

# Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 308

RIN 3064-AD06

#### Penalty for Failure To Timely Pay Assessments

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The Federal Deposit Insurance Corporation (“FDIC”) proposes to amend its rule concerning penalties for failure to timely pay assessments in compliance with the Federal Deposit Insurance Reform Act of 2005 (“Reform Act”), which amended provisions of the Federal Deposit Insurance Act (“FDIA”). The revisions generally provide that an insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty of not more than 1 percent of the assessment due for each day the violation continues. The statute provides for an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC. A special statutory rule covering assessment amounts of less than \$10,000 authorizes penalties up to \$100 per day. The FDIC is accorded discretion to compromise, modify or remit any penalty imposed on a finding that good cause prevented timely payment. The FDIC proposes amending its rule concerning late assessment penalties in conformity with these provisions of the Reform Act. The proposed rule would incorporate these statutory provisions into the FDIC’s regulations in place of the existing late assessment penalty rule at 12 CFR 308.132(c)(3)(v).

**DATES:** Comments must be received on or before September 18, 2006.

**ADDRESSES:** You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: <http://www.fdic.gov/rules/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web site.
- E-mail: [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

**Instructions:** All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/rules/laws/federal/propose.html> including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Donna M. Saulnier, Senior Assessment Policy Specialist, DOF, (703) 562-6167; or William V. Farrell, Manager, Assessments Section, DOF, (703) 562-6168; or Christopher Bellotto, Counsel, Legal Division, (202) 898-3801; or Stephen T. Weisweaver, Attorney, Legal Division, (202) 898-6976.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 2104(c) of the Reform Act amends section 18(h) of the FDIA, 12 U.S.C. 1828(h).<sup>1</sup> Section 18(h) was added to the FDIA in 1950 subjecting insured banks who fail or refuse to pay any assessment to a penalty of not more than \$100 for each day that such a violation continued.<sup>2</sup> Section 18(h) has remained virtually unchanged since its enactment in 1950.<sup>3</sup> The FDIC added the present rule concerning late assessment penalties when it amended 12 CFR 308.132 pursuant to the Debt Collection Improvement Act of 1996

<sup>1</sup> See Federal Deposit Insurance Reform Act of 2005, section 2104(c), Public Law 109-171, 120 Stat. 9, 13.

<sup>2</sup> See An Act to Amend the Federal Deposit Insurance Act, section 2, Public Law 797, 64 Stat. 893 (1950).

<sup>3</sup> The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), Public Law 101-187, 103 Stat. 187, amended section 18(h) of the FDIA making the provision applicable to “insured depository institutions” versus “insured banks.” See section 201(a), Public Law 101-187.

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(“DCIA”).<sup>4</sup> See 61 FR 57987 (Nov. 12, 1996). The DCIA required the head of each Federal Agency to enact rules adjusting each Civil Money Penalty (“CMP”), under the agency’s jurisdiction, by a rate of inflation prescribed in the DCIA. Accordingly, the FDIC added a version of the paragraph presently found at 12 CFR 308.132(c)(3) entitled “Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act.”<sup>5</sup> 61 FR at 57988. The FDIC also added the present rule set forth in 12 CFR 308.132(c)(3)(v) increasing the amount of any CMP that may be assessed pursuant to section 18(h) of the FDIA. The rule increased that amount from the maximum of \$100, as stated in section 18(h) of the FDIA, to a maximum of \$110 for each day the violation continues. 61 FR at 57989.<sup>6</sup>

The Reform Act contains the first major statutory changes to the late assessment penalty provisions in the FDIA. The FDIC proposes amending its rule concerning late assessment penalties, 12 CFR 308.132(c)(3)(v), to reflect the changes set forth in section 2104(c) of the Reform Act.

#### II. Description of the Proposal

Section 2104(c) of the Reform Act amends subsection (h) of section 18 of the FDIA, 12 U.S.C. 1828(h), by changing the late assessment penalty from not more than \$100 per day to not more than 1 percent of any assessment owed if the amount owed is \$10,000 or more at the time the institution fails or refuses to pay the assessment. If the institution owes less than \$10,000 at the time the institution fails or refuses to

<sup>4</sup> Public Law 104-134, 110 Stat. 1321-358, 373, amending section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (“Inflation Adjustment Act”), 28 U.S.C. 2461 (2000).

<sup>5</sup> The original version of 12 CFR 308.132(c)(3) applied to violations which occurred after November 12, 1996. However, the DCIA requires an adjustment of CMP’s every four years. The provision was updated in 2000 and 2004, and the present version of 12 CFR 308.132(c)(3)(v) by its terms applies to violations that occur after December 31, 2004. The proposed amendment to 12 CFR 308.132(c)(3)(v), however, will apply to violations that occur after the effective date of the Reform Act to avoid retroactive application of this change.

<sup>6</sup> Section 2104(c) of the Reform Act effectively returns the late assessment penalty on assessments of less than \$10,000 to the original amount of up to \$100. The Inflation Adjustment Act, *supra* note 4, may require a readjustment of this amount in 2008.

pay the assessment, then the amendment authorizes penalties up to \$100 for each day that the violation continues. The Reform Act also provides for an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC.

