

Expenses prepared by \_\_\_\_\_ (Provider Name(s) and Number(s)) for the cost reporting period beginning \_\_\_\_\_ and ending \_\_\_\_\_ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(iv) A hospital may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(i) of this section if this requirement would cause a financial hardship. The hospital must submit a written request for delay or waiver with necessary supporting documentation to its intermediary at least 120 days prior to the end of its cost reporting period. The intermediary reviews the request and forwards it with a recommendation for approval or denial, to HCFA central office within 30 days of receipt of the request. HCFA central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 25, 1993.

**Bruce C. Vladeck**

Administrator, Health Care Financing Administration.

Approved: May 6, 1994.

**Donna E. Shalala,**

Secretary.

[FR Doc. 94-12459 Filed 5-24-94; 8:45 am]

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 62

RIN 3067-AC25

### National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

**SUMMARY:** This interim rule amends the National Flood Insurance Program (NFIP) regulations for the "Write Your Own" (WYO) Program relating to the marketing of flood insurance policies. This interim rule modifies the

Arrangement to encourage increases in the policyholder base and to increase the financial stability of the NFIP.

**DATES:** Effective date: This interim rule and the offer are effective May 25, 1994. The Financial Assistance/Subsidy Arrangement is applicable with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1994, and later.

Comment Date: July 25, 1994.

**ADDRESSES:** Comments are requested and should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646-4536.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20742, (202) 646-3422.

**SUPPLEMENTARY INFORMATION:** The Write-Your-Own (WYO) Program (established in 1983) was authorized pursuant to Subpart C, part 62 of the National Flood Insurance Program (NFIP) regulations and section 1345 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001, *et seq.*).

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the Federal Insurance Administrator (the Administrator)) may be issued in their own names by insurers signatory to Financial Assistance/Subsidy Arrangements. Insurers then are responsible for all aspects of service, including policy issuance to new policyholders and to policyholders insured by them under other lines of property insurance; endorsement and renewal of policies; and the adjustment of claims brought under the policies. The insurers retain a specified amount of the premium for their expenses, including the commissions of agents. Under the Arrangement, the Government provides such additional funds as may be required, over and above the net premium income, for the payment of claims.

Once the Arrangement is signed by the authorized official of the private insurer and the Government, it is effective at the beginning of the Government's Fiscal Year on October 1 and runs through the following September 30. Also, in accordance with Article V—Commencement and Termination of the Arrangement, the Federal Insurance Administration (FIA) is required, by June 1 of each year, to publish in the **Federal Register** the

terms for the re-subscription of the Arrangement for the next Arrangement Year.

This interim rule amends the National Flood Insurance Program (NFIP) regulations dealing with the marketing of flood insurance policies, at Article II—Undertakings of the Company, paragraph G. of the Arrangement, by requiring the WYO Company to follow marketing guidelines established by the Federal Insurance Administration (FIA). FIA is currently developing marketing guidelines which will then be established in consultation with representatives of the WYO Companies.

As a result of the heavy flood losses which occurred in recent years (i.e., Hurricanes Andrew and Iniki in August and September 1992, the Northeast storm in December 1992, the blizzard of March 1993, and the Midwest flooding in the summer of 1993), FEMA recently had to exercise its borrowing authority for the first time in eight years. While the Program has been growing modestly, greater increases in the policyholder base are needed to provide additional premium dollars to build up the reserves to meet future catastrophic flooding events. Further, large numbers of the victims of recent flood disasters were not protected by flood insurance. Therefore, FEMA has determined that sufficient cause exists for making this rule effective immediately so the revised Arrangement can be the basis of the Offer required by June 1 and that delaying the effective date until after a comment period would be impracticable and contrary to the public interest. However, comments are requested and will be considered before further regulations are issued.

Publication of the Arrangement in this interim rule also constitutes, for the WYO Program Arrangement year of October 1, 1994—September 30, 1995, the Administrator's "Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy."

### Method of Acceptance of Offer

1. Acceptance of this offer shall be by mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1994. The notice may be preceded by facsimile transmission (202) 646-3445 which must be received by midnight EDT September 30, 1994.

2. The facsimile transmission or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance (see No. 6 below) must be on file with the Administrator by November 16, 1994.

