

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports address changes for BLM State Offices. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address changes for BLM State Offices will not have any economic impact whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Application procedures, Execution and filing of forms, Bureau offices of record.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), and 43 U.S.C. 1740, subpart 1821, part 1820, group 1800, subchapter A, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

1. The authority citation for part 1820 continues to read as follows:

Authority: R.S. 2478, 43 U.S.C. 1201; 43 U.S.C. 1740, unless otherwise noted.

2. Section 1821.2–1(d) is amended by revising the location and address of the Bureau of Land Management State Office in California to read:

§ 1821.2–1 Office hours; place for filing.

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STATE OFFICE AND AREA OF JURISDICTION

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California State Office, 2135 Butano Dr.,
Sacramento, CA 95825–0451—California
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Dated: July 2, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–18337 Filed 7–18–96; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC26

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule amends National Flood Insurance Program (NFIP) regulations establishing the Financial Assistance/Subsidy Arrangement that may be entered into by and between the Administrator and private sector insurers under the Write Your Own (WYO) program. The amendments: (1) Simplify the Arrangement by streamlining the format; (2) reflect recent policy changes regarding loss adjustment and financial operation of the private insurers in the WYO program; and (3) delete references to obsolete operating manuals and handbooks. The amendments also improve the flexibility of the Arrangement and provide information to permit WYO participants to discharge their responsibilities for underwriting, claims adjustment, and financial control procedures established by the Federal Insurance Administration.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: On April 3, 1996, FEMA published in the Federal Register, 61 FR 14709, a proposed rule to amend NFIP regulations establishing the Financial Assistance/Subsidy Arrangement that may be entered into by and between the Administrator and private sector insurers under the WYO program.

FEMA received two sets of written comments on the proposed rule. The comments were submitted by two separate Write Your Own companies.

One company expressed concerns over seven (7) issues in the Arrangement. The first concern questioned the Arrangement's incentive system, i.e., adjusting the percentage of retained premium relative to the Company's performance in achieving production goals. The proposed Arrangement provides a minimum of 30.6% of premium income to be retained by a WYO Company for operating and administrative expenses, including marketing expenses. When a WYO company achieves its production or marketing goals, the amount of retained premium income increases from the minimum of 30.6% up to a maximum of 32.6%. The commenter felt that such a provision was punitive and amounted to a retroactive penalty since the marketing goals are tied to the retention of current policies as well as the production of new business.

First of all, the amount of premium income retained by a WYO company (32.6%) includes allowances for marketing activities. Therefore, it is not unreasonable to condition a portion of the retained premium on the success of such marketing activities. Secondly, the unprecedented growth in the number of flood insurance policies during the last two years as a result of this very incentive system is a compelling reason to continue it under the Arrangement. Thirdly, the marketing goals are tied to retention of current policies only to the extent that such policies leave the NFIP entirely. If they go from one WYO company to another, the loss does not adversely affect the first company's goals. Furthermore, policy retention is a commonly accepted component of marketing strategies. In sum, the principle of relating financial incentives to performance is simply a sound business practice and has been retained in the Arrangement.

The commenter expressed a related concern that a standard percentage is unfair to larger companies that carry more policies on their book of business. FEMA has retained the same percentage for all companies participating in the WYO program for the current Arrangement believing that a consistent

standard is the most equitable approach for all participants since it is applied uniformly, regardless of a company's size. However, in calculating goal accomplishment, we will employ a formula that will recognize not only the percentage increase in the numbers of policies but also absolute numbers of new policies. This will be explained further in the offer letter for the Arrangement.

The overall issues of growth goals for companies in the WYO program, the appropriate level of the expense allowance, and the relationship between the two, all warrant a detailed review by the FIA. For the current Arrangement, however, the levels of retained premium reflected in the April 3, 1996 proposed rule remain in effect.

The second concern raised by this WYO company focused on the appropriate roles with respect to risk bearing by the Federal Government and the insurance companies participating in the Arrangement. (The heading in the company's submission reads "Continuing Shift of Risk-Bearing.") The commenter expressed concern that if Congressional authorization or appropriation for the program is ever withdrawn the WYO company would still be liable for its policies in force that are allowed to run their term under the Arrangement. The company recommended that the purpose statement be revised to emphasize the Federal Government's continuing financial assistance role—regardless of circumstances. The same company also recommended that Article V.E. should reaffirm that the FIA will reimburse expenses and ultimately be responsible for claim payment for the duration of the Arrangement even though financial assistance under the Arrangement is canceled for any new or renewal business. In the absence of that, the company recommended that a WYO company be permitted to cancel all policies in force with 45 days notice should financial assistance be terminated for any reason.

