

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-053-2]

#### Mexican Fruit Fly Regulations; Removal of Regulated Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by removing the quarantined portion of San Diego County, CA, from the list of areas regulated because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from San Diego County, CA, and that restrictions on the interstate movement of regulated articles from San Diego County, CA, are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. The interim rule was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

**EFFECTIVE DATE:** The interim rule was effective on July 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: mstefan@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective July 19, 1996, and published in the Federal Register on July 24, 1996 (61 FR 38353-

38354, Docket No. 96-053-1), we amended the Mexican fruit fly regulations in 7 CFR 301.64 by removing the quarantined portion of San Diego County, CA, from the list of areas regulated because of the Mexican fruit fly.

Comments on the interim rule were required to be received on or before September 23, 1996. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 61 FR 38353-38354 on July 24, 1996.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 5th day of November 1996.

A. Strating,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-28837 Filed 11-8-96; 8:45 am]

BILLING CODE 3410-34-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 308

#### Rules of Practice and Procedure; Civil Money Penalty Adjustments

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** As required by the Debt Collection Improvement Act of 1996

(DCIA), the Federal Deposit Insurance Corporation (FDIC) is adopting a final regulation that adjusts each civil money penalty (CMP) under its jurisdiction by the rate of inflation using the formula prescribed by the DCIA. That statute requires all federal agencies to adjust each CMP by the rate of inflation and adopt implementing regulations within 180 days after enactment of the DCIA, and at least once every four years thereafter. Any increase in a CMP shall apply only to violations that occur after the effective date of this regulation.

**EFFECTIVE DATE:** November 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Andrea Winkler, Counsel, (202) 736-0762, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The DCIA amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), to require the head of each Federal agency to enact regulations within 180 days of the enactment of the DCIA and at least once every four years thereafter, that adjust each CMP provided by law within the jurisdiction of the agency (with the exception of certain specifically listed statutes) by the inflation adjustment formula set forth in section 5(b) of the Inflation Adjustment Act. The Inflation Adjustment Act requires that each CMP amount be increased by the "cost of living" adjustment, which is defined as the percentage by which the Consumer Price Index (CPI) <sup>1</sup> for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any increase is to be rounded to the nearest multiple of \$10 in the case of penalties less than or equal to \$100; multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; multiple of \$10,000 in the

<sup>1</sup> The CPI is compiled by the Bureau of Statistics of the Department of Labor.

case of penalties greater than \$100,000 but less than or equal to \$200,000; and multiple of \$25,000 in the case of penalties greater than \$200,000. Under the DCIA, the first adjustment may not exceed ten percent of the current penalty amount. Any increase in penalty amounts under the DCIA shall apply only to violations which occur after the effective date of the increase.

To satisfy the requirements of the DCIA, the FDIC is amending those sections of part 308 of its regulations pertaining to its Rules of Practice and Procedure which address CMP's. The amount of each CMP which the FDIC has jurisdiction to impose has been increased according to the prescribed formula.

## II. Section-by-Section Summary

### *Authority Citation*

The authority citation for part 308 has been amended to include a reference to the statutes pursuant to which the FDIC assesses CMP's, to the Inflation Adjustment Act and to the DCIA.

### *Section 308.116(b)*

Section 308.116(b) pertains to the amount of any CMP that may be assessed for violations of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). This section has been amended by adding a new paragraph (4) entitled Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act. The amendment reflects the increased penalty amounts required by the DCIA for violations occurring after the effective date of this regulation. The amendment provides that Tier One penalties will increase from a maximum of \$5,000 for each day the violation continues to a maximum of \$5,500 for each day the violation continues; Tier Two penalties will increase from a maximum of 25,000 per day for each day the violation, practice or breach continues to a maximum of \$27,500 for each day the violation, practice or breach continues; and Tier Three penalties will increase, in the case of a person other than a depository institution, from a maximum of \$1,000,000 per day for each day the violation, practice or breach continues to a maximum of \$1,100,000 per day for each day the violation, practice or breach continues, or in the case of a depository institution, from an amount not to exceed the lesser of \$1,000,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues to an amount not to exceed the lesser of \$1,100,000 or one percent of the total

assets of such institution for each day the violation, practice or breach continues.