4. If 1., 2., or 3. above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to: Federal Emergency Management Agency, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

6. In accepting this offer, use the Notice of Acceptance Form set forth below:

**Notice of Acceptance Form 1994-1995; Federal Emergency Management Agency; Federal Insurance Administration; Financial Assistance/ Subsidy Arrangement (Arrangement)**

Whereas, in 1994, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/ Subsidy Arrangement (hereafter the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the *Federal Register*, does not provide sufficient space to type in the name of the Company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the *Federal Register* does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the *Federal Register* under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company (ies) listed below is (are) duly licensed to engage in the business of property insurance;

In witness whereof, the parties hereto have accepted this Arrangement on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

The United States of America  
Federal Emergency Management Agency  
By: \_\_\_\_\_

Title: Federal Insurance Administrator

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Executive Order 12898, Environmental Justice**

The socioeconomic conditions relating to this interim rule have been reviewed and it has been found that no disproportionately high and adverse effect on minority or low income populations result from this interim rule.

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

This interim 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. Nevertheless, this interim rule adheres to the regulatory principles set forth in E.O. 12866.

**Paperwork Reduction Act**

This rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

**Executive Order 12612, Federalism.**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

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

**List of Subjects in 44 CFR Part 62**

Flood insurance.

Accordingly, 44 CFR part 62 is amended as follows:

**PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS**

**Subpart C—Write Your Own (WYO) Companies**

1. 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.

2. Appendix A is revised to read as follows:

**Appendix A to Part 62**

*Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement.*

**Purpose:** To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

**Accounting Data:** Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

**Effective Date:** October 1, 1994.

**Issued By:** Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

**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") recognized the benefit of having the National Flood Insurance Program (the Program) "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; 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); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able 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 pursuant to 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; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

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

**Article II—Undertakings of the Company**

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

- 1.0 Policy Administration, including
- 1.1 Community Eligibility/Rating Criteria
- 1.2 Policyholder Eligibility Determination
- 1.3 Policy Issuance
- 1.4 Policy Endorsements
- 1.5 Policy Cancellations
- 1.6 Policy Correspondence
- 1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. The Write Your Own Claims Manual, the Federal Emergency Management Agency Adjuster Manual, the FIA National Flood Insurance Program Policy Issuance Handbook, the Write Your Own Operational Overview, and other instructional material also provide guidance to the Company.

**3.0 Reports**

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Transaction Record Reporting and Processing Plan for the Write Your Own (WYO) Program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

- 1.1 Renewal Processing—7 days;
- 1.2 Endorsement Processing—7 days;
- 1.3 Cancellation Processing—15 days;
- 1.4 Correspondence, Simple and/or Status Inquiries—7 days;
- 1.5 Correspondence, Complex Inquiries—20 days;
- 1.6 Supply, Materials, and Manual Requests—7 days;
- 1.7 Claims Draft Processing—7 days from completion of file examination;
- 1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
- 1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, not calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program or other action, e.g., limiting the Company's authority to write new business.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

**D. Policy Issuance**

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

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

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange

or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this Article, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's" Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement,

policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services (OIPATS), along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make her decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

#### Article IV—Undertakings of the Government

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient

organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than \$5,000, and in no case more than \$5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

#### Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the Federal Register and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

#### *Article VI—Information and Annual Statements*

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

#### *Article VII—Cash Management and Accounting*

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

#### *Article VIII—Arbitration*

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

#### *Article IX—Errors and Omissions*

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured

without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

#### *Article X—Officials Not to Benefit*

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

#### *Article XI—Offset*

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

#### *Article XII—Equal Opportunity*

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

#### *Article XIII—Restriction on Other Flood Insurance*

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages

available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

#### Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

#### Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

#### Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

Company  
by \_\_\_\_\_  
(Title) \_\_\_\_\_  
The United States of America  
Federal Emergency Management Agency  
by \_\_\_\_\_  
(Title) \_\_\_\_\_

