§ 1701.4 Increase in semiannual payment.

The Director, in his or her discretion, may increase any semiannual payment to be collected under § 1701.3 from an Enterprise that is not classified as adequately capitalized as necessary to pay additional estimated costs of regulation of the Enterprise.

§ 1701.5 Notice and review.

(a) *Written notice.* The Director shall provide each Enterprise with written notice of the annual assessment, the semiannual payments and any partial payments to be collected under this part. In addition, the Director shall provide each Enterprise with written notice of any changes in the assessment procedures that the Director, in his or her sole discretion, deems necessary under the circumstances.

(b) *Request for review.* At the written request of an Enterprise, the Director, in his or her discretion, may review the calculation of the proportional share of the annual assessment, the semiannual payments, and any partial payments to be collected under this part. The determination of the Director is final. Except as provided by the Director, review by the Director does not suspend the requirement that the Enterprise make the semiannual payment or partial payment on or before the date it is due.

§ 1701.6 Delinquent payment.

(a) *Interest and penalties.* The Director may assess interest and penalties on any delinquent semiannual payment or partial payment collected under this part in accordance with 31 U.S.C. 3717 (interest and penalty on claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion.

(b) *Transfer to general fund.* Any interest and penalties collected under this section shall be transferred to the general fund of the Treasury of the United States.

§ 1701.7 Enforcement of payment.

Notwithstanding § 1701.6, the Director may enforce the payment of any assessment under this part pursuant to the authorities of sections 1371 (12 U.S.C. 4631) (cease-and-desist proceedings), 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and 1376 (12 U.S.C. 4636) (civil money penalties) of the Act.

§ 1701.8 Deposit in fund.

OFHEO shall deposit any annual assessment collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

Dated: April 2, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 01–8424 Filed 4–4–01; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550–AA16

Rules of Practice and Procedure

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule amending OFHEO's rules governing administrative enforcement proceedings. The amendments summarize OFHEO's statutory authority to issue cease and desist orders and to impose various corrective and remedial sanctions, including, among other things, civil money penalties, against the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), as well as their respective executive officers and directors, in appropriate cases. By describing the grounds on which such actions might be instituted, and providing examples of the terms and conditions the agency might impose, OFHEO seeks to ensure greater transparency to and public awareness of the agency's supervisory regime and the safeguards affecting Freddie Mac and Fannie Mae.

EFFECTIVE DATE: May 7, 2001.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, (202) 414–6924, Jamey Basham, Counsel (202) 414–8906 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD *only*).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development (HUD) with responsibility for ensuring that Fannie Mae and Freddie Mac (collectively, the Enterprises) are adequately capitalized and operate safely and in conformity to the requirements of applicable statutes, rules and regulations, including their respective charter acts. The Enterprises are Federal instrumentalities established under Federal law to effect various broad public policy purposes.[1] These include providing liquidity to the residential mortgage market and promoting the availability of mortgage credit benefiting low-and moderate-income families and areas that are underserved by lending institutions.

The enumerated statutory authorities of the Director explicitly include the authority to issue rules to carry out the duties of the Director,[2] as well as other broad supervisory powers similar to those of the Federal bank regulatory agencies. OFHEO is empowered, among other things, to conduct examinations of the Enterprises; to require the Enterprises to provide reports; [3] to establish capital standards for the Enterprises; [4] and, in appropriate circumstances, to take prompt corrective action against an Enterprise that fails to remain adequately capitalized, including but not limited to possible imposition of a conservatorship.[5]

In addition, the Act grants OFHEO administrative enforcement authority similar to that granted by Congress to the Federal bank regulatory agencies, including the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to impose sanctions, including civil money penalties when appropriate.[6] Prior to issuing a cease and desist order, OFHEO is to conduct a hearing on the record and provide the subject of an order with notice and the opportunity to participate in such hearings.[7] Prior to imposing civil money penalties, OFHEO is to provide notice and the opportunity for a hearing to the persons subject to the penalties.[8] Part 1780 of OFHEO's rules and regulations currently sets out the procedural rules under which such notices are provided and hearings conducted.

