24

Mortgage Portfolio Protection Program (MPPP), under which they can offer, as a last resort, flood insurance at special high rates, sufficient to recover the full cost of this program in recognition of the uncertainty as to the degree of risk a given building presents due to the limited underwriting data required, to properties in a lending institution's mortgage portfolio to achieve compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Flood insurance policies under the MPPP may only be issued for those properties that:

(i) Are determined to be located within special flood hazard areas of communities that are participating in the NFIP, and

(ii) Are not covered by a flood insurance policy even after a required series of notices have been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

(2) WYO Companies participating in the MPPP must provide a detailed implementation package to any lending institution that, on a voluntary basis, chooses to participate in the MPPP to ensure the lending institution has full knowledge of the criteria in that program and must obtain a signed receipt for that package from the lending institution. Participating WYO Companies must also maintain evidence of compliance with paragraph (1)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan contained in appendix B of this part.

(3) The mortgagor must be protected against the lending institution's arbitrary placing of flood insurance for which the mortgagor will be billed by being sent three notification letters as described in paragraphs (1)(4) through (6) of this section.

(4) The initial notification letter must:

(i) State the requirements of the Flood Disaster Protection Act of 1973, as amended;

(ii) Announce the determination that the mortgagor's property is in an identified special flood hazard area as de-

lineated on the appropriate FEMA map, necessitating flood insurance coverage for the duration of the loan;

(iii) Describe the procedure to follow should the mortgagor wish to challenge the determination;

(iv) Request evidence of a valid flood insurance policy or, if there is none, encourage the mortgagor to obtain a Standard Flood Insurance Policy (SFIP) promptly from a local insurance agent (or WYO Company);

(v) Advise that the premium for a MPPP policy is significantly higher than a conventional SFIP policy and advise as to the option for obtaining less costly flood insurance; and

(vi) Advise that a MPPP policy will be purchased by the lender if evidence of flood insurance coverage is not received by a date certain.

(5) The second notification letter must remind the mortgagor of the previous notice and provide essentially the same information.

(6) The final notification letter must:

(i) Enclose a copy of the flood insurance policy purchased under the MPPP on the mortgagor's (insured's) behalf, together with the Declarations Page,

(ii) Advise that the policy was purchased because of the failure to respond to the previous notices, and

(iii) Remind the insured that similar coverage may be available at significantly lower cost and advise that the policy can be cancelled at any time during the policy year and a pro rata refund provided for the unearned portion of the premium in the event the insured purchases another policy that is acceptable to satisfy the requirements of the 1973 Act.

(Approved by the Office of Management and Budget under OMB control number 3067-0229.)

[61 FR 51219, Oct. 1, 1996, as amended at 64 FR 56176, Oct. 18, 1999]

§ 62.24 WYO Company participation criteria: new applicants.

New companies seeking to participate in the WYO Program, as well as former WYO Companies seeking to return to the WYO Program, must meet standards for financial capability and stability, for statistical and financial reporting, and for commitment to Program objectives.

(a) To demonstrate the ability to meet the financial requirements, an applicant for entry or reentry into the WYO Program must:

(1) be a licensed property insurance company;

(2) have a five (5) year history of writing property insurance;

(3) disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal government during the immediate prior five (5) years regarding the company's business practices;

(4) submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) submit, as data become available, information to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) submit its last State or regional audit, which should contain no material negative findings.

(b) An applicant for entry or reentry into the WYO Program must also pass a test to determine the company's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where the company's reporting requirements will be fulfilled by an already qualified performer, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(c) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the company shall submit information concerning the company's plans for the Write Your Own Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood in-

surance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicant companies shall also name, in addition to a Principal Coordinator, a corporate officer point of contact— an individual, e.g., at the level of a Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farmowners multiple peril, homeowners multiple peril, and commercial multiple peril policies in force, by line, and the company's Best's Financial Size Category for the purpose of setting marketing goals.

[59 FR 38572, July 29, 1994]

APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 2000.

