

requires listing or certification by a nationally recognized safety testing laboratory, after March 9, 2017, shall have an average full load efficiency of not less than the following:

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Issued in Washington, DC, on March 29, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2010-7642 Filed 4-2-10; 8:45 am]

**BILLING CODE 6450-01-P**

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 918

### FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1261

**RIN 2590-AA03, 2590-AA31 and 2590-AA34**

### Federal Home Loan Bank Directors' Eligibility, Elections, Compensation and Expenses

**AGENCY:** Federal Housing Finance Agency, Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** In this rulemaking, the Federal Housing Finance Agency (FHFA) is adopting a final rule that implements two separate proposed rules, which relate to Federal Home Loan Bank (Bank) director elections and director compensation, respectively. As to director elections, FHFA is amending its regulations relating to the process by which successor Bank directors are chosen after a directorship is redesignated to a new state prior to the end of the term as a result of the annual designation of Bank directorships. Under the final rule, the redesignation causes the original directorship to terminate and creates a new directorship that will be filled by an election of the members.

As to director compensation, FHFA is implementing section 1202 of the Housing and Economic Recovery Act of 2008 (HERA), which amended section 7(i) of the Federal Home Loan Bank Act (Bank Act) by repealing the statutory caps on the annual compensation that can be paid to Bank directors. This aspect of the final rule allows each Bank to pay its directors reasonable compensation and expenses, subject to the authority of the FHFA Director to object to, and to prohibit prospectively,

compensation and/or expenses that the Director determines are not reasonable.

**DATES:** This rule is effective May 5, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Daniel Coates, Associate Director, Division of FHLBank Regulation, 202-408-2959, [daniel.coates@fhfa.gov](mailto:daniel.coates@fhfa.gov) or Neil R. Crowley, Deputy General Counsel, 202-343-1316, [neil.crowley@fhfa.gov](mailto:neil.crowley@fhfa.gov), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. In General

On July 30, 2008, HERA, Public Law 110-289, 122 Stat. 2654 (2008), became law and created FHFA as an independent agency of the Federal government. Among other things, HERA transferred to FHFA the supervisory and oversight responsibilities over the Banks that formerly had been vested in the now abolished Federal Housing Finance Board (Finance Board). The Banks continue to operate under regulations promulgated by the Finance Board until such time as the existing regulations are supplanted by regulations promulgated by FHFA.

Section 1202 of HERA amended section 7 of the Bank Act, which governs the eligibility, election, compensation and expenses of Bank directors. *See* 12 U.S.C. 1427. FHFA has implemented section 7 in part 1261 of its rules. 12 CFR part 1261.

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability, whenever promulgating regulations that affect the Banks. The Director may also consider any other differences that are deemed appropriate. In preparing this final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that the rule is appropriate, particularly because this final rule applies only to the Banks.

##### II. Bank Director Eligibility and Elections

In December 2009, FHFA published a proposed rule that would deem terminated a directorship that is redesignated to a new state prior to the

end of its term as a result of the annual designation of Bank directorships, with a new directorship created for the new state. *See* 74 FR 62708 (Dec. 1, 2009). The new directorship would be filled by an election of the members. The proposal constituted a change from the current Finance Board rule, which deems the redesignation to create a vacancy on the board. Under the Bank Act, vacancies on the board are filled by the remaining directors. *See* 12 U.S.C. 1427(f)(2); 12 CFR 1261.3 and 1261.4.

FHFA received one comment on the proposed rule, which was from a Bank and related to an aspect of the term limit provisions. Section 1261.4(d)(2) implements the term limit provision of section 7(d) of the Bank Act. *See* 12 CFR 1261.4(d)(2); 12 U.S.C. 1427(d). The rule provides that a term adjusted after July 30, 2008 (the effective date of HERA) to a period of fewer than four years is not considered a full term for purposes of calculating term limits. *See* 12 CFR 1261.4(d)(2)(i). The Bank suggested that FHFA use the term "adjusted" in new paragraph 1261.3(e) to make clear that a newly created directorship with a term of less than four years as a result of a redesignation of directorships would not be a full term for purposes of the statutory term limit. FHFA agrees that this will clarify application of the rule and has made the change in the final rule. FHFA is adopting the remainder of the changes as proposed.

