responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Embraer S.A.: Docket No. FAA–2024–0455; Project Identifier MCAI–2023–00997–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–550 and EMB–545 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2023–08–03R01, effective November 2, 2023 (ANAC AD 2023–08–03R01).

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD was prompted by occurrences of premature cracks in the outer layer of certain flight deck side windows caused by interference due to manufacturing tolerances. The FAA is issuing this AD to address cracks, delamination, and any other damage of the flight deck side windows. The unsafe condition, if not addressed, may subject the inner layer of the window to unpredicted loads for several flights, which could result in window failure and subsequent in-flight depressurization events.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2023–08–03R01.

(h) Exceptions to ANAC AD 2023–08–03R01

(1) Where ANAC AD 2023–08–03R01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (b)(1)(i) of ANAC AD 2023–08–03R01 says ''In case of any crack in the outer layer is detected, before the next flight, replace the damaged window,'' for this AD, replace that wording with ''If any crack, delamination, or any other damage is found, before the next flight, replace the affected window.''

(3) Where paragraph (b)(2) of ANAC AD 2023–08–03R01 says ''at each 2,000 FC,'' for this AD, replace that wording with ''at intervals not to exceed 2,000 FC.''

(4) This AD does not adopt paragraph (d) of ANAC AD 2023–08–03R01.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: *AVS-AIR-730-AMOC@faa.gov faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3653; email: *hassan.m.ibrahim@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023–08–03R01, effective November 2, 2023.

(ii) [Reserved].

(3) For ANAC AD 2023–08–03R01, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations,* or email *fr.inspection@nara.gov.*

Issued on February 27, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–04570 Filed 3–6–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AR58

Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: On November 1, 2022, the Department of Veterans Affairs (VA) published a proposed rulemaking to amend its regulations on VA-backed interest rate reduction refinancing loans (IRRRLs). This supplemental notice of proposed rulemaking (SNPRM) proposes a change to the recoupment standard published in the proposed rule and seeks public comments on that change.

DATES: Comments must be received on or before May 6, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing,

inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this supplemental notice of proposed rulemaking (SNPRM) is available at *Regulations.gov*, under RIN 2900–AR58.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director, Regulations, Legislation, Engagement, and Training, and Terry Rouch, Assistant Director, Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862 (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On November 1, 2022, VA published a proposal to amend VA's existing IRRRL regulation at 38 CFR 36.4307 to reflect current statutory requirements set forth by section 309 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296, and section 2 of the Protecting Affordable Mortgages for Veterans Act of 2019, Public Law 116–33, 133 Stat. 1038. See Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans, 87 FR 65700 (Nov. 1, 2022). That rulemaking notice proposed that the lender of an IRRRL must provide the Secretary with a certification that the Veteran would recoup all fees, closing costs, and expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) on or before the date that is 36 months after the IRRRL's note date. VA has determined that the due date of the first payment on the IRRRL, rather than the note date, would further more practical implementation of the statutory text than the initial proposal and that it would better fit with the expectations of key stakeholders, including Veterans, Congress, and the loan industry.

With this SNPRM, VA seeks to clarify the effect of the recoupment standard and address important considerations and reasons for VA's proposed changes. To accomplish this, VA is proposing additional edits to 38 CFR 36.4307, as explained in more detail below. VA will address all of the comments received on the proposed rule and any comments VA receives on this SNPRM in our final rulemaking.

Background on VA's Proposed Rule

Section 3709(a), title 38, United States Code, requires that the issuer of an IRRRL certify to the Secretary as to the recoupment period for certain fees, closing costs, and expenses. See 38 U.S.C. 3709(a). The term ''issuer'' is not a term used in VA's program elsewhere, but VA has interpreted it to mean a lender. The statute also provides a broad methodology for calculating the recoupment period. For a loan to meet the statutory recoupment requirements, the certification must show that all fees and incurred costs are (i) scheduled to be recouped on or before the date that is 36 months after the date of loan issuance; and (ii) the recoupment is calculated through lower regular monthly payments (minus certain enumerated items) as a result of the refinanced loan.

