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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1217

[Document Number AMS–SC–20–0014]

#### Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Assessment Rate Increase

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) to increase the assessment rate from \$0.35 to \$0.41 per thousand board feet (mbf). The Order is administered by the Softwood Lumber Board (Board) with oversight by the U.S. Department of Agriculture (USDA). This rule will also add the conversion factor for square meters to board feet and makes one conforming change.

**DATES:** Effective Date: April 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Andrea Ricci, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 572–1442; facsimile: (202) 205–2800; or electronic mail: [Andrea.Ricci@usda.gov](mailto:Andrea.Ricci@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule affecting 7 CFR part 1217 (herein the “Order”) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

#### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, must be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA’s final ruling.

#### Background

This rule amends the Order by increasing the assessment rate from \$0.35 to \$0.41 per mbf of softwood lumber shipped within or imported into the United States. The Order is administered by the Board with oversight by the USDA. Under the program, assessments are collected from domestic manufacturers and importers and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. The additional funds will enable the Board to maintain its existing programs, while supporting new programs that will help maintain and expand markets for softwood lumber. This rule will also add the conversion factor for square meters to board feet and make one conforming change.

The Order specifies that the funds to cover the Board’s expenses shall be paid by assessments on manufacturers for the U.S. market, other income of the Board, and other funds available to the Board. Domestic manufacturers pay assessments based on the volume of softwood lumber shipped within the United States and importers pay assessments based on the volume of softwood lumber imported to the United States. Assessments are collected per mbf of softwood lumber, except that no entity shall pay an assessment on the first 15 million board feet (mmbf) of softwood lumber otherwise subject to assessments in a fiscal year. Domestic manufacturers are required to remit to the Board assessments owed no later than 30 calendar days of the month following the end of the quarter in which the softwood lumber was shipped. Importers are responsible for paying assessments to the Board on softwood lumber imported into the United States through the U.S. Customs and Border Protection (CBP). If CBP does not collect an assessment from the importer, the importer is responsible for paying the assessment to the Board no later than 30 calendar days of the month following the end of the quarter in which the softwood lumber was imported. Domestic manufacturers and importers must also remit to the Board required reports.

The Order also provides for exemptions from assessments. Section 1217.53 specifies that U.S. manufacturers and importers that domestically ship and/or import less

than 15 mmbf annually, exports of softwood lumber from the United States, and shipments and imports of organic softwood lumber are exempt from the Order's assessment requirements.

Pursuant to § 1217.52, and subject to the exemptions specified in § 1217.53, each domestic manufacturer and importer shall pay an assessment rate of \$0.35 per mmbf of softwood lumber, except that no entity shall pay an assessment on the first 15 mmbf of softwood lumber otherwise subject to assessment in a fiscal year. The assessment rate may not be less than \$0.35 per mmbf nor more than \$0.50 per mmbf. Section 1217.44(c) prescribes that the Board may recommend to the Secretary a change in the assessment rate as it deems appropriate by at least a majority of Board members plus two (exclusive of vacant seats).

The \$0.35 per mmbf assessment rate has been in effect since the program's inception in 2011. The Board's fiscal year runs from January 1 through December 31. Board expenditures for the five-year period from 2014–2018 have ranged from a low of \$12.35 million in 2014 to a high of \$15.32 million in 2016; expenditures in 2018 were \$14.23 million. Program expenditures averaged \$12.96 million during those five years, with annual expenditures averaging \$3.29 million (24 percent) for research conducted on wood standards; \$4.06 million (29 percent) on a communications program, which includes continuing education courses for architects and engineers; and \$3.94 million (28 percent) on a construction and design program that provides technical support to architects and structural engineers about using wood. Pursuant to § 1217.50(h), administrative expenditures have been under 8 percent of the assessments collected and other income received by and available to the Board for the fiscal year.

Board assessment income has ranged from \$12.55 million in 2014 to \$13.74

million in 2018. About 70 percent of the assessment income is from domestic manufacturers and 30 percent is from importers. Additionally, pursuant to § 1217.50(i), the Board maintains a monetary reserve with funds that do not exceed one fiscal period's budget. This rule will also amend § 1217.52(h) to add the conversion factor for square meters to board feet. Currently, the Order provides a factor used to convert cubic meters of imported softwood lumber into the equivalent volume of thousands of board feet, thus enabling the Board to calculate appropriate assessments. Softwood lumber is also being imported in square meters. Adding a conversion factor for square meters will better reflect current industry practices and facilitate the administration of the program.

