



NATIONAL FLOOD INSURANCE PROGRAM

Bureau and Statistical Agent

W-02020

MEMORANDUM TO: Write Your Own Company Principal Coordinators and
NFIP Servicing Agent

FROM: WYO Clearinghouse

DATE: March 22, 2002

SUBJECT: Final Rule: NFIP Pilot Project - Public Entity Insurers

Attached is a copy of the final rule for the NFIP's Pilot Project for Public Entity Insurers. Please distribute within your organization as appropriate.

If you have any questions, please contact your Program Coordinator.

cc: Vendors, IBHS, FIPNC, WYO Marketing Committee, Government Technical Representative

Suggested Routing: Marketing, Underwriting



**Friday,
March 22, 2002**

Part VIII

**Federal Emergency
Management Agency**

44 CFR Part 62

**National Flood Insurance Program (NFIP);
Pilot Project—Public Entity Insurers; Final
Rule**

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**
44 CFR Part 62
RIN 3067-AD17
**National Flood Insurance Program
(NFIP); Pilot Project—Public Entity
Insurers**
AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are launching a three-year pilot project that will permit governmental risk-sharing pools to sell flood insurance to public entities under the National Flood Insurance Program's Write Your Own (WYO) effort. We are limiting the participants in this pilot effort to a maximum of six such insurers that are able to provide flood insurance only to public entities for their public buildings. The participants in this pilot effort must comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate in the WYO program. This final rule includes the eligibility criteria for participation in the pilot and an addendum to the WYO Arrangement that construes the term "the company" used in the Arrangement to mean not only WYO companies but also the insurers selected for this pilot.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT:

Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202-646-3443, (facsimile) 202-646-4335, or (e-mail) Edward.Pasterick@fema.gov.

SUPPLEMENTARY INFORMATION: On May 8, 2001, we published at 66 FR 23200 a proposed rule that would add, on a pilot project basis, a new category of insurer to the National Flood Insurance Program (NFIP)'s Write Your Own (WYO) system. We proposed the pilot to be for three years with participation limited to no more than three intergovernmental risk-sharing pools sponsored by State municipal leagues.

Our stated purpose for the pilot was to use the WYO program as a model for serving the flood insurance needs of municipalities. We said in the proposed rule, "One of the inherent strengths of the WYO program, and one of the reasons for its success, is that private insurance companies, writing property insurance for other perils such as wind

and fire, provide convenient access to flood insurance coverage for their customers in need of flood insurance protection. This model may also apply to the unique relationship that public entity insurers, especially State municipal league-sponsored or other intergovernmental risk-sharing pools . . . enjoy with local governments."

We proposed the pilot in response to several organizations—several such risk pools and the National League of Cities—that asked us to consider permitting intergovernmental risk pools sponsored by State municipal leagues to sell flood insurance on a limited basis under the WYO program. We considered the request and agreed to propose such an expansion of the WYO program, but only on a pilot project basis. We saw the pilot as a controlled extension of the proven WYO approach—to use available mechanisms in the insurance marketplace to protect property owners from the peril of flood loss.

We also presented the proposal during its formative stages and before its publication as a proposed rule, to WYO companies and associations for flood insurance producers. The WYO companies and these associations raised concerns about the proposal. We summarize their concerns under the "Comments" section.

In sum, our intention for the pilot has been to determine whether the WYO model would be as successful in the public sector as it has been in the private sector. Using the WYO model we want to see whether the governmental risk pools selected for the pilot will provide more convenient and direct access for municipal governments to obtain flood insurance coverage. We have decided after careful consideration of the public comments on the proposed rule to proceed with the pilot with a number of modifications.

Comments: Summary

During the comment period, we received fifteen written submissions from the public. The following submitted comments on the proposed rule:

- One State Executive Department,
- One international association,
- One insurance agency,
- Two private WYO insurance companies,
- Four national associations, and
- Six State Municipal leagues.

