

to participate, as well as where the WYO Company elects not to participate. In addition, the final settlement will now be made subject to audit.

FEMA proposes to amend Article IX to address only matters not in litigation. Its provisions regarding reimbursement of the WYO Company are consistent with the new Article III, Section D.3, which addresses matters in litigation. To be consistent with Article III, Section D.3, FEMA amends the existing Article IX language, "error or omission," to "negligence." It provides that there will be no reimbursement for claims against the WYO Company grounded in actions "significantly outside the scope."

FEMA proposes to amend Article XVI to reflect the proposed changes to 44 CFR 62.23(g), as discussed above.

On September 5, 2003, FEMA published an interim final rule, 68 FR 52700, that amends the Arrangement. The purpose of that rule was to extend the current Arrangement for three months to allow FEMA to make the changes proposed in this rulemaking.

#### **National Environmental Policy Act**

This proposed rule falls within the exclusion category 44 CFR part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this proposed rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

#### **Executive Order 12866, Regulatory Planning and Review**

We have prepared and reviewed this proposed rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to review by the Office of Management and Budget ("OMB") 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 th[e] Executive [O]rder.

For the reasons that follow, FEMA has concluded that this proposed rule is neither a significant regulatory action nor an economically significant rule under the Executive Order. This proposed rule amends the Arrangement and related regulations to clarify issues of Federal jurisdiction and Federal law for disputes involving WYO Companies and the rules for reimbursing WYO Companies for the cost of litigation. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not reviewed this rule under the principles of Executive Order 12866.

#### **Paperwork Reduction Act**

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **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."

A regulatory flexibility analysis is not required for this proposed rule because it would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 13132, Federalism**

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere 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 must consult with State and local officials before implementing any such action to the extent practicable.

FEMA has reviewed this proposed rule under Executive Order 13132 and concludes that the proposed rule has no federalism implications as defined by the Executive Order. FEMA has determined that the rule does not significantly affect the rights, roles, and responsibilities of States, involves no preemption of State law and does not limit State policymaking discretion.

#### **Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of § 2(b)(2) of Executive Order 12778.

#### **List of Subjects in 44 CFR Parts 61 and 62**

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR parts 61 and 62 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. Amend § 61.5 by revising paragraph (e) and add a new paragraph (f) to read as follows:

##### **§ 61.5 Special terms and conditions.**

\* \* \* \* \*

(e) The standard flood insurance policy is authorized only under the terms and conditions established by Federal statute, the program's regulations, the Administrator's