

Company, like agents utilized by FEMA, act for the insured and are not agents of the WYO Company.

FEMA proposes to amend 44 CFR 62.22(a) to clarify that its provisions for Federal jurisdiction include WYO Companies.

FEMA proposes to amend 44 CFR 62.23(g) to recognize WYO Companies as fiscal agents of the Federal Government. This is based on section 1340(a)(1) of the National Flood Insurance Act of 1968, as amended. FEMA believes this change will clarify matters of jurisdiction and choice of law for WYO Companies. However, WYO Companies are not recognized as general agents of the Federal Government. The proposed amendment also provides that the Federal Government is not a proper party defendant in any lawsuit arising out of a WYO policy.

The remaining proposed amendments apply to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/ Subsidy Arrangement.

In Article I, FEMA proposes to amend the fifth paragraph to refer to the Federal Treasury, to clarify that WYO Companies are responsible for Federal funds. A companion proposed amendment to Article III, Section D.1, also refers to Federal funds. FEMA proposes to add two new paragraph clauses to Article I to emphasize the Federal nature of the WYO Companies' activities under the Arrangement, and support the application of Federal law in Federal Court to lawsuits arising under the Arrangement.

FEMA proposes to delete the tenth paragraph as currently drafted in Article I to clarify that policyholders and applicants are not direct beneficiaries of the Arrangement.

FEMA proposes to amend Article II, Section G to clarify the WYO Company's duty to comply with written standards, procedures, and guidance issued by FEMA or FIA.

FEMA proposes to amend Article III, Section B to delete the word "their" before the phrase "insurance agents" to be consistent with the proposed amendment to 44 CFR 61.5(e), as discussed above, that provides that the WYO agent is not the agent of the WYO Company.

FEMA proposes to amend Article III, Section D.2 to provide that failure to meet these requirements may result in no reimbursement, which is similar to a statement in the deleted Article III, Section D.3. The reference to Article IX in Article III, Section D.2 would be deleted in light of FEMA's proposed amendment of Article IX to restrict it to

matters not in litigation. FEMA proposes to delete Article III, Section D.3 because its litigation documentation and notification requirements have been established by FEMA outside the Arrangement.

FEMA proposes to amend Article III, Section D.4 (now renumbered as Article III, Section D.3), concerning reimbursement for WYO Company litigation costs, to delete the reference to insurer negligence and the cross-reference to Article IX. The issue of insurer negligence for matters in litigation will be dealt with in the context of the other standards in the new Article III, Section D.3. Article IX would now only apply to insurer negligence that has not resulted in litigation. The existing "significantly outside the scope" standard will be left in the new Article III, Section D.3. A provision will be added relating to a pattern of errors found in operation reviews, audits, or a review after litigation has been filed.

Agent negligence would continue to be grounds for non-reimbursement of litigation costs. FEMA would continue to evaluate whether a WYO Company would be reimbursed for costs, fees, and settlement payments (when appropriate) when agent negligence is alleged against that WYO Company for which they could be held financially responsible. Where FEMA determines that there is no agent negligence, the WYO Company would be reimbursed for the litigation costs of defending itself against the possibility that it could be held financially responsible for agent negligence; where FEMA determines that there is agent negligence, the WYO Company may still be reimbursed for litigation costs for the defense of policy provisions and for its own negligence. FEMA has not changed the general rule that litigation costs are not reimbursable if they relate to actions that are significantly outside the scope of the Arrangement.

FEMA proposes to expressly recognize that a part of litigation could be "significantly outside the scope" of the Arrangement while part is within the scope. In such a case, reimbursement would be based on the appropriate division of responsibility, if possible. Reimbursement for legal expenses ("costs to defend such litigation") will now be explicitly treated the same way as reimbursement for awards or judgments. A WYO Company can now petition the Federal Insurance Administrator, ("Administrator") instead of the Standards Committee, for reconsideration of a decision not to reimburse for litigation. The

Administrator could then seek the advice of the Standards Committee. There will no longer be a deadline for a decision.

FEMA proposes to amend Article III, Section E to clarify that WYO Companies must follow the refund rules established by FIA since flood insurance premiums are funds of the Federal Government.

FEMA proposes to amend Article V to clarify the procedures for a company to become, or to cease to be, a WYO Company. Companies will also be required to inform FEMA of their intent to continue in or leave the program within 30 days of the offer.

In Article V, Section C, the time during which the WYO Company can be required to continue performance while it exits the program by running off or transferring its business will be extended from 1 year to 18 months. Notice and billing cycles make the one-year limit impractical. The proposed amendment will also require a WYO Company to tell FEMA if it plans to leave the program during the Arrangement year.

FEMA proposes to amend Article V, Section C.1.a to set out the requirements when the business is to be transferred to FIA. The proposed amendment also would establish in Article V, Section C.2 the requirement for FIA approval of transfer of the business to another WYO Company.

FEMA proposes to amend Article V, Section D to formalize the possibility of non-renewal of the Arrangement by FIA for material failure of the WYO Company to comply with the Arrangement or to take corrective action required by the FIA, and to offer the alternative of permitting the transfer by sale, subject to FIA approval, as in Article V, Section C.2.

FEMA proposes to re-designate Article V, Section F (cancellation of the Arrangement resulting from an order or directive issued by a Department of Insurance) to Section E so that it immediately follows Section D (cancellation of the Arrangement by FIA) because these two sections are parallel in purpose and construction and should be placed together. This results in existing Section E being re-designated as Section F. The new Section E allows the possibility of the sale of the book of business, subject to FIA approval, similar to the proposed revision to Section D.

FEMA proposes to amend Article VII, Section C to make its provisions regarding settlement of accounts when the WYO Company's participation ends applicable to situations where the WYO Company is unable to or not permitted