### *Section 308.132*

Section 308.132 pertains to the manner in which the FDIC assesses CMP's. Paragraph (c)(2) of that section pertains to the CMP's imposed pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) for the late filing of a bank's Reports of Condition and Income (Call Reports) or for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(ii) has been amended to reflect the increase in the Tier Two penalty amount from a maximum of \$20,000 per day for each day the failure to file a Call Report continues to a maximum of \$22,000 per day for each day the failure to file continues.

Paragraph (c)(2)(iii) pertains to penalties for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(iii)(B) of that section has been amended to reflect the increase in Tier Two penalty amounts from a maximum of \$20,000 per day for each day the information is not corrected to a maximum of \$22,000 per day for each day the information is not corrected. Paragraph (c)(2)(iii)(C) of that section reflects the increase in Tier Three penalties from an amount not to exceed the lesser of \$1,000,000 or one percent of the total assets of the institution for each day the information is not corrected to an amount not to exceed the lesser of \$1,100,000 or one percent of the total assets of such institution for each day the information is not corrected. No change has been made to Tier One penalty amounts by the DCIA.

A new paragraph (c)(3), entitled Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Act has been added to reflect the increase in CMP amounts for violations which occur after the effective date of this regulation, pursuant to the various statutes for which the FDIC has jurisdiction.

Paragraph (c)(3)(i) sets forth the increases for CMP's assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). A Tier One CMP which may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) will increase from an amount not to exceed \$5,000 for each day the violation continues to an amount not to exceed \$5,500 for each day during which the violation continues. A Tier Two CMP which may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) will increase from an

amount not to exceed \$25,000 for each day during which the violation, practice or breach continues to an amount not to exceed \$27,500 for each day during which the violation, practice or breach continues. A Tier Three CMP which may be assessed pursuant to section 8(i)(2)(C)(12 U.S.C. 1818(i)(2)(C)) will increase from an amount not to exceed, in the case of any person other than an insured depository institution \$1,000,000 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,000,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed, in the case of any person other than an insured depository institution \$1,100,000 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,100,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

Paragraph (c)(3)(i)(A) of § 308.132 lists a number of statutes which provide jurisdiction to the FDIC to assess CMP's under section 8(i)(2) of the FDIA for violation thereof, including, the Home Mortgage Disclosure Act (12 U.S.C. 2804 et seq. and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.), the Truth in Savings Act (12 U.S.C. 4301 et seq.), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) 12 CFR Part 3500), the Truth in Lending Act (15 U.S.C. 1601 et seq.), the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and the Fair Housing Act (42 U.S.C. 3601 et seq.). Increases in the amount of any CMP which the FDIC may assess for violations of those statutes are the same as the increases for section 8(i)(2) penalties.

Paragraph (c)(3)(ii) of § 308.132 reflects the increases in CMP amounts that may be assessed pursuant to section 7(c) of the FDIA for late filing or the submission of false or misleading certified statements. A Tier One CMP will continue to be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in an amount not to exceed \$2,000 for each day during which the failure to file continues or the false or misleading information is not corrected. A Tier Two CMP which may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) will increase from an amount not to exceed \$20,000 for each

day during which the failure to file continues or the false or misleading information is not corrected to an amount not to exceed \$22,000 for each day during which the failure to file continues or the false or misleading information is not corrected. A Tier Three CMP which may be assessed pursuant to section 7(c)(4)(C) of the FDIA (12 U.S.C. 1817(c)(4)(B)) will increase from an amount not to exceed the lesser of \$1,000,000 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected to an amount not to exceed the lesser of \$1,100,000 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

Paragraph (c)(3)(iii) of § 308.132 sets forth the increases in CMP amounts that may be assessed pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)) for refusal to allow examination or to provide required information during an examination. The CMP which may be assessed pursuant to that statute against any affiliate of an insured depository institution which refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), will increase from an amount not to exceed \$5,000 for each day the refusal continues to an amount not to exceed \$5,500 for each day the refusal continues.

