



This document is scheduled to be published in the Federal Register on 05/23/2016 and available online at <http://federalregister.gov/a/2016-11701>, and on FDsys.gov

Billing Code: 9110-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

Docket ID: FEMA-2016-0012

RIN 1660-AA86

National Flood Insurance Program (NFIP): Financial Assistance/Subsidy

Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing to remove the copy of the Financial Assistance/Subsidy Arrangement and the summary of the Financial Control Plan from the appendices of its National Flood Insurance Program regulations, as it is no longer necessary or appropriate to retain a contract, agreement, or any other arrangement between FEMA and private insurance companies in the Code of Federal Regulations.

DATES: Comments are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket ID: FEMA-2016-0012, by one of the following methods:

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

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street, SW., Washington, DC 20472-3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For instructions on submitting comments, see the Public Participation portion of the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT: Claudia Murphy, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street, SW, Washington, DC 20472, (202) 646-2775.

SUPPLEMENTARY INFORMATION:

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the ADDRESSES section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking 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 via a link on the homepage 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 e-Rulemaking Portal at <http://www.regulations.gov>. Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 8NE, 500 C Street, SW., Washington, DC 20472-3100.

II. Background

The National Flood Insurance Act of 1968 (NFIA), as amended (42 U.S.C. 4001 et seq.), authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from flood in the United States. See 42 U.S.C. 4011(a). The NFIA states the NFIP is intended to be “a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry.” See 42 U.S.C. 4001(b). Under the NFIA, FEMA has the authority to carry out the NFIP through the facilities of the Federal government, utilizing, for the purposes of providing flood insurance coverage, insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States. See 42 U.S.C. 4071.

Pursuant to this authority, FEMA works closely with the insurance industry to facilitate the sale and servicing of flood insurance policies. An NFIP flood insurance policy, also known as the Standard Flood Insurance Policy (SFIP), can be purchased: (1) directly from the Federal government through a direct servicing agent, or (2) from a participating Write Your Own (WYO) insurance company through the WYO Program. The SFIPs set out the terms and conditions of insurance. See 44 CFR Part 61, Appendix A. FEMA establishes terms, rate structures, and premium costs of SFIPs. The terms, coverage limits, and flood insurance premiums are the same whether purchased from the NFIP Direct or the WYO Program.

FEMA established the WYO Program in 1983 to increase the NFIP policy count and geographic distribution of policies by taking advantage of the private insurance industry's marketing channels and existing policy base to sell flood insurance. See 48 FR 46789 (Oct. 14, 1983) (establishing the WYO Program). Seventy-nine private property or casualty insurance companies participate in this program today.¹

The NFIA authorizes FEMA to "enter into any contracts, agreements, or other arrangements" with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. See 42 U.S.C. 4081(a). Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as the WYO Companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the SFIP. Each Arrangement entered into by a WYO Company must be in the form and substance of the standard

¹ Federal Emergency Management Agency, Write Your Own Flood Insurance Company List, http://www.fema.gov/wyo_company (last accessed April 8, 2016).

Arrangement, a copy of which is in 44 CFR Part 62, Appendix A. See 44 CFR 62.23(a).

The standard Arrangement specifies the terms and conditions of utilizing the WYO Companies' facilities and services to carry out the NFIP. Each year, FEMA publishes in the Federal Register² and makes available to the WYO Companies the terms for subscription or re-subscription to the Arrangement. See Financial Assistance/Subsidy Arrangement, Article V(B). Under the Arrangement, participating WYO companies offer flood insurance coverage under the NFIP to eligible applicants, and write and service the SFIP in their own names. WYO Companies are responsible for all aspects of servicing of the policies, including policy issuance to new policyholders, endorsement, underwriting, renewal of policies, and cancellation of policies. WYO Companies are also responsible for compliance with community eligibility/rating criteria, making policyholder eligibility determinations, correspondence, and the payment of agents' commissions. The WYO Companies also investigate, adjust, settle, and defend all claims or losses arising from policies issued under the Arrangement. In addition, under the Arrangement, WYO Companies market flood insurance policies in a manner consistent with marketing guidelines established by FEMA. The WYO Companies are required to meet the requirements of a Financial Control Plan (see below for explanation of the Financial Control Plan), and submit to FEMA monthly Financial Reporting and Statistical Transaction reports.

