

plus six serving pieces, as specified in AHAM Standard DW-1. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

**2.7 Testing requirements.** Provisions in this appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water heating dishwashers.

**2.8 Preconditioning requirements.** Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.7 of this Appendix, without using a test load, and initiate the cycle.

### 3. Instrumentation

**3.1 Temperature measuring device.** The device must have an error no greater than  $\pm 1$  °F over the range being measured.

**3.2 Water meter.** The water meter must have a resolution of no larger than 0.1 gallons and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons per minute and for all water temperatures encountered in the test cycle.

**3.3 Water pressure gauge.** The water pressure gauge must have a resolution of one pound per square inch (psi) and must have an error no greater than 5 percent of any measured value over the range of  $35 \pm 2.5$  psig.

**3.4 Watt-hour meter.** The watt-hour meter must have a resolution of no greater than 1 watt-hour and a maximum error of no more than 1 percent of the measured value for any demand greater than 50 watts.

### 4. Test Cycle and Measurements

**4.1 Test cycle.** Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle, and allowing the cycle to proceed to completion.

**4.2 Machine electrical energy consumption.** Measure the electrical energy consumed by the machine during the test cycle, M, expressed in kilowatt-hours per cycle, using a water supply temperature as set forth in section 2.3 of this Appendix and using a watt-hour meter as specified in section 3.4 of this Appendix.

**4.3 Water consumption.** Measure the water consumption, V, specified as the number of gallons delivered to the dishwasher during the entire test cycle, using a water meter as specified in section 3.2 of this Appendix.

**4.4 Report values.** You must report the electrical energy consumption and water consumption values for the machine, as measured.

### 5. Calculation of derived results from test measurements

**5.1 Machine energy consumption for electric dishwashers.** Use the value recorded in section 4.2 of this Appendix as the per-cycle machine electrical energy consumption. Use the notation  $M_n$  for a test of the normal cycle or  $M_t$  for a test of the truncated normal cycle and express in kilowatt-hours per cycle.

**5.2 Water energy consumption for dishwashers using electrically heated water.** Determine the water energy consumption according to sections 5.2.1 and 5.2.2 of this Appendix. Use the notation  $W_n$  for a test of the normal cycle or  $W_t$  for a test of the truncated normal cycle, and express in kilowatt-hours per cycle. Note that electrically heated water was used.

**5.2.1 Dishwashers that operate with a nominal 140 °F inlet water temperature, only.** For each test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

**5.2.2 Dishwashers that operate with a nominal inlet water temperature of 120 °F.**

For each test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

**5.3 Water energy consumption per cycle using gas-heated or oil-heated water.**

Determine the water energy consumption for dishwashers according to sections 5.3.1 and 5.3.2 of this Appendix. Use the notation  $W_n$  for a test of the normal cycle or  $W_t$  for a test of the truncated normal cycle, and express in kilowatt-hours per cycle. Note that gas-heated or oil-heated water was used.

**5.3.1 Dishwashers that operate with a nominal 140 °F inlet water temperature, only.** For each test cycle, calculate the water energy consumption using gas-heated or oil-heated water, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K/e$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,

e = nominal gas or oil water heater recovery efficiency = 0.75.

**5.3.2 Dishwashers that operate with a nominal inlet water temperature of 120 °F.** For each test cycle, calculate the water energy consumption using gas heated or oil heated water, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K/c$$

where,

V is measured in section 4.3 of this

Appendix,

T = nominal water heater temperature rise = 70 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,

e = nominal gas or oil water heater recovery efficiency = 0.75.

**5.4 Total energy consumption per cycle.**

For each test cycle the total per-cycle energy consumption, E, is defined as the sum of the per-cycle machine electrical energy consumption, M, and the per-cycle water energy consumption, W, in kilowatt-hours per cycle. For the cycle type, M is calculated according to section 5.1 of this Appendix and W is calculated according to section 5.2 of this Appendix for electrically heated water, or according to section 5.3 for gas or oil heated water. Use the notation  $E_n$  for a test of the normal cycle or  $E_t$  for a test of the truncated normal cycle, and express in kilowatt-hours per cycle.