FHFA also is making a technical change to part 1261. It is creating a new subpart A, which contains definitions common to all subparts. These definitions include the terms Act, Bank, FHFA, and Director. These terms no longer will appear in other subparts of part 1261. The succeeding subparts will be redesignated subparts B (eligibility and elections), C (compensation and expenses), and D (reserved). In the newly redesignated subpart B, FHFA is renumbering §§ 1261.1 through 1261.7 as §§ 1261.2 through 1261.8, respectively. It is removing § 1261.8, which was reserved. FHFA is correcting the cross-references within subpart B to take into account the new numbering.

##### III. Bank Director Compensation and Expenses

In October 2009, FHFA published a proposed rule to address changes HERA section 1202 made to section 7(i) of the Bank Act. *See* 74 FR 54758 (Oct. 23, 2009). Among other things, section 1202 repealed the statutory caps on the annual compensation a Bank can pay to its directors, the effect of which was to authorize the Banks to pay reasonable compensation and expenses to their directors subject to FHFA approval. *See*

12 U.S.C. 1427(i). The proposed rule would implement the provisions of section 7(i) of the Bank Act in a manner that is consistent with the other authorities that the FHFA Director has over the compensation practices of the other regulated entities, *i.e.*, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

FHFA received six public comments on the proposed rule, three from Banks, one from the Council of Banks, which is a trade group representing all twelve Banks, one from a trade association representing home builders, and one from a public interest group. All commenters generally supported the rule and the goal of increased transparency.

For aspects of the proposed rule with respect to which FHFA received no comments, FHFA is adopting those provisions as proposed, and they generally are not addressed in this preamble. One comment concerned provisions of part 1261 that were not the focus of this rulemaking, such as board diversity and differences between elected and independent Bank directors. Because those matters are beyond the scope of the proposed rules, FHFA is not addressing them in either the regulation or this supplementary information. FHFA discusses issues raised by the other comments in the analysis of the appropriate section of the final rule below.

#### *A. Definitions—Section 1261.20*

FHFA received no comments on the definition section. However, because the term “expense” is used throughout the subpart and because reimbursable expenses are described as part of proposed § 1261.24, FHFA has decided to relocate the substance of the description of reimbursable expenses into a new definition. The final rule adds the term “expenses” to the definition section without making any substantive changes from proposed § 1261.24, which is deleted from the final rule. FHFA received no comments on § 1261.24.

#### *B. General—Section 1261.21*

FHFA has separated proposed § 1261.21(b) into two parts—the first concerns annual reporting requirements relating to anticipated compensation for the coming year and the second concerns annual reporting requirements relating to compensation and expenses for the prior year. FHFA received comments on two aspects of the reporting requirements. The first comment concerned the report on compensation a Bank expects to pay in

the upcoming year. A Bank suggested that FHFA change the due date for the report from December 1 to December 31 because some Banks address compensation issues at the last meeting of the year, which may occur later in December. FHFA has made this amendment in § 1261.21(b)(1).

The second group of comments concerned the reporting requirements for compensation and expenses that a Bank has paid in the prior year. In response to these comments, FHFA is making certain revisions to § 1261.21(b) and is deleting proposed § 1261.25, which would have required the Banks to disclose certain information about compensation practices in their annual reports to members. Finance Board regulations long had required the annual reports the Banks provide to their members to include certain information about the compensation and expenses paid to Bank directors. Section 1261.25 of the proposed rule would have expanded the elements a Bank had to include in the annual reports to provide members with additional information about director compensation, expenses, and meeting attendance. That proposal prompted comments questioning whether it effectively would require the Banks to include items in their filings with the U.S. Securities and Exchange Commission (SEC) that are not required by the federal securities laws. Since the Banks became registered with the SEC, they generally have ceased providing their members an annual report separate from the Form 10-K that they file with SEC, which includes information about director and officer compensation. FHFA agrees that the expanded provisions of § 1261.25 of the proposed rule could have the unintended consequence of requiring a Bank to include in its Form 10-K information that differs from what otherwise is required for SEC registrants, and has determined that the appropriate course is to delete from the final rule any requirements relating to the content of the Banks’ annual reports.