Issued By: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

ARTICLE I—FINDINGS, PURPOSE, AND AUTHORITY

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the "Program" or "NFIP") "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, overtime, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

ARTICLE II—UNDERTAKING OF THE COMPANY

A. Eligibility Requirements for Participation in the NFIP:

1. Policy Administration. All fund receipt, recording, control, timely deposit requirements, and disbursement in connection with all Policy Administration and any other related activities or correspondences, must meet all requirements of the Financial Control Plan. The Company shall be responsible for:

- a. Compliance with the Community Eligibility/Rating Criteria
- b. Making Policyholder Eligibility Determinations
- c. Policy Issuance
- d. Policy Endorsements
- e. Policy Cancellations
- f. Policy Correspondence
- g. Payment of Agents' Commissions

2. Claims Processing. All claims processing must be processed in accordance with the processing of all the companies' insurance policies and with the Financial Control Plan. Companies will also be required to comply with FIA Policy Issuances and other guidance authorized by FIA or the Federal Emergency Management Agency ("FEMA").

3. Reports.

a. Monthly Financial Reporting and Statistical Transaction reporting requirements. All monthly financial reporting and statis-

tical transaction reporting shall be in accordance with the requirements of the NFIP Transaction Record Reporting and Processing Plan for the Company Program and the Financial Control Plan for business written under the WYO (Write Your Own) Program. 44 CFR part 62, appendix B. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company reports.

b. Monthly financial reporting procedure shall be in accordance with the WYO Accounting Procedures.

B. Time Standards. Time will be measured from the date of receipt through the date mailed out. All dates referenced are working days, not calendar days. In addition to the standards set forth below, all functions performed by the company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing field. Continual failure to meet these requirements may result in limitations on the company's authority to write new business or the removal of the Company from the program. Applicable time standards are:

- 1. Application Processing—15 days (note: if the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added moneys shall be mailed within 10 days);
- 2. Renewal Processing—7 days.
- 3. Endorsement Processing—15 days.
- 4. Cancellation Processing—15 days.
- 5. Claims Draft Processing—7 days from completion of file examination.
- 6. Claims Adjustment—45 days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

C. Single Adjuster Program. To ensure the maximum responsiveness to the NFIP policy holders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program using procedures issued by the Administrator. The Single Adjuster procedure shall be followed in the following cases:

- 1. Where the flood and wind coverage is provided by the Company;
- 2. Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism; and
- 3. Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined

that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

D. Policy Issuance.

1. The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act.

3. All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator.

4. All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business.

5. The Administrator may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

ARTICLE III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM RE-FUNDS

A. The Company shall be liable for operating, administrative and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as surcharges on flood insurance premium and guaranty fund assessments.

B. The Company may withhold as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this article. This amount will equal the sum of the average of industry expense ratios for "Other Acq.", "Gen. Exp." and "Taxes" calculated by aggregating premiums and expense amounts for each of five property coverages using direct, as opposed to net, premium and expense information to derive weighted average expense ratios. For this purpose, we (the Federal Insurance Administration) will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's *Aggregates and Averages* for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion). During the first year of this change—arrangement year 1999–2000—which begins October 1, 1999, the expense allowance is set at the mid-point between the expense allowance calculated using *direct* premium and the expense allowance calculated using *net* premium.

The Company may retain 15 percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The amount of expense allowance retained by the company may increase a maximum of 2 percent, depending on the extent to which the company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. We will pay the company the amount of any increase after the end of the Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, may use the services of a national rating organization, licensed under state law, to help us undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. We will reimburse the Company for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to a "Fee Schedule" coordinated with the Company and provided by the Administrator.

3. Special allocated loss expenses shall be reimbursed to the Company in accordance with guidelines issued by the Administrator.

D. Loss Payments.

1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation which arises under the scope of this Arrangement, and the Authorities set forth above. All such loss payments must meet the documentation requirements of the Financial Control Plan and of this Arrangement. The Company will be reimbursed for errors and omissions only as set forth at Article IX of this Arrangement.

3. Notification of claims in litigation against the company. To ensure reimbursement of costs expended to defend a claim in litigation against the Company, the Company must promptly notify FIA.

