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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 01–23]

RIN 1557–ACOO

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending 12 CFR 8.2(a), which sets forth the formula for the semiannual assessment the OCC charges each national bank. The amendment revises the formula to establish a minimum base amount for the semiannual assessment for the first assessment bracket ($0–$2 million) of the assessment schedule. This change will enable the OCC to modestly adjust its assessments to better align with its costs of supervision.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or David Nebhut, Director, Policy Analysis, (202) 874–5220.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC charters, regulates, and supervises approximately 2,200 national banks and 58 Federal branches and agencies of foreign banks in the United States, accounting for approximately 55 percent of the nation's banking assets. Our mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.

The OCC funds the activities it undertakes to carry out this mission through assessments on institutions regulated by the OCC. The National Bank Act authorizes the OCC to collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the Office. 12 U.S.C. 482 (Supp. 2000). The statute requires that our charges be set to meet the Comptroller's expenses in carrying out authorized activities. *Id.* Pursuant to part 8 of its regulations, the OCC currently assesses national banks and Federal branches and agencies according to the following formula, set forth in the table at § 8.2(a):

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount—	Plus	Of excess over—
		Base amount	Marginal rates	
Column A	Column B	Column C	Column D	Column E
Million	Million			Million
$0	$2	$0	Y1	$0
2	20	X1	Y2	2
20	100	X2	Y3	20
100	200	X3	Y4	100
200	1,000	X4	Y5	200
1,000	2,000	X5	Y6	1,000
2,000	6,000	X6	Y7	2,000
6,000	20,000	X7	Y8	6,000
20,000	40,000	X8	Y9	20,000
40,000	.....	X9	Y10	40,000

Under this formula, the OCC assesses a national bank according to the amount of assets the bank reports on its Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries) (''Call Report'') filed for the quarter preceding the semiannual assessment period. A bank calculates the book-asset component of its assessment by first identifying which of 10 asset categories it fits within. If the bank fits within the smallest category (*i.e.,* $0 to $2 million), it multiplies all of its assets by a marginal rate that is provided each year by the OCC in the Notice of the Comptroller of the Currency Fees (Notice of Fees). Under this system, a national bank with $2 million in assets currently pays approximately $3,211 ($2 million multiplied by the 0.0016057180 marginal rate currently in effect) semiannually for the cost of its supervision by the OCC.

If the bank fits within any of the other nine asset categories, the bank pays a base amount provided in the Notice of Fees for that category (which equals the assessment on the largest bank in the next smallest asset category), plus an amount determined by multiplying a marginal rate (also provided in the Notice of Fees) by the amount of its assets that exceed the low end-point of its category. Thus, for example, a bank with $10 million in assets would fall into the second asset category ($2 million to $20 million) and would pay an assessment equal to $3,211, which is the current base amount for its category, plus $1605, which is the product of the current marginal rate for that category (0.0002007170), multiplied by $8 million (the amount of its assets that

exceeds the $2 million low-end point for its category).[1]

II. Description of the Proposal

On September 25, 2001, the OCC published a notice of proposed rulemaking in the **Federal Register** (66 FR 48983) to amend this assessment formula. The OCC proposed revising the table at § 8.2(a) to establish a minimum base amount for the semiannual assessment for the first assessment bracket of the assessment schedule. To accomplish this, the proposal deleted the figure of $0 as the base amount in Column C for the first asset bracket and replaced it with a variable (X1). The proposal also deleted the variable Y1 in Column D and replaced it with 0. The proposed revised table at § 8.2(a) looked as follows:

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount— Base amount	Plus Marginal rates	Of excess over—
Column A	Column B	Column C	Column D	Column E
Million	Million			Million
$0	$2	X1	0	
2	20	X2	Y1	$2
20	100	X3	Y2	20
100	200	X4	Y3	100
200	1,000	X5	Y4	200
1,000	2,000	X6	Y5	1,000
2,000	6,000	X7	Y6	2,000
6,000	20,000	X8	Y7	6,000
20,000	40,000	X9	Y8	20,000
40,000	.....	X10	Y9	40,000

This proposed assessment formula requires national banks to pay an assessment equal to the base amount (X1) for assets subject to the first asset bracket. For each semiannual assessment period, the base amount (X1) would be established by the Notice of Fees.

The OCC received nine comments on the proposal, all of which expressed concern about the impact of the increase on small banks. For the reasons discussed below, we are adopting the rule as proposed.

III. Discussion of Final Rule and Comments Received

The OCC is revising the table at § 8.2(a) as proposed to establish a minimum base amount for the semiannual assessment for the first asset category of the assessment schedule. As explained in the proposal, the dollar amount of the anticipated increased semiannual assessment will be the same for every national bank with at least $2 million in balance sheet assets.

The commenters were concerned that the effect of the proposed increase would be proportionately greater for the smallest national banks than for larger banks. These commenters believe that the increase is unfair and amounts to an undue burden on small banks, particularly those operating in areas that are experiencing economic decline. Several commenters suggested mitigating the effect of the increase by phasing it in over two or three years. Others suggested increasing assessments based on a flat percentage of assets or adopting a progressive dollar increase for each asset category so that the percentage increase for the smaller institutions is not as high as with a flat dollar increase.

We have considered carefully how changes to our assessment schedule would allocate the costs of OCC operations among national banks of different sizes and concluded that adoption of the proposed increase is warranted for the following reasons. First, the principal purpose of the proposal was to align the semiannual assessment for all national banks more closely with the increasing costs of the OCC's supervision. The final rule accomplishes that objective by modestly increasing the amount of the assessment for the asset category that is applicable to all national banks.

