Rules and Regulations

Federal Register

Vol. 69, No. 200

Monday, October 18, 2004

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AC76

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, as amended, requires all Federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. The Federal Deposit Insurance Corporation ((FDIC) last adjusted the maximum amounts of CMPs under its jurisdiction in 2000. The FDIC is issuing this final rule to implement the required adjustments to its CMPs. The FDIC is also correcting a technical error as to one CMP that occurred when the FDIC last adjusted CMPs in 2000.

DATES: This rule is effective on December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Philip P. Houle, Counsel, (202) 898–3722, Enforcement Unit, Legal Division, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION

I. Background

The Debt Collection Improvement Act of 1996 (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, to 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.

To satisfy the requirements of the DCIA, the FDIC is amending 12 CFR 308 of its regulations pertaining to its Rules of Practice and Procedure which address CMPs. The amount of each CMP which the FDIC has jurisdiction to impose has been increased according to the prescribed formula. The penalties were last adjusted in 2000 (65 FR 64887). Any increase in penalty amounts under the DCIA shall apply only to violations which occur after the effective date of the increase.

The FDIC is also implementing a technical correction of the maximum amount of tier three CMPs that may be assessed for violation of 12 U.S.C. 1817(c) involving the submission of certified statements to the FDIC for determining institutions' semiannual deposit insurance assessments. Although the FDIC had stated in the preamble to the 2000 final rule that the CMP was to be adjusted from $1,100,000 to $1,175,000, the CMP was not actually adjusted due to a technical error in the publication of the final rule (65 FR 64887). Under their own rulemaking, other Federal banking agencies did successfully adjust this CMP from $1,100,000 to $1,175,000 in 2000.

If the $1,100,000 CMP were now adjusted using the 17.2% CPI figure for the June 1996 to June 2003 period (as with those CMPs that were last adjusted to a higher amount in 1996), this CMP's maximum amount would be increased to $1,300,000 rather than to the lower $1,250,000 amount that is actually adopted in this final rule and correction. In the interests of fairness to respondents and consistency with other Federal banking agencies, the FDIC is making a technical correction that increases the $1,100,000 CMP to $1,175,000 for the June 1996 to June 1999 period and also adjusts the corrected CMP from $1,175,000 to $1,250,000 for the June 2000 to June 2003 period.

The correction and the adjustments are being made simultaneously and prospectively. This rulemaking shall become a final rule on publication in the **Federal Register** and shall be effective as of December 31, 2004.

Summary of Calculation

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–U)[1] 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: (A) $10 in the case of penalties less than or equal to $100; (B) $100 in the case of penalties greater than $100 but less than or equal to $1,000; (C) $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; (D) $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; (E) $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and (F) $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.[2]

Example

The following example explains the inflation adjustment calculation for CMP amounts that were last adjusted in 2000. Under 12 U.S.C. 1818(i), as adjusted at 12 CFR 308.132(c), the FDIC may impose a daily maximum Tier Three CMP not to exceed $1,175,000 for violating certain laws.

First, the appropriate CPI–U is determined. The statute requires the FDIC to use the CPI–U for June of the calendar year preceding the year of adjustment. Since the FDIC is adjusting the CMP in 2004, the CPI–U for June 2003, which was 183.7, is used. The statute also requires the FDIC to use the CPI–U for June of the year that the CMP

[1] The CPI–U is compiled by the Bureau of Statistics of the Department of Labor. To calculate the adjustment, the FDIC used the Department of Labor, Bureau of Labor Statistics B All Urban Consumers tables to arrive at the CPI–U value.

[2] For penalties that were increased in 1996 but were not increased at the last quadrennial adjustment in 2000, the relevant computation is the CPI–U for June 1996 (156.7) and the CPI–U for June 2003, which produces a 17.2% adjustment. If a penalty has never previously been adjusted (as is the case with the single-violation penalty under 42 U.S.C. 4012a(f)), the maximum increase for a first-time adjustment is 10% under 28 U.S.C 2461 note, rather than the 24.1% increase in the CPI–U for the intervening period.

was last set by law or adjusted for inflation. Because the FDIC last adjusted the CMP in 2000, the CPI–U for June 2000, which was 172.4, is used.

Next, the cost of living adjustment or inflation factor is then calculated by dividing the CPI–U for June 2003 (183.7) by the CPI–U for June 2000 (172.4). The result is 1.066 (*i.e.*, a 6.6 percent increase).

Third, the raw inflation adjustment is calculated by multiplying the maximum CMP amount by the percentage increase. In this example, $1,175,000 is multiplied by 6.6 percent, which equals $77,550.

Fourth, the raw inflation adjusted amount is rounded according to the rounding rules in section 5(a) of the Inflation Adjustment Act. Under the rounding rules, if the penalty is greater than $200,000, the increase is rounded to the nearest multiple of $25,000. Therefore, the maximum penalty increase in this example is $75,000 (*i.e.*, $77,500 rounded to the nearest multiple of $25,000).

Fifth, the rounded increase is added to the current maximum CMP amount that is being adjusted. In this example, $1,175,000 plus $75,000 yields a new maximum inflation adjusted CMP amount of $1,250,000.

Summary of Adjustments

Under the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the FDIC must adjust for inflation the civil monetary penalties in statutes under which it has authority to assess penalties. The following chart displays the adjusted civil money penalty amounts for the enumerated statutes. The amounts in this chart apply to violations that occur after December 31, 2004:

U.S. Code Citation	Current maximum amount	New maximum amount
12 U.S.C. 1817(a)		
Tier One CMP	2,200	2,200
Tier Two CMP	22,000	27,000
Tier Three CMP	1,175,000	1,250,000
12 U.S.C. 1817(c)		
Tier One CMP	2,200	2,200
Tier Two CMP	22,000	27,000
Tier Three CMP	[3] 1,175,000	1,250,000
12 U.S.C. 1817(j)		
Tier One CMP	5,500	6,500
Tier Two CMP	27,500	32,500
Tier Three CMP	1,175,000	1,250,000
12 U.S.C. 1818(i)(2)		
Tier One CMP	5,500	6,500
Tier Two CMP	27,500	32,500
Tier Three CMP	1,175,000	1,250,000
12 U.S.C. 1820(e)(4)	5,500	6,500
12 U.S.C. 1828(a)(3)	110	110
12 U.S.C. 1828(h)	110	110
12 U.S.C. 1829b(j)	11,000	11,000
12 U.S.C. § 1832(c)	1,100	1,100
12 U.S.C. 1884	110	110
12 U.S.C. 1972(2)(F)		
Tier One CMP	5,500	6,500
Tier Two CMP	27,500	32,500
Tier Three CMP	1,175,000	1,250,000
12 U.S.C. 3108(b)		
Tier One CMP	5,500	6,500
Tier Two CMP	27,500	32,500
Tier Three CMP	1,175,000	1,250,000
12 U.S.C. 3349(b)		
Tier One CMP	5,500	6,500
Tier Two CMP	27,500	32,500
Tier Three CMP	1,175,000	1,250,000
12 U.S.C. 3909(d)	1,100	1,100
12 U.S.C. 4717(b)		
Tier One CMP	5,500	6,500
Tier Two CMP	27,500	32,500
Tier Three CMP	1,175,000	1,250,000
15 U.S.C. 78u–2		
Tier One CMP (individuals)	5,500	6,500
Tier One CMP (others)	60,000	65,000
Tier Two CMP (individuals)	60,000	65,000
Tier Two CMP (others)	300,000	325,000
Tier Three CMP (individuals)	120,000	130,000
Tier Three penalty (others)	575,000	625,000
31 U.S.C. 3802	5,500	6,500
42 U.S.C. 4012a(f)		
Maximum CMP per violation	350	385
Maximum CMPs per year	115,000	125,000

[3] As noted, the FDIC is simultaneously and prospectively; (A) Correcting the technical error that occurred in 2000 when this CMP was not actually adjusted, by now increasing the CMP from a maximum of $1,100,000 to $1,175,000 for the June 1996 to June 1999 period and (B) adjusting the CMP the maximum from $1,175,000 to $1,250,000 for the June 2000 to June 2003 period.

II. Section-by-Section Analysis

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 increasing the: (A) Tier One CMP amount from $5,500 for each day the violation continues to $6,500 for each day that the violation continues; (B) Tier Two CMP amount from $27,500 for each day that the violation continues to $32,500 for each day that the violation continues; and (C) Tier Three CMP amount from $1,175,000 to $1,250,000 for each day that the violation continues or, in the case of a depository institution, increasing the CMP from an amount not to exceed the lesser of $1,250,000 or one percent of the total assets of the institution for each day that the violation continues. Section 308.116(b)(4) has also been amended by revising the date after which the adjusted CMPs will apply to violations covered by § 308.116 by deleting ''November 12, 1996'' and replacing it with ''December 31, 2004.''

Section 308.132

Section 308.132 pertains to the manner in which the FDIC assesses CMPs. Paragraph (c)(2) of that section pertains to the CMPs imposed pursuant to section 7(a) of the Federal Deposit Insurance Act (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. With respect to late filings, paragraph (c)(2)(ii) of § 308.132 has been amended to reflect the increase in the Tier Two CMP amount from a maximum of $22,000 per day to $27,000 per day for each day the failure to file continues. No change has been made to the Tier One CMP. Paragraph (c)(2)(ii) of § 308.132 has also been amended by revising the date after which the adjusted CMPs will apply to violations covered by that paragraph by deleting ''November 12, 1996'' and replacing it with ''December 31, 2004.''

Paragraph (c)(2)(iii) of § 308.132 pertains to CMPs 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 CMP amounts from a maximum of $22,000 per day for each day that the information is not corrected to a maximum of $27,000 per day for each day that the information is not corrected. Paragraph (c)(2)(iii)(C) of that section reflects the increase in Tier Three CMPs from an amount not to exceed the lesser of $1,175,000 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 $1,250,000 or one percent of the total assets of such institution for each day the information is not corrected. No change has been made to the Tier One CMP amount. Paragraphs (c)(2)(iii)(B) and (C) have also been amended by revising the date after which the adjusted CMPs will apply to violations covered by paragraph (c)(2)(iii) by deleting ''November 12, 1996'' in both paragraphs and replacing it in both paragraphs with ''December 31, 2004.''

Paragraph (c)(3)(i) of § 308.132 sets forth the increases for CMPs assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). A Tier One CMP will increase from a maximum of $5,500 per day to a maximum of $6,500 per day for each day that the violation continues. A Tier Two CMP will increase from a maximum of $27,500 per day to a maximum of $32,500 per day for each day that the violation, practice, or breach of fiduciary duty continues. A Tier Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,175,000 to a maximum of $1,250,000 or, in the case of any insured depository institution, the amount will increase from a maximum of $1,175,000 to $1,250,000 or an amount not to exceed the lesser of $1,250,000 or one 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 grant jurisdiction to the FDIC to assess CMPs 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.* and 12 CFR 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 violation of those statutes are the same as the increases for CMPs under section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) cited above. As in section 8(i)(2) of the FDIA, Tier One, Tier Two, and Tier Three CMP amounts will increase accordingly.

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 (12 U.S.C. 1817(c)) for late filing or the submission of false or misleading certified statements. A Tier Two CMP 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 $22,000 per day to an amount not to exceed $27,000 for each day during which the failure to file continues or the false or misleading information is not corrected. As noted above, 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 be corrected for the June 1996 to June 1999 period from an amount not to exceed the lesser of $1,100,000 or one 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 $1,175,000 or one 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. Also, 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 be adjusted for the June 2000 to June 2003 period by increasing it from an amount not to exceed the lesser of $1,175,000 or one 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 $1,250,000 or one 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. No change has been made to the Tier One CMP amount.

Paragraph (c)(3)(iii) of § 308.132 sets forth the increases in the 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 an examination or to provide required information during an examination. The maximum CMP amount will increase from $5,500 to $6,500.

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 a maximum of $5,500 to a maximum of $6,500. A Tier Two CMP which may be assessed under 12 U.S.C.

1972(2)(F)(ii) will increase from a maximum of $27,500 to a maximum of $32,500. 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 $1,175,000 for each day during which the violation, practice, or breach continues to an amount not to exceed $1,250,000 for each day during which the violation, practice, or breach continues. In the case of any insured depository institution, a Tier Three CMP will increase from an amount not to exceed the lesser of $1,175,000 or one 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 $1,250,000 or one 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 pertains to the assessment of CMPs under the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), 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)). The amount of these CMPs will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2) of the FDIA.

Paragraph (c)(3)(xi) of § 308.132 sets forth the increase in CMP amounts 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) of the FDIA.

Paragraph (c)(3)(xiii) of § 308.132 states that pursuant to the Community Development Banking and Financial Institution Act (CDBA) (12 U.S.C. 4717(b)) a CMP may be assessed for violation of the CDBA 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) of the FDIA.

Paragraph (c)(3)(xiv) of § 308.132 states that pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), CMPs 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 $5,500 for a natural person or $60,000 for any other person for violations set forth in 15 U.S.C. 78u–2(a), to $6,500 for a natural person or $65,000 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 $60,000 for a natural person to $300,000 for any other person to an amount not to exceed $65,000 for a natural person or $325,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 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 $120,000 for a natural person or $575,000 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, will be increased to an amount not to exceed $130,000 for a natural person or $625,000 for any other person.

Paragraph (c)(3)(xv) of § 308.132 states that a CMP may be assessed for violation of the Program Fraud Civil Remedies Act (31 U.S.C. 3802) for violations involving false claims and statements. The maximum CMP amount will increase from $5,500 to $6,500. Paragraph (c)(3)(xvi) of § 308.132 states that CMPs 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 maximum penalty for each violation will increase from an amount not to exceed $350 to an amount not to exceed $385. The maximum amount of CMPs which may be assessed annually against a regulated lending institution will increase from an amount not to exceed a total of $115,000 to an amount not to exceed a total of $125,000.

Paragraph (c)(3) of § 308.132 has also been amended by revising the date after which the adjusted CMPs will apply to violations covered by that paragraph by deleting ''November 12, 1996'' and replacing it with ''December 31, 2004.''

III. Exemption From Public Notice and Comment

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. The FDIC has thus determined for good cause that public notice and comment is unnecessary and impracticable under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in the **Federal Register** as a final rule.

IV. Effective Date

For the same reasons that the FDIC for good cause has determined that public notice and comment is unnecessary and impractical, the FDIC also finds that it has good cause to adopt an effective date that would be less than 30 days after the date of publication in the **Federal Register** pursuant to the APA (5 U.S.C. 553(d)). In the interest of fairness, however, the increase in the maximum amount of civil money penalties in this regulation applies only to violations that occur after December 31, 2004, rather than to violations that occurred after the date of publication of this rule in the **Federal Register**. Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802) states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

The FDIC also finds that the increase in the maximum amounts of CMPs under the FDIC's jurisdiction should be effective as of December 31, 2004 since the rule is ministerial, technical, and noncontroversial. Under the statute, agencies must make the required CMP inflation adjustments: (A) According to the formula in the statute and (B) within four years of the last inflation adjustment. Federal agencies have no discretion as to the amount or timing of the adjustment.

V. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104–121, 110 Stat. 857) provides generally for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA (5 U.S.C. 551 *et seq.*). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

The Office of Management and Budget has determined that this final revision to 12 CFR 308 does not constitute a ''major'' rule as defined by the statute.

VII. The Treasury and General Government Appropriations Act, 1999 Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law No. 105–277, 112 Stat. 2681 (1998)).