[1] *See* Federal Home Loan Mortage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561–67, 4562 note.

[2] 12 U.S.C. 4513(b)(1).

[3] 12 U.S.C. 4514, 4517, 1456(c), 1723a(k).

[4] 12 U.S.C. 4611–4614.

[5] 12 U.S.C. 4615–4623.

[6] 12 U.S.C. 4631–4641.

[7] 12 U.S.C. 4631(c), 4633.

[8] 12 U.S.C. 4636(c), 4633.

On December 27, 2000, OFHEO issued a Notice of Proposed Rulemaking (NPR), in which OFHEO proposed to clarify the agency's enforcement rules at part 1780 by describing briefly various circumstances in which OFHEO may initiate enforcement actions, the procedures involved, as well as the types of remedies and sanctions OFHEO may impose through a cease and desist order or civil money penalty. 65 FR 81,775. OFHEO received two comments on the NPR, one from each of the Enterprises. Copies of the comments are posted on the OFHEO web site at *http://www.ofheo.gov.* After careful consideration of the comments received, as discussed below, OFHEO has decided to adopt the proposed rule as a final rule, without substantive change.

Comments on the Proposed Rule

OFHEO received comments from Fannie Mae and Freddie Mac. In general, Fannie Mae largely concurred with the goals and language of the proposed rule, and Freddie Mac endorsed OFHEO's efforts to bring greater transparency to OFHEO's supervisory oversight and standards. However, both Enterprises lodged two broad objections to the proposed rule, as discussed below.

First, both Enterprises assert that § 1780.1(b) of the proposed rule, summarizing OFHEO's statutory authority to institute cease and desist proceedings under 12 U.S.C. 4631, should be expanded to address the extent to which the Department of Housing and Urban Development (HUD) holds authority over the Enterprises under Part 2 of the 1992 Act (12 U.S.C. 4541–4589).

OFHEO has determined to issue § 1780.1(b) without change. The language of § 1780.1(b) accurately recites OFHEO's authority under 12 U.S.C. 4631. In connection with their comments seeking changes to the rule to address this ancillary matter of intragovernmental coordination and cooperation, the Enterprises both stressed a different section of the 1992 Act, 12 U.S.C. 4513. Section 4513(b) enumerates certain authorities under the 1992 Act that are held exclusively by the Director of OFHEO. Section 4513(c) also provides that determinations, actions, and functions of the Director not referred to in section 4513(b) are subject to the review and approval of the Secretary of HUD. Section 4513(c) is outside the scope of part 1780. Whenever the Director's determination to issue a notice of charges under section 4631 constitutes, within the meaning of section 4513(c), an ''action * * * of the Director not referred to in subsection [4513(b)],'' the Director will obtain the ''review and approval of the Secretary'' of HUD, as contemplated by section 4513(c). Part 1780 more narrowly addresses, however, the procedures by which the Director's determinations set forth in a notice of charges are to be adjudicated. The scope of part 1780 does not extend to OFHEO's procedures before a notice of charges has been issued by the Director.

Second, both Enterprises object to a portion of § 1780.1(b)(1)(iv) of the proposed rule that describes OFHEO's authority under 12 U.S.C. 4631 to institute a cease and desist action on the basis of unsafe or unsound conduct by an Enterprise or an executive officer or director thereof or based on the unsound condition of an Enterprise. In their comments, the Enterprises objected to this provision on a twofold basis.