Paragraph (c)(3)(iv) of § 308.132 sets forth the increases in the amounts of any CMP that may be assessed pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)) for the incorrect display of the insurance logo. Such CMP will increase from an amount not to exceed \$100 for each day the violation continues to an amount not to exceed \$110 for each day the violation continues.

Paragraph (c)(3)(v) of § 308.132 sets forth the increase in the amount of any CMP that may be assessed pursuant to section 18(h) of the FDIA (12 U.S.C. 1828(h)) for failure to file a certified statement or to pay an assessment. That amount will increase from a maximum of \$100 for each day the violation continues to an amount not to exceed \$110 for each day the violation continues.

Paragraph (c)(3)(vi) of § 308.132 sets forth the increase in any CMP that may be assessed pursuant to section 19b(j) of the FDIA (12 U.S.C. 1829b(j)), against an insured depository institution and any

director, officer or employee thereof who wilfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations. The CMP amount will increase from an amount not to exceed \$10,000 per violation for each day the violation continues to an amount not to exceed \$11,000 per violation.

Paragraph (c)(3)(vii) of § 308.132 sets forth the increase in the civil fine which may be assessed pursuant to 12 U.S.C. 1832(c) for violation of provisions forbidding interest-bearing demand deposit accounts. The amount which may be assessed against any depository institution which violates the prohibition on deposit or withdrawal from interest-bearing accounts via negotiable or transferable instruments payable to third parties will increase from a fine of \$1,000 per violation to a fine of \$1,100 per violation.

Paragraph (c)(3)(viii) of § 308.132 sets forth the increase in any CMP that may be assessed pursuant to 12 U.S.C. 1884 for violations of security measure requirements. The amount of CMP which may be assessed against an institution which violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, will increase from a CMP not to exceed \$100 for each day of the violation to a CMP not to exceed \$110 for each day of the violation.

Paragraph (c)(3)(ix) of § 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to the Bank Holding Company Act of 1970 for prohibited tying arrangements. A Tier One CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) will increase from an amount not to exceed \$5,000 for each day during which the violation continues to an amount not to exceed \$5,500 for each day during which the violation continues. A Tier Two CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) will increase from an amount not to exceed \$25,000 for each day during which the violation, practice or breach continues to an amount not to exceed \$27,500 for each day during which the violation, practice or breach continues. A Tier Three CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) will increase from an amount not to exceed, in the case of any person other than an insured depository institution \$1,000,000 for each day during which the violation, practice, or breach continues to an amount not to exceed \$1,100,000 for each day during which the violation, practice, or breach continues. In the case of any insured depository institution, Tier Three

penalties will increase from an amount not to exceed the lesser of \$1,000,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed the lesser of \$1,100,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

Paragraph (c)(3)(x) of § 308.132 indicates that pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), a CMP may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). Such CMP will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xi) of § 308.132 sets forth the increase in CMP that may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), as made applicable by 12 U.S.C. 3349(b), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction. Such CMP amounts will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xii) of § 308.132 sets forth that pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), the CMP that may be assessed against any banking institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such banking institution will increase from an amount not to exceed \$1,000 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues to an amount not to exceed \$1,100 for each day such violation continues.

Paragraph (c)(3)(xiii) of § 308.132 indicates that pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a CMP may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). Such CMP amounts will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xiv) of § 308.132 sets forth that pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u-2), CMP's may be assessed for violations of

certain provisions of the Exchange Act, where such penalties are in the public interest. The Tier One CMP amounts which may be assessed pursuant to 15 U.S.C. 78u-2(b)(1) will increase from an amount not to exceed \$5,000 for a natural person or \$50,000 for any other person for violations set forth in 15 U.S.C. 78u-2(a), to \$5,500 for a natural person or \$55,000 for any other person. The Tier Two CMP which may be assessed pursuant to 15 U.S.C. 78u-2(b)(2)—for each violation set forth in 15 U.S.C. 78u-2(a)—will increase from an amount not to exceed \$50,000 for a natural person or \$250,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, to an amount not to exceed \$55,000 for a natural person or \$275,000 for any other person. The Tier Three CMP which may be assessed pursuant to 15 U.S.C. 78u-2(b)(3) for each violation set forth in 15 U.S.C. 78u-2(a), in an amount not to exceed \$100,000 for a natural person or \$500,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission to an amount not to exceed \$110,000 for a natural person or \$550,000 for any other person.