Because FHFA needs information about director compensation and expenses for its own supervisory and regulatory purposes, *i.e.*, to assess the reasonableness of the compensation and to compile compensation information for its HERA-mandated annual report to Congress, it has decided to revise the final rule to require the Banks to report the information they would have provided in the annual reports to members to FHFA. Thus, § 1261.21(b)(2) of the final rule requires the Banks to report by the tenth day of the calendar year, seven categories of information

relating to director compensation, expenses, and meeting attendance for the immediately preceding calendar year. Those categories relate to compensation and expenses paid to each director, compensation and expenses for all directors, group expenses, as well as the number of board and committee meetings held during the year and each director’s attendance at those meetings. FHFA intends for these new reporting requirements to cover compensation, expenses, and meetings that occur in calendar year 2010.

FHFA received several comments about group expenses, such as dinners in conjunction with board or committee meetings that a Bank does not reimburse back to individual directors. Commenters suggested three different methods for dealing with group expenses: (1) Do not report it as an expense; (2) treat it as an aggregated expense that FHFA will review during exam process; or (3) aggregate it, with the average cost allocated back to each director. FHFA believes that these group expenses are “expenses” relating to the directors’ attendance at board meetings, but agrees that allocating them among the attending directors might be burdensome. Therefore, FHFA has decided that the Banks need only provide an aggregate sum of group expenses as part of the report on prior year payments.

Several commenters asked FHFA to clarify that a director can attend a board or committee meeting either in person or through electronic means, such as video or teleconferencing. FHFA encourages in-person attendance by all directors, but will deem an individual director’s participation in the entire meeting via video or teleconferencing as attendance solely for purposes of reporting that director’s attendance under § 1261.21(b)(2)(vii). The board of directors is still required by § 1261.24(a) to hold a minimum of six in-person meetings each year, which requirement is separate from the reporting requirements of § 1261.21.

#### *C. Director Disapproval—Section 1261.23*

FHFA received several comments on proposed § 1261.23, which addresses the FHFA Director’s authority to disapprove compensation arrangements that do not conform to the reasonableness standard imposed by section 7(i) of the Bank Act. One commenter asked FHFA to clarify that the prospective disapproval determination or order does not apply to earned but unpaid compensation and expenses incurred but not yet

reimbursed. FHFA has done so in the final rule.

Two commenters suggested that the final rule establish a formal process for any determinations of unreasonable director compensation and that the Director provide a written factual analysis to a Bank along with any order directing a Bank to cease further payments at that level. FHFA does not see the need to establish a formal process for reviewing the reasonableness of a Bank's compensation practices, since there are in place already certain requirements to ensure the Agency makes decisions in a responsible manner. Under the Bank Act and principles of administrative law, FHFA must act reasonably in all cases and must have a reasonable factual basis for any regulatory or supervisory actions it takes. In light of these statutory requirements, FHFA believes that it is not necessary to create an additional formal process or to treat decisions made on director compensation any differently from the many other supervisory determinations FHFA makes. While FHFA may not issue a formal written analysis to a Bank whenever the Director deems its compensation arrangements to be unreasonable, it will endeavor to ensure that it provides an opportunity for the Bank to provide its views. Further, the Agency will provide guidance and will advise generally on the aspects of the compensation practices deemed objectionable and suggest improvements. The guidance likely will be in the form of a dialogue with the Bank, much like FHFA staff already engages in with respect to other matters of supervisory concern.

#### D. Board Meetings—Section 1261.24

In § 1261.24 of the final rule, FHFA has combined two separate provisions

of the proposed rule relating to board and committee meetings. Proposed § 1261.26, which concerned the number of board and committee meetings, now appears in § 1261.24(a) without substantive change. Proposed § 1261.27, which concerned the site of board and committee meetings, now appears in 1261.24(b) without substantive change. FHFA did not receive any comments on these sections.