Several statutory provisions introduced a number of new terms and ambiguous phrasings. As VA has pointed out in both its interim final cash-out refinance rule and proposed IRRRL rule notices, the text of section 3709 can reasonably lead to multiple interpretations. See Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans, 83 FR 64459, 64460–64461 (Dec. 17, 2018); 87 FR 65700, 65701–65706 (Nov. 1, 2022). VA also pointed out in both notices that VA would attempt to situate the provisions within the coherent and consistent framework of the newly enacted statute, as well as the whole of chapter 37, title 38, U.S.C. See 83 FR at 64461–64462; 87 FR at 65702, 65707.

Before 38 U.S.C. 3709 was signed into law, the term ''loan issuance'' was not mentioned within chapter 37 or commonly used by VA in the VA home loan program. The legislative history of Public Law 115–174 does not include a definition of the term or provide sufficient context from which to infer the intended meaning.

The term could derive from the Government National Mortgage Association (Ginnie Mae) mortgage-backed securities (MBS) program. The Ginnie Mae MBS program is the primary source of liquidity for lenders that participate in VA's program. An eligible issuer ''creates pools of mortgages, loan packages of mortgages,'' and is responsible for servicing the pooled mortgages until maturity or termination. See *Ginnie Mae MBS Guide,* Chap. 1, Part 10, available at *https://www.ginniemae.gov/issuers/program_guidelines/MBSGuideLib/Chapter_01.pdf.* Although the Ginnie Mae MBS program can include mortgages purchased from multiple originators and serviced by third parties, Ginnie Mae looks only to the eligible issuer of the MBS to ensure that the servicing meets Ginnie Mae's standards. See *Ginnie Mae: How Does it Work and What Does it Do?,* Bipartisan Policy Center, available at *https://bipartisanpolicy.org/download/?file=/wp-content/uploads/sites/default/files/GinnieMae-final.pdf#:~:text=The Government National Mortgage Association%28or Ginnie Mae%29.*

In the proposed rule notice, VA settled on proposing the note date as ''the date of loan issuance,'' which means that if VA were to adopt the standard as proposed, the note date would serve as the point at which the calculation of the 36-month recoupment period would begin. See 87 FR at 65701. Although VA did not explain the rationale in-depth, VA's proposal was consistent with the terms ''to issue'' and ''date of issue/issue date,'' as used in other related contexts (*e.g.,* the Ginnie Mae MBS Guide, insurance policies, bonds, and a regulatory definition relating to the Thrift Savings Plan).[1] VA also believed the note date would be a date all stakeholders could easily track.

Reconsidering the ''Date of Loan Issuance''

VA did not receive public comments specific to what ''date of loan issuance'' means. In preparation for the final rule, however, VA re-examined the text of section 3709, VA's proposed recoupment formula, comments of internal VA staff, potential outcomes for Veterans, ongoing industry implementation of the statutory recoupment standard, and a range of other sources,[2] and identified reasons why the initial proposal may not have reflected the best interpretation.

[1] See, *e.g.,* Ginnie Mae MBS Guide, Chap. 1, Part 9, available at *https://www.ginniemae.gov/issuers/program_guidelines/MBSGuideLib/Chapter_01.pdf;* 5 CFR 1655.1 (defining ''Loan issue date'' as ''the date on which the TSP record keeper disburses funds from the participant's account for the loan amount'').

[2] VA conducted a broad sweep of electronic search engines and databases using the term ''issuance date'' and ''date of issuance''.

Because VA now sees that ''date of loan issuance'' is subject to various reasonable interpretations, VA believes that it is prudent to reopen the public comment period for this specific issue. This will allow all stakeholders to provide input on whether the first payment due date better reflects the coherent and consistent statutory scheme and provides a more workable standard for Veterans, VA, and the loan industry.

Section 3709 provides that ''recoupment is calculated through lower regular monthly payments.'' See 38 U.S.C. 3709(a)(3). VA's proposed formula reflected this, in that it presented a comparison between that which the Veteran would pay for principal and interest under the loan being refinanced and that which the Veteran would pay for principal and interest under the IRRRL. See 87 FR at 65701.

Using the IRRRL's note date, however, may not give full meaning to Congress's emphasis on the way ''costs are scheduled to be recouped . . . through lower regular monthly payments.'' See 38 U.S.C. 3709(a). The loan closing and servicing processes generally result in a borrower missing one or two of the payments that would normally have been made under the loan being refinanced. Generally, the borrower must pay for the principal and interest corresponding to the missed loan payments up-front during the IRRRL closing or include the amounts in the balance of the IRRRL. If VA were to use the note date as the start of the recoupment period, there could consistently be one or two months where VA could not make a direct comparison of monthly payments to determine the borrower's costs and savings.