Finally, this rule will make a conforming change to § 1217.52(c) to reflect previously revised voting requirements in § 1217.44. In a final rule published in the **Federal Register** on September 25, 2019 (84 FR 50294), voting requirements prescribed in § 1217.44 were revised to specify that recommendations to change the assessment rate require affirmation by at least a majority of Board members plus two (exclusive of vacant seats). Currently, corresponding language in § 1217.52(c) specifies that an affirmative vote of at least two-thirds of Board members is required for assessment rate recommendations. A conforming change in this rule will revise § 1217.52(c) to require affirmation of assessment rate recommendations by a Board majority plus two, thus harmonizing the language in the two sections related to assessment recommendations.

#### Board Recommendation

The Board met on November 20, 2019, and recommended increasing its assessment rate from \$0.35 to \$0.41 per mmbf. The additional funds will enable the Board to maintain its existing programs, while supporting new

programs that will help maintain and expand markets for softwood lumber. For the 2016–2018 fiscal years, the Board has used reserve funds to bridge the deficit between income and expenses. In 2019, the Board kept expenditures in line with income and had to make cuts to its programs, primarily its communications program. The Board discussed the deficit spending that occurred from 2016–2018 and the funding cuts in 2019, along with the impacts of inflation, and determined that without the increase it would not be able to maintain its current programs nor be able to address gaps that limit the Board's ability to expand the market for softwood lumber. Continuing at the current funding level would limit its ability to capitalize on new opportunities or address challenges and maintain the impact the Board has achieved for the softwood lumber industry in prior years. Additionally, the current funding level restricts the ability to accelerate softwood lumber's increase in market share and lumber usage in the non-residential sector.

The Board's funding of research on wood standards has facilitated interest in using wood-based building systems in non-traditional markets, such as tall wood building. The 2021 International Code Council building standards will recognize the construction of mass timber buildings up to 18 stories in height. These new opportunities require a more comprehensive approach, particularly in outreach and education initiatives. The Board recognized that its funded programs must go beyond inspiring professionals to think about building with wood. These individuals need resources and technical assistance.

The Board estimated the increased assessment rate of \$0.41 per mmbf would generate additional revenues as shown in Table 1. The consumption forecast and assessable board feet figures are shown in billion board feet (bbf).

|                                                           | 2021         | 2022         | 2023         | 2024         | 2025         |
|-----------------------------------------------------------|--------------|--------------|--------------|--------------|--------------|
| Consumption Forecast (bbf) <sup>1</sup>                   | 49.69        | 49.39        | 52.72        | 55.64        | 57.52        |
| Assessable Board Feet (bbf) <sup>2</sup>                  | 40.30        | 40.05        | 42.76        | 45.13        | 46.65        |
| Estimated Assessment Revenue (\$0.35/mmbf)                | \$14,104,640 | \$14,018,162 | \$14,965,761 | \$15,794,788 | \$16,326,618 |
| Estimated Assessment Revenue (\$0.41/mmbf)                | \$16,522,578 | \$16,421,276 | \$17,531,320 | \$18,502,466 | \$19,125,466 |
| Additional Assessment Revenue at \$0.41/mmbf <sup>3</sup> | \$2,417,938  | \$2,403,114  | \$2,565,559  | \$2,707,678  | \$2,798,849  |

<sup>1</sup> Source: Forest Economic Advisors (<https://www.getfea.com/data-center>); data frequently revised; pulled 2/21/2020.

<sup>2</sup> Assumes 18.9 percent exemption rate.

<sup>3</sup> Difference of estimated assessment revenue at \$0.41/mmbf and estimated assessment revenue at \$0.35/mmbf.

The additional funds will support programs targeting contractors and

developers to address installer training and skills development; establish an

education program that will target architecture and engineering students,

as well as professionals; and restore the Board's communications program budget so that by 2025 it will be equivalent to 2018 expenditures. Therefore, the Board recommended increasing the assessment rate in the Order from \$0.35 to \$0.41 per mbf.

### Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) is required to examine the impact of the action on small entities.

Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than \$8 million.<sup>1</sup>

The Random Lengths Publications, Inc.'s yearly average framing lumber

composite price was \$356 per mbf in 2019. Dividing the \$8 million threshold that defines an agricultural service firm as small by this price results in a maximum threshold of 22.5 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 2 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition.

| Table 2. Domestic manufacturers and importers by SBA size standards, 2019 |                        |               |           |               |          |               |
|---------------------------------------------------------------------------|------------------------|---------------|-----------|---------------|----------|---------------|
|                                                                           | Domestic manufacturers |               | Importers |               | Totals   |               |
|                                                                           | Entities               | Volume (MMBF) | Entities  | Volume (MMBF) | Entities | Volume (MMBF) |
| Small                                                                     | 226                    | 1,991         | 774       | 1,257         | 1,000    | 3,248         |
| Large                                                                     | 290                    | 32,229        | 106       | 32,582        | 396      | 64,811        |
| Total                                                                     | 516                    | 34,220        | 880       | 33,839        | 1,396    | 68,059        |

Sources: Forest Economic Advisors; Customs and Border Protection.

As shown in Table 2, there are a total of 1,396 domestic manufacturers and importers of softwood lumber based on 2019 data. Of these, 1,000 entities, or 72 percent, shipped or imported less than 22.5 mmbf and would be considered small under the SBA definition. These 1,000 entities domestically manufactured or imported 3.25 billion board feet (bbf) in 2019, less than 5 percent of total volume.

While this action increases the assessment obligation on domestic manufacturers and importers from \$0.35 per mbf to \$0.41 per mbf, the impact on these entities will be minimal and uniform. The current assessment rate of \$0.35 per mbf represents 0.1 percent of the Random Lengths 2019 average framing lumber composite price of \$356 per mbf. The assessment rate of \$0.41 per mbf is 0.12 percent of this price. The increase in assessment rate represents an increase in cost to domestic manufacturers and importers of two-thousandth of one percentage point relative to their average received price. This cost, though minimal, will also be offset by the benefits derived from the program.

The 1996 Farm Bill requires that Research and Promotion programs be evaluated every five years with the specific goal of measuring the economic impact of commodity promotion on demand for the commodity. The Board completed its first five-year evaluation

of program effectiveness in 2016. The five-year evaluation, conducted by Prime Consulting, found that softwood lumber use per square foot increased nearly 23 percent among architects and structural engineers from the program's inception in 2011 to 2015. The evaluation also found a cumulative return on investment (ROI) of more than \$15 in increased sales of softwood lumber per \$1 spent on promotion by the program between 2012 and 2015. The cumulative ROI was updated in 2019 to reflect the time period of 2012 to 2018. The result was a return of more than \$23 in increased sales per \$1 spent on promotion.

This rule amends § 1217.52(b) to increase the assessment rate from \$0.35 to \$0.41 per mbf. The Order is administered by the Board with oversight by the USDA. Under the program, assessments are collected from domestic manufacturers and importers and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. The additional funds collected at the increased rate will enable the Board to maintain its existing programs, while supporting new programs that will help maintain and expand markets for softwood lumber. This rule also amends § 1217.52(h) to add the conversion factor for square meters to board feet and make one

conforming change to section 1217.52(c) regarding voting requirements.

Regarding alternatives, the Board considered maintaining the current assessment rate. However, a majority of Board members determined that an increase was needed to adequately support existing programs and fund new initiatives. The Board discussed increasing the assessment at its meeting in November 2018, but after much consideration it determined it was not the right time for the industry to make such a recommendation. In 2019, with the reduction of assessment revenue and the program cuts that were made, the Board again considered the merits of increasing the assessment rate. This was discussed at several Board committee meetings, including meetings of the Executive Committee on September 17, 2019, and November 19, 2019, and the Finance Committee on November 19, 2019. The Board also considered rates of \$0.39 and \$0.50 per mbf. After much discussion at committee meetings and with the full Board, the Board recommended increasing the rate from \$0.35 to \$0.41 per mbf.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This rule will not result in a change to the

<sup>1</sup> SBA does have a small business size standard for "Sawmills" of 500 employees (see [https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards\\_Effective%20Aug%2019%2C%202019\\_Rev.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf)).

Based on USDA's understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in

reality, a large business. Therefore, USDA used agricultural service firm as a more appropriate criterion for this analysis.

information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 13, 2020 (85 FR 49281). A 60-day comment period ending October 13, 2020, was provided to allow interested persons to submit comments.

#### Analysis of Comments

Twenty-nine comments were received in response to the proposed rule. Of those 29 comments, 22 supported the proposed assessment increase, six opposed the action, and one was outside the scope of the rulemaking.

