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 or 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 and Federalism.”

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 report, which includes a copy of the rule, to each House of 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.
increased the limit of liability under
at 64 FR 70191 a final rule that
Background
Thomas.Hayes@fema.gov.
SUPPLEMENTARY INFORMATION:
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–
9790, or (email) Thomas.Hayes@fema.gov.

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 535 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 offering 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
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
104–122. 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 unfunded 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:


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.

3. In Appendix A(2) to part 61, revise the first sentence 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.

4. In Appendix A (3) to part 61, revise the first sentence 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.

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.

ADDRESS: 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 areas 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. 4001 et seq., prohibits flood insurance coverage unless an appropriate public body
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.