5. Section 430.32 of Subpart C is amended by revising paragraph (f) to read as follows:

#### **§ 430.32 Energy and water conservation standards and effective dates.**

\* \* \* \* \*

(f) *Dishwashers.* The energy factor of dishwashers manufactured on or after May 14, 1994, must not be less than:

| Product class                                                                                                                                                              | Energy factor (cycles/kWh) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| (1) Compact Dishwasher (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM Standard DW-1 (see section 430.22)) .....                | 0.62                       |
| (2) Standard Dishwasher (capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM Standard DW-1(see section 430.22)) ..... | 0.46                       |

\* \* \* \* \*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1773

#### RIN 2550-AA21

#### Flood Insurance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final Regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation to clarify and to codify OFHEO's authority and ongoing responsibility to oversee and enforce the statutory requirements affecting the operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under the National Flood Insurance Reform Act of 1994.

**EFFECTIVE DATE:** The effective date of this regulation is December 18, 2001.

**FOR FURTHER INFORMATION CONTACT:** Luis E. Guzman, Counsel, telephone (202) 414-3832; David A. Felt, Associate General Counsel, telephone (202) 414-3750 (not toll free numbers), Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****I. Statutory Framework**

Title XIII of the Housing and Community Development Act of 1992, Public Law 102-550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (the "Act"),<sup>1</sup> established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. OFHEO is the financial safety and soundness regulator of the nation's two largest housing-related Government-sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, "the Charter Acts")<sup>2</sup> to, among other things, accommodate the restructured regulatory regime under the Act.

The National Flood Insurance Act of 1968 ("NFIA")<sup>3</sup> and the Flood Disaster Protection Act of 1973 ("FDPA"),<sup>4</sup> as amended by the National Flood Insurance Reform Act of 1994 ("NFIRA"),<sup>5</sup> together establish a

comprehensive National Flood Insurance Program ("NFIP") that includes various provisions designed to ensure that structures built in flood plains are covered by, at least, specified statutory minimum amounts of flood insurance. NFIRA, among other things, added specific requirements explicitly applicable to the Enterprises;<sup>6</sup> designated OFHEO as the Federal agency responsible for determining compliance of the Enterprises' flood insurance responsibilities; required OFHEO to report to Congress on the Enterprises' compliance in the agency's 1996, 1998 and 2000 annual reports;<sup>7</sup> and authorized OFHEO to issue any regulations necessary to carry out the applicable provisions of NFIRA.<sup>8</sup> NFIRA also explicitly authorized OFHEO to impose civil money penalties upon an Enterprise that fails to implement procedures reasonably designed to ensure that the loans it purchases comply with the mandatory flood insurance purchase requirements.<sup>9</sup>

More specifically, NFIRA requires that the Enterprises each implement procedures reasonably designed to ensure that any mortgage loan that is purchased and is secured by property located in a designated flood hazard area is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of (1) the outstanding principal balance of the loan or (2) the maximum limit of coverage made available for that type of property under the NFIP. OFHEO is authorized under NFIRA to levy a civil money penalty for each violation, not to exceed an aggregate maximum amount per year,<sup>10</sup> against an Enterprise that it finds to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to NFIRA.<sup>11</sup>

OFHEO published a notice of proposed rulemaking (66 FR 47563,

September 12, 2001) for public comment relating to its flood insurance oversight responsibilities. Comments on the proposed regulation were received only from the two Enterprises. Those comments were carefully considered in developing this final regulation. A discussion of those comments and OFHEO's response to them follows.