Paragraph (c)(3)(xv) of § 308.132 sets forth that the CMP that may be assessed pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), will increase from an amount of not more than \$5,000 per day for violations involving false claims and statements to \$5,500 per day.

Paragraph (c)(3)(xvi) of § 308.132 sets forth the CMP that may be assessed pursuant to the Flood Disaster Protection Act (FDPA)(42 U.S.C. 4012a(f)) against any regulated lending institution that engages in a pattern or practice of violations of the FDPA. The amount of the penalty for each violation will remain at \$350, however, the annual amount which may be assessed will increase from an amount not to exceed a total of \$100,000 annually to an amount not to exceed a total of \$105,000 annually.

### III. Regulatory Flexibility Act

Chapter 6 of Title 5 of the United States Code which pertains to "The Analysis of Regulatory Functions" does not apply to the final rule regarding part 308. The revision to part 308 is not a

"rule" for purposes of that statute (see 5 U.S.C. 601(2)) as it is not a rule for which the FDIC is required to publish a general notice of proposed rulemaking under section 553(b) of Title 5 of the United States Code. This is because the law leaves the FDIC no discretion with regard to the requirement of adjustment or the formula for the amount of CMP adjustments to be made, the changes are ministerial, technical and noncontroversial and the law requires that the regulation implementing the adjustments be made within 180 days of the enactment of the DCIA. Therefore, the FDIC has determined for good cause that public notice and comment are unnecessary, impracticable, or contrary to the public interest and that the rule should be published in final form.

### IV. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104-121) provides generally for agencies to report rules to Congress and for Congress to review the rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget has determined that this final revision to part 308 does not constitute a "major" rule as defined by the statute.

### V. Exemption From Public Notice and Comment

Because the law requires the FDIC to amend its rules, provides the specific adjustments to be made and leaves the FDIC no discretion in calculating the amount of those adjustments, the changes are ministerial, technical and noncontroversial, and the law requires that the regulation implementing the adjustments be published in the Federal Register within 180 days of enactment of the DCIA, the FDIC has determined for good cause that public notice and comment is unnecessary and impracticable under the APA (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in final form.

### VI. Effective Date

For the same reasons that the FDIC for good cause has determined that public notice and comment is unnecessary, impractical and contrary to the public interest, the FDIC finds that it has good cause to adopt an effective date that is less than 30 days after the date of publication in the Federal Register

pursuant to the APA (5 U.S.C. 553(d)), and therefore, the regulation is effective upon publication.

### List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

For the reasons set out in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below:

## PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1828, 1829, 1829b, 1831o, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78 (h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104-134, 110 Stat. 1321-358.

2. Section 308.116 is amended by adding a new paragraph (b)(4) to read as follows:

### § 308.116 Assessment of penalties.

\* \* \* \* \*

(b) \* \* \*

(4) *Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act.* After November 12, 1996:

(i) Any person who engages in a violation as set forth in paragraph (b)(1) of this section shall forfeit and pay a civil money penalty of not more than \$5,500 for each day the violation continues.

(ii) Any person who engages in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(2) of this section, shall forfeit and pay a civil money penalty of not more than \$27,500 for each day such violation, practice or breach continues.

(iii) Any person who knowingly engages in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(3) of this section, shall forfeit and pay a civil money penalty not to exceed:

(A) In the case of a person other than a depository institution—\$1,100,000 per day for each day the violation, practice or breach continues; or

(B) In the case of a depository institution—an amount not to exceed the lesser of \$1,100,000 or one percent of the total assets of such institution for

each day the violation, practice or breach continues.

