

offer a separate prescription drug premium amount for full subsidy eligible individuals subject to certain conditions. In response to comments received on the proposed rule, we determined that this approach did not address the reassignment issue as effectively as the LIS benchmark weighting approach recommended by commenters.

*D. Accounting Statement*

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table

provides our best estimate of the cost associated due to increased Federal low-income premium subsidy payments, which are primarily the result of allowing a greater number of low-income beneficiaries to remain in their current plan, rather than reassigning them to a lower cost plan. All expenditures are classified as costs to the Federal Government.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE MODIFICATION TO THE WEIGHTING METHODOLOGY USED TO CALCULATE THE LOW-INCOME BENCHMARK AMOUNT, FINAL RULE  
[\$ Millions]

Category: Monetized costs	Costs
Single Year CY 2009 .....	\$90
Annualized Monetized Costs Using 7% Discount Rate FY 2009–FY 2018 .....	155.6
Annualized Monetized Costs Using 3% Discount Rate FY 2009–FY 2018 .....	162.6
Undiscounted Cumulative Costs—FY 2009–FY 2018 .....	1,680

Costs reflect transfers from the Federal Government to Health Plans.

*E. Conclusion*

This rule is estimated to result in an increased Federal cost of \$90 million in CY 2009 and \$1.68 billion over the next 10 fiscal years (2009 through 2018). As explained above, these costs are primarily due to an increase in low-income premium subsidy payments. This rule will not have a significant economic impact on a substantial number of small entities, so we are not preparing an analysis for the RFA. In addition, the regulation will not have a significant impact on the operations of a substantial number of small rural hospitals, so we are not preparing an analysis for section 1102(b) of the Act. The analysis above, together with the preamble, provides a Regulatory Impact Analysis as it qualifies as a major rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects in 42 CFR Part 423**

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

**PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT**

■ 1. The authority citation for part 423 continues to read as follows:

**Authority:** Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security

Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

**Subpart P—Premium and Cost-Sharing Subsidies for Low-Income Individuals**

■ 2. Amend § 423.780 by revising paragraph (b)(2)(i) to read as follows:

**§ 423.780 Premium subsidy.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) The low-income benchmark premium amount for a PDP region is a weighted average of the premium amounts described in paragraph (b)(2)(ii) of this section, with the weight for each PDP and MA–PD plan equal to a percentage, the numerator being equal to the number of Part D low-income subsidy eligible individuals enrolled in the plan in the reference month (as defined in § 422.258(c)(1) of this chapter) and the denominator equal to the total number of Part D low-income subsidy eligible individuals enrolled in all PDP and MA–PD plans (but not including PACE, private fee-for-service plans or 1876 cost plans) in a PDP region in the reference month.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 20, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

March 27, 2008.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 08–1088 Filed 3–31–08; 4 pm]

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 62**

[Docket ID FEMA–2008–0001]

RIN 1660–AA58

**National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Write-Your-Own Arrangement**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim Rule.

**SUMMARY:** This rule amends portions of the Federal Emergency Management Agency (FEMA), Federal Insurance Administration, Financial Assistance/ Subsidy Arrangement (Arrangement) between Write-Your-Own Companies (WYO Companies) and FEMA. The rule makes technical changes intended to assist WYO Companies by recognizing each party's duties under the Arrangement and amends the way FEMA communicates changes to the Unallocated Loss Adjustment Expenses

(ULAE) compensation rate to WYO Companies.

**DATES:** *Effective Date:* May 5, 2008.

*Comment Date:* Submit comments on or before June 2, 2008.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA-2008-0001, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* FEMA-RULES@dhs.gov. Include Docket ID FEMA-2008-0001 in the subject line of the message.

*Fax:* 866-466-5370.

*Mail/Hand Delivery/Courier:* Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 835, Washington, DC 20472.