#### IV. Paperwork Reduction Act

The 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.*).

#### V. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of “small entities” for purposes of the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 12 CFR Parts 918 and 1261

Banks, Banking, Community development, Conflicts of interest, Credit, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Housing, Reporting and recordkeeping requirements, Wages.

■ For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511 and 4526, FHFA hereby amends chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

#### CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

##### PART 918—[REMOVED]

- 1. Remove 12 CFR part 918.

#### CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

##### PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

- 2. The authority citation for part 1261 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432, 4511, and 4526.

- 3. Redesignate subparts A, B, and C as subparts B, C, and D, respectively.
- 4. Redesignate §§ 1261.1 through 1261.7 as §§ 1261.2 through 1261.8, respectively.
- 5. Add a new Subpart A to read as follows:

##### Subpart A—Definitions

###### § 1261.1 Definitions.

As used in this part:

*Bank* written in title case means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Director* means the Director of the Federal Housing Finance Agency.

*FHFA* means Federal Housing Finance Agency.

##### Subpart B—[Amended]

- 6. Amend newly redesignated subpart B as follows:
- a. Revise all references to “the Act” to read “the Bank Act”; and
- b. Amend references as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
Newly redesignated § 1261.2, definition of the term “Voting State”.	12 CFR part 925 .....	12 CFR part 1263.
Newly redesignated § 1261.4(a)(2) .....	12 CFR 925.20 and 925.22, or any successor provisions.	§§ 1263.20 and 1263.22 of this chapter.
Newly redesignated § 1261.4(b) .....	12 CFR 925.20 and 925.22, or any successor provisions.	§§ 1263.20 and 1263.22 of this chapter.
Newly redesignated § 1261.5(b) .....	§ 1261.3(c) .....	§ 1261.4(c).
Newly redesignated § 1261.5(e)(1) .....	§ 1261.3(c) .....	§ 1261.4(c).
Newly redesignated § 1261.6(b) .....	12 CFR 925.20 and 925.22, or any successor provisions.	§§ 1263.20 and 1263.22 of this chapter.
Newly redesignated § 1261.7(a)(4) .....	§ 1261.5 .....	§ 1261.6.
Newly redesignated § 1261.8(a) .....	§ 1261.6(f) .....	§ 1261.7(f).
Newly redesignated § 1261.8(a)(iii) .....	§ 1261.6(e) .....	§ 1261.7(e).
Newly redesignated § 1261.8(b) .....	§ 1261.6(a) .....	§ 1261.7(a).
Newly redesignated § 1261.8(b) .....	§ 1261.6(a)(3) .....	§ 1261.7(a)(3).
Newly redesignated § 1261.8(d), introductory text.	§ 1261.5 .....	§ 1261.6.
Newly redesignated § 1261.8(g)(2) .....	§ 1261.6(e) .....	§ 1261.7(e).
§ 1261.9(a) .....	§ 1261.6(a) .....	§ 1261.7(a).

Amend:	By removing the reference to:	And adding in its place:
§ 1261.14(b) .....	paragraphs (c) and (d) of § 1261.6 .....	§ 1261.7(c) and (d).

■ 7. In newly redesignated § 1261.2 revise the introductory text to read as set forth below, and remove the definitions of the terms *Act*, *Bank*, *Director* and *FHFA*.

**§ 1261.2 Definitions.**

As used in this Subpart B:

\* \* \* \* \*

■ 8. Amend newly redesignated § 1261.4 by revising paragraph (d) and adding new paragraph (e) to read as follows:

**§ 1261.4 Designation of member directorships.**

\* \* \* \* \*

(d) *Notification*. On or before June 1 of each year, FHFA will notify each Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting state in the Bank district.

(e) *Change of state*. If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different State, that directorship shall be deemed to terminate in the previous State as of December 31 of that year, and a new directorship to begin in the succeeding State as of January 1 of the next year. The new directorship shall be filled by vote of the members in the succeeding State and, in order to maintain the staggered terms of directorships, shall be adjusted to a term equal to the remaining term of the previous directorship if it had not been redesignated to another State.

■ 9. Amend newly redesignated § 1261.5 by revising paragraph (e) to read as follows:

**§ 1261.5 Director eligibility.**

\* \* \* \* \*

(e) *Loss of eligibility*. A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

**§ 1261.8 [Amended]**

■ 10. Amend newly redesignated § 1261.8 by adding “(1)” after the “.” at the end of the italicized heading of paragraph (a).

■ 11. Add subpart C to read as follows:

**Subpart C—Federal Home Loan Bank Directors’ Compensation and Expenses**

Sec.

1261.20 Definitions.

1261.21 General.

1261.22 Directors’ compensation policy.

1261.23 Director disapproval.

1261.24 Board meetings.

**Subpart C—Federal Home Loan Bank Directors’ Compensation and Expenses**

**§ 1261.20 Definitions.**

As used in this subpart C:

*Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with service as a director. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any director.

*Expenses* means necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of official duties as are payable to senior officers of the Bank under the Bank’s travel policy, except gift or entertainment expenses.

**§ 1261.21 General.**

(a) *Standard*. Each Bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, as determined by a resolution adopted by the board of directors of the Bank and subject to the provisions of this subpart.

(b) *Reporting*. (1) *Following calendar year*. By December 31 of each calendar year, each Bank shall report to the Director the compensation it anticipates paying to its directors for the following calendar year.

(2) *Preceding calendar year*. No later than the tenth business day of each calendar year, each Bank shall report to the Director the following information relating to director compensation, expenses and meeting attendance for the immediately preceding calendar year:

(i) The total compensation paid to each director;

(ii) The total expenses paid to each director;

(iii) The total compensation paid to all directors;

(iv) The total expenses paid to all directors;

(v) The total of all expenses incurred at group functions that are not reimbursed to individual directors, such

as the cost of group meals in connection with board and committee meetings;

(vi) The total number of meetings held by the board and its designated committees; and

(vii) The number of board and designated committee meetings each director attended in-person or through electronic means such as video or teleconferencing.

**§ 1261.22 Directors’ compensation policy.**

(a) *General*. Each Bank’s board of directors annually shall adopt a written compensation policy to provide for the payment of reasonable compensation and expenses to the directors for the time required of them in performing their duties as directors. Payments under the directors’ compensation policy may be based on any factors that the board of directors determines reasonably to be appropriate, subject to the requirements in this subpart.

(b) *Minimum contents*. The compensation policy shall address the activities or functions for which director attendance or participation is necessary and which may be compensated, and shall explain and justify the methodology used to determine the amount of compensation to be paid to the Bank directors. The compensation policy shall require that any compensation paid to a director reflect the amount of time the director has spent on official Bank business, and shall require that compensation be reduced, as necessary to reflect lesser attendance or performance at board or committee meetings during a given year.

(c) *Prohibited payments*. A Bank shall not pay a director who regularly fails to attend board or committee meetings, and shall not pay fees to a director that do not reflect the director’s performance of official Bank business conducted prior to the payment of such fees.

(d) *Submission requirements*. No later than the tenth business day after adopting its annual policy for director compensation and expenses, and at least 30 days prior to disbursing the first payment to any director, each Bank shall submit to the Director a copy of the policy, along with all studies or other supporting materials upon which the board relied in determining the level of compensation and expenses to pay to its directors.

**§ 1261.23 Director disapproval.**

The Director may determine, based upon his or her review of a Bank’s

director compensation policy, methodology and/or other related materials, that the compensation and/or expenses to be paid to the directors are not reasonable. In such case, the Director may order the Bank to refrain from making any further payments under that compensation policy. Any such order shall apply prospectively only and will not affect either compensation or expenses that have been earned but not yet paid or reimbursed or payments that had been made prior to the date of the Director's determination and order.