Overall, commenters in support of the proposal expressed that increasing market share by developing new markets and uses for softwood lumber products while addressing the continued pressures from competitors is paramount to the continued success of the softwood lumber industry. They contend this may only be accomplished by the increased investment in the softwood lumber program. One commenter, who identified as a small sawmill, argued that the proposed increase was not enough, and an assessment rate of \$0.50 per mfb or more was warranted to continue promoting and developing new markets and uses for softwood lumber products. Commenters expressed the need for continued work on wood standards and the adoption of using wood-based products in non-traditional markets. They emphasized the importance of educational programs and continued technical assistance for builders, designers, developers, architects and engineers. Several commenters discussed the benefit of being able to work collaboratively as an industry to drive demand for softwood lumber, noting that the efforts of the program are critical to the long-term success of the

softwood lumber industry. Commenters noted the return on investment and incremental demand results from the most recent program evaluation as evidence of the success of the program thus far. And two commenters mentioned the results of the 2018 continuance referendum (78 percent of manufacturers and importers voting, who represented 94 percent of the volume of softwood lumber, were in favor of continuing the program) to demonstrate the continued support of the industry for the program.

Out of the six comments in opposition, three commenters noted that the industry is currently seeing record demand and historically high prices, and that the need for an increase in the assessment to fund programming geared towards creating additional demand is not necessary. Two commenters noted that the Board should be able to create demand at the current funding levels. One commenter simply opposed the increase, but did not provide further detail. In its discussion of the proposed increase, the Board determined that continuing at the current funding level would limit its ability to maintain the impact it has achieved for the softwood lumber industry in prior years. It reviewed its revenues and expenditures for the past several fiscal periods and agreed that without the increase it would not be able to maintain its current programs nor be able to address gaps that limit the Board's ability to expand the market for softwood lumber. Additionally, it believed current funding levels restricts its ability to accelerate softwood lumber's increase in market share and lumber usage in the non-traditional markets. In formulating the proposed increase, the Board reviewed several different rate options, including not increasing the rate, but ultimately decided that additional funds generated by the increase are needed to maintain and expand markets for softwood lumber. None of the commenters provided comments on the addition of the conversion factor and the conforming change. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

#### List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1217 is amended as follows:

#### PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1217 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Amend § 1217.52 by revising paragraphs (b), (c), and (h) to read as follows:

#### § 1217.52 Assessments.

\* \* \* \* \*

(b) Subject to the exemptions specified in § 1217.53, each manufacturer for the U.S. market shall pay an assessment to the Board at the rate of \$0.41 per thousand board feet of softwood lumber, except that no person shall pay an assessment on the first 15 million board feet of softwood lumber otherwise subject to assessment in a fiscal year. Domestic manufacturers shall pay assessments based on the volume of softwood lumber shipped within the United States and importers shall pay assessments based on the volume of softwood lumber imported to the United States.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote by at least a majority of Board members plus two (exclusive of vacant seats), a change in the assessment rate. In no event may the rate be less than \$0.35 per thousand board feet nor more than \$0.50 per thousand board feet. A change in the assessment rate is subject to rulemaking by the Secretary.

\* \* \* \* \*

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. The assessment rates are computed using the following conversion factors: One cubic meter (m3) equals 0.423776001 thousand board feet, and one square meter (m2) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (h)

| Softwood lumber<br>(by HTSUS number) | Assessment<br>\$/cubic<br>meter | Assessment<br>\$/square<br>meter |
|--------------------------------------|---------------------------------|----------------------------------|
| 4407.11.00 .....                     | 0.1737                          | 0.004412                         |
| 4407.12.00 .....                     | 0.1737                          | 0.004412                         |
| 4407.19.05 .....                     | 0.1737                          | 0.004412                         |
| 4407.19.06 .....                     | 0.1737                          | 0.004412                         |
| 4407.19.10 .....                     | 0.1737                          | 0.004412                         |
| 4409.10.05 .....                     | 0.1737                          | 0.004412                         |
| 4409.10.10 .....                     | 0.1737                          | 0.004412                         |
| 4409.10.20 .....                     | 0.1737                          | 0.004412                         |
| 4409.10.90 .....                     | 0.1737                          | 0.004412                         |
| 4418.99.10 .....                     | 0.1737                          | 0.004412                         |

\* \* \* \* \*

**Bruce Summers,**Administrator, Agricultural Marketing  
Service.

[FR Doc. 2021-03467 Filed 2-24-21; 8:45 am]