#### Exhibit A

#### FEE SCHEDULE

| Range (by covered loss)             | Fee   |
|-------------------------------------|-------|
| Erroneous Assignment .....          | \$40  |
| Closed Without Payment .....        | 125   |
| Minimum for Upton-Jones Claims .... | 800   |
| \$0.01 to \$600 .....               | 150   |
| \$600.01 to \$1,000 .....           | 175   |
| \$1,000.01 to \$2,000 .....         | 225   |
| \$2,000.01 to \$3,500 .....         | 275   |
| \$3,500.01 to \$5,000 .....         | 350   |
| \$5,000.01 to \$7,000 .....         | 425   |
| \$7,000.01 to \$10,000 .....        | 500   |
| \$10,000.01 to \$15,000 .....       | 550   |
| \$15,000.01 to \$25,000 .....       | 600   |
| \$25,000.01 to \$35,000 .....       | 675   |
| \$35,000.01 to \$50,000 .....       | 750   |
| \$50,000.01 to \$100,000 .....      | 1,000 |
| \$100,000.01 to \$150,000 .....     | 1,300 |
| \$150,000.01 to \$200,000 .....     | 1,600 |
| \$200,000.01 to limits .....        | 2,000 |

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles (\$500 and \$500) and limited to the amount of insurance purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 1994.

Elaine A. McReynolds,  
Administrator, Federal Insurance  
Administration.

[FR Doc. 94-12627 Filed 5-20-94; 8:45 am]

BILLING CODE 6718-05-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 0

[DA 94-464]

#### Transfer of Continuity of Government and National Security and Emergency Preparedness Functions From the Office of Managing Director to the Field Operations Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization between the Office of Managing Director and the Field Operations Bureau. This reorganization improves the effectiveness of the Commission's Continuity of Government (COG) and National Security and Emergency Preparedness (NSEP) activities by integrating them within the field infrastructure, and increasing the technical and administrative support to these activities.

EFFECTIVE DATE: June 24, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Terry Johnson, Office of Managing Director, (202) 632-0923.

#### SUPPLEMENTARY INFORMATION:

Amendment of Part 0 of the Commission's Rules to Reflect a Reorganization of the Office of Managing Director and the Field Operations Bureau; Order

[DA 94-464]

Adopted: May 5, 1994.

Released: May 13, 1994.

By the Managing Director:

1. On March 7, 1994, the Commission adopted proposed changes in the organizations of the Office of Managing Director and the Field Operations Bureau. Implementation of the proposed changes requires amendment to Part 0 of the Commission's Rules and Regulations. In adopting the reorganization the Commission delegated authority to the Managing Director to make the attached editorial changes.

2. In order to increase the effectiveness of the Commission's Continuity of Government (COG) and National Security and Emergency Preparedness (NSEP) activities, they are being integrated within the field infrastructure. This will improve the technical and administrative support to these activities.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of section 4 of the Administrative Procedures Act are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. It is ordered, effective 30 days after publication in the Federal Register that Part 0 of the Rules and Regulations is amended as set forth in the Appendix below.

#### List of Subjects in 47 CFR Part 0

Authority delegated, Organization and functions (Government agencies).

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

#### Final Rules

Part 0 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for Part 0 continues to read as follows:

**Authority:** Sections 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

**§ 0.11 [Amended]**

2. Section 0.11 is amended by removing paragraph (a)(10), and redesignating paragraphs (a)(11) and (a)(12) as paragraphs (a)(10) and (a)(11), respectively.

3. Section 0.91 is amended by revising paragraph (1) to read as follows:

**§ 0.91 Functions of the Bureau.**

\* \* \* \* \*

(1) Administers the Telecommunications Service Priority System with the concurrence of the Field Operations Bureau, and resolves matters involving assignment of priorities and other issues pursuant to part 64 of the rules.

4. Section 0.111 is amended by adding a new paragraph (o) to read as follows:

**§ 0.111 Functions of the Bureau.**

\* \* \* \* \*

(o) Under the general direction of the Defense Commissioner, coordinate the defense activities of the Commission, and provide support to the Defense Commissioner with respect to his participation in the Joint Telecommunications Resources Board and the National Security Telecommunications Advisory Committee; including recommendation of national emergency plans and preparedness programs covering Commission functions during national emergency conditions. Support the Chief, Common Carrier Bureau on matters involving assignment of Telecommunications Service Priority System priorities and in the administration of that system. The Chief, Field Operations Bureau, or his designee, acts as FCC Defense Coordinator and principal to the National Communications System.