**II. Background**

The Enterprises have a key role in the implementation of the National Flood Insurance Program, particularly with regard to lenders that are not subject to direct supervision by a Federal regulatory agency. The Enterprises use their seller/servicer guidelines and other quality control review procedures to ensure that lenders with whom they contract comply with the applicable flood insurance laws. The Enterprises are required to establish procedures designed to prevent their purchase of loans that do not comply with these laws. NFIRA tasks OFHEO with reviewing the adequacy of such procedures as well as the Enterprises' compliance with them.

A primary purpose of the final regulation is to reiterate the relevant statutory provisions specifically applicable to the Enterprises and to OFHEO and to codify them in OFHEO's regulations. The final regulation is intended to provide guidance as to the procedures to be applied if an enforcement action were to be required, to add statutory civil money penalty amounts for infractions of the flood insurance requirements to the schedule of penalties in OFHEO's regulations and to adjust such penalty amounts as contemplated by law for inflation.

**The Inflation Adjustment Act**

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Inflation Adjustment Act),<sup>12</sup> requires Federal agencies with the authority to issue civil money penalties, to adopt regulations to adjust each civil money penalty authorized by law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of civil money penalties and promote compliance with the law. The Inflation Adjustment Act requires agencies to make an initial adjustment of their civil money penalties upon the statute's enactment, and to make additional adjustments on an ongoing basis, at least once every four years following the initial adjustment.

<sup>1</sup> 12 U.S.C. 4501 *et seq.*

<sup>2</sup> Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459).

<sup>3</sup> 42 U.S.C. 4001 *et seq.* and other scattered sections of 42 U.S.C.

<sup>4</sup> 42 U.S.C. 4002 *et seq.* and other scattered sections of 42 U.S.C.

<sup>5</sup> Pub. L. 103-325 (Sept. 23, 1994) (codified, as amended, at 42 U.S.C. 4001-4129).

<sup>6</sup> 42 U.S.C. 4012a(b)(3).

<sup>7</sup> 12 U.S.C. 4521(a)(4).

<sup>8</sup> 42 U.S.C. 4001 note.

<sup>9</sup> 42 U.S.C. 4012a(f)(3).

<sup>10</sup> Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996, adjustments have been made to the civil money penalty amounts. The Inflation Adjustment Act's rounding rules require that each increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

<sup>11</sup> 42 U.S.C. 4012a(f)(3), (5).

<sup>12</sup> 28 U.S.C. 2461 note.

Under the Inflation Adjustment Act, the inflation adjustment for each applicable civil money penalty is determined by increasing the maximum civil money penalty amount by a cost-of-living adjustment. As is described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment is to reflect the percentage increase in the Consumer Price Index since the civil money penalties were last adjusted or established.

NFIRA sets forth the procedures under which the Director of OFHEO could impose civil money penalties against an Enterprise and the amounts of these civil money penalties. In this rulemaking, the amounts of these civil money penalties are being adjusted in accordance with the requirements of the Inflation Adjustment Act. The increases in maximum civil money penalty amounts contained in this final rule do not mandate the amount of any civil money penalty that OFHEO may seek for a particular violation; OFHEO would determine each civil money penalty on a case-by-case basis in light of the circumstances of the case.

The Inflation Adjustment Act directs Federal agencies to calculate each civil money penalty adjustment as the percentage by which the CPI-U for June of the calendar year preceding the adjustment exceeds the CPI-U for June of the calendar year in which the amount of such civil money penalty was last set or adjusted pursuant to law. OFHEO has not previously adjusted these CMP amounts, so the base period is 1995, the year the statutory requirements became applicable to the Enterprises. Because OFHEO is making these adjustments in calendar year 2001, and the statutory requirements became applicable to the Enterprises in 1995, the inflation adjustment amount for each civil money penalty was calculated by comparing the CPI-U for June 1995 (152.5) with the CPI-U for June 2000 (172.4), resulting in an inflation adjustment of 13.05 percent. For each civil money penalty, the product of this inflation adjustment and the previous maximum penalty amount was then rounded in accordance with the specific requirements of the Inflation Adjustment Act,<sup>13</sup> then added to the

previous maximum penalty amount to determine the new adjusted maximum penalty amount. However, the Inflation Adjustment Act further specifies that the first adjustment of any civil money penalty pursuant to such Act may not exceed ten percent of the penalty. Accordingly, the original civil money penalty maximum of \$350 under NFIRA is increased to \$385 for each violation and the civil money penalty maximum of \$100,000 is increased to \$110,000 for the total assessed penalties against any Enterprise during any calendar year.