*Handling of Confidential or Proprietary Information Submitted in Public Comments:* Do not submit comments that include trade secrets, confidential commercial or financial information to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail/hand delivery/courier to the FEMA Office of Chief Counsel, 500 C Street, SW., Room 835, Washington, DC 20472.

Upon receipt of such comments, FEMA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. FEMA will hold them in a separate file to which the public does not have access, and place a note in the public docket that FEMA has received such materials from the commenter. If FEMA receives a request to examine or copy this information, FEMA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and FEMA's FOIA regulation on confidential commercial information found at 44 CFR 5.57.

*Instructions:* All submissions received must include the agency name and Docket ID (FEMA-2008-0001). Unless the comment or material is submitted using the method provided above in "Handling of Confidential or Proprietary Information Submitted in Public Comments," all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on

the Administration Navigation Bar of <http://www.regulations.gov>.

*Viewing Comments and Documents:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov> and search for Docket ID FEMA-2008-0001. Submitted comments may also be inspected at Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 835, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Edward L. Connor, Deputy Assistant Administrator, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3429 (Phone), (202) 646-3445 (facsimile), or [Edward.Connor@dhs.gov](mailto:Edward.Connor@dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

Under the authority of sections 1304 and 1345 of the National Flood Insurance Act of 1968, Public Law 90-448, 82 Stat. 476, as amended (42 U.S.C. 4011, 4081), the Federal Emergency Management Agency (FEMA) provides insurance protection against flood damage to homeowners, businesses, and others by means of the National Flood Insurance Program (NFIP). The sale of flood insurance is largely implemented by private insurance companies that participate in the NFIP Write-Your-Own (WYO) program. Through the WYO program, insurance companies enter into agreements with FEMA to sell and service flood insurance policies and adjust claims after flood losses.

Under the WYO program, 88 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on the Financial Assistance/Subsidy Arrangement (Arrangement). The Arrangement is published at 44 CFR part 62, Appendix A and defines the duties and responsibilities of insurers that sell, service and market insurance under the WYO program. The Arrangement also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers. The Arrangement is renewed yearly through written agreement between the WYO Companies and FEMA.

##### **II. Discussion of the Interim Rule**

In this rule, FEMA makes three changes to the Arrangement. These changes either clarify existing practices or clarify how FEMA communicates certain information to WYO Companies.

##### *1. Insurance Agent Training*

Article II, section G. 3., is being added to address the WYO Companies' cooperation in helping ensure that agents writing flood insurance under the NFIP avail themselves of the training opportunities needed to meet the minimum NFIP training requirements called for in section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, 118 Stat. 733 (42 U.S.C. 4011 note) (the "BBB Act"). The new section of the Arrangement will not affect the training and education requirements, which are established by the States, but merely integrates WYO Companies into the effort to ensure agents meet those requirements. The new section commits the WYO Companies to notify their agents of the requirement to comply with State regulations regarding flood insurance agent education, notify them of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs. Although WYO Companies are already undertaking these efforts, they are being added to the Arrangement to formalize the commitment.

##### *2. Payment of Claims*

Article III, section D. 1. of the Arrangement provides that loss payments under flood insurance policies are to be made by the WYO Company from Federal funds retained in the bank account(s) established under Article II, section E., and, if such funds are depleted, from Federal funds derived by drawing against the Letter of Credit established pursuant to Article IV. WYO Companies have sought clarification as to what would occur following a large scale flooding event if there are no funds available in the National Flood Insurance Fund (NFIF) to be drawn down through the company letter of credit.

Although the seventh "Whereas" clause in Article I already states that the Federal Treasury will back all flood policy claim payments by the Company, FEMA is revising Article VII, section A. to provide additional clarification that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit. As will be discussed in more depth below, in certain heavy loss years, the potential exists for the NFIP to exhaust its authority to borrow funds from the Treasury to pay claims. In such an event, there may be a period of time during which no funds are available in the Treasury until the Congress takes

action to either increase the program's borrowing authority, or appropriate funds to relieve the debt. This interim rule revises Article VII, section A. to provide that in such circumstances, the Federal Insurance Administrator will suspend the NFIP's payment of claims until funds are again available in the Treasury, and that the WYO Companies are not required to pay claims from their own funds in the event of such a suspension.

3. *Unallocated Loss Adjustment Expense Schedule*

FEMA is revising Article III, section C.1. of the Arrangement which deals with the Unallocated Loss Adjustment Expense (ULAE) for which WYO Companies receive reimbursement under the Arrangement. At present, the ULAE rate is an expense reimbursement of 3.3 percent of the incurred loss (except that it does not include "incurred but not reported"). The effect of this rule is to remove the ULAE compensation percentage from the Arrangement. Instead, the percentage will now be communicated by FEMA to the WYO Companies through a ULAE Schedule.

As currently written, the ULAE compensation rate is one of only a few compensation rates explicitly spelled out in the Arrangement. The WYO Allocated Loss Adjustment Expense Fee Schedule (also called the Adjuster fee schedule) was at one time also in the Arrangement, but was removed because it changed frequently (61 FR 37687). Similarly, the total WYO Allowance was once contained in the Arrangement. The WYO Allowance was a combination of a 15 percent agency commission rate and an operating expense rate. Because the operating expense portion of that figure changed from year-to-year, the

operating expense portion of that figure was removed (64 FR 27705). In the Fiscal Year 2007 Arrangement, the only fixed compensation rates were the agency commission rate of 15 percent, a 2 percent marketing incentive, and the 3.3 percent ULAE.

Until now the ULAE has not changed. Pursuant to this rulemaking, however, the 3.3 percent fixed rate will be removed and, the ULAE compensation rate will be subject to change. Therefore, it makes sense to treat it in the same manner as the Adjuster fee schedule and the WYO Allowance by releasing it in an annual fee schedule. This will allow FEMA to adjust the rate as needed to reflect the actual expenses incurred by the WYO Companies.

In the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005, FEMA became aware that while the ULAE compensation percentage is equitable for most loss years, it exposes the Federal Government to an excessive amount of reimbursement in loss years that reach a catastrophic level of losses. ULAE is intended to cover those claim handling expenses that are not associated with specific claims, such as maintaining the home office claims staff and establishing and running on-site claims field offices. The 3.3 percent rate functioned equitably during most years of the NFIP, under-compensating companies moderately in light loss years, while providing slightly more compensation in heavier loss years, but averaging out to an appropriate level. However, as FEMA experienced after Hurricane Katrina, the 3.3 percent schedule greatly exceeds the companies' actual ULAE out-of-pocket expenses in catastrophic loss years.

In an "average" loss year, the NFIP pays out approximately \$16.8 million in ULAE (\$302,775,669/18 years), while a

single catastrophic event (Hurricane Katrina) resulted in over \$613 million in ULAE payments. The data from 1987 to 2007 used to generate these figures is available in the public docket for this rulemaking. Generally, ULAE is expected to increase as claims payout increases. That is, ULAE expenses for the WYO Companies should be larger during heavy loss years. However, the ratio of ULAE to losses (either paid losses or incurred losses) is not constant.

For example, if paid losses increase ten-fold, the increase in ULAE expenditures (the administrative expense associated with processing each claim) will not also increase ten-fold. However, under the Arrangement, the ULAE reimbursement was a set 3.3 percent of the incurred loss. In an average year, claims tend to range between \$15,000 and \$30,000. So, for an average \$30,000 insurance claim the ULAE reimbursement of 3.3 percent would be \$990 per claim. However, claims from Hurricane Katrina, averaged around \$90,000, so the ULAE reimbursement of 3.3 percent jumped to \$2,970 per claim. When entering the realm of certain catastrophic flooding events like Hurricane Katrina, WYO Companies could benefit somewhat from the economy of scale.

