

must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Maryland's amendments to the VOC requirements from specific processes, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 31, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067-AD34

National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed Rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) propose to change the way premiums are calculated for policyholders who purchase flood insurance coverage under the NFIP for "Pre-FIRM" buildings in Special Flood Hazard Areas (SFHAs). (The term "Pre-FIRM buildings" means buildings whose construction began on or before December 31, 1974, or before the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later. Most Pre-FIRM buildings and their contents are eligible for subsidized rates under the NFIP.)

We are planning to increase flood insurance rates to be implemented in coordination with the elimination of the Expense Constant, a flat charge that the policyholder currently pays to defray certain expenses of the Federal Government related to flood insurance. As part of this planned increase in rates, we are proposing to increase Pre-FIRM subsidized rates. As a result of this change, the same amount of premium revenue will still be collected to cover those expenses currently generated by

the Expense Constant; however, policyholders will pay for those expenses through premiums that vary by the amount of insurance that they purchase, instead of a flat charge per policy. The end result will be revenue neutral.

DATES: We invite comments on this proposed rule, which we should receive on or before March 5, 2003.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536, or (e-mail) rules@fema.gov.

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) 202-646-7970, or (e-mail) Thomas.Hayes@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

The Flood Disaster Protection Act of 1973 requires us to charge full-risk premiums for flood insurance coverage on buildings when their construction began after December 31, 1974, or on or after the effective date of the Flood Insurance Rate Map, if the second date is later. (We call such construction "Post-FIRM" construction.)

The Flood Disaster Protection Act of 1973 also authorizes us to apply chargeable premiums to Pre-FIRM property and gives FEMA flexibility to set the flood insurance rates for such property. The legislation calls for us to balance the need to offer reasonable rates that encourage people to buy flood insurance with the statutory goal to distribute burdens fairly between all who will be protected by flood insurance and the general public.

Through the years, FIMA has increased these rates five times with the latest being the final rule 67 FR 8902, published February 27, 2002. Each of the prior changes has been implemented in order to distribute burdens fairly among all who will be protected by flood insurance and to reduce the burden on the general public.

However, with this rule, the proposed rate increase will simply offset the revenue that the Program would otherwise forego through the elimination of the Expense Constant, as explained in the next section. This rule is revenue-neutral, whereas the previous rules resulted in premium increases for the class of Pre-FIRM SFHA policyholders.

While this proposed change to offset the elimination of the Expense Constant will be premium-neutral for the class of Pre-FIRM SFHA policyholders, it will result in slightly different premiums for individual policyholders. For residential structures, the largest net premium increase for any policyholder will be \$24, while policyholders that purchase either Contents-only (e.g., renters) or building-only coverage will see net premium decreases of at least \$10. Non-Residential policyholders will have slightly different results.

Section 572 of the National Flood Insurance Reform Act of 1994, Pub. L. 103-325, 42 U.S.C. 4015, however, imposes the following annual limitation on rate increases under the NFIP:

"Notwithstanding any other provision of this title, the chargeable risk premium rates for flood insurance under this title for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 10 percent of the average of the risk premium rates for properties within the risk classification upon commencement of such 12-month period."

This regulation complies with this statutory limitation on annual rate increase under the NFIP, since it will be revenue neutral.

Proposed Changes and Their Purposes

We are proposing to increase the rates for Pre-FIRM SFHA policies to offset the revenue that the Program would otherwise forego through the elimination of the Expense Constant. The Expense Constant is a flat charge that the policyholder currently pays to defray certain expenses of the Federal Government related to flood insurance. This proposed change will be premium-neutral for the class of Pre-FIRM SFHA policyholders.

FIMA believes that eliminating the Expense Constant will help us further the goals of the flood program, especially in regard to policy growth. Currently, policyholders see two flat charges on their flood insurance premium bills—\$50 for the Expense Constant, and \$30 for the Federal Policy Fee (a statutorily-mandated fee to cover certain administrative expenses of the National Flood Insurance Program that are not covered by the Expense Constant). Our marketing research has indicated that this is viewed very unfavorably by prospective insureds. They view it as having to pay \$80 before they can even purchase any flood insurance coverage. By eliminating the expense constant, we can hopefully

overcome an objection at the point of sale, while still generating the same average revenue per policy. Although we are unable to quantify the expected impact of this proposal on future policy sales, we expect it to help the program generate a modest increase in policies in force.