In addition to the written comments, we heard comments from representatives of two national associations—the National League of Cities (NLC) and the National Association of Counties (NACo)—at a

meeting on June 20, 2001. FEMA's Office of the General Counsel, in coordination with the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, facilitated that meeting. We recorded the comments offered by the two national associations and made them part of the docket for this rule. We summarize that meeting and our decisions under a separate heading of this section.

The public generally favored the proposal. Twelve of the written submissions supported the pilot project while three objected to the proposal. Four of those in support of the proposal expressed an interest in participating in the pilot project.

Each of the following sections treats issues raised by the submitters and explains our reasons for accepting, rejecting, or modifying a given recommendation. We also add a section that summarizes the content of the June 20, 2001 meeting that is included in the rule's docket. Additionally, one set of comments was submitted well after the end of the comment period; however, we considered those comments as well and discuss them in a separate section.

**Proposed Pilot: Creating Non-Insurance
Company Competitors**

Two private insurance companies expressed concern that the pilot would create "non-insurance company" competition for the WYO companies "that may or may not be subject to the same requirements as the WYO participants."

We modeled the participation criteria for the pilot's participants in 44 CFR 62.24(b) on the participation standards that WYO companies have had to meet under 44 CFR 62.24(a). Also, the pilot participants will participate under the same WYO Arrangement that WYO companies do. To ensure consistent standards and requirements, we added an addendum to the WYO Arrangement that expands the definition of "WYO company" to include the public entity insurers that will participate in the pilot. As a result, the pilot participants will be subject to the same requirements for customer service, reporting, financial management, and administration that the private WYO insurance companies must meet.

We would point out that the participants in the pilot project will not be able to sell flood insurance coverage to private consumers—homeowners, business owners, condominium associations, or the owners of multi-family dwellings. They may sell flood insurance only to public entities for their public buildings. Conversely,

WYO companies may still sell flood insurance to public entities for their public buildings as well as to homeowners, business owners, condominium associations, and the owners of multi-family dwellings. The pilot project will not change that.

Use of Cover America II To Promote Flood Coverage for Public Buildings

The two private insurance companies objecting to the proposal asked whether the market of public buildings was in fact an "under-penetrated" market. If so, the WYO companies suggested that, instead of launching a pilot project, we should use the NFIP's marketing campaign, Cover America II, to increase education and awareness among municipalities that may need flood insurance protection for their public buildings. The commenters suggested that we target mailings to municipalities for their public buildings and launch awareness and education efforts with municipal leagues, instead of implementing the pilot.

Whether the pilot will serve an "under-penetrated" market was not a major factor in proposing the pilot. Rather, the primary purpose of the pilot is to extend to another category of insurer and client the same opportunity for full service that is currently enjoyed by private WYO companies and their policyholders. At the same time, any increase in market penetration resulting from the pilot will be welcome.

We believe using our marketing and education efforts to target public entities is a good suggestion, but it is not a mutually exclusive option to launching the pilot. We plan to look into such a marketing and education effort with the view of increasing the number of public buildings protected by flood insurance. The pilot project will be one of several measures we will use to accomplish that objective.

Cost of Flood Insurance as Deterrent to Sales

The two companies objecting to the pilot, and one municipal league in support of the proposal, believed that public entities have not bought flood insurance to date for their public buildings because of the cost of coverage. The pilot will provide a good opportunity to examine this.

We will also be interested to see whether the convenience for public entities in dealing with one insurance vehicle for all lines of property coverage will increase flood insurance coverage of public buildings in the selected States.

Expansion of the Pilot

Two national associations—the Association of Governmental Risk Pools (AGRIP) and the National Association of Counties—recommended that we expand the pilot project to permit other interested public-entity pools, including county pools, to participate. AGRIP, however, said that a pilot is unnecessary arguing that the need is already clear.