To confirm this, FEMA sought data from the Institute for Business and Home Safety (IBHS), a nonprofit organization of insurers and reinsurers that conduct business in the United States or reinsure risks located in the United States. IBHS submitted a voluntary data call for unallocated loss figures related to Hurricane Katrina to the insurance companies on its flood subcommittee. FEMA received consolidated data from five of the companies.

COMPANIES A THRU E

	2005	2006	2005-2006
Direct Incurred Losses .....	\$12,130,920,519	\$304,991,844	\$12,435,912,362
Direct ULAE Incurred .....	\$328,235,999	\$(17,947,595)	\$310,288,405
Percentage .....	2.71	-5.88	2.50

The figures above reflect the amount of Direct Incurred Losses that were paid out to policyholders for flood loss. The Direct ULAE Incurred is the actual amount of cost that the WYO Companies incurred to process the claims. In 2005, the companies expended \$328,235,999 which was 2.71 percent of the overall amount paid out. In contrast, in 2006, the companies actually saved \$17,947,595, which is a

negative 5.88 percent of the amount paid to insureds. The FY2006 cost savings was a result of efficiencies in scale resulting from the realization of the cost in FY2005. Because the losses in both years are attributed to Hurricane Katrina, FEMA has aggregated the figures which show an overall actual cost to the WYO Companies for their ULAE to be 2.5 percent of the incurred losses for a catastrophic event. This is

in contrast to the 3.3 percent that the WYO Companies were actually paid under the terms of the Arrangement.

FEMA has considered four primary alternatives to the fixed 3.3 percent rate:

A. *Status quo*. This is an unacceptable position due to the inflated ULAE payments to the WYO Companies that occur after catastrophic events like Hurricane Katrina.

B. *Straight reduction to the ULAE formula from the current 3.3 percent to*

a number that is more equitable for catastrophic years. While this would solve the problem for catastrophic years, it would greatly under-compensate the WYO Companies for the great preponderance of "routine" loss years. This would cause the companies to question their continued participation in the program and could greatly impact the long-term effectiveness of the program.

C. A blend of A and B that would maintain the current ULAE schedule of 3.3 percent of incurred losses for non-catastrophic loss years, while providing a lower ULAE rate for losses in excess of a specified threshold. While this approach has a certain appeal, as FEMA explored this option the formula quickly became very complicated as FEMA tried to adapt the formula so that it could be applied at the individual company level, taking into account the difference in what a catastrophic loss year would look like for a large company versus smaller geographically concentrated companies. It also had to be flexible enough to appropriately limit ULAE compensation for catastrophes where the loss payments span fiscal years. In short, the formula quickly grew so complicated that it would be difficult to administer.

D. Providing the ULAE reimbursement for companies to be based on a combination of a percentage of written premiums and a percentage of incurred loss. Shifting a portion of the ULAE compensation to be based on written premium would allow the companies a more equitable vehicle to cover their fixed expenses—such as home office claims staff—that are incurred every year whether a light loss year or a catastrophic loss year. However, under such an approach the appropriate percentage of written premium would probably vary over time depending upon the policy base and the premium adequacy of the NFIP. For example, as the current discounted premium (commonly referred to as "subsidized premiums") is addressed through aggressive rate increases, the NFIP's written premium would increase without an associated increase in the WYO Companies' fixed expenses.

FEMA currently favors splitting the ULAE compensation between premium and incurred loss as described in alternative D. However, to assure that the ULAE Fee Schedule can be easily adjusted to reflect needed readjustments over time, the ULAE percentage should be removed from the Arrangement and handled similarly to the Adjuster Fee Schedule and WYO Allowance.

Transmitting the ULAE rate through a Fee Schedule will align it with the

method that FEMA uses to transmit most of the other rates in the Agreement to WYO Companies and will allow FEMA to revise the rate more rapidly than through the formal rulemaking process. However, FEMA will not revise the rate during the Arrangement year. Pursuant to the terms of 44 CFR 62.23(i)(3), an established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year.

FEMA has extended the FY2007 Arrangement until such time that the FY2008 Arrangement and Schedules are finalized. Concurrent with the release of the FY2008 Arrangement, FEMA will release the FY2008 ULAE Schedule. In the new schedule, FEMA intends to move from a fixed rate system to a formula. FEMA used the data above to generate the new ULAE formula which is expected to be 1 percent of the Written Premium plus 1.5 percent of the Incurred Loss. FEMA used data from 1985 to 2007 to compare ULAE payments under the 3.3 percent framework versus this new formula and found the difference to be negligible in routine loss years. From 1985 to 2007, excluding 2005 and 2006, the total (not annual) difference is an increase of approximately \$14 million. Using data from 2005–2006, which are the catastrophic Katrina years, the difference is a total reduction of approximately \$300 million. A chart depicting this data is available in the public docket for this rulemaking.

Although this rulemaking is focused on the manner in which the ULAE formula is communicated to the WYO Companies, and not the actual ULAE rate itself, FEMA seeks data to use in its efforts to revise the formula, and suggestions for ways to tailor the formula to ensure that it will accurately reimburse WYO Companies for their actual loss. WYO Companies are encouraged to submit actual ULAE data during the comment period of this rule to assist FEMA in continuing to refine the formula. Comments that include trade secrets, confidential commercial or financial information should be submitted using the methods described above in the "Handling of Confidential or Proprietary Information Submitted in Public Comments" portion of the ADDRESSES caption of this preamble.

### III. Regulatory Requirements

#### Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 553, and 44 CFR 1.12, provides an exception from the standard notice and comment rulemaking procedures where the agency for good

cause finds the procedures for comment and response contrary to public interest. The rapid implementation of this rule is in the best interest of the public, as delay could overwhelm the NFIP should a catastrophic disaster occur.

Although catastrophic loss events like Katrina are relatively infrequent events, the probability of another storm of similar magnitude remains the same for this year. Research has shown that there has been a significant increase in high-latitude cyclone frequency, with an increase in storm intensity. ("Trends in Northern Hemisphere Surface Cyclone Frequency and Intensity", Gregory J. McCabe, Martyn P. Clark and Mark C. Serreze, American Meteorological Society, June 15, 2001.) There has also been an increase of more than 30 percent in the modeled frequency of major hurricanes making landfall in the United States, which accounts for current elevated levels of hurricane activity in the Atlantic basin that are expected to persist for at least the next five years. Although experts hold different climatological perspectives on the underlying causes of elevated hurricane activity, warmer temperatures are expected to result in high activity in the Atlantic basin, leading to a greater potential for hurricanes to make landfall at higher intensities. ("Insurance Risk Models Rise with Elevated Storm Frequency, Severity" Environment News Service, April 13, 2006.)

Furthermore, hurricanes are not the only cause of floods. Catastrophic flooding can occur at anytime of the year. If a catastrophic event occurs before FEMA is able to revise the ULAE figure it could cause a financial hardship to the American taxpayer as there would be a drain on the NFIP funds that would not have occurred if the change in the ULAE was in place at the time of the event. After Hurricane Katrina, the NFIP was forced to borrow \$17.31 billion from the Federal Treasury. If an event were to occur, the program's debt to the Treasury would only increase. Since a catastrophic flooding event has the possibility of happening at any time, any delay in implementing this rule puts the risk of financial hardship in the realm of possibility.

The program has been fortunate to have had two years in a row (2006 and 2007), in which the United States has not been hit with a large disaster; however, it is foolish to expect that such calm years will continue. Spurred by the constant threat of flood hazards, FEMA has been reviewing the NFIP to evaluate areas in which the program is inefficient. One area addressed is the ULAE rate. As discussed above, the

fixed 3.3 percent ULAE rate established in the Arrangement is not aligned with the actual expenses incurred by WYO Companies in processing claims. If a catastrophic disaster or any disaster resulting in more than \$3 million in losses hits before this rule goes into effect, it could overwhelm the NFIP. This rule is intended to reduce inefficiency in the NFIP and properly allocate relatively scarce resources to those in need.

FEMA has not considered these changes to the Arrangement in a vacuum. In the summer of 2007 FEMA met with IBHS, a nonprofit organization of insurers and reinsurers that conduct business in the United States or reinsure risks located in the United States. Forty-three of the 88 WYO companies are members of IBHS and those 43 companies write 85 percent of the WYO policies. The purpose of that meeting was to discuss the possibility of removing the fixed ULAE rate and methods that could be used in its place to more appropriately reimburse the actual expenses incurred by WYO Companies. IBHS provided helpful ideas, many of which are discussed above in the "Discussion of the Interim Rule" section. In those discussions, IBHS did not oppose the removal of the ULAE percentage from the text of the Arrangement or the revision of the ULAE formula.

FEMA believes it is contrary to the public interest to delay the benefits of this rule. In accordance with the APA, 5 U.S.C. 553(b)(B), for the reasons cited above FEMA finds that there is good cause for the interim final rule to be published without prior public comment FEMA, however, values public input to the regulatory process, and for this reason we are inviting post-effective-date comments on this interim rule. We may change this rule as a result of the comments we receive.

#### *Congressional Review of Agency Rulemaking*

FEMA has sent this interim final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801–808. As discussed in depth below in the Executive Order 12866 analysis, this rule is not a "major rule" within the meaning of that Act and will not result in an annual effect on the economy of \$100,000,000 or more. Moreover, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor does FEMA expect that it will have "significant adverse effects"

on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This rule is intended to revise the Arrangement between the WYO Companies and FEMA to encourage agents writing flood insurance under the NFIP to avail themselves of the training opportunities needed to meet the minimum NFIP training requirements, to clarify that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit, and to change the method in which FEMA communicates the ULAE rate to the WYO Companies. These changes are intended to improve the Arrangement and allow FEMA to run the NFIP in a more efficient and reasonable manner.

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

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866 (58 FR 51735, Oct. 4, 1993). This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866; therefore, OMB has not reviewed it under that Order.

As explained in this preamble, the first change to the Arrangement involves adding section G.3. to Article II. Section G.3. clarifies a WYO Company's cooperation in helping market the NFIP flood insurance policy, including ensuring that property insurance agents writing flood insurance under the NFIP avail themselves of the training opportunities needed to meet the minimum NFIP training requirements called for in section 207 of the Flood Insurance Reform Act of 2004. As insurance companies, these entities are expected to ensure that agents who provide insurance to the public understand the policies they provide. Training agents in the content of policies they provide is a necessary and typical part of marketing any insurance policy. These are efforts WYO Companies are already undertaking.

Next, in Article VII of the Arrangement, FEMA revises section A. to clarify for WYO Companies that, as has always been the case, WYO Companies do not have to use company funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit. In certain heavy loss years, the potential exists for the NFIF to exhaust its authority to borrow funds from the Treasury to pay claims. In such an

event, there may be a period of time during which no funds are available in the Treasury until the Congress either takes action to increase the program's borrowing authority, or appropriates funds to relieve the debt. The change made to the Arrangement in this rule is consistent with past practices of the NFIP, clarifies that the practice will continue in the future, and has no monetary impact.

