

is being paid. Where an assignment of rights or an obligation to assign rights to other parties who are micro entities occurs subsequent to the filing of a certification of entitlement to micro entity status, a second certification of entitlement to micro entity status is not required.

(h) Prior to submitting a certification of entitlement to micro entity status in an application, including a related, continuing, or reissue application, a determination of such entitlement should be made pursuant to the requirements of paragraph (a) or (d) of this section. It should be determined that all parties holding rights in the invention qualify for micro entity status. The Office will generally not question certification of entitlement to micro entity status that is made in accordance with the requirements of this section.

(i) Notification of a loss of entitlement to micro entity status must be filed in the application or patent prior to paying, or at the time of paying, any fee after the date on which status as a micro entity as defined in paragraph (a) or (d) of this section is no longer appropriate. The notification that micro entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the micro entity amount is not sufficient notification that micro entity status is no longer appropriate. Once a notification of a loss of entitlement to micro entity status is filed in the application or patent, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status, and a new certification of entitlement to micro entity status is required to again obtain micro entity status.

(j) Any attempt to fraudulently establish status as a micro entity, or pay fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office. Improperly, and with intent to deceive, establishing status as a micro entity, or paying fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office.

(k) If status as a micro entity is established in good faith in an application or patent, and fees as a micro entity are paid in good faith in the application or patent, and it is later discovered that such micro entity status either was established in error, or that the Office was not notified of a loss of entitlement to micro entity status as required by paragraph (i) of this section through error, the error will be excused upon compliance with the separate submission and itemization requirements of paragraph (k)(1) of this section and the deficiency payment

requirement of paragraph (k)(2) of this section.

(1) Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error) required for a single application or patent. Where more than one application or patent is involved, separate submissions of deficiency payments are required for each application or patent (see § 1.4(b)). The paper must contain an itemization of the total deficiency payment for the single application or patent and include the following information:

(i) Each particular type of fee that was erroneously paid as a micro entity, (*e.g.*, basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a small or non-small entity, as applicable;

(ii) The micro entity fee actually paid, and the date on which it was paid;

(iii) The deficiency owed amount (for each fee erroneously paid); and

(iv) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts as set forth in paragraph (k)(2) of this section.

(2) The deficiency owed, resulting from the previous erroneous payment of micro entity fees, must be paid. The deficiency owed for each previous fee erroneously paid as a micro entity is the difference between the current fee amount for a small entity or non-small entity, as applicable, on the date the deficiency is paid in full and the amount of the previous erroneous micro entity fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously and erroneously paid as a micro entity.

(3) If the requirements of paragraphs (k)(1) and (k)(2) of this section are not complied with, such failure will either be treated at the option of the Office as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month time period that is not extendable under § 1.136(a) to avoid the return of the fee deficiency payment.

(4) Any deficiency payment (based on a previous erroneous payment of a micro entity fee) submitted under this paragraph will be treated as a notification of a loss of entitlement to micro entity status under paragraph (i) of this section, but payment of a deficiency based upon the difference between the current fee amount for a small entity and the amount of the previous erroneous micro entity fee payment will not be treated as an

assertion of small entity status under § 1.27(c). Once a deficiency payment is submitted under this paragraph, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status.

Dated: May 23, 2012.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 61

[Docket ID: FEMA-2011-0037]

RIN 1660-AA09 (Formerly 3067-AD02)

### National Flood Insurance Program (NFIP); Insurance Coverage and Rates

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; withdrawal.

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**SUMMARY:** The Federal Emergency Management Agency (FEMA) is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) concerning National Flood Insurance Program (NFIP) insurance premium rates for structures that have suffered multiple flood losses. The proposed rule would have required owners of such structures to pay a higher premium for flood insurance if they declined an offer of funding to eliminate or reduce future flood damage. FEMA is withdrawing the NPRM because it has been superseded by legislation.

**DATES:** The Notice of Proposed Rulemaking, published on August 5, 1999 (64 FR 42632), is withdrawn as of May 30, 2012.

**ADDRESSES:** The Notice of Proposed Rulemaking and this withdrawal notice are available online at <http://www.regulations.gov> under docket ID FEMA-2011-0037. Insert FEMA-2011-0037 in the "Keyword" box, and then click "Search." The Docket is also available for inspection or copying at FEMA, 500 C Street SW., Room 840, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Thomas Hayes, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598-3020. Phone: (202) 646-3419. Facsimile: (202) 646-7970. Email: [Thomas.Hayes@dhs.gov](mailto:Thomas.Hayes@dhs.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

The National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*, authorizes FEMA to offer insurance against flood losses through the National Flood Insurance Program (NFIP). The NFIP allows FEMA to offer flood insurance at less-than-full-risk premium rates for older structures. This is because Congress recognized that in authorizing the NFIP there would be a trade-off: Participating local governments would adopt and enforce flood mitigation standards that make future construction resistant to future flood loss, but federally-backed flood insurance would be available for older structures built without the benefit of detailed flood risk information.