We disagree with the position that a pilot is unnecessary; we believe that we need a pilot project to demonstrate whether using governmental risk-pools will be a useful vehicle for meeting the flood insurance needs of municipal governments and for meeting the standards of the program. We agree, however, with AGRIP and NACo that the expansion of the pilot is warranted.

In the preamble of the proposed rule, we said that the pilot would consist of three intergovernmental risk-sharing pools sponsored by State municipal leagues. As we mentioned earlier, two other national organizations—NACo and AGRIP—that represent the interests of risk pools asked that we expand the scope of the pilot to permit their members to be considered for the pilot as well. Those comments have merit.

We have agreed therefore to expand the scope of the pilot to permit eligible entities from each of these national associations to participate in the pilot. Due to the limitations on NFIP resources, however, we must at this time limit the expanded pilot to a maximum of six participants. In order to ensure that participation in the pilot is fair, representative, and equally distributed among various kinds of governmental risk pools, we will accept two nominations each from NLC, NACo, and AGRIP for this WYO pilot. This represents a doubling of the scope of pilot, which we originally proposed.

Each of the national associations representing governmental risk pools—NLC, NACo, and AGRIP—will nominate two of its interested members to participate in the pilot. We will then review the applications of all candidate organizations and accept up to six organizations that meet our criteria as set forth in the NFIP's regulations, 44 CFR 62.23 and 62.24.

Criteria for Participation

AGRIP recommended a number of changes to 44 CFR 62.23 and 62.24 that would be inclusive enough to accommodate other public entity pools. We believe our language in the proposed rule is already inclusive enough to accommodate such entities and that was certainly our intention in drafting the proposal. And while we

have not adopted every change in wording recommended by AGRIP, we have modified the criteria for participation in section 62.23 and 62.24 to ensure that the pilot is open not only to intergovernmental risk-sharing pools sponsored by State municipal leagues but also county pools and other governmental risk pools. For instance, in section 62.23(b), we say that "the term 'WYO company' shall include public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, and other intergovernmental risk-sharing pool entities for covering public entity structures." We maintain the position that those eligible for the WYO program under this pilot must be an entity already acting as an insurer, that is, an organization that provides property and liability coverage and is subject to State oversight.

Questions

In addition to the questions we have addressed in the preceding sections, one State, which sponsors a local government property insurance fund ("Fund"), asked specific questions on the program's implementation. We restate those questions followed by our answer.

Question: How will, or could participation in the pilot project affect compliance with FEMA (disaster) guidelines? For example, by participating in the pilot program could Fund members, if they elect not to purchase flood coverage, be held to a different (higher) standard of compliance, as it relates to FEMA eligibility guidelines.

Answer: Fund members will not be held to a higher standard.

Question: The Fund does not employ or use agents. Does the Fund need to become an Agent of Record, or appoint an Agent of Record to receive commissions on its behalf? Could the NFIP commissions be paid directly to the Fund?

Answer: Under the WYO program, a portion of the expense allowance—the portion of the premium income that a participating insurer retains—provides for a 15% agent commission; however, it does not have to be used to pay for commissions if a participating insurer does not use agents. (One of the private companies participating in the WYO program does not use agents in selling flood insurance.)

Question: Can separate service fees be paid directly to the Fund for administering/ servicing the NFIP WYO program? If so, what are those fees and how would they be calculated.

Answer: We do not pay service fees directly to participating insurers. Under Article III of the WYO Arrangement, participants retain a certain percentage of the premium for selling and servicing flood insurance. We call the amount of premium participants retain the "expense allowance."

Question: Are there any plans for the FEMA/NFIP Application to be streamlined or tailored to the governmental entities in the pilot project?

Answer: No, there are no such plans.

Question: What type of bank account is envisioned to process premium collections and claim payments for a governmental risk-sharing insurer?

Answer: The WYO Arrangement and the WYO Program's Financial Control Plan call for the participating WYO entity to deposit premiums into a separate, restricted account. Article II of the Arrangement requires the participating WYO company to "separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing, for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III."