Both Enterprises asserted that section 4631 does not contain language authorizing OFHEO to institute a cease and desist proceeding on the basis of unsafe or unsound conduct. To the contrary, as set forth in the preamble of the proposed rule, the 1992 Act necessarily and explicitly authorizes OFHEO to pursue cease and desist proceedings on the basis of unsafe and unsound practices or conditions. In particular, section 4631(a)(3)(A) authorizes OFHEO to issue a notice of charges for violations of the 1992 Act. The 1992 Act subjects the Enterprises to an overarching obligation to conduct their operations in a manner that maintains the safe and sound condition of the Enterprise, the parameters of which may be determined by OFHEO, as the safety and soundness regulator, in its supervisory discretion.

As both Enterprises otherwise recognized in their comments, Congress constituted OFHEO with broad authorities, described above, sufficient to empower the agency to serve as a strong financial institution regulatory agency with the responsibility of ensuring the Enterprises are adequately capitalized and operate safely (*i.e.,* in a safe and sound manner and in compliance with applicable laws, rules, and regulations). The commenters assert, however, that OFHEO's reading of the 1992 Act, and particularly of section 4631(a)(3)(A), does not comport with congressional intent, and that, in effect, Congress intentionally refrained from empowering OFHEO to compel a Enterprise to cease demonstrably unsafe and unsound conduct. The language of the 1992 Act makes clear that Congress constituted OFHEO as more than a mere advisory oversight body for the Enterprises on safety and soundness issues and concerns.

In addition, both Enterprises objected to the manner in which § 1780.1(b)(1)(iv) of the proposed rule describes an unsafe and unsound practice as conduct that is contrary to prudent standards of operation that might cause loss or damage to the Enterprise, or is likely to cause such loss or damage in the future if continued unabated. In their comments, both Enterprises cited to judicial precedents construing a provision of the Federal Deposit Insurance Act, 12 U.S.C. 1818(b), under which the Federal bank regulatory agencies may institute cease and desist proceedings to halt, among other things, ''unsafe or unsound practices.'' As noted by the Enterprises, some courts construing section 1818(b) suggest that the statute requires the practice in question to threaten the financial integrity of the institution.

Case law construing section 1818(b), however, is informative but not determinative of the scope of OFHEO's authority. Congress did not wholly import the bank regulatory framework or specific enforcement statutes into the 1992 Act, so enforcement standards applicable to thousands of insured banks under banking law do not necessarily serve as the sole foundation for the standards applying to the two Enterprises under the 1992 Act. Nevertheless, to the extent such case law arguably has a bearing on these issues, the language of § 1780.1(b)(1)(iv), as proposed, fairly describes judicial views of section 1818(b), under which an unsafe or unsound practice exists if the practice is deemed contrary to accepted standards of banking operations which might result in abnormal risk or loss to a banking institution or shareholder.[9] Moreover, the cases that suggest an unsafe or unsound practice must threaten the very financial integrity of an institution do not look at the unencumbered language of section 1818(b) or its legislative history. No reference to such a heightened standard is included in either section 1818(b) or its legislative history.

Taken in the full context of the 1992 Act and the responsibilities of OFHEO thereunder—both similar to and distinct from those of the Federal bank regulatory agencies—OFHEO's rule articulates a standard that comports with the intent of Congress and a robust safety and soundness regime. The 1992

[9] *See, e.g., Greene County Bank* v. *FDIC*, 92 F.3d 633 (8th Cir. 1996), *cert. denied*, 519 U.S. 1109 (1997); *Doolittle* v. *NCUA*, 992 F.2d 1531 (11th Cir. 1993), *cert. denied*, 516 U.S. 987 (1995); *Hoffman* v. *FDIC*, 912 F.2d 1172 (9th Cir. 1990).

Act, as interpreted in § 1780.1(b)(1)(iv) of the proposed rule, imposes upon the Enterprises an affirmative obligation to conduct their operations safely, that is, in a manner that reasonably maintains the safe and sound condition of the Enterprise.[10] The parameters of safety and soundness are to be determined by OFHEO, as the safety and soundness regulator, in its supervisory discretion. If an Enterprise fails to operate within such boundaries, it violates the 1992 Act for purposes of 12 U.S.C. 4631. Viewed in this light, judicial precedents that address the setting of standards by a financial safety and soundness regulator, based on safety and soundness concerns, are instructive. The courts in these cases have long acknowledged that safety and soundness regulators may take action against practices that the agency, in its expert judgment, determines are likely to be detrimental to the institution or the industry.[11] This case law does not impose standards limiting the regulator's authority to those practices having dire consequences for the institution; the 1992 Act at several points contemplates action long before the Enterprises reach such critical stages of corporate survival.

It is also important to note that, in adopting the final version of 12 U.S.C. § 4631, Congress abandoned language in Senate Bill S. 2733, the Senate version of the legislation, which would have prohibited OFHEO from taking any cease and desist action against an adequately capitalized Enterprise unless the conduct or violation in question threatened to cause a significant depletion of the Enterprise's capital. S. Rep. No. 102–282, 102nd Cong., 2nd Sess. 25–26, 120 (1992). That Congress considered and rejected a limiting standard for cease and desist proceedings counsels against engrafting one by regulation as the Enterprises suggest.

Each Enterprise expressed concerns about the practical implications of § 1780.1(b)(1)(iv) of the proposed rule and apprehension that OFHEO might use the rule to micro-manage the Enterprises. The Enterprises posit that, in the absence of an explicit requirement that the conduct in question threaten the very integrity of the Enterprise, the standard in § 1780.1(b)(1)(iv) would permit OFHEO to take action against any business activity, given that every business activity involves some element of risk. To the contrary, the rule does not assert unfettered authority for OFHEO to impose its business judgment on the Enterprises, as the comments suggest. As § 1780.1(b)(1)(iv) states, the challenged conduct must, in addition to causing loss or being likely to cause loss in the future, also be contrary to prudent standards of operation. Further, and as a practical matter, cease and desist proceedings are not resorted to by the agency routinely, and are comparatively protracted in nature and subject to immediate judicial review. Moreover, the standard reiterated in § 1780.1(b)(1)(iv) is that which OFHEO has employed in connection with its safety and soundness supervision of the Enterprise since OFHEO's inception. In light of these considerations and the due process attendant to OFHEO's enforcement proceedings, concerns about micro-management are misplaced. Under the enforcement process, OFHEO may not superimpose its business judgment upon the Enterprises; the safety and soundness of the Enterprise must be addressed by the agency on a case-specific basis.

As another matter, Freddie Mac's comments on the rule addressed proposed § 1780.1(c)(4)(xii). This subsection includes ''candor and cooperation after the fact'' in the list of factors that may be considered by OHFEO in determining the appropriateness and amount of civil money penalties. More particularly, Freddie Mac recommended clarifying that an Enterprise's decision to assert a legal privilege, such as the attorney-client privilege, would not adversely affect OFHEO's evaluation of the Enterprise's candor and cooperation. Freddie Mac asserted that without such a clarification, the proposed factor might dissuade an Enterprise from asserting its full legal privileges due to a perceived threat that larger civil money penalties would be imposed for doing so.

OFHEO has adopted § 1780.1(c)(4)(xii) without change. Section 4636(c)(2) of Title 12 enumerates various factors that the Director of OFHEO is to consider and allows the Director to consider ''any other factors that the Director may determine by regulation to be appropriate.'' OFHEO has determined to take the candor and cooperation of an Enterprise, executive officer, or director into account as a mitigating factor in assessing a civil money penalty. The language of § 1780.1(c)(4)(xii) includes no implication that an assertion of a valid legal privilege will be viewed as an aggravating circumstance resulting in to higher civil money penalty amounts. Similarly, it is the practice of the Federal bank regulatory agencies to consider the cooperation of regulated entities as a mitigating factor in determining civil money penalties.[12] The extent to which an Enterprise, executive officer, or director receives the benefit of this mitigating factor in the face of an assertion of a valid legal privilege is a case-specific issue. The degree of mitigation may depend in part upon whether the assertion is consistent with candor and cooperativeness meriting reduction in the amount of the penalty that is otherwise appropriate in light of the seriousness of the offense.