The missed payments highlight two outcomes that could harm Veterans and contradict section 3709. First, a lender could try to count those one or two missed payments toward the IRRRL savings (Note: VA refers to ''missed payments'' here solely to mean they are not due and payable when they would have been scheduled as such under the loan being refinanced). For example, if a Veteran's next two scheduled payments of $2,000 would be $0.00 under the IRRRL, the lender could try to assert the $4,000 as a complete savings, thereby reducing the recoupment period. Two scenarios where this could harm the Veteran are: (i) the missed payments would go toward recoupment even though the Veteran would be responsible for the amounts (at closing or in the loan balance), and (ii) a predatory lender could profit by exploiting ''the savings'' and justifying new, unnecessary charges to the Veteran.

Second, if VA were to exclude from the recoupment period the two months when payments were not due, the Veteran would be limited to 34 monthly payments to meet the recoupment, rather than the full 36, to offset the IRRRL's transaction costs. See 38 U.S.C. 3709(a)(2) (''all of the fees and incurred costs . . . [must be] scheduled to be recouped on or before the date that is 36 months after the date of loan issuance''). Because VA must adhere to the 36-month statutory requirement, VA is concerned a de facto 34-month requirement would not meet the statute's terms.

In addition, it is VA's understanding that the concerns that led to the enactment of section 3709—whether concerns of VA or those of consumer advocates—were not necessarily about missed payments in and of themselves. Few Veterans would argue that being able to retain one or two months of mortgage payments is intrinsically predatory or more costly. The main concern was the way certain lenders marketed the missed payments, misleading Veterans to believe as if they were no longer responsible for those payments. However, the Veteran was still responsible for paying them, albeit in different ways, as discussed above.

Because the payment structure could reduce the recoupment period from 36 months to 34, VA must confront another potential area for concern. If the recoupment period is conditioned upon making up the missed payments, VA seemingly characterizes the missed payments as a new charge to the Veteran, something the Veteran would not have been responsible for paying had the loan not been refinanced. In short, it could be asserted that VA's decision about the note date is tantamount to VA defining a missed payment as a ''fee, closing cost, or expense,'' that must be recouped. See 38 U.S.C. 3709(a)(1).

One way to address these issues would be to keep the note date as ''the date of loan issuance'' but substantively change or introduce a new, more complex formula that accounts for the missed payments. But VA is concerned that adding complexity and substantive change to the proposed calculation would make the refinance process frustrating to Veterans and lenders alike, as well as lead to unnecessary errors in origination and oversight. Thus, VA believes the best approach is to keep the straightforward formula, as proposed in the November 2022 notice, and simply change the start date of the recoupment period, as described above. See 87 FR at 65701. The formula would continue to appear as follows:

$$\frac{\text{(fees + closing costs + expenses) – lender credits}}{\text{reduction in monthly payment of principal and interest}} = \text{months to recoup costs}$$

To sum up the options VA considered with respect to the recoupment standard, VA could—

1. Finalize the rule using the note date as ''the date of loan issuance,'' which could be seen as tantamount to defining missed payments as ''a fee, closing cost, or expense,'' that must be recouped;

2. Propose a different definition of ''the date of loan issuance,'' where such date is the date that the first payment under the IRRRL is due; or

3. Propose a new formula to account for the missed payments in a meaningful, accurate way, regardless of additional complexity, potential for error, and potential for stakeholder frustration.

VA does not believe a fourth option, one where a lender could count the missed payments as savings, would be consistent with the purpose of section 3709, which is to protect Veterans from predatory lending. See 87 FR at 65702.

Updated Revision to Proposed § 36.4307

Based on VA's additional analysis (discussed above), VA now proposes an updated revision to the language of § 36.4307(a)(8). Specifically, VA proposes a different definition for ''the date of loan issuance,'' one that would be specific to IRRRLs and section 3709. VA proposes to begin the 36-month recoupment period on the date that is the first payment due date of the IRRRL.