5. Section 0.182 is amended by revising the section heading to read as follows:

**§ 0.182 Chief, Field Operations Bureau.**

6. Section 0.183 is revised to read as follows:

**§ 0.183 Emergency Communications Administration.**

The Field Operations Bureau coordinates the National Security and Emergency Preparedness (NSEP) activities of the Federal Communications Commission including

Continuity of Government Planning and the Emergency Broadcasting System (EBS) and other such functions as may be delegated during a national emergency or activation of the President's war emergency powers as specified in section 706 of the Communications Act; maintains liaison with FCC Bureaus/Offices, other government agencies, the telecommunications industry and FCC licensees on NSEP matters; and, as requested, represents the Commission at NSEP meetings and conferences.

7. Section 0.185 is amended by revising the introductory paragraph and paragraphs (a) and (b) to read as follows:

**§ 0.185 Responsibilities of the bureaus and staff offices.**

The heads of each of the several bureaus and staff offices, in rendering advice and assistance to the Chief, Field Operations Bureau in the performance of his duties with respect to defense activities will have the following duties and responsibilities:

(a) To keep the Chief, Field Operations Bureau informed of the instigation, progress, and completion of programs, plans or activities with respect to defense in which they are engaged or have been requested to engage.

(b) To render assistance and advice to the Chief, Field Operations Bureau on matters which relate to the functions of their respective bureaus or staff offices.

\* \* \* \* \*

**§ 0.231 [Amended]**

8. Section 0.231 is amended by removing paragraphs (a), and (b), and (i), and redesignating paragraphs (c) through (h) as paragraphs (a) through (f) and redesignating paragraphs (j) through (l) as paragraphs (g) through (i).

9. Section 0.284 is amended by revising paragraph (a)(4) to read as follows:

**§ 0.284 Actions taken under delegated authority.**

(a) \* \* \*

(4) Matters involving emergency communications, including the issuance of Emergency Broadcast System Authorizations (FCC Form 392)—Field Operations Bureau.

\* \* \* \* \*

10. Section 0.311 is amended by adding paragraphs (g) and (h) to read as follows:

**§ 0.331 Authority delegated.**

\* \* \* \* \*

(g) The Chief, Field Operations Bureau, or his designee, is delegated authority to exempt AM, FM, and

Television broadcast licensees from the requirement of installing and maintaining the necessary equipment to receive Emergency Action Notifications and Terminations and arranging for either an associated listening watch, or automated alarm, or both. (See § 73.922 of this chapter).

(h) The Chief, Field Operations Bureau, or his designee, upon securing concurrence of the General Counsel, is delegated authority to execute, in the name of the Commission, all agreements pertaining to the loan of United States Government property to radio station licensees for national defense purposes.

11. Section 0.332 is amended by revising paragraph (d) to read as follows:

**§ 0.332 Actions taken under delegated authority.**

\* \* \* \* \*

(d) Matters involving emergency communications—Field Operations Bureau.

\* \* \* \* \*

[FR Doc. 94-12604 Filed 5-24-94; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 625**

[Docket No. 940262-4062; I.D. 050994D]

**Summer Flounder Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of commercial quota adjustment.

**SUMMARY:** NMFS announces adjustments to the commercial quota for the 1994 summer flounder fishery. This action complies with regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP), which require quota overages landed in any state to be deducted from that state's quota the following year. The public is advised that a quota adjustment has been made and is informed of the revised state quotas.

**EFFECTIVE DATE:** May 20, 1994.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, 508-281-9101.

**SUPPLEMENTARY INFORMATION:**

Regulations implementing Amendment 2 to the FMP are found at 50 CFR part 625, the final rule being published on December 4, 1992 (57 FR 57358). The

regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20. The commercial summer flounder quota for the 1994 calendar year, adopted to ensure achievement of the appropriate fishing mortality rate of 0.53 for 1994,

is set to equal 16,005,560 lb (7.3 million kg) (59 FR 10586, March 7, 1994).

Section 625.20(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other available information, the following states were determined to have exceeded their 1993 quotas: Maine, Massachusetts, New Jersey, Delaware,

Maryland, Virginia, and North Carolina. The remaining states of New Hampshire, Rhode Island, Connecticut, and New York did not exceed their 1993 quotas and, therefore, no adjustments are necessary for these states. Table 1 shows the 1993 quotas adjusted for authorized transfers made between states during the year, 1993 landings, 1993 overage amounts, 1994 quotas, and the adjusted 1994 quotas taking into account 1993 overage amounts, by state.