\* \* \* \* \*

3. In § 308.132, paragraph (c)(2) is revised and a new paragraph (c)(3) is added to read as follows:

**§ 308.132 Assessment of penalties.**

\* \* \* \* \*

(c) \* \* \*

(2) The Board of Directors or its designee may assess civil money penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) as follows:

(i) *Late filing—Tier One penalties.* In cases in which a bank fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$2,000 per day may be assessed where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the bank inadvertently transmitted a Call Report which is minimally late.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$300 per day for each of the first 15 days for which the failure continues, and \$600 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$100 per day or  $\frac{1}{10000}$ th of the bank's total assets ( $\frac{1}{100}$ th of a basis point) for each of the first 15 days for which the failure continues, and \$200 or  $\frac{1}{500}$ th of the bank's total assets,  $\frac{1}{5}$  of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Second offense.* Where the bank has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be \$500 per day for each of the first 15 days for which the failure continues, and \$1,000 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than \$25,000,000 in assets, those amounts, respectively, shall be  $\frac{1}{500}$ th of the bank's total assets and  $\frac{1}{250}$ th of the bank's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in this paragraph (c)(2)(i) will be assessed on a case-by-case basis where the amount of time of the bank's delinquency is lengthy or the

bank has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the bank, penalties assessed for late filing shall not be waived.

(ii) *Late filing—Tier Two penalties.* Where a bank fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$20,000 per day for each day the failure continues. Pursuant to the Debt Collection Improvement Act of 1996, for violations which occur after November 12, 1996, the maximum Tier Two penalty amount will increase to \$22,000 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which a bank submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$2,000 per day for each day the information is not corrected, where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the bank inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where a bank submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$20,000 per day for each day the information is not corrected. Pursuant to the Debt Collection Improvement Act of 1996, for violations which occur after November 12, 1996, the maximum Tier Two penalty amount will increase to \$22,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where a bank knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,000,000 or 1 percent of the bank's total assets per day for each day the information is not corrected. Pursuant to the Debt Collection Improvement Act of 1996, for violations which occur after November 12, 1996, the maximum Tier Three penalty amount will increase to the lesser of \$1,100,000 per day or 1 percent of the bank's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in this paragraph (c)(2) may be reduced based upon the factors set forth in paragraph (b) of this section.

(3) *Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Act.* Pursuant to section 31001(s) of the Debt Collection Act, for violations which occur after November 12, 1996, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(i) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) in an amount not to exceed \$5,500 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed \$27,500 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,100,000 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,100,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(A) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (c)(3)(i) for violations of various consumer laws, including, the Home Mortgage Disclosure Act (12 U.S.C. 2804 et seq. and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.), the Truth in Savings Act (12 U.S.C. 4301 et seq.), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq. and 12 CFR part 3500), the Truth in Lending Act (15 U.S.C. 1601 et seq.), the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and the Fair Housing Act (42 U.S.C. 3601 et seq.) in the amounts set forth in paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(ii) *Civil money penalties assessed pursuant to section 7(c) of the FDIA for late filing or the submission false or misleading certified statements.* Tier One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in

an amount not to exceed \$2,000 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed \$22,000 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of \$1,100,000 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(iii) *Civil money penalties assessed pursuant to section 10(e)(4) of the FDIA for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)), civil money penalties may be assessed against any affiliate of an insured depository institution which refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed \$5,500 for each day the refusal continues.

(iv) *Civil money penalties assessed pursuant to section 18(a)(3) of the FDIA for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)), civil money penalties may be assessed against an insured depository institution which fails to correctly display its insurance logo pursuant to that section, in an amount not to exceed \$110 for each day the violation continues.

(v) *Civil money penalties assessed pursuant to section 18(h) of the FDIA for failure to file a certified statement or to pay assessment.* Pursuant to section 18(h) of the FDIA (12 U.S.C. 1828(h)), a civil money penalty may be assessed against an insured depository institution which wilfully fails or refuses to file a certified statement or pay any assessment required under the FDIA in an amount not to exceed \$110 for each day the violation continues.

(vi) *Civil money penalties assessed pursuant to section 19b(j) of the FDIA for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (12 U.S.C. 1829b(j)), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who wilfully or through gross negligence violates or causes a violation of the recordkeeping

requirements of that section or its implementing regulations in an amount not to exceed \$11,000 per violation.