In other words, VA proposes to interpret the date the Veteran is required to make the first regular payment under the IRRRL—regardless of whether the Veteran actually makes the payment—as ''the date of loan issuance'' set by section 3709(a)(2). To illustrate the difference between VA's definition as described by the November 2022 notice and this updated proposal: if a Veteran signs a note on April 10, 2025, and the first payment due date of the IRRRL is June 1, 2025, the recoupment period under VA's proposed rule would begin April 10, 2025. Under this SNPRM, the recoupment period would begin June 1, 2025. VA believes that, for the reasons described above, this new approach would be consistent with the text and context of section 3709, result in more advantageous outcomes for Veterans, and be an easy standard for lenders to compute and follow.

With respect to the formula provided in the preamble of the proposed rule, VA is clarifying that provided the result of the formula, *i.e.,* the months to recoup, is less than or equal to 36, the IRRRL would meet recoupment. VA would maintain the proposed rule's formula, but clarify that when the result of the calculation, *i.e.,* the ''months to recoup costs'' in the figure above, is less than or equal to 36, the recoupment requirement for the IRRRL would be met. In other words, VA proposes that the statutory recoupment requirement would be met when:

$$\frac{\text{(fees + closing costs + expenses) – lender credits}}{\text{reduction in monthly payment of principal and interest}} \leq 36 \text{ months}$$

In revised proposed § 36.4307(a)(8)(i), VA would require that the lender of the refinancing loan provide the Secretary with a certification that all fees, closing costs, and expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the Veteran as a result of the refinance are scheduled to be recouped on or before the date that is 36 months after the date that is the first payment due date of the refinancing loan.

To reiterate, VA is seeking comments on this issue only. VA will not review new comments on any another aspect of the proposed rulemaking.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

VA believes that the discrete change in recoupment start date contained in this SNPRM would not affect the way lenders have, in practice, calculated recoupment of applicable fees, closing costs, and expenses over 36 monthly payments. On this basis, the Secretary hereby certifies that this SNPRM would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This SNPRM contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on March 1, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Michael P. Shores,

Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

■ 2. Amend § 36.4307 by:
■ a. In paragraph (a)(4)(ii), removing the cross-reference to ''§ 36.4339(a)(4)'' and adding, in its place, the cross-reference ''§ 36.4339(b)'';
■ b. In paragraphs (a)(4), (5), (6), and (7), adding paragraph headings;
■ c. Adding new paragraphs (a)(8), (9), (10), and (11); and
■ d. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

36.4307 Interest rate reduction refinancing loan.

(a) * * *

* * * * *

(4) *Maximum amount of refinancing loan.* * * *

(5) *Cases of delinquency.* * * *

(6) *Guaranty amount.* * * *

(7) *Loan term.* * * *

(8) *Recoupment.* (i) The lender of the refinancing loan must provide the Secretary with a certification that all fees, closing costs, and expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the veteran as a result of the refinance are scheduled to be recouped on or before the date that is 36 months after the date that is the first payment due date of the refinancing loan.

(ii) The recoupment period is calculated by dividing the dollar amount equating to the sum of all fees, closing costs, and expenses, whether included in the loan or paid at or outside of closing, minus lender credits (the numerator), by the dollar amount by which the veteran's monthly payment for principal and interest is reduced as a result of the refinance (the denominator).

(iii) *Numerator.* The numerator described by paragraph (a)(8)(ii) of this section is the dollar amount equating to the sum of all fees, closing costs, and expenses that would be incurred by the veteran as a result of the refinance. Except as provided in this paragraph (a)(8)(iii), such sum includes any charge that is incurred by the veteran as a result of the refinance, including taxes that are not described in paragraph (a)(8)(iii)(C) of this section. Lender credits may be subtracted from other amounts in the numerator. The following items do not constitute fees, closing costs, or expenses for the purposes of this paragraph (a)(8)(iii) and are excluded from the numerator:

(A) The loan fee as prescribed by 38 U.S.C. 3729;

(B) Prepaid interest and amounts held in escrow (for example, amounts for hazard insurance); and

(C) Taxes and assessments on the property, even when paid outside of their normal schedule, that are not incurred solely due to the refinance transaction (for example, property taxes and special assessments).

(iv) *Denominator.* The denominator described by paragraph (a)(8)(ii) of this section is the dollar amount by which the veteran's monthly payment for principal and interest is reduced as a result of the refinance. The reduction is calculated by subtracting the veteran's monthly payment for principal and interest under the refinancing loan from the veteran's monthly payment for principal and interest under the loan being refinanced. When calculating monthly payments for principal and interest, the lender must use the full payment, without omitting any amounts to be repaid monthly by the veteran and attributable to, for example, financed fees, financed loan fees prescribed by 38 U.S.C. 3729, financed closing costs, and financed expenses.

