

2 = conversion factor to convert unit from per 30 min. to per h.

PE_{rated} = nameplate rating of auxiliary electrical equipment of heater, in Watts

BOH = as defined in 5.2 of this appendix

POH = as defined in 5.2 of this appendix

$P_{W,SB}$ (Btu/h) = electrical energy consumption rate during standby mode expressed in Btu/h = $3.412 P_{W,SB}$, Btu/h

$P_{W,SB}$ = as defined in 4.2 of this appendix

$P_{W,OFF}$ (Btu/h) = electrical energy consumption rate during off mode expressed in Btu/h = $3.412 P_{W,OFF}$, Btu/h

$P_{W,OFF}$ = as defined in 4.3 of this appendix

5.4 Integrated thermal efficiency.

5.4.1 Calculate the seasonal useful output of the pool heater as:

$$E_{\text{OUT}} = \text{BOH}[(E_t/100)(Q_{\text{IN}} + PE)]$$

Where:

BOH = as defined in 5.2 of this appendix

E_t = thermal efficiency as defined in 5.1 of this appendix

Q_{IN} = as defined in 5.2 of this appendix

PE = as defined in 5.3 of this appendix

100 = conversion factor, from percent to fraction

5.4.2 Calculate the annual input to the pool heater as:

$$E_{\text{IN}} = E_F + E_{\text{AE}}$$

Where:

E_F = as defined in 5.2 of this appendix

E_{AE} = as defined in 5.3 of this appendix

5.4.3 Calculate the pool heater integrated thermal efficiency (TE_i) (in percent).

$$TE_i = 100(E_{\text{OUT}}/E_{\text{IN}})$$

Where:

E_{OUT} = as defined in 5.4.1 of this appendix

E_{IN} = as defined in 5.4.2 of this appendix

100 = conversion factor, from fraction to percent

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 390

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires all Federal agencies that have statutory authority to impose civil money penalties (CMPs), every four years, to publish, as adjusted for inflation, the maximum authorized amount of those CMPs. The Federal Deposit Insurance Corporation (FDIC) last adjusted the maximum amounts of CMPs under its jurisdiction in 2008.

The FDIC is issuing this final rule to publish the adjusted maximum CMPs.

DATES: This rule is effective on December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carl J. Gold, Counsel, Legal Division (202) 898-8702, or David Chapman, Chief Statistician, (703) 254-0227, Division of Insurance and Research.

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, by regulation published within 180 days of the enactment of the DCIA, and at least once every four years thereafter, to adjust the maximum authorized amount of each CMP which the agency is authorized to assess. The agency is required to use 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 part 308 of its regulations (12 CFR part 308) of its regulations pertaining to its Rules of Practice and Procedure that address CMPs. The amount of each CMP that the FDIC has jurisdiction to impose has been increased according to the prescribed formula, or maintained at the previous level if warranted. The penalties specified in part 308 of the FDIC's regulations were last adjusted in 2008 (73 FR 73153, Dec. 2, 2008).

In addition, the FDIC is amending Part 390 of its regulations (12 CFR part 390) to adjust the maximum authorized CMP amounts it may assess against State savings associations under applicable laws. Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred the functions, powers, and duties of the Office of Thrift Supervision (OTS) relating to State savings associations to the FDIC effective one year after July 21, 2010, the date that the Dodd-Frank Act was enacted. The Dodd-Frank Act also amended section 3 of the Federal Deposit Insurance Act (FDI Act) to designate the FDIC as the "appropriate Federal banking agency" for State savings associations. The FDIC transferred 12 CFR 509.103, the OTS regulation that prescribed procedures regarding assessment of CMPs against State savings associations, and the maximum permissible CMP amounts, to

new part 390 of the FDIC's regulations. See 76 FR 47652 (Aug. 5, 2011). The amounts in the OTS regulation were last adjusted in 2008, and therefore are also subject to review and adjustment as provided by the DCIA.

Any increase in penalty amounts under the DCIA shall apply only to violations that occur after the effective date of the amended regulations.

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 time that a CMP was adjusted following implementation of the DCIA in 1996, the increase could not exceed ten percent of the then-current original penalty amount, even though the intervening cost-of-living exceeded ten percent. As a general matter, under the DCIA, a particular CMP will not be increased for inflation or cost-of-living when the "rounding" process fails to reach the level warranting adjustment, as shown in the Summary of Adjustments chart below. In those cases, a particular CMP might be increased at a subsequent future quadrennial adjustment, when the level of inflation for the years since the last prior adjustment is taken into account. An example of the computation steps is found at 73 FR 73153 (Dec. 2, 2008), which published the FDIC's adjustments of CMPs in 2008.

Summary of Adjustments

Under the Inflation Adjustment Act, the FDIC must adjust for inflation the maximum civil monetary penalties which it has authority to assess under the FDIA and other statutes. The

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 values.

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, 2012:

U.S. Code citation	Current maximum amount	New maximum amount
12 U.S.C. 1464(v), 1817(a):		
Tier One CMP	2,200	3,200
Tier Two CMP	32,000	32,000
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1464(v), 1817(c):		
Tier One CMP	2,200	3,200
Tier Two CMP	32,000	32,000
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1817(j):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1818(i)(2):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1467(d), 1820(e)(4)	7,500	7,500
12 U.S.C. 1820(k)(6)	275,000	275,000
12 U.S.C. 1828(a)(3)	110	110
12 U.S.C. 1828(h)	100	100
12 U.S.C. 1829b(j)	16,000	16,000
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	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 3108(b):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 3349(b):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 3909(d)	1,100	1,100
12 U.S.C. 4717(b):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
15 U.S.C. 78u-2:		
Tier One CMP (individuals)	7,500	7,500
Tier One CMP (others)	70,000	70,000
Tier Two CMP (individuals)	70,000	70,000
Tier Two CMP (others)	140,000	140,000
Tier Three CMP (individuals)	350,000	350,000
Tier Three penalty (others)	675,000	700,000
31 U.S.C. 3802	7,500	7,500
42 U.S.C. 4012a(f):		
Maximum CMP per violation	385	2000

CFR Citation	Current maximum amount	New maximum amount
12 CFR 308.132(c)(2)(i):		
First Offense—Reports of Condition & Income (Call Reports)		
\$25 million or more assets 1 to 15 days late	330	330
\$25 million or more assets 16 or more days late	660	660
under \$25 million assets 1 to 15 days late	110	110
under \$25 million assets 16 or more days late	220	220
Subsequent Offenses—Reports of Condition & Income (Call Reports)		
\$25 million or more assets 1 to 15 days late	550	550
\$25 million or more assets 16 or more days late	1,100	1,100

II. Summary of Key Amendments

The following analysis discusses only those sections of the regulation where at least one of the maximum CMPs (e.g. Tier Three in the case of a multi-tiered CMP) is increasing or there is another pertinent change to the regulatory text. While there has been inflation as measured by the applicable index, many maximum CMPs are not increasing because of the rounding rules in the Inflation Adjustment Act. As noted, with the exception of flood insurance-related CMP amounts, which are already effective due to a recent statutory amendment, any increase in maximum CMP amounts will apply to violations and other acts and omissions covered by the various laws and regulations cited herein, that occur after December 31, 2012.

Section 308.116(b)

Section 308.116(b)(4) pertains to the amount of CMPs 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 Tier Three CMP amount from \$1,375,000 to \$1,425,000 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 \$1,425,000 or one percent of the total assets of the institution for each day that the violation continues. No change has been made to the Tier One or Tier Two CMP amount.

Section 308.132

Section 308.132 sets forth the procedure by which the FDIC assesses CMPs, and lists the maximum CMPs for violations other than those covered by § 308.116. Paragraph (c) is being amended in various places to change the word “bank” to “institution”. This reflects that, as noted above, the Dodd-Frank Act made the FDIC the appropriate Federal banking agency for State savings associations as well as State nonmember banks and other institutions. As of March 2012, savings associations have been required to file Call Reports instead of Thrift Financial Reports with their appropriate Federal banking agency. The changes in the provisions that are discussed in the following paragraphs reflect that change.

Paragraph (c)(2) of § 308.132 pertains to the CMPs imposed pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) or section 5 of the Home Owners' Loan Act (12 U.S.C. 1464(v)) for the late filing of Reports of Condition and Income (Call Reports) or for the

submission of false or misleading Call Reports or information. With respect to late filings of Call Reports, paragraph (c)(2)(i) of § 308.132 has been amended to reflect the increase in the Tier One CMPs from \$2,200 for each day the violation continues to \$3,200 for each day the violation continues.

Tier Two CMPs for failure to file call reports under paragraph (c)(2)(ii) of § 308.132 have not been adjusted. 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)(A) of that section has been amended to reflect the increase in the Tier One CMP amount from a maximum of \$2,200 per day for each day that the information is not corrected to a maximum of \$3,200 per day for each day that the information is not corrected. No change has been made to the Tier Two CMP amount.

Paragraph (c)(2)(iii)(C) of § 308.132 reflects the increase in Tier Three CMPs from an amount not to exceed the lesser of \$1,375,000 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 \$1,425,000 or one percent of the total assets of such institution for each day the information is not corrected.

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 Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, \$1,375,000 to a maximum of \$1,425,000 or, in the case of any insured depository institution, the amount will increase from a maximum of \$1,375,000 to \$1,425,000 or an amount not to exceed the lesser of \$1,425,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier One or Tier Two CMP amount.

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, 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 that 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, only the Tier Three CMP amount 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 One CMP pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) will increase from an amount not to exceed \$2,200 per day to an amount not to exceed \$3,200 for each day during which the failure to file continues or the false or misleading information is not corrected. A Tier Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, \$1,375,000 to a maximum of \$1,425,000 or, in the case of any insured depository institution, the amount will increase from a maximum of \$1,375,000 to \$1,425,000 or an amount not to exceed the lesser of \$1,425,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier Two CMP amount.

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 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, \$1,375,000 for each day during which the violation, practice, or breach continues, to an amount not to exceed \$1,425,000 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 \$1,375,000 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 \$1,425,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier One or Tier Two CMP amount.

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)). For each day that a violation continues, the amount of a Tier Three CMP will increase from \$1,375,000 to \$1,425,000. No change has been made to the Tier One or Tier Two CMP amount.

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. For each day that a violation continues, the amount of a Tier Three CMP will increase from \$1,375,000 to \$1,425,000. No change has been made to the Tier One or Tier Two CMP amount.

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)). For each day that a violation continues, the amount of a Tier Three CMP will increase from \$1,375,000 to \$1,425,000. No change has been made to the Tier One or Tier Two CMP amount.

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 Three CMPs that 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) are currently an amount not to exceed \$350,000 for a natural person or \$675,000 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. The amount for a natural person will not be increased. The amount for any other person will increase to \$700,000. No

change has been made to the Tier One or Tier Two CMP amount.

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. In § 100208 of the Biggert-Waters Flood Insurance Reform Act of 2012,² Congress increased the maximum CMP prescribed in 42 U.S.C. 4012a(f)(5) per violation from \$385 to \$2,000, and eliminated the \$135,000 cap on the total amount of penalties assessed against a single regulated lender in any calendar year. These amendments took effect on July 1, 2012. Accordingly, the maximum amount for violating 42 U.S.C. 4012a(f)(5) is \$2,000 per violation.

Section 390.74

The FDIC finds that it is unnecessary to maintain 12 CFR 390.74(c), which sets forth the maximum CMP amounts that may be assessed against State savings associations under various statutes, as a separate subsection. As noted above, the Dodd-Frank Act made the FDIC the appropriate Federal banking agency for State savings associations. As such, most of potential CMP amounts for which inflation-adjusted maximum CMP amounts are listed in subsection 390.74(c) are authorized by the same statutes that authorize the FDIC to assess CMPs against State nonmember banks and other entities that were already under the FDIC's supervision before the Dodd-Frank Act. In two cases, CMPs against State savings associations are authorized by statutes specific to savings associations (12 U.S.C. 1464, which authorizes CMPs for non-filing or late filing of reports of condition, and 12 U.S.C. 1467, which authorizes CMPs for refusal of an affiliate to cooperate with an examination). All of the inflation adjustments being made under parallel statutes that apply to State nonmember banks are the same as those that need to be made for State savings associations. Accordingly, the maximum permissible CMP amounts for State savings associations following the effective date of this regulation will be found in Part 308.

III. Exemption From Public Notice and Comment

Since 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, 2012, rather than to violations that occur immediately after the date of publication of this rule in the **Federal Register**. While 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, this rule does not impose any additional compliance, reporting or other new substantive requirements. Therefore section 302 is inapplicable.

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) (Pub. L. 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

² Public Law 112-241, 126 Stat. 405 (July 6, 2012).

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 (Pub. L. 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.

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 part 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, 1819, 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. In § 308.116:

■ a. Paragraph (b)(4) introductory text is amended by removing "December 31, 2008" and adding "December 31, 2012" in its place

■ b. Paragraph (b)(4)(iii)(A) is amended by removing "\$1,375,000" and adding "\$1,425,000" in its place; and

■ c. Paragraph (b)(4)(iii)(B) is amended by removing "\$1,375,000" and adding "\$1,425,000" in its place.

■ 3. Revise § 308.132 to read as follows:

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties.

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the institution or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.01(e)(1) of the Uniform Rules (this part).

(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)) or section 5 of the Home Owners' Loan Act (12 U.S.C. 1464(v)) as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution 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 \$3,200 per day may be assessed where the institution 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 institution inadvertently transmitted a Call Report which is minimally late. Pursuant to the Debt Collection Improvement Act of 1996, for violations of this paragraph (c)(2)(i) which occur after December 31, 2012, the following maximum Tier One penalty amounts contained in paragraphs (c)(2)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$330 per day for each of the first 15 days for which the failure continues, and \$660 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$110 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$220 or 1/500th of the institution's total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution 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 \$550 per day for each of the first 15 days for which the failure continues, and \$1,100 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution'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 institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

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

(ii) *Late-filing—Tier Two penalties.* Where an institution 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 \$32,000 per day for each day the failure continues.

(iii) *False or misleading reports or information.* (A) *Tier One penalties.* In cases in which an institution 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 \$3,200 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where an institution 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 \$32,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution 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 \$1,425,000 or 1 percent of the institution'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 Improvement Act.* Pursuant to section 31001(s) of the Debt Collection Improvement Act, for violations which occur after December 31, 2012, 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 \$7,500 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 \$37,500 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 \$1,425,000 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,375,000 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 (iii) of this section.

(B) [Reserved]

(ii) *Civil money penalties assessed pursuant to section 7(c) of the FDIA for late filing or the submission of 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)) or section 5(v)(4) (12 U.S.C. 1464(v)(4)) in an amount not to exceed \$3,200 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 \$32,000 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 \$1,425,000 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 \$7,500 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 FDI Act for failure to timely pay assessment.* (A) *In General.* Subject to paragraph (c)(3)(v)(C) of this section, any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(B) *Exception in case of dispute.* Paragraph (c)(3)(v)(A) of this section shall not apply if—

(1) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(2) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(C) *Special rule for small assessment amounts.* If the amount of the assessment which an insured depository institution fails or refuses to pay is less than \$10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (c)(3)(v)(A) of this section shall not exceed \$100 for each day that such violation continues.

(D) *Authority to modify or remit penalty.* The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (c)(3)(v)(A) of this section upon a finding that good cause prevented the timely payment of an assessment.

(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 willfully 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 \$16,000 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 \$7,500 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 \$37,500 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 \$1,375,000 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 \$1,425,000 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 institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such institution is an 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 amount 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 \$7,500 for a natural person or \$70,000 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)—\$70,000 for a natural person or \$350,000 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 \$140,000 for a natural person or \$700,000 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 \$7,500 per claim or statement 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)), as of July 1, 2012, 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 \$2,000 per violation.

(xvii) *Civil money penalties assessed for violation of one-year restriction on Federal examiners of financial*

institutions. Pursuant to section 10(k) of the Federal Deposit Insurance Act (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to \$275,000 against any covered former Federal examiner of a financial institution who, in violation of section 1820(k) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k), without the written waiver or permission by the appropriate Federal banking agency or authority under section 1820(k)(5).

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

- 4. The general authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

§ 390.74 [Amended]

- 5. In § 390.74, remove paragraph (c).

By order of the Board of Directors.

Washington, DC, this 11th day of December 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30251 Filed 12–14–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1225; Directorate Identifier 2012–NM–219–AD; Amendment 39–17288; AD 2012–25–07]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GIV–X airplanes. This AD requires performing a modified system power-on self test (SPOST) of the flap/stabilizer electronic control unit (FSECU), and revising the airplane flight manual to incorporate these test procedures into the daily preflight check. This AD was prompted by