#### **§ 1261.24 Board meetings.**

(a) *Number of meetings.* The board of directors of each Bank shall hold as many meetings each year as necessary and appropriate to carry out its fiduciary responsibilities with respect to the effective oversight of Bank management and such other duties and obligations as may be imposed by applicable laws, provided the board of directors of a Bank must hold a minimum of six in-person meetings in any year.

(b) *Site of meetings.* The bank usually should hold board of director and committee meetings within the district served by the Bank. The Bank shall not hold board of director or committee meetings in any location that is not within the United States, including its possessions and territories.

Dated: March 27, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010-7418 Filed 4-2-10; 8:45 am]

**BILLING CODE P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Parts 27, 29, 91, 121, 125, and 135**

[Docket No. FAA-2005-20245; Amendment No. 27-45, 29-52, 91-313, 121-349, 125-60 and 135-121]

**RIN 2120-AJ65**

#### **Extension of the Compliance Date for Cockpit Voice Recorder and Digital Flight Data Recorder Regulations**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** On March 7, 2008, the FAA published a final rule titled "Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations." The

rule required certain upgrades of cockpit voice recorder and digital flight data recorder equipment on certain aircraft beginning April 7, 2010. That compliance date is being changed for certain requirements on certain aircraft. **DATES:** These amendments are effective April 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule contact Timothy W. Shaver, Avionics Maintenance Branch, Flight Standards Service, AFS-360, Federal Aviation Administration, 950 L'Enfant Plaza, SW., Washington, DC 20024; telephone (202) 385-4292; facsimile (202) 385-4651; e-mail [tim.shaver@faa.gov](mailto:tim.shaver@faa.gov). For legal questions concerning this final rule contact Karen L. Petronis, Regulations Division, AGC-200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; facsimile (202) 267-7971; e-mail [karen.petronis@faa.gov](mailto:karen.petronis@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for This Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for aircraft movement and flightcrew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

##### **I. Background**

###### **A. History of the Regulatory Requirements**

In February 2005, the FAA issued a notice of proposed rulemaking proposing to amend the digital flight data recorder (DFDR) and cockpit voice recorder (CVR) regulations for much of the U.S. fleet of aircraft (70 FR 9752; February 28, 2005). Some of the changes proposed were based on recommendations from the National Transportation Safety Board (NTSB or Board) that were issued as a result of the Board's investigations of several aircraft

accidents and incidents. A full discussion of the NTSB's recommendations and the FAA's proposed changes can be found in the 2005 NPRM.

In March 2008, the FAA issued a final rule adopting many of those proposals (73 FR 12541; March 7, 2008). The requirements were adopted as aircraft certification or operating rules, some of which take effect on April 7, 2010, and include:

- The recording of datalink communications, when the communications equipment is installed on or after April 7, 2010;
- Wiring requirements related to single electrical failures and their effect on the DFDR and CVR systems;
- The addition of a 10-minute independent power source for the CVR;
- Requirements regarding the CVR location and housing;
- Requirements for the duration of DFDR recording;
- Requirements for the duration of CVR recording; and
- Increased sampling rates for certain DFDR parameters.

A detailed discussion of the individual requirements and where they appear in the regulations can be found in the preamble to the 2008 final rule, beginning at page 12556 (Section-By-Section Analysis). Some of the requirements were promulgated to be effective in two years, while others were required within four years of April 7, 2008.

Between May 1, 2009 and December 14, 2009, the FAA received seven petitions from aircraft manufacturers and two from industry associations requesting either that the effective dates in the regulations be changed or that other relief from several of the 2008 requirements be granted for aircraft manufactured on or after April 7, 2010.

In a notice of proposed rulemaking (NPRM) published on January 7, 2010 (75 FR 943), the FAA denied all of the petitions and instead proposed that some of the requirements for newly manufactured aircraft be extended from the April 7, 2010 compliance date. Specifically, the FAA proposed that:

1. For increased DFDR sampling rates, the compliance date for newly manufactured aircraft operated under part 121, 125, or 135 would be extended until December 6, 2010.
2. For the datalink recording requirements, the compliance date after which the installation of datalink communications must include recording equipment would be extended until December 6, 2010 for aircraft operating under part 121, 125, or 135.