VIII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

IX. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority and pursuant to its fundamental responsibilities to ensure the safety and soundness of insured depository institutions. Specifically, 12 U.S.C. 1819(a)(Tenth) provides the FDIC with general authority to issue such rules and regulations as it deems necessary to carry out the statutory mandates of the FDIA and other laws that the FDIC is charged with administering or enforcing.

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, the FDIC amends 12 CFR 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1831i, 1831m(g)(4), 1831o, 1831p–1, 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, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

§ 308.116 [Amended]

■ 2. Section 308.116 is amended by:
■ a. Paragraph (b)(4) is amended by removing ''November 12, 1996'' and adding ''December 31, 2004'' in its place.
■ b. Paragraph (b)(4)(i) is amended by removing $5,500 and adding $6,500 in its place.
■ c. Paragraph (b)(4)(ii) is amended by removing $27,500 and adding $32,500 in its place.
■ d. Paragraph (b)(4)(iii)(A) is amended by removing $1,175,000 and adding $1,250,000 in its place.
■ e. Paragraph (b)(4)(iii)(B) is amended by removing $1,175,000 and adding $1,250,000 in its place.

§ 308.132 [Amended]

■ 3. Section 308.132 is amended by:
■ a. Paragraph (c)(2)(ii) is amended by removing ''November 12, 1996'' and adding ''December 31, 2004'' in its place.
■ b. Paragraph (c)(2)(ii) is amended by removing $22,000 and adding $27,500 in its place.
■ c. Paragraph (c)(2)(iii)(B) is amended by removing $22,000 and adding $27,500 in its place.
■ d. Paragraph (c)(2)(iii)(B) is amended by removing ''November 12, 1996'' and adding ''December 31, 2004'' in its place.
■ e. Paragraph (c)(2)(iii)(C) is amended by removing $1,175,000 and adding $1,250,000 in its place.
■ f. Paragraph (c)(2)(iii)(C) is amended by removing ''November 12, 1996'' and adding ''December 31, 2004'' in its place.
■ g. Paragraph (c)(3) is amended by removing ''November 12, 1996'' and adding ''December 31, 2004'' in its place.
■ h. Paragraph (c)(3)(i) is amended by removing $5,500 and adding $6,500 in its place, by removing $27,500 and adding $32,500 in its place, and by removing $1,175,000 and adding $1,250,000 in its place.
■ i. Paragraph (c)(3)(ii) is amended by removing $22,000 and adding $27,000 in its place and by removing $1,100,000 and adding $1,250,000 in its place.[4]
■ j. Paragraph (c)(3)(iii) is amended by removing $5,500 and adding $6,500 in its place.
■ k. Paragraph (c)(3)(ix) is amended by removing $5,500 and adding $6,500 in its place, by removing $27,500 and adding $32,500 in its place, and by removing $1,175,000 and adding $1,250,000 in its place.
■ l. In paragraph (c)(3)(xiv) by removing $5,500 and adding $6,500 in its place, by removing $60,000 and adding $65,000 in its place, by removing $300,000 and adding $325,000 in its place, by removing $120,000 and adding $130,000 in its place, and by removing $575,000 and adding $625,000 in its place.
■ m. Paragraph (c)(3)(xv) is amended by removing $5,500 and adding $6,500 in its place.
■ n. Paragraph (c)(3)(xvi) is amended by removing $350 and adding $385 in its place and by removing $115,000 and adding $125,000 in its place.

Dated this 12th day of October, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–23242 Filed 10–15–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19337; Directorate Identifier 2004–NM–155–AD; Amendment 39–13824; AD 2004–21–03]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–1159, G–1159A, G–1159B, and G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Gulfstream Model G–1159, G–1159A, G–1159B, and G–IV series airplanes. This AD requires a one-time inspection of the left and right aileron and elevator

[4] This provision simultaneously and prospectively implements both the: (A) Technical correction for the June 1996 to June 1999 period by increasing the tier three CMP for violation of 12 U.S.C. 1817(c) from $1,100,000 to $1,175,000 and (B) adjusts the corrected $1,175,000 CMP by increasing the CMP to $1,250.000 for the June 2000 to June 2003 period.