Question: Do the FEMA/NFIP Flood Zone maps have a global position or plotting feature whereby the Fund can access them electronically? Can the Fund enter an address or location coordinate and automatically determine what Flood hazard Zone or Area the building or location is situated?

Answer: The NFIP does not provide such a service. There are private enterprises called Flood Zone Determination Companies that provide such a service for a fee. Those interested in acquiring such services may find a list of Flood Zone Determination Companies on FEMA's Web site at www.fema.gov under "Flood Zone Determination Companies."

Question: What types of training programs are available for training and support of producers or administrative staff, if * * * (we) are selected as one of the candidates for the pilot program?

Answer: The NFIP's Bureau and Statistical Agent conducts training for all the program's major stakeholders, including the WYO companies. We plan during the early implementation of the pilot program for the NFIP Bureau to conduct such specialized training for the selected participants.

Meeting of FEMA and Stakeholders

On June 20, 2001, FEMA's Office of the General Counsel, the Congressional and Intergovernmental Affairs Division

of FEMA's External Affairs Directorate, and the Deputy Administrator for the Federal Insurance and Mitigation Administration met with representatives of the NLC and NACo. The NLC and NACo had asked for the meeting so that they could offer comments on the proposed rule, in addition to their written comments, and get clarification on several issues. We made the recorded minutes of that meeting part of the official docket for this rule and they are available upon request from FEMA's Rules Docket Clerk, 500 C Street, SW., Washington, DC 20472.

At the meeting, representatives for NLC and NACo asked whether there was any flexibility for expanding the pilot to accommodate other kinds of qualified pools. The Deputy Administrator responded that the scope of the pilot resulted from ongoing work between FEMA, the NLC, and several of its members that had expressed an interest in providing flood insurance to its members. One representative from NACo stressed that "we want to be part of the pilot and [can] identify a * * * (member) that is doing a good job." The enthusiasm and support by NACo both at the June 20, 2001 meeting and in written comments submitted to the FEMA Rules Docket, as well as the written comments of AGRIP, have prompted us to expand the pilot to accommodate other governmental risk pools. We will ask the NLC, NACo, and AGRIP each to nominate two of its interested and potentially qualified members to us for consideration in the pilot.

Additional Comment

One national association of insurance agents submitted written comments well after the close of the comment period. We reviewed those comments but did not find them persuasive. The association "does not believe that a new delivery system would change the mindset of public entity risk pools, a market segment that has never been willing to pay the price for flood coverage recommended to them in the past."

Our philosophy is that we wish to use and, in this case, test every available mechanism within the marketplace that can help property owners—private and public—to protect their interests with flood insurance. The finite nature of the pilot will help us evaluate the effectiveness of applying the successful WYO model to the public sector as well. We believe the pilot's restriction that the pilot's participants may only sell flood insurance to public entities and then again only for their public buildings will preserve the unique

relationship that private insurance companies and agents have with their private customers—a market excluded from the participants of this pilot. Conversely, the pilot does not preclude agents and companies from marketing to public entities in addition to their private customers.

National Environmental Policy Act (NEPA)

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

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this rule is to launch a three-year pilot project that will permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's WYO effort.

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

Executive Order 12866, Regulatory Planning and Review

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

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

For the reasons that follow we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule will accomplish one primary purpose: To determine the merit of permanently expanding the WYO program to permit State municipal league-sponsored and other governmental risk-sharing pools to sell flood insurance to public entities to cover their buildings against flood loss. The rule will permit us to analyze the three-year pilot project to determine the merit of permitting such insurers to be eligible to sell flood insurance permanently under the WYO program. There are no major economic impacts resulting from implementation of this rule. Rather, the rule will add a new marketing avenue for writing flood insurance for public buildings.

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

Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Act, a person does not have to respond to and may not be penalized for failing to comply with an information collection that does not display a currently valid OMB.