BILLING CODE P

**FEDERAL DEPOSIT INSURANCE  
CORPORATION****12 CFR Part 327****RIN 3064-AF65****Assessments, Amendments To  
Address the Temporary Deposit  
Insurance Assessment Effects of the  
Optional Regulatory Capital  
Transitions for Implementing the  
Current Expected Credit Losses  
Methodology****AGENCY:** Federal Deposit Insurance  
Corporation (FDIC).**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation is adopting amendments to the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs, to address the temporary deposit insurance assessment effects resulting from certain optional regulatory capital transition provisions relating to the implementation of the current expected credit losses (CECL) methodology. The final rule removes the double counting of a specified portion of the CECL transitional amount or the modified CECL transitional amount, as applicable (collectively, the CECL transitional amounts), in certain financial measures that are calculated using the sum of Tier 1 capital and reserves and that are used to determine assessment rates for large or highly complex IDIs. The final rule also adjusts the calculation of the loss severity measure to remove the double counting of a specified portion of the CECL transitional amounts for a large or highly complex IDI. This final rule does

not affect regulatory capital or the regulatory capital relief provided in the form of transition provisions that allow banking organizations to phase in the effects of CECL on their regulatory capital ratios.

**DATES:** The final rule is effective April 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Policy Objectives and Overview of  
Final Rule**

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC establish a risk-based deposit insurance assessment system for insured depository institutions (IDIs).<sup>1</sup> Consistent with this statutory requirement, the FDIC's objective in finalizing this rule is to ensure that IDIs are assessed in a manner that is fair and accurate. In particular, the primary objective of this final rule is to remove a double counting issue in several financial measures used to determine deposit insurance assessment rates for large or highly complex banks, which could result in a deposit insurance assessment rate for a large or highly complex bank that does not accurately reflect the bank's risk to the deposit insurance fund (DIF), all else equal.<sup>2</sup>

The final rule amends the assessment regulations to remove the double

counting of a portion of the CECL transitional amounts, in certain financial measures used to determine deposit insurance assessment rates for large or highly complex banks. In particular, certain financial measures are calculated by summing Tier 1 capital, which includes the CECL transitional amounts, and reserves, which already reflects the implementation of CECL. As a result, a portion of the CECL transitional amounts is being double counted in these measures, which in turn affects assessment rates for large or highly complex banks. The final rule also adjusts the calculation of the loss severity measure to remove the double counting of a portion of the CECL transitional amounts for large or highly complex banks.

This final rule amends the deposit insurance system applicable to large banks and highly complex banks only, and it does not affect regulatory capital or the regulatory capital relief provided in the form of transition provisions that allow banking organizations to phase in the effects of CECL on their regulatory capital ratios.<sup>3</sup> Specifically, in calculating another measure used to determine assessment rates for all IDIs, the Tier 1 leverage ratio, the FDIC will continue to apply the CECL regulatory capital transition provisions, consistent with the regulatory capital relief provided to address concerns that despite adequate capital planning, unexpected economic conditions at the time of CECL adoption could result in higher-than-anticipated increases in allowances.<sup>4</sup>

The FDIC did not receive any comment letters in response to the proposal and is adopting the proposed rule as final without change. Under this final rule, amendments to the deposit insurance assessment system and changes to regulatory reporting requirements will be applicable only while the regulatory capital relief described above, or any potential future amendment that may affect the

<sup>1</sup> 12 U.S.C. 1817(b). As used in this final rule, the term "insured depository institution" has the same meaning as it is used in section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2). Pursuant to this requirement, the FDIC first adopted a risk-based deposit insurance assessment system effective in 1993 that applied to all IDIs. See 57 FR 45263 (Oct. 1, 1992). The FDIC implemented this assessment system with the goals of making the deposit insurance system fairer to well-run institutions and encouraging weaker institutions to improve their condition, and thus, promote the safety and soundness of IDIs.

<sup>2</sup> As used in this final rule, the term "small bank" is synonymous with "small institution," the term "large bank" is synonymous with "large institution," and the term "highly complex bank" is synonymous with "highly complex institution," as the terms are defined in 12 CFR 327.8. For assessment purposes, a large bank is generally defined as an institution with \$10 billion or more in total assets, a small bank is generally defined as an institution with less than \$10 billion in total assets, and a highly complex bank is generally defined as an institution that has \$50 billion or more in total assets and is controlled by a parent holding company that has \$500 billion or more in total assets, or is a processing bank or trust company. See 12 CFR 327.8(e), (f), and (g).

<sup>3</sup> Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Federal Reserve Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans. See 12 CFR part 3 (Office of the Comptroller of the Currency); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). See also 84 FR 4222 (Feb. 14, 2019) and 85 FR 61577 (Sept. 30, 2020).

<sup>4</sup> See 84 FR 4225 (Feb. 14, 2019).