The FDIC proposes to amend its rule concerning late assessment penalties by revising the paragraph presently found at 12 CFR 308.132(c)(3)(v) and replacing the paragraph with the language from section 2104(c) of the Reform Act. The late assessment penalty will change from a maximum of \$110 per day to not more than 1 percent of the assessment owed if the institution owes an assessment of \$10,000 or more at the time the institution refuses or fails to pay any assessment.<sup>7</sup> Additionally, if the amount the institution fails or refuses to pay is less than \$10,000, the rule will authorize penalties up to \$100 for each day that the violation continues.

Finally, the proposed rule would adopt the statutory provisions providing for an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC. The proposed rule would also adopt the statutory provisions according the FDIC discretion to compromise, modify, or remit any penalty that the FDIC may assess upon a finding that good cause prevented the timely payment of an assessment.

### III. Regulatory Analysis and Procedure

#### A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. *For example:*

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the rule be more clearly stated?
- Does the proposed rule contain language or jargon that is not clear? If

<sup>7</sup> The FDIC can also initiate a termination of insurance proceeding, pursuant to section 8(a) of the FDIA, 12 U.S.C. 1818(a), when an institution withholds portions of its insurance assessments. *Doolin Security Savings Bank v. FDIC*, 53 F.3d 1395, 1408 (4th Cir. 1995).

so, which language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- What else could we do to make the rule easier to understand?

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment. *See* 5 U.S.C. 603, 604, 605. The proposed rule would amend the FDIC’s rule concerning late assessment penalties to adopt statutory language enacted by Congress in the Reform Act. The proposed rule would not create any additional economic impact because, if an economic impact exists, the only economic impact results from the language of the statute. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities if adopted in final form.

#### C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

#### D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Rules and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

#### List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

For the reasons set forth in the preamble, the FDIC proposes to amend Subpart H of 12 CFR 308 as follows:

### PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation 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, 1829b, 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 and 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.

2. Revise paragraph (c)(3)(v) of section 308.132 as follows:

#### § 308.132 Assessment of penalties.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(v) *Civil money penalties assessed pursuant to section 18(h) of the FDIA 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.

\* \* \* \* \*

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of July, 2006.

Federal Deposit Insurance Corporation.

**Valerie Best,**

*Assistant Executive Secretary.*

[FR Doc. E6-11423 Filed 7-18-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2006-25388; Directorate Identifier 2006-NM-086-AD]**

**RIN 2120-AA64**

#### **Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes equipped with certain hydraulic accumulators. This proposed AD would require inspecting the hydraulic accumulators to identify certain serial numbers, and replacing any affected accumulator with a new or serviceable accumulator. Operators may delay doing the replacement by doing repetitive inspections of the affected hydraulic accumulators for signs of failure (leaking or cracking), and replacing any failed accumulator with a new or serviceable unit. This proposed AD results from a report that one hydraulic accumulator failed in service, which caused the loss of the yellow hydraulic system when the airplane was configured for landing. We are proposing this AD to prevent damage to the pressure skin, failure of certain hydraulic systems, contamination of the cabin with hydraulic mist, increased workload for the flightcrew associated with the loss of one or more hydraulic circuits, and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by August 18, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov>

and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed AD.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-25388; Directorate Identifier 2006-NM-086-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

##### **Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### **Discussion**

We have received reports that an unsafe condition may exist on BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes that have hydraulic accumulators, part number (P/N) AIR91666-0, -1, and -2, installed. The European Aviation Safety Agency (EASA) advises that the manufacturer identified two batches of defective hydraulic accumulators after one accumulator burst in service, which caused the loss of the yellow hydraulic system when the airplane was configured for landing. The landing was completed without further incident.

The accumulator was found in the hydraulics bay, detached from its mounting, and shrapnel debris had punctured the pressure skin. Metallurgical examination revealed a pre-existing flaw in the accumulator cylinder casing. A second accumulator with a material flaw in the cylinder casing was identified by non-destructive testing during component overhaul. Further investigation showed that a total of 54 accumulators, P/N AIR91666, were manufactured without the required inspection processes being applied to the cylinder casings. Material flaws within the cylinder could cause the unit to burst in service, resulting in damage to the pressure skin and loss of any services supplied by the system that is connected to the failed accumulator. These services include flaps, lift and roll spoilers, rudder, airbrake, landing gear actuators, nose wheel steering, and wheel brakes. This condition, if not corrected, could result in damage to the pressure skin, failure of certain hydraulic systems, contamination of the cabin with hydraulic mist, increased workload for the flightcrew associated with the loss of one or more hydraulic circuits, and consequent reduced controllability of the airplane.

#### **Relevant Service Information**

BAE Systems (Operations) Limited has issued Service Bulletin ISB-29-A046, dated March 14, 2006. The service bulletin describes procedures for inspecting to identify specified serial numbers of hydraulic accumulators with P/N AIR91666-0, -1, and -2 in the yellow and green hydraulic systems and, if applicable, the forward airstairs. If any affected serial number is