In accordance with the Arrangement, WYO Companies retain a specific amount of policyholder premium for their operating and administrative expenses, for a commission allowance to meet commission or salaries of insurance agents, brokers, or

² See, e.g., 80 FR 46313 (Aug. 4, 2015).

other entities producing qualified flood insurance applications, and other related expenses. FEMA also reimburses WYO Companies for certain unallocated, allocated, and special allocated loss adjustment expenses as provided for in the Arrangement.

The Arrangement includes an arbitration provision applicable if any misunderstanding or dispute arises between FEMA and a WYO Company with reference to any factual issue under any provision of the Arrangement or with respect to FEMA’s non-renewal of the Company’s participation. The Arrangement also includes provisions related to information and annual statements, access to books and records, cash management and accounting, offset, errors and omissions, terms for the commencement and termination of the Arrangement, and other miscellaneous provisions.

Since the primary relationship between the Federal government and the WYO Companies is one of a fiduciary nature (that is, to ensure that any taxpayer funds are appropriately expended), FEMA established “A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program,” also known as the “Financial Control Plan.” See 42 U.S.C. 4071; 44 CFR 62.23(f), Part 62, App. B. To ensure financial and statistical control over the NFIP, as part of the Arrangement WYO companies agree to adhere to the standards and requirements in the Financial Control Plan. The Financial Control Plan includes standards and requirements for financial, underwriting, and other audits of participating WYO companies. Reconciliation procedures for the Transaction Record Reporting and Processing (TRRP) Plan are also outlined in the Financial Control Plan, in addition to other financial controls, such as the Claims Reinspection Program, report certifications and signature authorizations, and operation review procedures.

In 1985, FEMA added a copy of the Financial Control Plan to the NFIP regulations at 44 CFR Part 62, Appendix B. However, in 1999, FEMA removed the copy of the Financial Control Plan from the regulations and replaced it with a summary, thus allowing the Federal government and its industry partners the flexibility to make operational adjustments and corrections more efficiently and more quickly while retaining the broad framework necessary for sound financial controls. See 64 FR 56174 (Oct. 18, 1999).

III. Discussion of Proposed Rule

In this rule, FEMA proposes to remove the copy of the Arrangement in 44 CFR Part 62, Appendix A, and the summary of the Financial Control Plan in 44 CFR Part 62, Appendix B. In addition, FEMA proposes to make conforming amendments to update citations to these appendices in Section 62.23.

1. Financial Assistance/Subsidy Arrangement: 44 CFR Part 62, Appendix A

FEMA proposes to remove the copy of the Arrangement in 44 CFR Part 62, Appendix A, because it is no longer necessary to include a copy of the Arrangement in the Code of Federal Regulations (CFR), and the NFIA does not require FEMA to include a copy of the Arrangement in the CFR. See 42 U.S.C. 4081. In 1985, FEMA added a copy of the Arrangement to the appendix of 44 CFR Part 62 to inform the public of the procedural details of the WYO program. See 50 FR 16236 (April 25, 1985). However, since that time, there have been technological advances for disseminating information to the public, and there are now more efficient ways to inform the public of the procedural details of the WYO program. For example, FEMA now posts a copy of the Arrangement

on its website.³ Moreover, after more than thirty years of operation, the public is more familiar with the procedural details of the WYO Program and the flood insurance provided through WYO Companies than it was in 1985, after only two years of operation. Additionally, FEMA proposes to remove the copy of the Arrangement in 44 CFR Part 62, Appendix A, because it is inappropriate to codify in regulation a contract, agreement, or other arrangement between FEMA and private insurance companies.

By removing the copy of the Arrangement from the appendix of Part 62, FEMA and its industry partners maintain the flexibility to negotiate operational adjustments and corrections to the Arrangement more quickly and efficiently. Because a copy of the Arrangement is currently in the CFR, FEMA must undergo rulemaking to update the Arrangement. Since 1985, when FEMA added a copy of the Arrangement to the CFR, FEMA has undergone rulemaking approximately 21 times to make corrections and updates to the Arrangement. Although the rulemaking process plays an important role in agency policymaking, when this process is not required or necessary, the requirement to undergo rulemaking can unnecessarily slow down the operation of the NFIP by FEMA and its industry partners and can result in the use of alternate, less than ideal measures that result in business and operational inefficiencies.

For example, under Article II(C) of the Arrangement, following a catastrophic event, WYO companies agreed to adjust combined flood and wind losses utilizing one adjuster under the NFIP-approved Single Adjuster Program (SAP) using procedures issued by FEMA. This practice proved functionally impractical. Rather than undergo rulemaking to remove the SAP requirement from the Arrangement, since 2012 FEMA

³ FEMA, WYO Company Financial Assistance/Subsidy Arrangement, <http://www.fema.gov/media-library/assets/documents/17972?id=4054> (last accessed April 8, 2016).

has granted a limited waiver of this requirement, pursuant to FEMA's waiver authority in Section 62.23(k) of FEMA's regulations. FEMA communicated the exceptions to and under Section 62.23(k) through WYO Bulletins⁴. This may cause confusion for NFIP stakeholders and the general public because the copy of the Arrangement in the CFR does not reflect those updates. Once FEMA removes the copy of the Arrangement from the CFR, however, FEMA can make changes such as removal of the revisions to the SAP requirement before the beginning of the next Arrangement period, without engaging in rulemaking and without workarounds such as FEMA's limited waiver authority. In addition, FEMA would be able to implement updates and corrections more efficiently, and would have the flexibility to negotiate longer Arrangement terms; currently, the Arrangement is signed and in effect for a one-year period, but in the future, FEMA could offer an Arrangement term for a two- or three-year period. FEMA also recognizes that insurance industry practices and technology evolve at a fast pace, providing efficiencies and customer-centric innovations that can streamline and improve the financial stability and customer focus of the NFIP. FEMA would be able to implement changes to the NFIP to take advantage of innovations and technology changes in an efficient and timely manner.

⁴ See FEMA, Memorandum For: WYO Principal Coordinators and the NFIP Direct Servicing Agent, Granting a Limited Waiver for Insurance Companies Participating in the WYO Program of the SAP found in 44 CFR Pt. 62, App A, Article II, Section C, Paragraphs 1-3 – FEMA, Federal Insurance Administration – Financial Assistance/Subsidy Arrangement, W-12050 (Aug. 13, 2012); FEMA, Memorandum For: WYO Principal Coordinators and the NFIP Direct Servicing Agent, Granting an extension of the Limited Waiver for Insurance Companies Participating in the WYO Program of the SAP found in 44 C.F.R. Pt. 62, App A, Article II, Section C., Paragraphs 1 -3 – FEMA, Federal Insurance Administration – Financial Assistance/Subsidy Arrangement and Revised Wording, W-13040 (July 9, 2013); FEMA, Memorandum For: WYO Principal Coordinators and the NFIP Direct Servicing Agent, Extension of the Limited Waiver of the SAP, W-14051 (Sept. 10, 2014); FEMA, Memorandum For: WYO Company Principal Coordinators and the NFIP Direct Servicing Agent, Extension of the Limited Waiver of the SAP, W-15044 (Sept. 17, 2015).

Once a copy of the Arrangement is removed from the CFR, FEMA will continue to enter into the Arrangement with WYO Companies, and in accordance with the terms of the current Arrangement, FEMA will continue to notify private insurance companies and make available to companies the terms for subscription or re-subscription of the Arrangement through a notice in the Federal Register. See Financial Assistance/Subsidy Arrangement, Article V(B). As is current practice, all private insurance companies wishing to participate in the WYO Program should request subscription or re-subscription in accordance with the instructions in the Federal Register notice published before each fiscal year. See 80 FR 46313 (Aug. 4, 2015). FEMA evaluates requests from private insurance companies to participate using publicly available information, industry performance data, and other criteria outlined in FEMA's regulations and in the Arrangement. FEMA will also continue to send a copy of the offer for the Arrangement each fiscal year, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP.

Under the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), FEMA is required to issue a rule to formulate revised expense reimbursements to property and casualty insurance companies participating in the WYO Program for their expenses servicing standard flood insurance policies, including how such companies shall be reimbursed in both catastrophic and non-catastrophic years. Sec. 100224, Pub. Law 112-141, 126 Stat. 936. FEMA is in the process of developing this rulemaking and will issue a notice of proposed rulemaking in the future.

2. A Plan to Maintain Financial Control for Business Written under the Write Your Own Program: 44 CFR Part 62, Appendix B

FEMA proposes to remove the summary of the Financial Control Plan in 44 CFR Part 62, Appendix B. As discussed, beginning in 1985, FEMA included a copy of the Financial Control Plan in regulation at 44 CFR Part 62, Appendix B. In 1999 FEMA removed the copy of the Financial Control Plan from FEMA's regulations and replaced it with a summary of the Financial Control Plan. 64 FR 56174 (Oct. 18, 1999). FEMA proposes to remove the summary of the Financial Control Plan in Appendix B because this information is contained in either FEMA's Financial Control Plan,⁵ or in 44 CFR Section 62.23, and thus reprint elsewhere in the CFR is duplicative and unnecessary.

Paragraphs (a) and (b) of Appendix B contain a general overview of the Arrangement and the Financial Control Plan. FEMA is removing this information from Appendix B because this information is also contained in the Arrangement, the Financial Control Plan, and FEMA's regulations at Section 62.23, and is therefore duplicative and unnecessary. Paragraph (c) of Appendix B describes the roles and responsibilities of the Standards Committee. FEMA is removing this information from Appendix B because this information describes internal procedural details of the Standards Committee, which do not need to be in regulation. In addition, paragraph (c) contains information related to the Standards Committee that is already codified in FEMA's regulations at Section 62.23 and in FEMA's Financial Control Plan. As a result, FEMA proposes to remove this information from Appendix B because it is duplicative and unnecessary. In paragraphs (d) and (e) of Appendix B, there is the Financial Control Plan Table of Contents, and information on where to obtain a copy of the Financial Control Plan. FEMA is removing

⁵See, National Flood Insurance Program, The Write Your Own Program Financial Control Plan Requirements and Procedures (1999), <http://bsa.nfipstat.fema.gov/manuals/fcp99jc.pdf> (last accessed April 8, 2016).

this information from Appendix B because a copy of the Financial Control Plan is available on FEMA's website, and the NFIA does not require this information to be in regulation.

3. Amendments to 44 CFR 62.23 to Remove Reference to Appendices A and B

FEMA proposes to make conforming amendments to the language in 44 CFR 62.23 where FEMA references Appendix A and Appendix B of 44 CFR Part 62, because those appendices will be removed. In paragraphs (a) and (i)(1) of Section 62.23, FEMA proposes to remove reference to Appendix A, because FEMA proposes to remove the copy of the Arrangement in Appendix A. In addition, in paragraphs (f) and (l)(2) of Section 62.23, FEMA proposes to remove reference to Appendix B, because FEMA proposes to remove the summary of the Financial Control Plan in Appendix B.

Lastly, FEMA proposes to remove the example in Section 62.23(i)(1) which references the SAP. As discussed above, FEMA has granted a limited waiver of the SAP requirement, and this example is no longer relevant. In addition, the example references Appendix A, which FEMA is proposing to remove via this notice of proposed rulemaking.

IV. Regulatory Analysis

a. Executive Order 12866, as amended, Regulatory Planning and Review; Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

FEMA is issuing a proposed rule that would remove Appendix A and B from Part 62 of 44 CFR. These Appendices contain a copy of the WYO Financial Assistance/Subsidy Arrangement (Arrangement) and a summary of the “Plan to Maintain Financial Control for Business Written Under the Write Your Own Program” (Financial Control Plan), respectively. In addition, FEMA proposes to make conforming amendments to update citations to these appendices in Section 62.23.

Since 1983, FEMA has entered into a standard Arrangement with WYO companies to sell NFIP insurance policies under their own names and adjust and pay SFIP claims.⁶ Since 1985, a copy of the Arrangement has been in FEMA regulations. FEMA has made frequent changes to the Arrangement, and underwent rulemaking approximately 21 times to update the copy of the Arrangement in the regulations. Its placement in the CFR is not required by statute, and is redundant and unnecessary.

FEMA proposes to remove the copy of the Arrangement in 44 CFR Part 62, Appendix A, because the NFIA does not require FEMA to include a copy of the Arrangement in the CFR, and therefore, it is no longer necessary. In 1985, FEMA added a copy of the Arrangement to the regulations to inform the public of the procedural details of the WYO Program. However, since that time there have been technological

⁶ As of April 2016, 79 private property or casualty insurance companies participate in the Write Your Own program. Federal Emergency Management Agency, Write Your Own Flood Insurance Company List, http://www.fema.gov/wyo_company (last accessed April 8, 2016).

advances for disseminating information to the public, and there are now more efficient ways to inform the public of the procedural details of the WYO Program. For example, FEMA now posts a copy of the Arrangement on its website. This serves the purpose of promoting awareness and disseminating program information, without needing to go through the rulemaking process. This rulemaking does not impose any changes to the current Arrangement with WYO Companies; FEMA believes there would not be any costs imposed on participating WYO companies as a result of this proposed rule. FEMA would continue to enter into the Arrangement with WYO companies, and make available the terms for subscription or re-subscription through Federal Register notice. In addition, FEMA would continue to place a copy of the Arrangement on its website to inform the public of the procedural details of the WYO program, and engage in negotiation with WYO companies on the terms of the Arrangement.

One of the benefits associated with this rule is enhanced flexibility for FEMA and its industry partners to negotiate operational adjustments to the Arrangement more quickly and efficiently in order to be more responsive to the needs of industry partners and the operation of the NFIP. Additionally there is less confusion generated from inconsistencies that result from current practice. Finally, the elimination of the administrative burden that accompanies repeated updates to the CFR and any posted departures from the CFR onto FEMA's website regarding Program requirements are an additional benefit. FEMA believes there would be no economic impact associated with implementing the proposed rule.

Additionally, we are proposing to remove a summary of the Financial Control Plan; the plan itself was removed in 1985. FEMA does not anticipate any economic impacts from removing the summary.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FEMA does not believe this proposed rule will have a significant economic impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposed requirements in this NPRM. FEMA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process when making a final determination.

In accordance with the Regulatory Flexibility Act, an IFRA must contain: (1) A description of the reasons why the action by the agency is being considered; (2) A succinct statement of the objectives of, and legal basis for, the proposed rule; (3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply; (4) A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of

professional skills necessary for preparation of the report or record; (5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and (6) A description of significant alternatives to the rule.

1) A Description of the Reasons Why Action by the Agency is being Considered

FEMA proposes to remove the copy of the Arrangement, because it is no longer necessary to include a copy of the Arrangement in the CFR, and the NFIA does not require FEMA to include a copy of the Arrangement in the CFR. Moreover, by removing the copy of the Arrangement from the CFR, FEMA and its industry partners would benefit from enhanced flexibility to negotiate operational adjustments and corrections to the Arrangement more quickly and efficiently. FEMA proposes to remove the summary of the Financial Control Plan in the CFR because this information is contained in either FEMA's Financial Control Plan, or 44 CFR 62.23, and thus reprint elsewhere in the CFR is duplicative and unnecessary. Finally, FEMA proposes to make conforming amendments by removing the language in 44 CFR 62.23 where FEMA references Appendix A and Appendix B of 44 CFR Part 62, for administrative efficiency because those appendices would be removed.

2) A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

FEMA proposes to remove the copy of the Arrangement from the CFR, because the NFIA does not require FEMA to include a copy of the Arrangement in the CFR. FEMA proposes to remove the summary of the Financial Control Plan in the CFR because this information is contained in either FEMA's Financial Control Plan, or 44

CFR 62.23, and thus reprinting elsewhere in the CFR is duplicative and unnecessary.

Finally, FEMA proposes to make conforming amendments to the language in 44 CFR 62.23 where FEMA references Appendix A and Appendix B of 44 CFR Part 62, because those appendices would be removed.

The NFIA authorizes FEMA to “enter into any contracts, agreements, or other arrangements” with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. See 42 U.S.C. § 4081. Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as the WYO companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the policy. Since the primary relationship between the Federal government and WYO Companies is one of a fiduciary nature, FEMA established the Financial Control Plan. See 42 U.S.C. § 4071; 44 CFR § 62.23(f), Part 62, App. B. The NFIA does not require FEMA to include a copy of the Arrangement or a summary of the Financial Control Plan in the CFR. It is in reference to these specific authorities to administer the NFIP, and the WYO program that is encompassed within it, that FEMA is proposing to continue to streamline operations and remove administrative hurdles to the effectiveness of these programs.

3) A Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Proposed Rule will Apply

“Small entity” is defined in 5 U.S.C. 601. The term “small entity” can have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction.” Section 601(3) defines a “small business” as having the

same meaning as “small business concern” under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) defines a “small organization” as any not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. Section 601(5) defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. No small organization or governmental jurisdiction are party to the WYO program and therefore would not be affected.

The SBA stipulates in its size standards the largest an insurance firm that is “for profit” may be and still be classified as a “small entity.”⁷ The small business size standards for North American Industry Classification System (NAICS) code 524126 (direct property and casualty insurance carriers) is 1,500 employees. The size standard for the four remaining applicable codes of 524210 (Insurance Agencies and Brokerages), 524113 (Direct Life Insurance Carriers), 524292 (Third Party Administration of Insurance and Pension Funds) and 524128 (Other Direct Insurance) is \$7.0 million in revenue as modified by the SBA, effective February 26, 2016.

There are currently a total of 79 companies participating in the WYO Program; these 79 companies are subject to the terms of the Arrangement and the standards and requirements in the Financial Control Plan. FEMA researched each WYO company to determine the NAICS code, number of employees, and revenue for the individual

⁷ U. S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes effective February 26, 2016. Available at <https://www.sba.gov/content/small-business-size-standards>.

companies. FEMA used the open-access database, www.manta.com, as well as www.cortera.com to find this information for the size determination. This was used as a metric of company size, compliant with the SBA thresholds based on the assigned NAICS code. Of the 79 WYO companies we found a majority of 53 firms were under code 524210 (Insurance Agencies and Brokerages), of which 20 firms or 38% were found to be small (with only one lacking full data but presumed to be small). The second largest contingent of 17 firms were under 524126 (direct property and casualty insurance carriers), of which 11 firms or 65% were found to be small (with only one missing data points but presumed to be small). Of the other three aforementioned industry codes, 524113, 524292 and 524128, there was one firm under each and none were small. Finally, six firms were specifically missing industry classifications, and FEMA believes that all but one are likely to be small. In total we found that a total of 36 of the 79 companies are below this maximum, and therefore would be considered small entities. Consequently, small entities comprise 46% of participating companies.

FEMA believes that the rule would impose no burdens on any participating company because it is removing a redundant section of the CFR and not substantively changing to the Arrangement or the Financial Control Plan itself. Therefore, FEMA does not anticipate that there would be a significant economic impact on a substantial number of small entities as a result of this proposed rule.

4) A Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule, including an Estimate of the Classes of Small Entities which will be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule would not impose any compliance costs on WYO companies. The WYO Arrangement in 44 CFR Part 62, Appendix A is a copy of the Arrangement that FEMA enters into separately with each WYO Company. FEMA would continue to enter into the Arrangement with WYO Companies, and in accordance with the terms of the current Arrangement, FEMA would continue to notify private insurance companies and make available to companies the terms for subscription or re-subscription of the Arrangement through Federal Register Notice.

As the record of regulatory changes to the Arrangement shows, required changes will be implemented regardless of the regulatory process. Current channels of notification and negotiation would remain unaffected by this rule; the only thing that would change is the elimination of the administrative burden that would accompany these changes.

As part of the Arrangement, WYO companies agree to adhere to the standards and requirements in the Financial Control Plan. The Financial Control Plan has been removed from the regulations since 1985. Removing the summary would have no economic impact. FEMA does not believe this proposed rule would have a significant economic impact on a substantial number of small entities.

5) An Identification, to the Extent Practicable, of all Relevant Federal Rules which may Duplicate, Overlap, or Conflict with the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

6) A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Given that this rule has no direct compliance costs, no less burdensome alternatives to the proposed rule are available. In the absence of this proposed rule, small entities would continue to experience the negative repercussions of inconsistencies between the written Arrangement and updates that FEMA has communicated through bulletins to provide exceptions to certain parts. Small entities would also continue to experience burdens associated with alternate, less than ideal measures that have been implemented in lieu of updates to the Arrangement in the CFR.

FEMA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FEMA will consider all comments received in the public comment process.

b. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one

year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

c. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 et seq. an agency must prepare an environmental assessment and environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement. Although rulemaking is a major federal action subject to NEPA, the list of exclusion categories at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an EA or EIS where the rule relates to actions that qualify for categorical exclusions. Administrative actions are categorically excluded from NEPA. 44 CFR 10.8(d)(2)(i). This is a rulemaking related to an administrative function. An environmental assessment will not be prepared because a categorical exclusion applies to this rulemaking and no extraordinary circumstances exist.

d. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501-3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the

Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. This proposed rulemaking would call for no new collections of information under the PRA. The removal of the Arrangement from the regulation will not impact any existing information collections in that it would not substantively change any of the information collection requirements, because the information collection requirements still exist in the regulations. The existing information collections listed include citations to 44 CFR Part 62 Appendices A and B. These citations will be updated in the next information collection renewal cycle. The WYO Companies will still be expected to comply with each of the information collection requirements associated with the WYO Program.