### Section-By-Section Analysis

#### Section 1773.1 Authority and Scope

Section 1773.1 sets forth the authority upon which this final regulation is based, namely the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Reform Act of 1994 requires OFHEO to examine the Enterprises to ascertain their compliance with these statutes and to report to Congress on their compliance, and provides OFHEO with the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is authorized to impose civil money penalties on an Enterprise for violation of procedures established pursuant to the National Flood Insurance Act of 1968, as amended, or rules or regulations adopted pursuant thereto.<sup>14</sup>

#### Section 1773.2 Requirements

Section 1773.2(a) sets forth the requirement that each Enterprise is to implement procedures reasonably designed to ensure that the properties securing particular loans described in paragraph (a) are properly insured in accordance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. This requirement applies to any loan purchased by an Enterprise that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Program. As explained in this section, the Enterprise is required to ensure that a building or

mobile home, and any personal property securing such loan are covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Program.

Section 1773.2(b) sets forth that the procedures in section 1773.2(a) need apply only to loans made, increased, extended, or renewed after September 22, 1995. It further provides that paragraph (a) does not apply to any loan having an original outstanding principal balance of \$5,000 or less and a repayment term of one year or less.

#### Section 1773.3 Civil Money Penalties

Section 1773.3 sets forth procedures under this final section under which the Director of OFHEO may impose civil money penalties against an Enterprise. Section 1773.3(a) sets forth that the Director of OFHEO may assess a civil money penalty against an Enterprise determined by the Director to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to § 1773.2.

Section 1773.3(b) sets forth notice and hearing requirements prior to the imposition of civil money penalties under this section. A civil money penalty may be issued only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

Section 1773.3(c) sets forth the maximum amount of civil money penalties that may be imposed on an Enterprise under this section. A civil money penalty under this section may not exceed the adjusted statutory amount of \$385 for each violation and the total amount of penalties assessed under this section against an Enterprise during any calendar year may not exceed the adjusted statutory cap of \$110,000 for such total penalties.

Section 1773.3(d) sets forth procedures for the deposit of civil money penalties. Any civil money penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

Section 1773.3(e) provides that any civil money penalty under this section shall be in addition to any civil remedy or criminal penalty otherwise available.

Section 1773.3(f) provides that no penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized.

<sup>13</sup> The statute's rounding rules require that each increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

<sup>14</sup> 42 U.S.C. 4012a(f)(3).

### III. Comments on the Proposed Flood Insurance Regulation

#### *Enterprise Compliance*

Fannie Mae's first comment concerned proposed new 12 CFR 1773.2(a), which sets forth the requirement that each Enterprise is to implement procedures reasonably designed to ensure that the properties securing particular loans described in paragraph (a) are properly insured in accordance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. Both Enterprises assert that they have implemented procedures consistent with these statutes and have also consistently complied with all statutory requirements for flood insurance. Fannie Mae noted that neither the proposed regulation nor the preamble of the proposal suggest that the proposal, should it be adopted, is intended to require the Enterprises to readdress or revise the procedures they already have developed and implemented that comply with the relevant statutes. Fannie Mae suggested that OFHEO confirm this interpretation in connection with final rulemaking so as to avoid any confusion on this point.

It would not be germane, however, to the purposes of a rulemaking to issue a pronouncement that an Enterprises has fully developed and implemented adequate procedures that comply with their statutory responsibilities. The Enterprises' obligation to institute statutorily mandated procedures is subject to ongoing oversight by OFHEO as part of its routine examination process. This rulemaking is not intended to imply any deficiency in compliance or inadequacy of existing policies or practices of the Enterprises under the law.