Final Rule

OFHEO is adopting the proposed rule as a final rule without substantive change. The text of the proposed rule and a description thereof are contained in OFHEO's NPR at 65 FR 81775 (December 27, 2000). OFHEO is making one technical change. The authority citation in the NPR inadvertently omitted the citation to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The final rule adds a citation for this act. OFHEO is also making one editorial change. Proposed § 1780.1(b)(1)(iv) included the wholly redundant phrase ''in the future'' which has been deleted from the final rule.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The final rule is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based Enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

[10] As is discussed in the ''Background'' material above, OFHEO exercises exclusive authority for matters relating the the Enterprises' safety and soundness, and is vested with broad powers to that end. *See, e.g.,* 12 U.S.C. 4513(a), 4513(b)(5), 4517(a), and 4521(a)(2)–(3).

[11] *See, e.g., Independent Bankers Ass'n of America* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980).

[12] *See, e.g.,* FDIC Manual of Examination Policies, Section 10.2 (CMP Matrix).

Unfunded Mandates Reform Act of 1995

This final rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the proposed rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

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

Paperwork Reduction Act of 1995

This final rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight amends 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1780 is revised to read as follows:

Authority: 12 U.S.C. 4501, 4513, 4517, 4521, 4631–4641, 28 U.S.C. 2461 note.

Subpart A—General Rules

2. Revise § 1780.1 to read as follows:

§ 1780.1 Scope.

(a) *Types of proceedings governed by these rules.* This part prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(1) Cease-and-desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631 and 4633);

(2) Civil money penalty assessment proceedings under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633 and 4636);

(3) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a; and

(4) Other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided for in the regulations specifically governing such an adjudication.

(b) *Cease and desist orders.* (1) Grounds for instituting proceedings. Sections 1371(a) and (b) of the 1992 Act specify when the Director of OFHEO may issue a notice of charges instituting cease and desist proceedings, to be conducted according to the procedural rules in this part. The Director may issue a notice of charges as described in § 1780.20 if the Director determines, or the Director has reasonable cause to believe that, an Enterprise or an executive officer or director thereof has engaged in, or it is about to engage in, any of the following conduct or violations:

(i) For an adequately capitalized Enterprise, any conduct which threatens to cause a significant depletion of the Enterprise's core capital; or for an Enterprise which is not in the adequately capitalized category, any conduct that is likely to result in a material depletion of the Enterprise's core capital;

(ii) Any conduct that may result in the issuance of a cease and desist order that requires an executive officer or director of an Enterprise to make restitution, provide reimbursement, indemnification or guarantee against loss to the Enterprise, where such person was either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss to the Enterprise;

(iii) Any conduct that violates a written agreement entered into by an Enterprise with the Director; or

(iv) Any conduct that violates the 1992 Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*), or any regulation, rule, or order under such Acts, or any unsafe and unsound practice (in that it is contrary to prudent standards of operation which might cause loss or damage to the Enterprise, or is likely to cause such loss or damage if continued unabated), or any unsafe and unsound condition, except that the Director may not enforce compliance with housing goals established under subpart B of part 2 of subtitle A of the 1992 Act (12 U.S.C. 4561 through 4567), with section 1336 or 1337 of the 1992 Act (12 U.S.C. 4566 or 4567), or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 4566 or 4567), or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e) or (f)).