(v) If the dollar amount of the veteran's monthly payment for principal and interest under the refinancing loan is equal to or greater than the dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced, meaning there is no reduction in the monthly payment for principal and interest as a result of the refinancing loan, the lender must not charge any fees, closing costs, or expenses, except for those enumerated by paragraphs (a)(8)(iii)(A), (B), and (C) of this section.

(9) *Loan seasoning.* (i) The refinancing loan must meet both of the following requirements:

(A) On or before the note date of the refinancing loan, the veteran must have made at least six consecutive monthly payments on the loan being refinanced. For the purposes of this paragraph (a)(9), ''monthly payment'' means the full monthly dollar amount owed under the note plus any additional monthly amounts agreed to between the veteran and the holder of the loan being refinanced, such as payments for taxes, hazard insurance, fees and charges related to late payments, and amounts owed as part of a repayment plan. A monthly payment will count toward the requisite six consecutive monthly payments only if made in or before the same calendar month for which it is due. A prepaid monthly payment will count toward the requisite six consecutive monthly payments, provided that the holder of the loan being refinanced applies such payment as satisfying the veteran's obligation of payment for a specific month, advances the due date of the veteran's next monthly payment, and does not apply the payment solely toward principal. When multiple partial payments sum to the amount owed for one monthly payment, they will count as a single monthly payment toward the requisite six consecutive monthly payments, but only if all partial payments are made in or before the same calendar month for which full payment is due.

(B) The note date of the refinancing loan must be a date that is not less than 210 days after the first payment due date of the loan being refinanced, regardless of whether the loan being refinanced became delinquent. The first payment due date of the loan being refinanced is not included in the 210-day count. The note date of the refinancing loan is included in the 210-day count.

(ii) *Loan modifications.* If the loan being refinanced has been modified, any payment made before the modification date does not count toward the requisite six consecutive monthly payments under paragraph (a)(9)(i)(A) of this section. The note date of the refinancing loan must be a date that is not less than 210 days after the first payment due date of the modified loan. The first payment due date of the modified loan is not included in the 210-day count. The note date of the refinancing loan is included in the 210-day count.

(iii) *Assumptions.* If the loan being refinanced was assumed pursuant to 38 U.S.C. 3714, any payment made before the assumption date does not count toward the requisite six consecutive monthly payments under paragraph (a)(9)(i)(A) of this section. The note date of the refinancing loan must be a date that is not less than 210 days after the first payment due date of the assumed loan. The first payment due date of the assumed loan is not included in the 210-day count. The note date of the refinancing loan is included in the 210-day count.

(10) *Interest rate.* (i) In a case in which the loan being refinanced has a fixed interest rate and the refinancing loan will also have a fixed interest rate, the interest rate on the refinancing loan must not be less than 50 basis points less than the interest rate on the loan being refinanced.

(ii) In a case in which the loan being refinanced has a fixed interest rate and the refinancing loan will have an adjustable rate, the interest rate on the refinancing loan must not be less than 200 basis points less than the interest rate on the loan being refinanced. In addition, discount points may be included in the loan amount only if—

(A) The lower interest rate is not produced solely from discount points;

(B) The lower interest rate is produced solely from discount points, discount points equal to or less than one discount point are added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and expenses that have been financed) maintains a loan to value ratio of 100 percent or less; or

(C) The lower interest rate is produced solely from discount points, more than one discount point is added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and expenses that have been financed) maintains a loan to value ratio of 90 percent or less.

(iii) Pursuant to paragraph (a)(4)(i) of this section, no more than two discount points may be added to the loan amount.

(iv) In cases where the lower interest rate is not produced solely from discount points, as described by paragraph (a)(10)(ii)(A) of this section, lenders must provide to the Secretary evidence that the lower interest rate is not produced solely from discount points.