The collections associated with this regulation are as follows: (1) OMB Control Number 1660-0038, Write Your Own Company Participation Criteria, 44 CFR 62 Appendix A, which establishes the criteria to return to or participate in the WYO program; (2) OMB control number 1660-0086, the National Flood Insurance Program – Mortgage Portfolio Protection Program (MPPP), 44 CFR Part 62.23 (l)(2) and Appendix B, which is a program lenders can use to bring their mortgage loan portfolios into compliance with flood insurance purchase requirements; and (3) OMB control number 1660-0020, WYO Program, 44 CFR 62.23 (f) and Appendix B, the Federal Insurance and Mitigation Administration program that requires each WYO Company to submit financial data on a monthly basis into the National Flood Insurance Program’s Transaction Record Reporting and Processing Plan (TRRPP) system as referenced in 44 CFR 62.23(h)(4). Each of these collections are still required by Part 62 and will not be impacted by the

removal of the Arrangement from the regulation because the existing information collections cover requirements in the regulations, not requirements in the Appendices.

e. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A record is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual. A Privacy Threshold Analysis was completed. This rule does not require a Privacy Impact Analysis or System of Records Notice at this time.

f. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

This proposed rule does not have Tribal implications. Currently, Indian Tribal governments cannot participate in the WYO Program as WYO companies, and thus are not affected by this proposed rule. To participate in the WYO program, a company must be a licensed property or casualty insurance company and meet the requirements in FEMA regulations at 44 CFR 62.24.

g. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255, August 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, on the relationship between the national government and 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.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rule does not have federalism implications, because participation as a WYO Company is voluntary and does not affect State policymaking discretion. Moreover, currently, States cannot participate in the WYO Program as WYO companies, and thus are not affected by this proposed rule. To participate in the WYO program, a company must be a licensed property or casualty insurance company and meet the requirements in FEMA regulations at 44 CFR 62.24. 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.

h. Executive Order 11988, Floodplain Management.

Pursuant to Executive Order 11988, each agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring,

managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain. The changes proposed in this rule would not have an effect on land use, floodplain management, or wetlands.

i. Executive Order 11990, Protection of Wetlands.

Pursuant to Executive Order 11990, each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's

responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in the Executive Order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The changes proposed in this rule would not have an effect on land use, floodplain management, or wetlands.

j. Executive Order 12898, Environmental Justice

Pursuant to Executive Order 12898, —Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16,

1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, 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.

This rulemaking will not have a disproportionately high or adverse effect on human health or the environment. This rulemaking will not have a disproportionately high or adverse effect on human health or the environment. Therefore the requirements of Executive Order 12898 do not apply to this rule.

k. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801-808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule is not a major rule within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more, 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, and it will not 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 in domestic and export markets.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR Chapter I 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. Amend §62.23 by:

- a. Revising the last sentence of paragraph (a);
- b. Revising the second sentence of paragraph (f);
- c. Revising paragraph (i)(1); and
- c. Revising the last sentence of paragraph (l)(2).

§62.23 [Amended]

(a), * * * Arrangements entered into by WYO Companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled “Financial Assistance/Subsidy Arrangement.”

* * * * *

(f) * * * In furtherance of this end, the Federal Insurance Administrator has established “A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program.”; * * *

* * * * *

(i) * * *

(1) WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement provides that claim adjustments shall be binding upon the FIA.

* * * * *

(l) * * *

(2) * * * Participating WYO Companies must also maintain evidence of compliance with paragraph (l)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan.

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Appendix A [Removed]

3. Remove Appendix A to Part 62 .

Appendix B [Removed]

4. Remove Appendix B to Part 62.

Dated: May 12, 2016.

W. Craig Fugate
Administrator,
Federal Emergency Management Agency.

[FR Doc. 2016-11701 Filed: 5/20/2016 8:45 am; Publication Date: 5/23/2016]