#### *Civil Money Penalties (§ 1773.3(a)), and Other Available Sanctions*

Freddie Mac asserted that the general grant of authority to promulgate necessary regulations (granted to various agencies by 42 U.S.C. 4001 note) does not override the National Flood Insurance Reform Act's implicit limitation on OFHEO's authority to impose penalties. In explanation, Freddie Mac asserts that OFHEO's explicit statutory authority to assess civil money penalties relating to flood insurance is limited solely to assessing penalties for patterns or practices of purchasing loans in violation of an Enterprise's procedures established pursuant to the National Flood Insurance Reform Act. Freddie Mac

asserts, therefore, that OFHEO's authority to assess penalties does not extend to other violations of the proposed flood insurance regulation or the law. According to Freddie Mac, the proposed flood insurance regulation exceeds statutory limits to the extent that its language could be read to provide for regulatory action against other statutory or regulatory violations, or would permit regulatory sanctions other than civil money penalties.

Fannie Mae expressed similar concerns that the language in proposed new 12 CFR 1773.3(a) is overbroad in suggesting that OFHEO may assess civil money penalties against an Enterprise that engages in a pattern or practice of purchasing loans in violation of procedures established pursuant to the National Flood Insurance Act. Fannie Mae urges OFHEO to substitute the reference to the National Flood Insurance Act for a reference to 42 U.S.C. 4012a(b)(3), inasmuch as the latter is assertedly the specific statutory provision to which OFHEO's civil money penalty authority in 42 U.S.C. 4012a(f)(3) relates.

OFHEO disagrees. The regulatory scheme established under NFIA under which OFHEO is charged to ensure compliance by the Enterprises cannot be reasonably read to allow unlawful conduct to go without sanction or remedy. OFHEO is broadly empowered under its enabling law to ensure the safe and sound operations of the Enterprises, including authority to oversee compliance by the Enterprises with applicable laws. The extraordinary civil money penalty authority granted under NFIA does not explicitly limit or displace the general powers of OFHEO to enforce applicable laws using its general enforcement powers under the 1992 Act.

#### *Authority and Scope (§ 1773.1(a))*

Fannie Mae's third comment notes that proposed new 12 CFR 1773.1(a) states that the National Flood Insurance Reform Act of 1994 designates OFHEO as the federal agency responsible for determining the Enterprises' compliance with the National Flood Insurance Reform Act of 1994 and the National Flood Insurance Act of 1968. Fannie Mae asserts that the asserted breadth of the proposed rule is overly broad because the only compliance role Congress explicitly assigned to OFHEO with regard to those Acts is confined to 42 U.S.C. 4012a. Fannie Mae therefore requests that OFHEO redraft this part of the proposed new rule to more narrowly reference only 42 U.S.C. 4012a.

Freddie Mac also argues that the law narrowly charges OFHEO with

enforcing the requirements of the National Flood Insurance Reform Act and empowers OFHEO with the authority to assessing civil money penalties. Freddie Mac asserts that to the extent proposed new 12 CFR 1773.1(a) can be read more broadly to encompass more than what the statute contemplated it is invalid. That is, Freddie Mac asserts that the National Flood Insurance Reform Act establishes the only enforcement sanction applicable to the Enterprises to be civil money penalty assessments, and no other administrative action or sanction is available to OFHEO.

Both commenters recommended that OFHEO amend proposed new 12 CFR 1773.1(a) to more narrowly recite that OFHEO is charged solely with enforcing the requirements of 42 U.S.C. 4012a(b)(3) through the assessment of civil money penalties.