(2) *Remedial provisions of cease and desist orders.* As provided by sections 1371(c) and (d) of the 1992 Act, a cease and desist order issued as set out in § 1780.55 may require the Enterprise, or an executive officer or director thereof, to refrain from engaging in conduct or violations specified in paragraphs (b)(1)(i) through (iv) of this section and/or require correction of an unsafe or unsound condition specified in paragraph (b)(1)(iv) of this section, as found by the Director, and may also require the Enterprise, an executive officer, or director thereof to take such action as the Director determines to be appropriate to correct or remedy the conditions resulting from such conduct or violation. This may include, but is not limited to, provisions to:

(i) Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(ii) Require the Enterprise to obtain new capital;

(iii) Restrict asset or liability growth of the Enterprise;

(iv) Require the Enterprise to dispose of any asset involved;

(v) Require the Enterprise to improve design or implementation of internal policies, compliance efforts, internal controls, risk measurement and limits, and management reporting systems;

(vi) Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director);

(vii) Require the Enterprise, an executive officer or director thereof to adhere to limits on activities or functions; or

(viii) Require the Enterprise to take such other action as the Director determines appropriate.

(3) *Restitution and indemnification by executive officers and directors.* As part of the affirmative relief described in paragraph (b)(2) of this section, section 1371(d)(1) of the 1992 Act provides that the Director may require an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was:

(i) Unjustly enriched in connection with the conduct or violation in question; or

(ii) Engaged in such conduct or violation knowingly, and such conduct or violation caused or would be likely to cause a substantial loss to the Enterprise.

(4) *Temporary cease and desist orders.* (i) Under sections 1372(a) and (b) of the 1992 Act, if the Director determines that any conduct or violation or threatened conduct or violation described in the notice of charges in cease and desist proceedings described under § 1780.20 is likely to cause insolvency, to cause significant depletion of core capital, or to cause other irreparable harm to an Enterprise before proceedings described in this part will be completed, the Director may issue a temporary cease and desist order. Such order may direct the Enterprise, executive officer or director thereof to refrain from the conduct or violation, and to take whatever affirmative action the Director determines to be appropriate to prevent or remedy such insolvency, depletion, or harm pending completion of such cease and desist proceedings.

(ii) In addition, section 1372(c) of the 1992 Act addresses cases in which the Director determines that the books and records of an Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise. In connection with issuance of the notice of charges in cease and desist proceedings specified by § 1780.20, the Director may issue a temporary order directing the Enterprise to cease the activity or practice that gave rise, whether in whole or in part, to the incomplete or inaccurate state of the records, and may require the Enterprise to take affirmative action to make the records complete and accurate.

(c) *Civil money penalties.* (1) *First tier CMPs.* Section 1736 of the 1992 Act authorizes the Director to assess civil money penalties against an Enterprise, in proceedings to be conducted according to the procedural rules in this part. The Director may issue a notice of charges to an Enterprise, as described in § 1780.20, to impose money penalties of up to $5,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in conduct that violates:

(i) The 1992 Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any regulation, rule, or order under such Acts, except with regard to housing goals established under subpart B of part 2 of subtitle A of the 1992 Act, with section 1336 or 1337 of the 1992 Act, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

(ii) Any written agreement entered into by the Enterprise with the Director; or

(iii) Any permanent or temporary cease and desist order entered under sections 1371 or 1372 of the 1992 Act, or sections 1365 (12 U.S.C. 4615, setting out supervisory actions applicable to undercapitalized Enterprises) or 1366 (12 U.S.C. 4616, setting out supervisory actions applicable to significantly undercapitalized institutions) of the 1992 Act.

(2) *Second tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to $25,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in the following violation or conduct, or to an executive officer or director of an Enterprise to impose money penalties of up to $10,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in the following violation or conduct, if the Director finds that the violation or conduct was either part of a pattern of misconduct or involved recklessness and causes or is likely to cause a material loss to the Enterprise:

(i) Any violation described in paragraphs (c)(1)(i) through (iii) of this section; or

(ii) Any conduct that causes or is likely to cause a loss to the Enterprise.

(3) *Third tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to $1,000,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in a violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, or to an executive officer or director of an Enterprise to impose money penalties of up to $100,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in such violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, if the Director finds that the violation or conduct was knowing and caused or is likely to cause a substantial loss to the Enterprise.