First, the Arrangement may not obligate the Federal Government in any way beyond Congressional authorization. Congress has built into the Act, however, a number of safeguards for policyholders—the ultimate beneficiaries of the National Flood Insurance Program—and private insurance companies that participate in the NFIP. One of the major safeguards for consumers and private insurance companies is FEMA's borrowing authority for the National Flood Insurance Fund which operates independently of fiscal year authorization. Furthermore, the WYO

program has operated for thirteen years and all have benefited—the consumer, the taxpayer, and participating WYO companies that have not had to absorb or share losses even in recent heavy loss years in spite of their active involvement in the NFIP. While FIA cannot speak for Congress relative to the authorization for the NFIP, FIA has recognized the commenter's concern by revising the purpose statement of Article I to emphasize that all flood policies issued are done so under prescribed conditions pursuant to the Arrangement and authorization granted by Congress for the program.

The same commenter also expressed concern over certain details in the Arrangement for the single adjuster program for catastrophic losses such as hurricanes when property owners suffer combined wind and flood losses but have separate insurance carriers for these perils. Specifically, Article II.C.3.0 of the proposed Arrangement requires using a single adjuster when the flood coverage is provided by the WYO company and the wind coverage is provided by another WYO company. Article II.C.4.0 requires the use of a single adjuster when the flood coverage is by the WYO company, the wind coverage is by another property insurer, and the State Insurance Regulator deems it in the interests of the policyholder that a single adjuster be used to handle both losses.

FIA finds some merit in the commenter's concerns relative to: 1. Article II.C.3.0, such as the potential exposure of a WYO company's proprietary information through the use of a single adjuster. Consequently, the Arrangement has been revised by deleting Article II.C.3.0. Article II. C.4.0, which requires the use of a single adjuster when the State Insurance Regulator requires one, has been retained in the Arrangement and renumbered as Article II.C.3.0. FIA believes strongly that at the heart of the single adjuster approach is an overriding public benefit since claims on the same property involving separate perils are adjusted in a coordinated manner. Therefore, whenever a State Insurance Regulator deems it in the interest of the public that a single adjuster be used for an event involving wind and flood, the program will support the Regulator's decision and require the use of a single adjuster by participating WYO companies.

The company also expressed concern that it no longer has an understanding with one Joint Underwriting Association and would run the risk in Article II.C.2.0 of breach of contract or misrepresentation since Joint

Underwriting Associations are one of the wind carriers that would require the use of a single adjuster. The commenter indicated that Article II.C.2.0 represented only a small percentage of its business, and Joint Underwriting Associations are in fact only one of a number of property insurance mechanisms listed in Article II.C.2.0. While the company may no longer act as a servicing agent for a particular State Joint Underwriting Association, this would certainly not preclude the use of a single adjuster when the coverage for flood is offered by the company and the wind coverage is offered by the underwriting association. Accordingly, Article II.C.2.0 of the Arrangement has not been revised.

The same company also recommended that State premium tax surcharges for flood insurance and guaranty fund assessments be excluded from liability from a participating Company. The company believed that the wording in the proposed Arrangement could be an impediment to marketing. FIA agrees with this comment, and Article III.A. has been revised to read, "The Company shall be liable for operating, administrative and production expenses, including any State premium taxes, dividends, agent's commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under the Arrangement, but excluding surcharges on flood insurance premium and guaranty fund assessments."

The first commenter also objected that the percentage (3.3%) paid to WYO companies for unallocated loss adjustment expenses is inadequate—one that has not changed since the inception of the program. While loss adjustment expenses, as the commenter mentioned, will on the average be higher for catastrophic events than for smaller events, the 3.3% contained in the Arrangement is an average percentage for all loss adjustment scenarios, including catastrophic disasters as well as moderate and small events where allocated loss expenses are lower. FEMA has determined that the current 3.3% should be retained in the current Arrangement. The matter however warrants review, and any modification to the loss adjustment expense will be considered at the end of the current Arrangement year.

The commenter also objected to the removal of the adjuster fee schedule from the Arrangement and recommended that the fee schedule be modified to reflect higher limits of coverage. FEMA agrees that additional changes need to be made to the fee

schedule; however, in the interest of expedition and flexibility, FEMA believes that any changes to the fee schedule should be made outside the rule making process in close coordination with the participating WYO companies. Therefore, the fee schedule has not been included in the final Arrangement.

This commenter's final recommendation involved offering greater flexibility in the Arrangement regarding cash management procedures and oversight. The commenter recommended that Article VII.B. be revised to read "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 by the FIA." FEMA agrees with that recommendation provided that FIA's approval of accounting procedures is in writing. The purpose underlying the revisions in the latest Arrangement is to streamline the document and to achieve greater flexibility in managing the program without sacrificing essential operational and financial controls. We have modified the Arrangement to reflect the company's recommendation.

A second WYO company objected also to the fixed percentage of 32.6% of retained premium only when companies achieve their marketing or production goals and to the limitation of 30.6% when that goal is not achieved. The company cited its extensive service and outreach programs to its agents in an effort to achieve the growth goals for the National Flood Insurance Program. In spite of this effort, the company indicated that increased competition from the independent agency system has prevented the company from achieving its goals. FEMA concludes however that the experience of the WYO program as a whole, with these percentages in place, has been responsible in large part for the unprecedented growth of the program. As explained above, the percentage rates of 30.6% (the minimum amount of premium that a company may retain) and 32.6% (the amount of premium retained by a company when it achieves its marketing goals) have been retained in this Arrangement but will be reviewed by FIA for future Arrangements.

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action as defined under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735, October 4, 1993. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. This rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, 44 CFR part 62 is amended as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 continues to read as follows:

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

2. Appendix A of part 62 is revised to read as follows:

Appendix A of 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, 1996.

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) "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, over time, 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—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including:

1.1 Community Eligibility/Rating Criteria.

1.2 Policyholder Eligibility Determination.

1.3 Policy Issuance.

1.4 Policy Endorsements.

1.5 Policy Cancellations.

1.6 Policy Correspondence.

1.7 Payment of Agents' Commissions.

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. Other technical and policy material published by FEMA and FIA will also provide guidance to the Company.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Transaction Record Reporting and Processing Plan for the Write Your Own (WYO) Program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

B. The Company shall use the following time standards of performance as a guide:

1.0 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 monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—15 days;

1.3 Cancellation Processing—15 days;

1.4 Claims Draft Processing—7 days from completion of file examination;

1.5 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.

1.6 For the elements of work enumerated above, the elapsed time

shown is from the date of receipt through the date of mail out. Days means working days, not calendar days.

In addition to the standards for timely performance set forth above, 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 industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards and the marketing guidelines provided for in Section G. below can be a factor considered by the Federal Insurance Administrator (the Administrator) in requiring corrective action by the Company, in determining the continuing participation of the Company in the Program, or in taking other action, e.g., limiting the Company's authority to write new business.

C. To ensure maximum responsiveness to the National Flood Insurance Program's (NFIP) policyholders 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 in the following cases and under procedures issued by the Administrator:

1.0 Where the flood and wind coverage is provided by the Company;

2.0 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

3.0 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.

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

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 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;

4.0 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;

5.0 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 Refunds

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

B. The Company shall be entitled to withhold, on a provisional basis, as operating and administrative expenses, including 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 Section C. of this Article, which amount shall be 32.6% of the Company's written premium on the policies covered by this Arrangement. The final amount retained by the Company shall be determined by an increase or decrease depending on the extent to which the Company meets the marketing goals for the 1996–1997 Arrangement year contained in marketing guidelines established pursuant to Article II. G.

The adjustment in the amount retained by the Company shall be made after the end of the 1996–1997 Arrangement year. Any decrease from 32.6% made as a result of a Company not meeting its marketing goals shall be directly related to the extent to which the Company's goal was not achieved, but shall not exceed two (2) percentage points (providing for a minimum of 30.6%).

The increase, which shall be distributed among the Companies exceeding their marketing goals, shall be drawn from a pool composed of the difference between 32.6% of all WYO Companies' written premium in Arrangement year 1996–1997 and the total amount, prior to the increase, provided to the Companies on the basis of the extent to which they have met their marketing goals. A distribution formula will be developed and distributed to WYO Companies that will consider the extent to which the Company has exceeded its goal and the size of the Company's book of business in relation to the total number of WYO policies. The amount of any increase shall be paid promptly to the Company after the end of the 1996–1997 Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

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.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 will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Administrator along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company that are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his/her decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, 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 of the notification 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 cancelled 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 cancelled 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 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 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

A. 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 ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

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.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: July 12, 1996.

Harvey G. Ryland,
Deputy Director.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST-95-321]

RIN 2105-AC22

Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Insufficient Specimens and Other Issues

AGENCY: Office of the Secretary, DOT.