Similarly, Fannie Mae asserts that to the extent proposed new 12 CFR 1773.1(a) contemplates that OFHEO may enforce the requirements of the National Flood Insurance with respect to the Enterprises that language is overly broad inasmuch as OFHEO has no statutory basis for instituting an enforcement action against an Enterprise under the National Flood Insurance Reform Act beyond that explicitly set forth in 42 U.S.C. 4012a. Fannie Mae further asserts that OFHEO's organic enforcement authority, found at 12 U.S.C. 4615 et seq., includes no explicit language relating to violations of the National Flood Insurance Reform Act.

OFHEO disagrees. The Enterprises proposal to narrowly confine OFHEO's role under the National Flood Insurance Act would ignore OFHEO's pervasive authority under the 1992 Safety and Soundness Act to use its full array of preventative and remedial tools to ensure the safety and soundness of the Enterprises, including compliance with applicable federal laws and regulations. It is implausible that Congress would suggest a scheme that would allow violative conduct, constituting unsafe and unsound practice, to go without sanction or remedy.

#### **Amount of Flood Insurance Coverage (§ 1773.2)**

Freddie Mac's comment notes that, with respect to the amount of required flood insurance, the proposed regulation reiterates the statutory requirement that the amount of flood insurance be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the NFIP.

Freddie Mac indicated that in implementing the law's requirements under NFIRA it requires flood insurance coverage levels at or above the statutory minimums. That is, Freddie Mac, requires seller/servicers to ensure that borrowers maintain insurance "at least equal to the higher" of: (a) 80% of the replacement cost of the insurable improvements, or (b) the lower of the outstanding loan balance or the full replacement cost of the improvements (provided that the insurance never needs to exceed the maximum amount available under the NFIP). The Enterprise asserts that it requires such higher coverage because borrowers are not fully protected against a partial loss under a NFIP flood insurance policy if the policy covers less than 80% of the replacement cost of the improvements. Freddie Mac asserts that the higher required coverage serves the best interests of Freddie Mac, the borrower and the public purpose of the NFIP.

In order to avoid any doubt as to its authority to require such a higher coverage amount, Freddie Mac recommends that OFHEO add a provision to proposed section 1773.2(a) explicitly stating that nothing in the regulation precludes an Enterprise from requiring a higher level of coverage than is required by the regulation. Freddie Mac asserts that such a provision would assist the Enterprises in the cases in which lenders or borrowers assert that a higher level of coverage may not be allowed under law.

Nothing in this regulation precludes the asserted authority of the Enterprises to require additional flood insurance coverage. This issue of authority encompasses questions of law and policy beyond the immediate parameters of the published proposal and request for comment. OFHEO will, however, refrain at this time from addressing the issue further absent a fuller exploration of the matter. The Enterprise or any other involved parties may nevertheless seek to otherwise clarify the issue through other appropriate means.

### Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This final rule is not deemed to be a significant rule under Executive Order 12866 because it will not result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on

competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final rule has not been submitted to the Office of Management and Budget for review.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this final rule under the Regulatory Flexibility Act. The General Counsel certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

### Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Unfunded Mandates Reform Act of 1995

This final rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate 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.

### List of Subjects in 12 CFR Part 1773

Administrative practice and procedure, Flood insurance, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, OFHEO adds 12 CFR part 1773 to subchapter C of Chapter XVII to read as follows:

## PART 1773—FLOOD INSURANCE

Sec.

1773.1 Authority and scope.

1773.2 Requirements.

1773.3 Civil money penalties.

**Authority:** 12 U.S.C. 4521(a)(4), 4513, 4536(a); 42 U.S.C. 4001 note; 28 U.S.C. 2461 note; 42 U.S.C. 4012a(f)(3), (4), (8), (9), (10).

