

have annual sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of handlers and a minority of producers are classified as small entities.

This rule suspends § 925.215 of the order's rules and regulations, which established an assessment rate of \$0.01 per lug for fiscal period 1997 and subsequent fiscal periods. This suspension will be in effect for the 1998 fiscal period.

The Committee discussed alternatives to this rule, including not suspending the assessment rate, but concluded that no assessment rate will be necessary as there will be sufficient funds in the reserve and interest income to meet the 1998 fiscal period's expenses, and expenses for the first several months of fiscal year 1999. Also, the Committee recommended that the major expenditures for the 1998 fiscal period should include \$100,000 for research, \$25,000 for the sheriff's patrol, and \$9,109 for the manager's salary. Budgeted expenses for these items in 1997 were \$100,000 for research, \$25,000 for compliance purposes, and \$8,675 for the manager's salary. Funds in the reserve will be kept within the maximum permitted by the order (approximately one fiscal period's expenses).

Handler costs will be reduced during the 1998 fiscal year, as assessments will not be collected. The Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found

that the continuing assessment rate on handlers during the 1998 fiscal period no longer tends to effectuate the declared policy of the Act. The suspension shall continue only through December 31, 1998, at which time it shall terminate and the suspended assessment rate specified in section 925.215 will apply again beginning January 1, 1999.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by suspending the assessment rate on handlers during the 1998 fiscal period; (2) the 1998 fiscal period begins on January 1, 1998, and this action should be effective as soon as possible to inform handlers that the Secretary concurs with the Committee's recommendation; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

#### PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### § 925.215 [Suspended]

2. In Part 925, § 925.215 is suspended in its entirety effective January 1, 1998, through December 31, 1998.

Dated: December 23, 1997.

**Sharon Bomer Lauritsen,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1780

RIN 2550–AA06

#### Civil Money Penalties

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final rule.

**SUMMARY:** OFHEO is issuing this final rule to adjust each civil money penalty within its jurisdiction to account for inflation. This action is necessary to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**DATES:** This final rule is effective December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Danielle Arigoni, Research Assistant, Office of Policy Analysis, or Marvin L. Shaw, Senior Counsel, Office of General Counsel, 1700 G Street, NW, 4th Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Office of Federal Housing Enterprise Oversight (OFHEO) was established by Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act). OFHEO is an independent office within the U.S. Department of Housing and Urban Development (HUD) with responsibility for ensuring that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized and operating in a safe and sound manner. The 1992 Act authorizes OFHEO's Director (Director) to impose a civil money penalty for violations by an Enterprise or its executive officers or directors of any statute or regulation under OFHEO's jurisdiction.<sup>1</sup>

Fannie Mae and Freddie Mac are Government-sponsored enterprises that provide liquidity to and stability in the secondary market for residential

<sup>1</sup> See 1992 Act, section 1376 (12 U.S.C. 4636).

mortgages.<sup>2</sup> The Enterprises also increase the availability of mortgage credit benefiting low- and moderate-income families and areas that are underserved by lending institutions. The Enterprises engage in two principal businesses: investing in residential mortgages and guaranteeing residential mortgage securities.

## II. Debt Collection Improvement Act of 1996

In order to preserve the remedial impact of civil money penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>3</sup> as amended by the Debt Collection Improvement Act of 1996<sup>4</sup> (the Debt Collection Improvement Act), requires Federal agencies to make an initial inflationary adjustment for all applicable civil money penalties and to make further adjustments of these penalty amounts at least once every 4 years. The Debt Collection Improvement Act further stipulates that any resulting increases in a civil money penalty due to the calculated inflation adjustments (i) should apply only to violations that occur after October 23, 1996—the Act's effective date—and (ii) should not exceed 10 percent of the penalty indicated.

Under the Debt Collection Improvement Act, the inflation adjustment for each applicable civil money penalty is determined by increasing the maximum civil money penalty amount per violation by the cost-of-living adjustment. The "cost-of-living" adjustment is defined by the statute as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law, divided by the earlier CPI value. Any calculated increase under this adjustment is subject to a specific rounding formula<sup>5</sup> set forth in the Debt Collection Improvement Act.

## III. OFHEO'S Civil Money Penalties Affected by the Inflation Adjustment

The following example illustrates how the methodology outlined in the Debt Collection Improvement Act applies to civil money penalties assessed by OFHEO. Under section 1376 of the 1992 Act, OFHEO may impose a daily penalty not to exceed \$1,000,000 on either Enterprise or any executive officer or director of an Enterprise for certain violations. The first step in determining the inflation adjustment is to calculate and apply the percentage by which the CPI for all Urban Consumers (CPI-U) has changed over the period beginning in the year in which the existing civil money penalty amounts were last statutorily defined (section 1376 was adopted in 1992, and no adjustments have been made since) and ending in the calendar year preceding the adjustment. Given that the current year is 1997, the end of the period is the preceding year, 1996. The corresponding CPI-U values for the months of June in 1992 and 1996 are 419.9 and 469.5, respectively. Dividing the difference between the two values by the base year (1992) value yields a percentage increase of 11.8, which is multiplied by the existing civil money penalty amount of \$1,000,000 to yield an increase of \$118,000.

The second step is to apply the rounding rules in the Debt Collection Improvement Act which state that, where the increase is greater than \$100,000 but less than or equal to \$200,000, the increase shall be rounded to the nearest multiple of \$10,000. As a result, the increase is rounded up to \$120,000. When added to the original civil money penalty, the adjustment yields a new maximum civil money penalty of \$1,120,000.