(4) *Amount of CMPs.* In determining the amount of a civil money penalty within the range of penalties described in paragraphs (c)(1) through (3) of this section, the Director may fashion sanctions in any such amount as deemed to be appropriate taking into consideration such factors as:

(i) The gravity of the violation or conduct;

(ii) Any loss or risk of loss to the Enterprise;

(iii) Any benefits received;

(iv) Any attempts at concealment;

(v) Any history of prior violations or conduct;

(vi) Any related or unrelated previous supervisory actions;

(vii) Any injury to the public;

(viii) Deterrence of future violations or conduct;

(ix) The effect of the penalty on the safety and soundness of the Enterprise;

(x) Any circumstances of hardship upon an executive officer or director;

(xi) Promptness and effectiveness of any efforts to ameliorate the consequences of the violations or conduct; and

(xii) Candor and cooperation after the fact.

(d) *Coordination with other supervisory actions.* In addition to cease and desist and/or civil money penalty proceedings under this part, the 1992 Act grants the Director other authority to take supervisory action, including requiring mandatory and discretionary supervisory actions against an Enterprise that fails to remain adequately capitalized; appointment of a conservator for an Enterprise; entering into a written agreement the violation of which is actionable through proceedings under this part, or any other formal or informal agreement with an Enterprise as may be deemed by the Director to be appropriate. Under the 1992 Act, the selection of the form of supervisory action is within the Director's discretion, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action.

(e) *Proceedings against affiliates.* Under subtitle C of the 1992 Act, the Director may institute proceedings as described under this part against an

affiliate of an Enterprise as well as an executive officer or director of such affiliate. An entity is affiliated with an Enterprise if the entity controls the Enterprise, is controlled by the Enterprise, or is under common control with the Enterprise. For purposes of this part, control means the ability to exercise a controlling influence over the management and policies of the entity or Enterprise, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise.

(f) *Public nature of proceedings.* As described in § 1780.6 of this part, all hearings shall be open to the public unless the Director in his discretion determines to the contrary based on public interest. The Director shall also make final orders available to the public, as well as modifications to or terminations thereof, except that the Director may determine in writing to delay public disclosure of such final orders for a reasonable time if immediate disclosure would seriously threaten the financial health or security of the Enterprise.

Dated: April 2, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 01–8425 Filed 4–4–01; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–117–AD; Amendment 39–12167; AD 2001–07–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Series Airplanes; and Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time inspection for cracks on the attachment holes of the doorstop fitting on the aft passenger/crew doors; repair, if necessary; and modification of the attachment holes. This action is necessary to detect and prevent fatigue cracking of the attachment holes for doorstop fitting number 5, which could result in reduced structural integrity of the door frames. This action is intended to address the identified unsafe condition.

DATES: Effective April 20, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 2001.

Comments for inclusion in the Rules Docket must be received on or before May 7, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–117–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during fatigue tests, cracks were found, starting at the attachment holes for doorstop fitting No. 5 at frame 73A on the aft passenger/crew doors. This condition, if not corrected, could result in reduced structural integrity of the door frames.

Although the fatigue tests were performed on the Model A340 series airplane, the subject area on affected Model A330 series airplanes is almost identical to that on the affected Model A340 series airplanes. Therefore, those Model A330 series airplanes may be subject to the same unsafe condition revealed on the Model A340 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–53–3074, Revision 01 (for Model A330 series airplanes), and A340–53–4085, Revision 01 (for Model A340 series airplanes), both dated May 19, 1998, which describe, among other things, procedures for inspection of the two inboard attachment holes and the support fitting in frame 73A of the aft passenger/crew doors for cracks, and cold expansion of the holes and the addition of bushings to improve the fatigue behavior of the doorstop fittings. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified the inspections as mandatory and the cold expansion modifications as optional and issued French airworthiness directives 2000–126–114(B) (for Model A330 series airplanes) and 2000–125–139(B) (for Model A340 series airplanes), both dated March 8, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future,