### § 1773.1 Authority and scope.

(a) *Authority.* The National Flood Insurance Act of 1968, title XII of Public Law 90–448, Aug. 1, 1968, 42 U.S.C. 4002 *et seq.*, and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4002 *et seq.*, as amended by the National Flood Insurance Reform Act of 1994 ("NFIRA"), Public Law 103–325, Sept. 23, 1994, 42 U.S.C. 4001–4129, together create the National Flood Insurance Program ("NFIP") which established specific requirements applicable to the Enterprises. NFIRA designates OFHEO as the Federal agency responsible for determining compliance by the Enterprises with these statutes and with reporting to Congress biannually for six years on the Enterprises' compliance. OFHEO has the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is also charged with enforcing the requirements of NFIRA as to the Enterprises and provides for the assessment of civil money penalties for violations of the procedures established by the Enterprises pursuant to the law or implementing regulations.

(b) *Scope.* This part sets forth the responsibilities of the Enterprises under NFIRA and the procedures to be used in any proceeding to assess civil money penalties against an Enterprise under NFIRA.

### § 1773.2 Requirements.

(a) *Procedures.* Each Enterprise shall implement procedures reasonably designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the NFIP, and purchased by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the NFIP.

(b) *Applicability.* (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, extended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original outstanding balance of \$5,000 or less and a repayment term of one year or less.

#### **§ 1773.3 Civil money penalties.**

(a) *In general.* If an Enterprise is determined by the Director of OFHEO to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to the NFIA, as amended, or to § 1773.2, the Director may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) *Notice and hearing.* A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

(c) *Amount.* A civil money penalty under this section may not exceed \$385 for each violation. The total amount of penalties assessed under this section against an Enterprise during any calendar year may not exceed \$110,000.

(d) *Deposit of penalties.* Any penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

(e) *Additional penalties.* Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy or criminal penalty otherwise available.

(f) *Statute of limitations.* No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.

Dated: December 13, 2001.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 01-31166 Filed 12-17-01; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 2001-SW-18-AD; Amendment 39-12561; AD 2001-25-08]

RIN 2120-AA64

#### **Airworthiness Directives; Sikorsky Model S-70A and S-70C Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Sikorsky Model S-70A and S-70C helicopters. This action requires certain inspections of each main landing gear drag beam (beam) for a crack and removing any cracked beam before further flight. This action also requires reducing the torque of the jackpad mounting bolt retention nut (nut) of each beam. This amendment is prompted by failure of a beam due to stress corrosion resulting from sustained tensile stress due partly to excessive torque of the nut. The actions specified in this AD are intended to prevent excessive torque of the nut, failure of a beam, and subsequent loss of control of the helicopter during takeoff or landing.

**DATES:** Effective January 2, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 19, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-18-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7155, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new AD for Sikorsky Model S-70A and S-70C helicopters. This action requires certain inspections of each beam for a crack and removing any cracked beam before further flight. This AD also requires reducing the torque of the nut on each beam. This amendment is prompted by the failure of a beam due to stress corrosion resulting from sustained

tensile stress due partly to excessive torque on the nut.

The FAA has reviewed Sikorsky Alert Service Bulletin No. 70-03-2, dated July 26, 1999 (ASB). The ASB describes procedures for reducing the torque on each nut to 45-50 ft-lbs to reduce stress to the beam.

We have identified an unsafe condition that is likely to exist or develop on other Sikorsky Model S-70A and S-70C helicopters of the same type designs. Therefore, this AD is being issued to prevent excessive torque on a nut, failure of a beam, and subsequent loss of control of the helicopter during takeoff or landing. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, within 30 hours time-in-service, the following actions are required for the beam, and this AD must be issued immediately:

- Visually inspect each beam for a crack.
- If a crack is found, remove the beam before further flight.
- If a crack is suspected, dye-penetrant inspect the beam, and if a crack is found, remove the beam before further flight.
- If no crack is found, reduce the torque on the nut.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 3 helicopters on the U.S. register will be affected by this AD, that it will take approximately 2 work hours to inspect the beam and to reduce the torque on each nut, and 2 work hours to replace a cracked beam. The average labor rate is \$60 per work hour. Required parts will cost approximately \$18,600 per beam. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$56,520, assuming one beam has to be replaced on each affected helicopter.

#### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified