

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**
44 CFR Part 62
RIN 3067-AD23
**National Flood Insurance Program;
Assistance to Private Sector Property
Insurers**
AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Based on recent cost information, we (FEMA) are adjusting the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT:

Edward L. Connor, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202-646-3443, (facsimile) 202-646-3445, (email) *Edward.Connor@fema.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2001, we published at 66 FR 23874 a rule proposing to increase the "expense allowance" under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance under the Write Your Own (WYO) program. (The "expense allowance" is a portion of the premiums charged for flood insurance policies that participating insurers sell under the WYO program.) The expense allowance is based on 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 five property coverages.

Based on our analysis of recent expense information from the companies, we believe that we should increase the current expense allowance under the Arrangement.

During the comment period, we received three sets of comments on the proposed rule. One respondent agreed with the rule as proposed. The other two respondents agreed with the proposed increase in the expense allowance. One of those however was disappointed that the proposed rule did not address marketing incentives, which are referred to in the Arrangement but not included in the Arrangement itself. The other recommended a change in the

marketing incentives for larger WYO companies.

As has been our practice, we consulted during the past year with WYO company representatives on the marketing incentives. We are planning to liberalize those incentives for the coming year. Since the marketing incentives are outside the Arrangement proper and therefore outside the scope of this rulemaking, we will not make any adjustment to the rule as proposed.

One commenter also recommended that we consider increasing the unallocated loss adjustment expense allowance from its current 3.3%. That commenter also recommended that the expense allowance be linked directly to the individual WYO company's flood insurance expense as identified in the insurance expense exhibit of the annual statement. (The commenter recommended both these changes for the 2002-3 Arrangement Year.) We plan to review the entire system for reimbursing WYO companies, and we will look at both of those recommendations as part of that review. We are prepared to propose any appropriate changes during the next rulemaking cycle.

In summary, the rule increasing the expense allowance, as proposed, will be adopted as a final rule.

During August 2001, we will send a copy of the offer for the 2001-2002 Arrangement year, together with related materials and submission instructions, to all private insurance companies participating under the current 2000-2001 Arrangement. Any private insurance company not currently participating in the WYO program but wishing to consider FEMA's offer for 2001-2001 may request a copy by writing: Federal Emergency Management Agency, Deputy Administrator, Federal Insurance and Mitigation Administration, WYO Program, Washington, DC 20472.

**National Environmental Policy Act
(NEPA)**

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this final rule is to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

**Executive Order 12866, Regulatory
Planning and Review**

We have prepared and reviewed this final rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the final rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule adjusts the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector

insurers that sell and service flood insurance. The adjustment increases by approximately \$14 million the expense allowance paid to the WYO private sector insurers. It does not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It creates no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

This final rule revises the NFIP regulations to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. Therefore, I certify that a regulatory flexibility analysis is not required for this rule because it will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies

must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule adjusts the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 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. Revise the *Effective Date* and Article III. B of Appendix A to part 62 to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

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Effective Date: October 1, 2001.

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ARTICLE III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS

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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 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). In addition, this amount will be increased by one percentage point to reimburse expenses beyond regular property/casualty expenses.

The Company may retain fifteen percent (15%) 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 two percentage points, 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.

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

Dated: July 27, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01-19406 Filed 8-3-01; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No.: 010509116–1197–02; I.D. 042301B]

RIN 0648–AO87

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule that revises restrictions on the frequency and timing of limited entry permit transfers and clarifies NMFS regulatory requirements for transferring limited entry permits. This rule also updates and clarifies limited entry program regulations so that they are more readable for the public. This action is needed to and is intended to revise limited entry permit regulations to better address the needs of the small businesses participating in the Pacific Coast groundfish limited entry fishery.

DATES: Effective August 1, 2001.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220–1384. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Kevin Ford (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: yvonne.dereynier@noaa.gov, kevin.ford@noaa.gov or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION: Electronic Access: This Federal Register document is also accessible via the internet at the website of the Office of the Federal Register: <http://www.access.gpo.gov/sudocs/aces/aces140.html>

This final rule revises the Pacific Coast groundfish fishery limited entry program regulations at 50 CFR 660 to modify the restriction on frequency and timing of limited entry permit transfers and also updates and re-organizes the regulations in a manner that is consistent with current NMFS permitting activities and practices. Re-organizing limited entry program regulations will not change the effect or intent of the regulations. This rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR prepared by NMFS for this action.

This final rule modifies the limited entry program regulations to remove outdated provisions, rearrange and clarify currently applicable regulations into a more readable and user-friendly format, and incorporate November 2000 Council recommendations on the frequency and timing of permit transfers. At that time, the Council recommended revising the restriction on the frequency of limited entry permit transfers from once every 12 months to once per calendar year. Clarifications of existing requirements include: revising the definition of "lessee" to specify that lessees do not have the right to transfer permits; revising the prohibition against operating a limited entry vessel without a limited entry permit so that the prohibition is clear without needing reference to other regulations; rearranging the limited entry program regulations into a more logical format; removing permit regulations that deal with permit applications that are no longer accepted; and clarifying documentation needs for the different permit action requests that permit owners make to the NMFS Fisheries Permits Office.

The proposed rule to implement changes to the allowed frequency of limited entry permit transfers and to update the limited entry program regulations was published on May 30, 2001 (66 FR 29276). NMFS requested comments on the proposed rule through June 19, 2001. During the comment period on the proposed rule, NMFS received one letter of comment. The commenter expressed concern about the Federal fisheries management process and the involvement of fishers in decisions made about regulations affecting their fisheries, citing a wish

that fish remain available for future generations. This rule does not address the Federal fisheries management process, which is governed by the Magnuson-Stevens Act. Overall, this final rule is a minor action that clarifies regulations and increases business flexibility for limited entry permit holders. This final rule will not provide new or increased fishing opportunities and thus is not expected to have any effect on the environment.

Changes from the Proposed Rule

In the proposed rule for this action (May 30, 2001, 66 FR 29276), 50 CFR 660.335 (d)(3), "Effective date," ended with the sentence: "No transfer is effective until the limited entry permit has been reissued as registered with the new vessel and the permit is in possession of the new permit holder." The phrase "and the permit is in possession of the new permit holder" was removed in this final rule, as it is redundant with 50 CFR 660.306, "Prohibitions," paragraph (n), which states that it is unlawful for any person to "fail to carry on board a vessel that vessel's limited entry permit if required."

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impacts of this final rule on small entities and the basis for this certification has not changed. Accordingly, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause, namely that it would be contrary to the public interest, to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553 (d)(3). This final rule concerns transfers of limited entry permits and affects permitting activities in the limited entry fleet. It is linked to another more complex regulation under consideration by NMFS. This is a proposed rule that was published on June 8, 2001 (66 FR 30869), that would implement Amendment 14 to the FMP by allowing permit stacking in the limited entry fixed gear sablefish fishery.

NMFS anticipates that the limited entry, fixed gear sablefish fishery will