



NATIONAL FLOOD INSURANCE PROGRAM

Bureau and Statistical Agent

W-03010

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

FROM: WYO Clearinghouse

DATE: March 3, 2003

SUBJECT: Final Rule: Increased Cost of Compliance Limit of Liability

Effective May 1, 2003, FEMA is increasing the limit of liability for Increased Cost of Compliance (ICC) coverage from \$20,000 to \$30,000 with no increase in premium. Under the Liberalization Clause, this new ICC amount applies to all claims occurring on or after May 1, 2003. All NFIP policies effective on or after May 1, 2003, must reflect this change.

Attached is a copy of the ICC Federal Register Notice and a generic ICC Endorsement to the Standard Flood Insurance Policy Forms that may be used by the WYO Companies.

Please distribute this information within your organization as appropriate. If you have any questions, please contact your Program Coordinator.

Attachments

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

Suggested Routing: Marketing, Underwriting, Claims

grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

D. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 24, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

2. Section 52.770 is amended by adding (c)(147) to read as follows

§ 52.770 Identification of plan.

* * * * *

(c) * * *
(147) On February 1, 2002, Indiana submitted its Prevention of Significant Deterioration rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2-2-1, 2-2-2, 2-2-3, 2-2-4, 2-2-5, 2-2-6, 2-2-7, 2-2-8, 2-2-9, 2-2-10, 2-2-11, 2-2-12, 2-2-13, 2-2-14, 2-2-15, 2-2-16. Filed with the Secretary of State on March 23, 2001, effective April 22, 2001. (B) Title 326 of the Indiana Administrative Code, Rules 2-1.1-6 and 2-1.1-8. Filed with the Secretary of State on November 25, 1998, effective December 25, 1998. Errata filed with the Secretary of State on May 12, 1999, effective June 11, 1999.

[FR Doc. 03-5024 Filed 2-28-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067-AD33

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are increasing the limit of liability under Coverage D—Increased Cost of Compliance (ICC) of the Standard Flood Insurance Policy from \$20,000 to \$30,000. New information has led us to decrease our estimate of annual ICC claims, and based on this decrease, we believe the limit of liability can be increased with no change in premium.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Thomas Hayes, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, 202-646-3419, (facsimile) 202-646-7970, or (email)

Thomas.Hayes@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1999, we published at 64 FR 70191 a final rule that increased the limit of liability under Coverage D—Increased Cost of Compliance of the Standard Flood Insurance Policy from \$15,000 to \$20,000. This is how we summarized our reasons for the increase in 1999 at 64 FR 70191:

“In making initial estimates of ICC claims, we had access to our loss experience from 1978 through 1994. The latest experience period for estimating ICC claims runs through 1998. Based on our additional experience with flood losses—losses large enough to trigger community declarations of substantial damage—we have decreased the number of expected annual ICC claims to a range of 2700–2900. On this basis, we are confident that the limit of liability for ICC coverage can be increased from \$15,000 to \$20,000 (a 33% increase) with no change in premiums.”

With this rule, we are proposing to further increase the limit of liability to \$30,000.

First, the pricing for this coverage has to be actuarially sound with premiums varying, to the extent possible, by risk. Second, section 555 of the National Flood Insurance Reform Act of 1994, which mandates ICC coverage, sets a cap of \$75 that we may charge for this coverage. Third, our previous estimate was that the number of policyholders receiving benefits under ICC coverage would be 2700–2900 each year. Fourth, we considered the uncertainties associated with the introduction of the product and which extend through the first few years of the coverage.

In making our revised estimate of ICC claims on which we based the increase in the coverage limit to the current level of \$20,000, we relied on our loss experience available at the time—both for ICC during the limited time that it had been offered, and on our total program experience from 1978 through 1998. Based on our additional loss experience, which includes data through calendar year end 2001, and concentrating on losses large enough to trigger community declarations of substantial damage, we have further

decreased our estimate of the expected annual number of ICC claims to a range of 2200–2500. On this basis, we are confident that the limit of liability can be increased from \$20,000 to \$30,000 (a 50% increase) with no change in premium. The number of ICC claims actually filed since the introduction of this coverage is small compared to the number that we expected based on our flood claims filed under building coverage. We intend to continue analyzing this discrepancy, make further adjustments in premium charges, coverage amounts, or both as warranted, and to continue our education efforts with policyholders and local officials to make sure that they adequately understand this coverage.

Administrative Procedure Act Determination

We are publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency procedure or practice that is excepted from the prior public comment requirements of section 553(b). The rule makes nonsubstantive, nonsignificant changes to 44 CFR part 61 by conferring a benefit to flood insurance policyholders, increasing coverage for increased cost of compliance without an increase in premium.

National Environmental Policy Act (NEPA)

The requirements of 44 CFR part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

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

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is,

regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. We have reviewed this proposed rule under E.O. 13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. We do not foresee the rule affecting the distribution of power and responsibilities among the various levels of government or limiting the policymaking discretion of the States.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–221. The rule is not a “major rule” within the meaning of that Act. It is an administrative action in support of normal day-to-day activities that increases a benefit to policyholders without increasing premiums. It does not result in nor is it likely to result in 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. 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. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfounded Federal mandate within the meaning of the Unfunded Mandate Reform Act of 1995, Public Law 104–4. It does not meet the \$100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 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(1) to part 61, revise the first sentence III. D. 2. to read as follows: Appendix A(1) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, dwelling form.

III. * * *

D. * * *

2. Limit of Liability.

We will pay you up to \$30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

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3. In Appendix A(2) to part 61, revise the first sentence of III. D. 2. to read as follows: Appendix A(2) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, general property form.

III. * * *

D. * * *

2. Limit of Liability.

We will pay you up to \$30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

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4. In Appendix A (3) to part 61, revise the first sentence of III. D. 2. to read as follows: Appendix A(3) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, residential condominium building association policy.

III. * * *

D. * * *

2. Limit of Liability.

We will pay you up to \$30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

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Dated: February 26, 2003.

Anthony S. Lowe,
Administrator, Federal Insurance and Mitigation Administration.
[FR Doc. 03-4902 Filed 2-28-03; 8:45 am]

BILLING CODE 6718-03-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7803]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

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 suspended 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 be withdrawn by publication in the **Federal Register**.

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

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administration, 500 C Street, SW., Room 435, Washington, DC 20472, (202) 646-3443.

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 National Flood Insurance Program, 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 *et seq.* 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, the Federal Emergency Management Agency has identified the special flood hazard areas 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 the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency'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 a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been 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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY.

STANDARD FLOOD INSURANCE POLICY

ENDORSEMENT

This Endorsement replaces Paragraph 2, Coverage D - Increased Cost of Compliance, III - Property Covered of the Dwelling, General Property, and Residential Condominium Building Association Policies with the following paragraph.

2. Limit of Liability

We will pay you up to \$30,000 under this Coverage **D** - Increased Cost of Compliance, which only applies to **policies** with **building** coverage (Coverage **A**). Our payment of claims under Coverage **D** is in addition to the amount of coverage which you selected on the **application** and which appears on the **Declarations Page**.

But the maximum you can collect under this **policy** for both Coverage **A** – Building Property and Coverage **D** – Increased Cost of Compliance cannot exceed the maximum permitted under the **Act**. We do not charge a separate deductible for a claim under Coverage **D**.

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