Second, the final rule enables the OCC to strike an appropriate balance between assessing each national bank for its fair share of the OCC's expenses and moderating the impact of the increase on small national banks. We continue to anticipate, as we said in the preamble to the proposed rule, that the December 1, 2001, Notice of Fees will set a semiannual base amount for the smallest asset category in the range of $5,000 and that the marginal rate for that asset category will be 0. Applying a base amount of $5,000 and a marginal rate of 0 to national banks in the smallest asset category results in a minimum semiannual assessment charge for these banks of $5,000, or an increase of $1,789 for a bank with balance sheet assets of $2 million. The assessment for banks in each of the larger categories (X2–X10) would increase by the same dollar amount, because the base amount for any category is the maximum that a bank in the immediately preceding asset category would pay.

This approach enables the OCC to allocate its costs of supervision more equitably among national banks, and particularly to narrow the gap between the OCC's overall costs to supervise, examine and regulate smaller banks, and what these institutions pay in assessments. Although the amount of the increase will represent a proportionately greater amount of a smaller bank's total assessment than will be the case for a larger bank that pays a larger total assessment, the greater proportionate increase will affect the category of banks where the greatest disparity currently exists between the assessments those banks pay and the OCC's overall costs attributable to them.

Even so, the relatively modest size, in dollars, of the anticipated base amount results in a relatively modest increase, in dollars, even for the smallest banks. Because the OCC has decided on this approach to mitigate the effects of the increase on the smallest banks, we have

[1] This illustrative calculation assumes that there are no circumstances that, under part 8, would require adjustments to the assessment to reflect, for instance, a bank's status as a non-lead bank or a composite supervisory rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System or ROCA rating (which rates risk management, operational contols, compliance, and asset quality), as apprpriate. *See* 12 CFR 8.2(a)(6) and (7).

declined to adopt a multi-year phase-in period, which could have resulted in an assessment increase that, ultimately, would need to be greater than we anticipate under the approach we have adopted, in order to reflect increases in costs of the OCC attributable to each institution.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The OCC has reviewed the impact this final rule will have on small national banks. For purposes of this final rule, the OCC defines ''small national banks'' to be those banks with less than $100 million in total assets. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion is that the minimum semiannual assessment for these banks will increase by only approximately $1,789. The OCC does not believe this to be a significant economic impact. Accordingly, a Regulatory Flexibility Act analysis is not required.

V. Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VI. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in 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 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC 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, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As noted above, for a national bank with at least $2 million in total assets, the final rule will increase the bank's semiannual assessments by $1,789.

VII. Effective Date

Any new regulation that imposes ''additional reporting, disclosure, or other requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form,'' unless certain exceptions apply. Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, § 302(b) (September 23, 1994). This rulemaking imposes no such additional reporting, disclosure, or other requirements. Accordingly, the requirement to delay the effective date until the first day of the next calendar quarter does not apply, and the rule will become effective December 31.

List of Subjects in 12 CFR Part 8

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends part 8 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 8—ASSESSMENT OF FEES

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 781; and 26 D.C. Code 102.

2. In § 8.2, paragraph (a) is revised to read as follows:

§ 8.2 Semiannual assessment.

(a) Each national bank and each District of Columbia bank shall pay to the Comptroller of the Currency a semiannual assessment fee, due by January 31 and July 31 of each year, for the six-month period beginning 30 days before each payment date. The amount of the semiannual assessment paid by each bank is computed as follows:

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount—	Plus	Of excess over—
		Base amount	Marginal rates	
Column A	Column B	Column C	Column D	Column E
Million	Million			Million
$0	$2	X1	0	
2	20	X2	Y1	$2
20	100	X3	Y2	20
100	200	X4	Y3	100
200	1,000	X5	Y4	200
1,000	2,000	X6	Y5	1,000
2,000	6,000	X7	Y6	2,000
16,000	20,000	X8	Y7	6,000
20,000	40,000	X9	Y8	20,000
140,000	.....	X10	Y9	40,000

* * * * *

Dated: November 9, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–28692 Filed 11–15–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM202; Special Conditions No. 25–191–SC]

Special Conditions: Gulfstream G–1159, G–1159A, G–1159B Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream G–1159, G–1159A, G–1159B series airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Honeywell Epic Control Display System for Retrofit (CDS–R). The system consists of dual Electronic Primary Flight Display Systems, which replace the existing Primary Flight Display System. The Electronic Primary Flight Display Systems will utilize electrical and electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 6, 2001.

Comments must be received on or before December 17, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM202, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM202. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2976; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM202.'' The postcard will be date stamped and returned to the commenter.

Background

On January 9, 2001, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, Illinois 62707, applied for a Supplemental Type Certificate (STC) for the Gulfstream G–1159, G–1159A, G–1159B series airplanes. The Gulfstream G–1159, G–1159A, G–1159B series airplanes are small transport category airplanes powered by two turbofan engines with a maximum takeoff weight of 69,700 pounds. The aircraft operate with a two pilot crew and can carry up to 19 passengers. The modified airplanes incorporate the installation of a Honeywell Epic Control Display System for Retrofit (CDS–R). The system consists of dual Electronic Primary Flight Display systems that replace the existing Primary Flight Display systems. The Honeywell Epic DCS–R has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Gulfstream G–1159, G–1159A, G–1159B series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations included in the certification basis for the Gulfstream G–1159, G–1159A, G–1159B series airplanes include 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–41 except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A12EA.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream G–1159, G–1159A, G–1159B series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream G–1159, G–1159A, G–1159B series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).