The Office of Management and Budget has approved the use of the following information collection requirements for use by a maximum of six pilot participants in the newly added governmental risk-sharing pools category of insurer under the Write Your Own (WYO) program. The criteria for participating in the program are contained in FEMA regulation 44 CFR 62.23(a) and 62.24 and Appendixes A and B of part 62. The information collections are:

Title: Write Your Own (WYO) Program, OMB Number 3067–0169,

expiration date March 31, 2002, hour burden—33 minutes per respondent; and

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants, OMB Number 3067–0259, expiration date April 30, 2002, hour burden—7 hours per respondent.

FEMA did not receive any comments on the need for the information, the accuracy of the burden estimate, cost to the respondents, or the methods for minimizing burden on the respondents during the review and comment period for the proposed rule.

Addressee: Interested persons should submit comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 on or before April 22, 2002. Comments may also be sent to the Chief, Records Management Branch, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

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

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule revises the NFIP regulations to launch a three-year pilot project that permits governmental risk sharing pools to sell insurance to public entities under the NFIP's WYO Program. We will limit the participants to six such insurers that will be able to provide flood insurance only to public entities for public buildings. Participation in the pilot program is voluntary.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 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.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule adds a new category of insurer under the WYO program—an insurer that would provide another marketing avenue to protect public buildings from flood loss. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have. We have, nevertheless, consulted with local officials, with the National League of Cities, the National Association of Counties, the Association of Governmental Risk Pools, Write Your Own companies, and several State municipal leagues. We have welcomed their valuable comments, and this rule has benefited from their comments.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

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

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

2. Revise paragraphs (a) and (b) of section 62.23 to read as follows:

§ 62.23 WYO Companies authorized.

(a) Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under these arrangements, such companies or other insurers may offer flood insurance coverage under the program to eligible applicants. Such WYO companies may offer flood coverage to policyholders insured by them under their own property business lines of insurance, pursuant to their customary business practices, including their usual arrangements with agents and producers. WYO companies may sell flood insurance coverage in any State in which the WYO company is authorized to engage in the business of property insurance. Other WYO insurers may offer flood insurance coverage to their pool members insured by them under their own property business lines of coverage, pursuant to their customary business practices. These other WYO insurers may provide flood coverage in any State that has authorized the other insurer to provide property coverage to its members. 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," a copy of which is included in appendix A of this part and made a part of these regulations.

(b) Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term "WYO Company" shall include the following kinds of insurers: Public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and other intergovernmental risk-sharing pool for covering public entity structures.)

* * * * *

3. Revise section 62.24 to read as follows:

§ 62.24 WYO participation criteria.

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

(a) To demonstrate the ability to meet the financial requirements, a private

insurance company wishing to enter or reenter the WYO program must:

- (1) Be a licensed property insurance company;
- (2) Have a five (5) year history of writing property insurance;
- (3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;
- (4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;
- (5) Submit information, as data become available, to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and
- (6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO program, which will end September 30, 2004, must:

- (1) Have authority by a State to provide property coverage to its members;
- (2) Have a five (5) year history of writing property coverage;
- (3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the other insurer's business practices; and
- (4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the other insurer meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless

the test requirement is waived, e.g., where an already qualified performer will fulfill the applicant's reporting requirements, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant will submit information concerning its plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization.

Applicants will also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farm-owners multiple peril, homeowners multiple peril, and commercial multiple peril policies or coverage documents in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

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

Note: This Addendum to Appendix A to Part 62 applies only to a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures participating in the pilot project established in § 62.24(b) that permits intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

(1) "Company" in the preceding Arrangement includes "a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures."

(2) The references to "marketing guidelines" in Article II—Undertaking of the

Company and to "marketing goals" in Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

* * * * *

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

Dated: March 12, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02-6920 Filed 3-21-02; 8:45 am]

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