Finally, this rule revises section C.1. of Article III, to remove explicit reference to the 3.3 percent ULAE compensation percentage in the Arrangement to allow FEMA added flexibility in adjusting the rate as needed to best align it to the actual expenses incurred by the WYO Companies. Instead, the ULAE rate will be communicated by FEMA to the WYO Companies through a Fee Schedule. The ULAE compensation rate will be communicated to the WYO Companies in the same manner that other forms of its compensation have been communicated. This rule does not change the ULAE rate, only the way it is communicated; therefore, there is no monetary effect from this rule.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) mandates that an agency conduct a RFA analysis when an agency is "required by section 553 \* \* \* to publish general notice of proposed rulemaking for any proposed rule \* \* \*" 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). Good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

#### *National Environmental Policy Act*

FEMA's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. The changes made in this regulation constitute action to enforce Federal, State or local codes, standards or regulations. This rulemaking will not have a significant effect on the human environment and, therefore, neither an environmental assessment nor an

environmental impact statement are required.

#### *Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, Aug. 10, 1999), 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. The changes in this rule affect the contractual relationship between FEMA and WYO Companies. Participation as a WYO Company is voluntary and does not affect State policymaking discretion. In accordance with Section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

#### *Paperwork Reduction Act of 1995*

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. This rule does not impose any new reporting or recordkeeping requirements, nor does it revise information collection requirements currently approved under the Paperwork Reduction Act of 1995.

#### *Executive Order 12988, Civil Justice Reform*

FEMA has reviewed this rule under Executive Order 12988, "Civil Justice Reform" (61 FR 4729, Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may 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. Though this rule will not result in such an

expenditure, FEMA does discuss the effects of this rule elsewhere in this preamble.

Moreover, because this rule addresses a pre-existing Arrangement between FEMA, FIA, and WYO Companies it does not impose any additional enforceable duty beyond that already agreed to. Participation as a WYO Company is voluntary and does not affect State policymaking discretion. Accordingly, this rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

#### *Executive Order 12898, Environmental Justice*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA believes that no action under this rule will have a disproportionately high or adverse effect on human health or the environment. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

#### *Executive Order 13045, Protection of Children*

FEMA has analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or safety that might disproportionately affect children.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

FEMA has reviewed this rule under Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000). This rule will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

#### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights*

FEMA has reviewed this rule under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights" (53 FR 8859, Mar. 18, 1988) as supplemented by Executive Order 13406, "Protecting the Property Rights of the American People" (71 FR 36973, June 28, 2006). This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

#### **List of Subjects in 44 CFR Part 62**

Claims, Flood insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, amend 44 CFR part 62, appendix A 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. In Appendix A to part 62, amend Article II to add section G.3. to read as follows:

#### **Appendix A to Part 62—Federal Emergency Management Agency, Federal**

##### *Insurance Administration, Financial Assistance/Subsidy Arrangement*

\* \* \* \* \*

##### Article II—Undertaking of the Company

\* \* \* \* \*

##### G. \* \* \*

3. The Company shall notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

■ 3. In Appendix A to part 62, amend Article III to revise section C.1. to read as follows:

##### Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

\* \* \* \* \*

##### C. \* \* \*

1. Unallocated loss adjustment expense shall be reimbursed to the

Company pursuant to a "ULAE Schedule" coordinated with the Company and provided by the Federal Insurance Administrator.

\* \* \* \* \*

■ 4. In Appendix A to part 62, amend Article VII to revise section A. to read as follows:

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. In the event that adequate Letter of Credit funding is not available to meet current Company obligations for flood policy claim payments issued, FIA shall direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Companies are not required to pay claims from their own funds in the event of such suspension.

\* \* \* \* \*

Dated: March 28, 2008.

**Harvey E. Johnson Jr.,**

*Acting Deputy Administrator, Federal Emergency Management Agency.*

[FR Doc. E8-6898 Filed 4-2-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-8019]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES: Effective Dates:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

**FOR FURTHER INFORMATION CONTACT:** David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth

column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act.** This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

**Regulatory Classification.** This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 13132, Federalism.** This rule involves no policies that have federalism implications under Executive Order 13132.

**Executive Order 12988, Civil Justice Reform.** This rule meets the applicable standards of Executive Order 12988.