(v) Lenders must use a property valuation from an appraisal report, completed no earlier than 180 days before the note date, as the dollar amount for the value in the loan to value ratio described by paragraph (a)(10)(ii) of this section. The appraisal report must be completed by a licensed appraiser and the appraiser's license must be active at the time the appraisal report is completed. A veteran may only be charged for one such appraisal report. A veteran may only be charged for such appraisal report as part of the flat charge not exceeding 1 percent of the amount of the loan, as described by § 36.4313(d)(2). While a lender may use a VA-designated fee appraiser to complete the appraisal report, lenders should not request an appraisal through VA systems unless directed by the Secretary.

(11) *Net tangible benefit.* The refinancing loan must provide a net tangible benefit to the veteran. For the purposes of this section, net tangible benefit means that the refinancing loan is in the financial interest of the veteran. The lender of the refinancing loan must provide the veteran with a net tangible benefit test. The net tangible benefit test must be satisfied. The net tangible benefit test is defined as follows:

(i) The refinancing loan must meet the requirements prescribed by paragraphs (a)(8), (9), and (10) of this section.

(ii) The lender must provide the veteran with an initial loan comparison disclosure and a final loan comparison disclosure of the following:

(A) The loan payoff amount of the refinancing loan, with a comparison to the loan payoff amount of the loan being refinanced;

(B) The type of the refinancing loan, whether a fixed-rate loan, traditional adjustable-rate loan, or hybrid adjustable-rate loan, with a comparison to the type of the loan being refinanced;

(C) The interest rate of the refinancing loan, with a comparison to the current interest rate of the loan being refinanced;

(D) The term of the refinancing loan, with a comparison to the term remaining on the loan being refinanced; and

(E) The dollar amount of the veteran's monthly payment for principal and interest under the refinancing loan, with a comparison to the current dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced.

(iii) The lender must provide the veteran with an initial loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides the Loan Estimate, required under 12 CFR 1026.19(e), to the veteran. If the lender is required to provide to the veteran a revised Loan Estimate under 12 CFR 1026.19(e) that includes any of the revisions described by paragraph (a)(11)(iv) of this section, the lender must provide to the veteran, on the same date the revised Loan Estimate must be provided, an updated loan comparison disclosure.

(iv) The revisions described by this paragraph (a)(11)(iv) are:

(A) A revision to any loan attribute that must be compared pursuant to paragraph (a)(11)(ii) of this section;

(B) A revision that affects the recoupment under paragraph (a)(8) of this section; and

(C) Any other revision that is a numeric, non-clerical change.

(v) The lender must provide the veteran with a final loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides to the veteran the Closing Disclosure required under 12 CFR 1026.19(f). The veteran must certify, following receipt of the final loan comparison disclosure, that the veteran received the initial and final loan comparison disclosures required by this paragraph.

(vi) Regardless of whether the lender must provide the veteran with a Loan Estimate under 12 CFR 1026.19(e) or a Closing Disclosure under 12 CFR 1026.19(f), the lender must provide the veteran with the initial and final loan comparison disclosures. Where the lender is not required to provide the veteran with a Loan Estimate or a Closing Disclosure because the refinancing loan is an exempt transaction under 12 CFR 1026.3, the lender must provide the veteran with the initial and final loan comparison disclosures on the dates the lender would have been required to provide the veteran with the Loan Estimate under 12 CFR 1026.19(e) and the Closing Disclosure under 12 CFR 1026.19(f), respectively, as if the refinancing loan was not an exempt transaction.

* * * * *

(Authority: 38 U.S.C. 3703, 3709, and 3710)

■ 3. Amend § 36.4313 by:
■ a. Revising paragraph (d)(1)(i); and
■ b. In paragraph (e)(1)(i), removing the word ''and'' and adding, in its place, the word ''or''.

The revisions read as follows:

36.4313 Charges and fees.

* * * * *

(d) * * *

(1) * * *

(i) Fees of Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs except the following:

(A) Appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender; and

(B) Appraisal fees incurred for the purpose specified by § 36.4307(a)(10)(v) of this subpart.

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[FR Doc. 2024–04884 Filed 3–6–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0338; FRL–11798–01–R4]

Air Plan Approval; KY; Revisions to Jefferson County Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted on May 31, 2023, by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on behalf of the Louisville Metro Pollution Control District (Jefferson County or District). The purpose of the revision is to modify the SIP-approved version of the District's definitions rule to include a list of ''trivial activities'' in a new appendix; update the incorporation by reference date of the Federal air quality regulation that excludes certain organic compounds from the definition of ''volatile organic compounds (VOC);'' and make minor grammatical changes.