Finally, the Debt Collection Improvement Act provides that any adjustment for inflation of a civil money penalty shall not exceed 10 percent of the existing amount. In this case, the maximum penalty amount is \$100,000. As such, the final increase is adjusted to meet the 10 percent increase limit, since the \$120,000 increase resulting from the calculations exceeds the amount allowed by the Debt Collection Improvement Act. A final civil money penalty amount is reached by adding the equivalent of 10 percent of the statutorily defined penalty (\$100,000) to the existing civil money penalty amount (\$1,000,000), yielding a figure of \$1,100,000. This is the figure which is associated with the violations previously penalized by a maximum

and \$25,000 in the case of penalties greater than \$200,000.

\$1,000,000 fine. This adjustment process has been applied to all of OFHEO's statutory civil money penalty limits to determine the maximum amounts as listed in the 1992 Act.

Based on these considerations, OFHEO has decided to amend chapter XVII of Title 12 of the Code of Federal Regulations by adding subpart E, titled "Civil Money Penalties," to Part 1780 to reflect the inflation adjustments mandated by the Debt Collection Improvement Act.

## IV. Effective Date

OFHEO finds good cause to make this rule effective upon publication of this document in the **Federal Register** under the Administrative Procedure Act (APA). 5 U.S.C. 553(d). This final rule does not impose any additional responsibilities on any entity. Instead, it simply adjusts the civil penalties as directed by the Debt Collection Improvement Act.

OFHEO also finds for good cause that notice and an opportunity to comment on this document are unnecessary under the APA. 5 U.S.C. 553. This rulemaking conforms with and is consistent with the statutory authority set forth in the Debt Collection Improvement Act, with no issues of policy discretion. Consequently, because the opportunity for notice and comment is unnecessary, OFHEO is issuing these requirements as a final rule.

## V. Regulatory Impact Statements

### *Executive Order 12612, Federalism*

Executive Order 12612 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. OFHEO has determined that this regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

### *Executive Order 12866, Regulatory Planning and Review*

OFHEO's Acting Director has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

<sup>2</sup> See 1992 Act, sections 1331–38 (12 U.S.C. 4561–67, 4562 note).

<sup>3</sup> Pub. L. 101–410, 28 U.S.C. 2461 note.

<sup>4</sup> Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358 (codified as amended at 28 U.S.C. 2461 note).

<sup>5</sup> The statute's rounding rules require that an increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000;

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government.

The regulation meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, requires that regulations involving the collection of information receive clearance from OMB. The regulation contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) (see 5 U.S.C. 601(2)). Because this action is limited to the adoption of statutory language, without interpretation, notice and comment on this final rule is unnecessary pursuant to 5 U.S.C.

553(b)(B). Therefore, the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Act of 1995

OFHEO has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector of \$100 million or more in any one year. Accordingly, this rulemaking is not subject to the Unfunded Mandates Act of 1995.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, OFHEO amends chapter XVII of Title 12 of the Code of Federal Regulations by adding Part 1780 to read as follows:

PART 1780—UNIFORM RULES OF PRACTICE AND PROCEDURE

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Civil Money Penalty Inflation Adjustments

Sec.

1780.70 Inflation adjustments.

1780.71 Applicability.

Authority: 12 U.S.C. 4513, 4636; 28 U.S.C. 2461 note.

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Civil Money Penalty Inflation Adjustments

§ 1780.70 Inflation adjustments.

The maximum amount of each civil money penalty within OFHEO's jurisdiction is adjusted in accordance with the Debt Collection Improvement Act of 1996 (28 U.S.C. 2461 note) as follows:

U.S. Code citation	Description	Previous maximum penalty	New adjusted maximum penalty
12 U.S.C. 4636(b)(1) .....	First Tier .....	\$5,000	\$5,500
12 U.S.C. 4636(b)(2) .....	Second Tier (Executive Officer or Director) .....	10,000	11,000
12 U.S.C. 4636(b)(2) .....	Second Tier (Enterprise) .....	25,000	27,500
12 U.S.C. 4636(b)(3) .....	Third Tier (Executive Officer or Director) .....	100,000	110,000
12 U.S.C. 4636(b)(3) .....	Third Tier (Enterprise) .....	1,000,000	1,100,000

§ 1780.71 Applicability.

The inflation adjustments in § 1780.70 apply to civil money penalties assessed in accordance with the provisions of 12 U.S.C. 4636 for violations occurring after October 23, 1996.

Dated: December 22, 1997.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-174-AD; Amendment 39-10266; AD 98-01-02]

RIN 2120-AA64

Airworthiness Directives; Fokker F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires a one-time visual inspection of the rear cargo door

and luggage auxiliary structure for corrosion, repetitive borescope inspections of the rear cargo door, and removal and repair of any corrosion found during the inspections. This amendment also requires the drilling of drain holes and application of a corrosion preventive and sealing compound inside the rear cargo door, and modification of the rear cargo door to aid in future routine borescope inspections. This amendment is prompted by reports of corrosion being found in the affected areas on several of the affected airplanes. The actions specified by this AD are intended to prevent such corrosion, which could result in structural failure of the cargo door and loss of the door during flight, and consequent rapid decompression, aerodynamic instability, and/or damage to other fuselage structures.