

interpretations, and the express terms of the policy itself. Any representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations are void.

(f) Any duly licensed property or casualty agent selling and servicing NFIP policies acts for the insured, and does not act as agent for the Federal Government, the Federal Emergency Management Agency, the Federal Insurance Administration, the servicing agent, or the Write-Your-Own Company.

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

3. 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.

4. Amend § 62.22 by revising paragraph (a) to read as follows:

§ 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration, a participating Write-Your-Own Company, or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any claim after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration, the participating Write-Your-Own Company, or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the insurer only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

* * * * *

5. Amend § 62.23 by revising paragraph (g) to read as follows:

§ 62.23 WYO Companies authorized.

* * * * *

(g) A WYO Company shall act as a fiscal agent of the Federal Government, but not as its general agent. WYO Companies are solely responsible for their obligations to their insured under any flood insurance policies issued under agreements entered into with the Administrator, such that the Federal Government is not a proper party

defendant in any lawsuit arising out of such policies.

* * * * *

6. In Appendix A to part 62, revise the *Effective Date* to read as follows:

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

* * * * *

Effective Date: January 1, 2004.

* * * * *

7. In Appendix A to part 62, revise Article I to read as follows:

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

* * * * *

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its “Finding and Declaration of Purpose” in the National Flood Insurance Act of 1968, as amended, (“the Act” or “Act”) recognized the benefit of having the National Flood Insurance Program (the “Program” or “NFIP”) “carried out to the maximum extent practicable by the private insurance industry”; and

Whereas the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1345 of the Act (42 U.S.C. 4081); and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act (42 U.S.C. 4011)); and

Whereas, the insurer (hereinafter the “Company”) under this Arrangement shall charge rates established by the FIA; and

Whereas, FIA has promulgated regulations and guidance implementing the Act and the Write-Your-Own Program whereby participating private insurance companies act in a fiduciary capacity utilizing Federal funds to sell and administer the Standard Flood Insurance Policies, and has extensively regulated the participating companies’ activities when selling or administering the Standard Flood Insurance Policies; and

Whereas, any litigation resulting from, related to, or arising from the Company’s compliance with the written standards, procedures, and guidance issued by FEMA or FIA arises under the Act, regulations, or FIA guidance, and

legal issues thereunder raise a Federal question; and

Whereas, through this Arrangement, the Federal Treasury will subsidize all flood policy claim payments by the Company; and

Whereas, this Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public.

Now, therefore, the parties hereto mutually undertake the following:

8. In Appendix A to part 62, revise Article II, section G to read as follows:

Article II—Undertaking of the Company

* * * * *

G. Compliance with Agency Standard and Guidelines.

1. The Company shall comply with written standards, procedures, and guidance issued by FEMA or FIA relating to the NFIP and applicable to the Company.

2. The Company shall market flood insurance policies in a manner consistent with marketing guidelines established by FIA.

9. In Appendix A to part 62 amend Article III to revise the second paragraph of section B; revise section D; and add a sentence to the end of section E to read as follows:

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

B. * * *

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The Company may retain fifteen percent (15%) of the Company’s written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or