(vii) *Civil fine pursuant to 12 U.S.C. 1832(c) for violation of provisions forbidding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution which violates the prohibition on deposit or withdrawal from interest-bearing accounts via negotiable or transferable instruments payable to third parties shall be subject to a fine of \$1,100 per violation.

(viii) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884, an institution which violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, shall be subject to a civil penalty not to exceed \$110 for each day of the violation.

(ix) *Civil money penalties assessed pursuant to the Bank Holding Company Act of 1970 for prohibited tying arrangements.* Pursuant to the Bank Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) in an amount not to exceed \$5,500 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed \$27,500 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,100,000 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,100,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(x) *Civil money penalties assessed pursuant to the International Banking Act of 1978.* Pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in paragraph (c)(3)(i) of this section.

(xi) *Civil money penalties assessed for appraisal violations.* Pursuant to 12 U.S.C. 3349(b), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state

certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in paragraph (c)(3)(i) of this section.

(xii) *Civil money penalties assessed pursuant to International Lending Supervision Act.* Pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), the CMP that may be assessed against any banking institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such banking institution is amount not to exceed \$1,100 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(xiii) *Civil money penalties assessed for violations of the Community Development Banking and Financial Institution Act.* Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in paragraph (c)(3)(i) of this section.

(xiv) *Civil money penalties assessed for violations of the Securities Exchange Act of 1934.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u-2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(1) in an amount not to exceed \$5,500 for a natural person or \$55,000 for any other person for violations set forth in 15 U.S.C. 78u-2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u-2(a)—\$55,000 for a natural person or \$275,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(3) for each violation set forth in 15 U.S.C. 78u-2(a), in an amount not to exceed \$110,000 for a natural person or \$550,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or

indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(xv) *Civil money penalties assessed for false claims and statements pursuant to the Program Fraud Civil Remedies Act.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than \$5,500 per day may be assessed for violations involving false claims and statements.

(xvi) *Civil money penalties assessed for violations of the Flood Disaster Protection Act.* Pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed \$350 per violation, and not to exceed a total of \$105,000 annually.

By order of the Board of Directors.

Dated at Washington, D.C. this 29th day of October, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

*Executive Secretary.*

[FR Doc. 96-28752 Filed 11-8-96; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-CE-103-AD; Amendment 39-9808; AD 96-23-03]

RIN 2120-AA64

**Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N24A, and N22S Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N24A, and N22S airplanes that are not equipped with a part number (P/N) 1E/N-12-57 fuselage stub fin plate (MOD N759). This action requires replacing the existing fuselage stub fin plate with one of improved design, P/N 1E/N-12-57. This action results from several reports of cracks along the forward flange of the fuselage stub fin plate in

the area of Rib Water Line (WL) 138.87. The actions specified by this AD are intended to prevent structural failure of the fuselage area caused by a cracked stub fin plate, which could result in loss of control of the airplane.

**DATES:** Effective December 23, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1996.

**ADDRESSES:** Service information that applies to this AD may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-103-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard., Lakewood, California 90712; telephone (310) 627-5224; facsimile (310) 627-5210.

#### SUPPLEMENTARY INFORMATION:

##### Events Leading to the AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to ASTA Models N22B, N24A, and N22S airplanes that are not equipped with a part number (P/N) 1E/N-12-57 fuselage stub fin plate (MOD N759) was published in the Federal Register on July 8, 1996 (61 FR 35693). The action proposed to require replacing the existing fuselage stub fin plate with one of improved design, P/N 1E/N-12-57. Accomplishment of the proposed installation as specified in the notice of proposed rulemaking (NPRM) would be in accordance with Nomad Service Bulletin ANMD-53-13, Revision 3, dated October 24, 1995.

The NPRM was the result of several reports of cracks along the forward flange of the fuselage stub fin plate in the area of Rib Water Line (WL) 138.87.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

#### The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

#### Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 22 workhours per airplane to accomplish the required action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$22,050 or \$1,470 per airplane. This figure is based on the assumption that no affected owner/operator of the affected airplanes has accomplished the required replacement.

ASTA has informed the FAA that it has no records of parts distribution. The FAA believes that several of the affected airplanes already have the required replacement incorporated, which would reduce the cost impact upon the public.

#### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.