To implement the NFIP, FEMA has worked with communities to develop the kind of detailed flood risk information needed for flood mitigation efforts. This information is reflected in a community's Flood Insurance Rate Map (FIRM). Many properties built before the publication of a community's FIRM are at a greater risk of incurring flood loss because they were constructed prior to the availability of full flood risk information. These properties are discussed in FEMA's actuarial studies, which show that the owners of buildings insured under the NFIP that repetitively flood are not charged premiums that truly reflect the risk.

One of FEMA's highest priorities is to correct the problem of multiple flood losses to older structures (target repetitive loss buildings) insured under the NFIP. The Notice of Proposed Rulemaking (NPRM) defined target repetitive loss buildings as those with four or more losses, or with two or more flood losses cumulatively greater than the building's value. The NPRM proposed to apply full-risk premiums for flood insurance coverage to a target repetitive loss building, if an owner declined an offer of mitigation funding authorized by FEMA. Under the proposed rule, if the owner of a target repetitive flood loss building declined an offer of mitigation funding to relocate, elevate, or flood-proof the structure, then that owner would, upon the next policy renewal, have to pay full-risk premiums for flood insurance coverage under the NFIP.

**II. Summary of Comments**

FEMA received seven comments on the NPRM from private parties and interest groups. Generally, commenters supported the regulation. Some had concerns that it needed to include

greater detail on important issues. Several commenters had reservations about the NPRM's possible effects on the mortgage industry. Specifically, they discussed the criteria banks use in issuing mortgages, such as a borrower's ability to insure the building, which they stressed is the collateral for the loan. If the insurance rate increases to the point where the borrower can no longer afford insurance, the collateral for the mortgage is at substantial risk and the mortgage is in jeopardy. This relationship to the requirements of the NPRM caused concern that the NPRM could destabilize the primary and secondary mortgage markets. Commenters also expressed the opinion that public notice, or at least notice to the mortgage holder, should be incorporated into the premium rate increase process. Finally, one commenter was concerned that the NPRM would be economically detrimental to homeowners who suffer from flood damages through no fault of their own.

**III. Reason for Withdrawal**

FEMA is withdrawing the NPRM because it has been superseded by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (the Act), Public Law 108-264, 118 Stat. 712, 42 U.S.C. 4001 note. The Act amended the National Flood Insurance Act of 1968 by authorizing increases to the flood insurance premium rates for building owners of repetitive loss who decline offers of mitigation funding (section 102 of the Act; 42 U.S.C. 4102a). FEMA promulgated a final rule implementing this amendment at 44 CFR part 79 on September 16, 2009 (74 FR 47471). Therefore, this NPRM is no longer necessary.

**IV. Conclusion**

FEMA is withdrawing the August 5, 1999 NPRM for the reasons stated in this notice.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

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**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 172, 173, and 176**

[Docket No. PHMSA-2009-0241 (HM-242)]

RIN 2137-AE52

**Hazardous Materials Regulations: Combustible Liquids**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Withdrawal of Advance Notice of Proposed Rulemaking (ANPRM) and denial of petitions P-1498, P-1531, and P-1536.

**SUMMARY:** On April 5, 2010, PHMSA issued an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** [75 FR 17111] under Docket No. PHMSA-2009-0241 (HM-242) soliciting comments on whether PHMSA should consider harmonization of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) applicable to the transportation of combustible liquids with the UN Recommendations, while maintaining an adequate level of safety, and posed a series of questions. The major issues being examined and addressed are: Safety (hazard communication and packaging integrity); International commerce (frustration/delay of international shipments in the port area); Increased burden on domestic industry (elimination of domestic combustible liquid exceptions); and Driver Eligibility (exception from placarding which would exempt seasonal workers from the Federal Motor Carrier Safety Administration's Commercial Driver's License (CDL) and Hazmat Endorsement requirements, and the Transportation Security Administration's (TSA) fingerprinting and background check provisions). PHMSA also addressed three petitions for rulemaking in the April 5 ANPRM; two suggesting that domestic requirements for the transportation of combustible liquids should be harmonized with International standards, and one suggesting that the HMR should include more expansive domestic exceptions for shipments of combustible liquids.

The issuance of this notice constitutes a decision by PHMSA to withdraw the April 5, 2010 ANPRM, and to deny the International Vessel Operators Dangerous Goods Association (IVODGA) petition, P-1498, the Dangerous Goods Advisory Council (DGAC) petition, P-