TABLE 1. ADJUSTED 1994 COMMERCIAL QUOTA FOR THE SUMMER FLOUNDER FISHERY

(Parentheses Indicate a Negative Amount)

|    | 1993 quota<br>(lb) | 1993 landings<br>(lb) | 1993 overage<br>(lb) | Initial 1994<br>quota (lb) | Adjusted 1994 quota |           |
|----|--------------------|-----------------------|----------------------|----------------------------|---------------------|-----------|
|    |                    |                       |                      |                            | (lb)                | (kg)      |
| ME | 5,874              | 6,023                 | 149                  | 7,612                      | 7,463               | 3,385     |
| NH | 57                 | 0                     | 0                    | 74                         | 74                  | 34        |
| MA | 842,327            | 902,786               | 60,459               | 1,091,653                  | 1,031,194           | 467,746   |
| RI | 1,946,851          | 1,942,451             | 0                    | 2,510,149                  | 2,510,149           | 1,138,596 |
| CT | 278,749            | 224,620               | 0                    | 361,258                    | 361,258             | 163,865   |
| NY | 944,405            | 849,376               | 0                    | 1,223,943                  | 1,223,943           | 555,177   |
| NJ | 2,323,354          | 2,466,452             | 143,098              | 2,676,928                  | 2,533,830           | 1,149,338 |
| DE | 2,197              | 6,403                 | 4,206                | 2,847                      | (1,359)             | (616)     |
| MD | 251,829            | 254,081               | 2,252                | 326,369                    | 324,117             | 147,018   |
| VA | 2,882,623          | 3,052,136             | 169,513              | 3,411,867                  | 3,242,354           | 1,470,722 |
| NC | 2,871,750          | 2,894,835             | 23,085               | 4,392,860                  | 4,369,775           | 1,982,117 |

#### Classification

This action is required by 50 CFR part 625 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 19, 1994.

Charles Karnella,

Acting Program Management Officer,  
National Marine Fisheries Service.

[FR Doc. 94-12714 Filed 5-20-94; 12:21 pm]

BILLING CODE 3510-22-P

#### 50 CFR Part 651

[Docket No. 940552-4152; I.D. 051294A]

#### Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 4 to the Northeast Multispecies Fishery Management Plan (FMP). The measures contained in this rule are a series of time and area closures for sink gillnet gear to reduce bycatch of harbor porpoise. These measures replace blocks of time during each month during which all sink gillnets would be

required to be removed from the water.

The intent of this rule is to reduce significantly the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment #4 and its environmental assessment are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508-281-9272.

#### SUPPLEMENTARY INFORMATION:

##### Background

The New England Fishery Management Council (Council) submitted Amendment 5 to NMFS on September 27, 1993. One of its principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of year 4 of implementation of the Amendment to a level not to exceed 2 percent of the population, based on the best estimates of abundance and bycatch.

The Council was requested by NMFS in October 1992 to take action to reduce the harbor porpoise bycatch within the context of Amendment 5. The Council agreed to develop fishery management measures that would address the issue on the basis that the sink gillnet fishery was subject to regulation under the FMP, there were no existing regulatory mechanisms to reduce porpoise takes, and the current level of bycatch in the fishery was not sustainable.

Additionally, on January 7, 1993, NMFS published a proposed rule (58 FR 3108) to list the Gulf of Maine population of harbor porpoise as threatened under the Endangered Species Act (ESA), due primarily to the level of incidental takes in the sink gillnet fishery and the lack of an adequate regulatory mechanism to accomplish bycatch reductions. As NMFS noted in the rule, the Marine Mammal Exemption Program contained in the 1988 amendments to the Marine Mammal Protection Act (MMPA) did not set bycatch limits.

The Council subsequently adopted the goal of achieving reductions in harbor porpoise bycatch, so that the actual amount of harbor porpoise caught as bycatch in the sink gillnet fishery would not exceed 2 percent of the estimates of the harbor porpoise population, in part to avoid the pending ESA listing. This objective was based on