As an additional benefit, this will bring the NFIP in closer conformity with the insurance industry standard of

practice for property insurance where expense constants are rarely used. This proposal will make the NFIP's premium calculation more like that for other property lines. As such, it should also make it more intuitive for insurance agents to process flood insurance.

Comparison of Proposed Rate Increases with Current Rates

The following chart compares the current rates we charge for Pre-FIRM

SFHA properties with the proposed rate increases for Pre-FIRM, SFHA properties. Also these proposed increases apply only to the rates charged for the "first layer" of flood insurance coverage set by Congress in Section 1306 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448):

Type of structure	Current A zone ¹ rates per year per \$100 coverage on—		Proposed A zone ¹ rates per year per \$100 coverage on—			
	Structure	Contents	Structure		All other	Contents
			RCBAP ²			
			High rise	Low rise		
1. Residential:						
No Basement or Enclosure .....	.68	.79	.85	.70	.76	.96
With Basement or Enclosure .....	.73	.79	.90	.75	.81	.96
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No basement or Enclosure .....	.79	1.58	N/A	N/A	.83	1.62
With basement or Enclosure .....	.84	1.58	N/A	N/A	.88	1.62

¹ A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.

² Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Type of structure	Current V zone ¹ rates per year per \$100 coverage on—		Proposed V zone ¹ rates per year per \$100 coverage on—			
	Structure	Contents	Structure		All other	Contents
			RCBAP ²			
			High rise	Low rise		
1. Residential:						
No Basement or Enclosure .....	.91	1.06	1.08	.93	.99	1.23
With Basement or Enclosure .....	.98	1.06	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No basement or Enclosure	1.06	2.10	N/A	N/A	1.10	2.14
With basement or Enclosure	1.12	2.10	N/A	N/A	1.16	2.14

¹ V zones are zones V1–V30, VE, and unnumbered V zones.

² Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Prior to this change, as shown in the Current A Zone and Current V Zone table, RCBAP policyholders were always charged the same building rates as everyone else. In order to accomplish the elimination of the Expense Constant in a revenue-neutral manner, it is now necessary to vary the rates as shown in the Proposed tables.

National Environmental Policy Act (NEPA)

Pursuant to section 102(2) (C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4317 *et seq.*, we are conducting an environmental assessment of this proposed rule. The assessment will be available for inspection through the Rules Docket

Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this proposed rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review 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 the Executive Order.

For the reasons that follow we have concluded that the proposed rule is

neither an economically significant nor a significant regulatory action under the Executive Order. The rule will be premium neutral for the National Flood Insurance Fund. The adjustment in premiums rates will be offset by the elimination of the Expense Constant. It would 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 would create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this proposed rule under the provisions of Executive Order 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. The rule would adjust the premiums for buildings in Pre-FIRM Special Flood Hazard Areas. The rule in

no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we propose to 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:

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. Revise §61.9 (a) to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each \$100 of flood insurance coverage as follows for Pre-FIRM, A zone properties, Pre-FIRM, V-zone properties, and emergency program properties.

Type of structure	Proposed A zone ¹ rates per year per \$100 coverage on—				Proposed V zone ² rates per year per \$100 coverage on—			
	Structure			Contents	Structure			Contents
	RCBAP ³		All other		RCBAP ³		All other	
	High rise	Low rise		High rise	Low Rise			
1. Residential:								
No Basement or Enclosure .....	.85	.70	.76	.96	1.08	.93	.99	1.23
With Basement or Enclosure ....	.90	.75	.81	.96	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:								
No basement or Enclosure	N/A	N/A	.83	1.62	N/A	N/A	1.10	2.14
With basement or Enclosure	N/A	N/A	.88	1.62	N/A	N/A	1.16	2.14

¹ A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.

² V zones are zones V1–V30, VE, and unnumbered V zones.

³ Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

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Dated: January 23, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

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