Prompt notice, in duplicate, of any such claim in litigation within the scope of this section (D) shall be sent to the FIA along with a copy of any material pertinent to the claim in litigation. FIA shall forward one copy of all such claims to the Associate General Counsel for Litigation, FEMA OGC, to ensure that the FEMA OGC is aware of all pending litigation. Following the initial notice of claims in litigation, to ensure expeditious reimbursement, the company must submit all pertinent material and billing documentation as it becomes available. Within 60 days of the receipt of a notice of claim in litigation by the Company, the Company must submit an initial case analysis and legal fee estimate for billing support. Failure to meet these notice requirements may result in the Administrator's decision not to reimburse expenses for which FIA and the FEMA OGC have not been notified in a timely manner.

4. Limitation on Litigation Costs. Following receipt of notice of such claim, the Office of General Counsel (OGC), FEMA, shall review the information submitted. If it is determined that the claim is grounded in actions by the Company that are outside the scope of this Arrangement, the National Flood Insurance Act, and 44 CFR chapter 1, subchapter B, and/or involve issues of insurer/agent negligence as discussed in Article IX of this Arrangement, the OGC shall make a recommendation to the Adminis-

trator as to whether the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement. In the event the Administrator determines that the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement, the Company will be notified, in writing, within thirty (30) days of the Administrator's decision, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration the determination that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from Federal flood insurance funds referred to in Article II, Section E, and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

ARTICLE IV—UNDERTAKINGS OF THE GOVERNMENT

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections C, D, and E. Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than

\$5,000, and in no case more than \$5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D;
 2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and
 3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.
- B. The FIA shall provide technical assistance to the Company as follows:
1. The FIA's policy and history concerning underwriting and claims handling.
 2. A mechanism to assist in clarification of coverage and claims questions.
 3. Other assistance as needed.

ARTICLE V—COMMENCEMENT AND TERMINATION

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the FEDERAL REGISTER and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for a period not to exceed one (1) year following the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

1. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and
2. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and
3. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide

the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

ARTICLE VI—INFORMATION AND ANNUAL STATEMENTS

The Company shall furnish to FEMA such summaries and analyses of information including claim file information, and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as

Federal Emergency Management Agency

Pt 62, App. A

filed with the State Insurance Authority of the Company's domiciliary State.

ARTICLE VII—CASH MANAGEMENT AND ACCOUNTING

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by the FIA.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

ARTICLE VIII—ARBITRATION

If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination that shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

ARTICLE IX—ERRORS AND OMISSIONS

The parties shall not be liable to each other for damages caused by inadvertent delay, error, or omission made in connection with any transaction under this Arrangement. In the event of such actions, the responsible party must attempt to rectify that error as soon as possible after discovery of the error and act to mitigate any costs incurred due to that error. In the event that steps are not taken to rectify the situation and such action leads to claims against the company, the NFIP, or other related entities, the responsible party shall bear all liability attached to that delay, error or omission to the extent permissible by law.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or Trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

ARTICLE X—OFFICIALS NOT TO BENEFIT

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

ARTICLE XI—OFFSET

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

ARTICLE XII—EQUAL OPPORTUNITY

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

ARTICLE XIII—RESTRICTION ON OTHER FLOOD INSURANCE

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

ARTICLE XIV—ACCESS TO BOOKS AND RECORDS

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and

records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

ARTICLE XV—COMPLIANCE WITH ACT AND REGULATIONS

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, the National Flood Insurance Reform Act of 1994, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

ARTICLE XVI—RELATIONSHIP BETWEEN THE PARTIES (FEDERAL GOVERNMENT AND COMPANY) AND THE INSURED

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

[62 FR 39910, July 24, 1997, as amended at 63 FR 32761, June 16, 1998; 64 FR 27709, May 21, 1999; 65 FR 36634, June 9, 2000]

APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

A PLAN TO MAINTAIN FINANCIAL CONTROL FOR BUSINESS WRITTEN UNDER THE WRITE YOUR OWN PROGRAM.

(a) *In general.* Under the Write Your Own (WYO) Program, we (the Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA)) may enter into an arrangement with individual private sector insurance companies licensed to engage in the business of property insurance. The arrangement allows these companies—using their customary business practices—to offer flood insurance coverage to eligible property owners. To assist companies in

marketing flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO policies issued under the WYO Arrangement. To account for and ensure appropriate spending of any taxpayer funds, the WYO companies and we will implement this Financial Control Plan (Plan). Only the Administrator may approve any departures from the requirements of this Plan.

(b) *Financial Control Plan.* (1) The WYO Companies are subject to audit, examination, and regulatory controls of the various States. Additionally, the operating department of an insurance company is customarily subject to examinations and audits performed by the company's internal audit or quality control departments, or both, and independent Certified Public Accountant (CPA) firms. This Plan will use to the extent possible the findings of these examinations and audits as they pertain to business written under the WYO Program.

(2) This Plan contains several checks and balances that can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of the Company's files by us or our designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

(c) *Standards Committee established.* (1) We establish in this Plan a Standards Committee for the WYO Program to oversee the performance of WYO companies under this Plan and to recommend appropriate remedial actions to the Administrator. The Standards Committee will review and recommend to the Administrator remedies for any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to, not renewing a particular company's WYO Arrangement.

(2) The Administrator appoints the members of the Standards Committee, which consists of five (5) members from FIA, one (1) member from FEMA's Office of Financial Management, and one (1) member from each of the six (6) designated WYO Companies, pools, or other entities.

(3) A WYO company must—

(A) Have a biennial audit of the flood insurance financial statements conducted by a CPA firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with generally accepted auditing standards (GAAS) and the Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must

file with us a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

(B) Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing Plan (Part 5). We will file a report of the Operation Review with the Standards Committee (Part 7).

(C) Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing (TRRP) Plan and the WYO Accounting Procedures Manual. The National Flood Insurance Program's (NFIP) Bureau and Statistical Agent will analyze the transactions reported under the TRRP Plan and submit a monthly report to the WYO company and to us. The analysis will cover the timeliness of the WYO submissions, the disposition of transactions that do not pass systems edits, and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reports. (Parts 2 and 6).

(D) Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

(E) Cooperate with us in the implementation of a claims reinspection program (Part 3).

(F) Cooperate with us in the verification of risk rating information.

(G) Cooperate with FEMA's Office of Inspector General on matters pertaining to fraud.

(d) This Plan incorporates by reference a separate document, "The Write Your Own Program Financial Control Plan Requirements and Procedures," that contains the following parts, each of which is incorporated by reference into and is applicable to the Financial Control Plan:

(1) Part 1—Financial Audits, Audits for Cause, and State Insurance Department Audits;

(2) Part 2—Transaction Record Reporting and Processing Plan Reconciliation Procedures;

(3) Part 3—Claims Reinspection Program;

(4) Part 4—Report Certifications and Signature Authorization;

(5) Part 5—Transaction Record Reporting and Processing Plan;

(6) Part 6—Write Your Own (WYO) Accounting Procedures Manual; and

(7) Part 7—Operation Review Procedures.

(e) Interested members of the public may obtain a copy of "The Write Your Own Program Financial Control Plan Requirements and Procedures" by contacting the FEMA

Distribution Center, P.O. Box 2012, Jessup, MD 20794.”

[64 FR 56176, Oct. 18, 1999]

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

Subpart A—General

Sec.

- 63.1 Purpose of part.
- 63.2 Condemnation in lieu of certification.
- 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.
- 63.4 Property not covered.
- 63.5 Coverage for contents removal.
- 63.6 Reimbursable relocation costs.
- 63.7 Amount of coverage and deductible on effective date of condemnation or certification.
- 63.8 Limitation on amount of benefits.
- 63.9 Sale while claim pending.
- 63.10 Demolition or relocation contractor to be joint payee.
- 63.11 Requirement for a commitment before October 1, 1989.
- 63.12 Setback and community flood plain management requirements.

Subpart B—State Certification of Structures Subject to Imminent Collapse

- 63.13 Purpose of subpart.
- 63.14 Criteria for State qualification to perform imminent collapse certifications.
- 63.15 State application for eligibility to certify structures subject to imminent collapse.
- 63.16 Review of State application by the Administrator.
- 63.17 Procedures and data requirements for imminent collapse certifications by States.
- 63.18 Review of State certification by the Administrator.

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