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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC54

Deposit Insurance Regulations; Living Trust Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations to clarify and simplify the deposit insurance coverage rules for living trust accounts. The rules are amended to provide coverage up to $100,000 per qualifying beneficiary who, as of the date of an insured depository institution failure, would become the owner of the living trust assets upon the account owner's death.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, Legal Division (202) 898–7349; Kathleen G. Nagle, Supervisory Consumer Affairs Specialist, Division of Supervision and Consumer Protection (202) 898–6541; or Martin W. Becker, Senior Receivership Management Specialist, Division of Resolutions and Receiverships (202) 898–6644, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2003 the FDIC published a proposed rule to simplify the insurance coverage rules for living trust accounts (''proposed rule''). 68 FR 38645, June 30, 2003. The FDIC undertook this rulemaking because of the confusion among bankers and the public about the insurance coverage of these accounts.

A living trust is a formal revocable trust over which the owner (also known as the grantor) retains ownership during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable. A living trust is an increasingly popular instrument designed to achieve specific estate-planning goals. A living trust account is subject to the FDIC's insurance rules on revocable trust accounts. Section 330.10 of the FDIC's regulations (12 CFR 330.10) provides that revocable trust accounts are insured up to $100,000 per ''qualifying'' beneficiary designated by the account owner. If there are multiple owners of a living trust account, coverage is available separately for each owner. Qualifying beneficiaries are defined as the owner's spouse, children, grandchildren, parents and siblings. 12 CFR 330.10 (a).

The most common type of revocable trust account is the ''payable-on-death'' (''POD'') account, comprised simply of a signature card on which the owner designates the beneficiaries to whom the funds in the account will pass upon the owner's death. The per-beneficiary coverage available on revocable trust accounts is separate from the insurance coverage afforded to any single-ownership accounts held by the owner or beneficiary at the same insured institution. That means, for example, if an individual has at the same insured bank or thrift a single-ownership account with a balance of $100,000 and a POD account (naming at least one qualifying beneficiary) with a balance of $100,000, both accounts would be insured separately for a combined amount of $200,000. If the POD account names more than one qualifying beneficiary, then that account would be insured for up to $100,000 per qualifying beneficiary. 12 CFR 330.10(a).

Separate, per-beneficiary insurance coverage is available for revocable trust accounts only if the account satisfies certain requirements. First, the title of the account must include a term such as ''in trust for'' or ''payable-on-death to'' (or corresponding acronym). Second, each beneficiary must be either the owner's spouse, child, grandchild, parent or sibling. Third, the beneficiaries must be specifically named in the deposit account records of the depository institution. And fourth, the account must evidence an intent that the funds shall belong unconditionally to the designated beneficiaries upon the owner's death. 12 CFR 330.10(a) and (b).

As noted, the most common form of revocable trust account is the POD account, consisting simply of a signature card. With POD accounts, the fourth requirement for per-beneficiary coverage does not present a problem because the signature card normally will not include any conditions upon the interests of the designated beneficiaries. In other words, the signature card provides that the funds shall belong to the beneficiaries upon the owner's death. In contrast, many living trust agreements provide, in effect, that the funds might belong to the beneficiaries depending on various conditions. The FDIC refers to such conditions as ''defeating contingencies'' if they create the possibility that the beneficiaries may never receive the funds following the owner's death.

Living trust accounts started to emerge in the late 1980s and early 1990s. At that time, the FDIC responded to a significant number of questions about the insurance coverage of such accounts, often times reviewing the actual trust agreements to determine whether the requirements for per-beneficiary insurance were satisfied. In the FDIC's review of numerous such trusts, it determined that many of the trusts included conditions that needed to be satisfied before the named beneficiaries would become the owners of the trust assets. For example, some trusts required that the trust assets first be used to satisfy legacies in the grantor's will; the remaining assets, if any, would then be distributed to the trust beneficiaries. Other trusts provided that, in order to receive any benefit under the trust, the beneficiary must graduate from college. Because of the prevalence of defeating contingencies among living trust agreements and the increasing number of requests to render opinions on the insurance coverage of specific living trust accounts, in 1994 the FDIC issued ''Guidelines for Insurance Coverage of Revocable Trust Accounts (Including ''Living Trust'' Accounts).'' FDIC Advisory Opinion 94–32 (May 18, 1994). As part of its overall simplification of the deposit insurance regulations, in 1998 the FDIC revised § 330.10 to include a provision explaining the insurance coverage rules for living trust accounts. 12 CFR 330.10(f). That provision included a definition of defeating contingencies.

Despite the FDIC's issuance of guidelines on the insurance coverage of living trust accounts and its inclusion of a special provision in the insurance regulations explaining the coverage of these accounts, there still is significant public and industry confusion about how the insurance rules apply to living trust accounts. Time has shown that the basic rules on the coverage of POD accounts are not fully adaptable to living trust accounts. The POD rules were written to apply to signature-card accounts, not lengthy, detailed trust documents. Because living trust accounts and PODs are subject to the same insurance rules and analysis, depositors and bankers often mistakenly believe that living trust accounts are automatically insured up to $100,000 per qualifying beneficiary without regard to any terms in the trust that might prevent the beneficiary from ever receiving the funds. Our experience indicates that in a significant number of cases that is not so under existing rules. Because of the existence of defeating contingencies in the trust agreement, a living trust account often fails to satisfy the requirements for per-beneficiary coverage. Thus, the funds in the account are treated as the owner's single-ownership funds and, after being added to any other single-ownership funds the owner has at the same institution, insured to a limit of $100,000. The funds in a non-qualifying living trust account with more than one owner are deemed the single-ownership funds of each owner, with the corresponding attribution of the funds to each owner's single-ownership accounts.

The FDIC recognizes that the rules governing the insurance of living trust accounts are complex and confusing. Under the current rules, the amount of insurance coverage for a living trust account can only be determined after the trust document has been reviewed to determine whether there are any defeating contingencies. Consequently, in response to questions about coverage of living trust accounts, the FDIC can only advise depositors and bankers that they should assume that such accounts will be insured for no more than $100,000 per grantor, assuming the grantor has no single-ownership funds in the same depository institution. Otherwise, the FDIC suggests that the owners of living trust accounts seek advice from the attorney who prepared the trust document. Depositors who contact the FDIC about their living trust insurance coverage are often troubled to learn that they cannot definitively determine the amount of their coverage without a legal analysis of their trust document. Also, when a depository institution fails the FDIC must review each living trust to determine whether the beneficiaries' interests are subject to defeating contingencies. This often is a time-consuming process, sometimes resulting in a significant delay in making deposit insurance payments to living trust account owners.

II. The Proposed Rule

In the proposed rule issued in June 2003, the FDIC identified and requested comments on what it believed to be two viable alternatives to address the confusion surrounding the insurance coverage of living trust accounts.

The first alternative provided for coverage up to $100,000 per qualifying beneficiary named in the living trust irrespective of defeating contingencies (''Alternative One'').

The FDIC would identify the beneficiaries and their ascertainable interests in the trust from the depository institution's account records and provide coverage on the account up to $100,000 per qualifying beneficiary. As with POD accounts, under Alternative One insurance coverage would be provided up to $100,000 per qualifying beneficiary limited to each beneficiary's ascertainable interest in the trust.

Alternative One expressly required that the deposit account records of the institution indicate the ownership interest of each beneficiary in the living trust. The information could be in the form of the dollar amount of each beneficiary's interest or on a percentage basis relative to the total amount of the trust assets. The FDIC requested specific comments on how such a recordkeeping requirement should be satisfied when a trust provided for different levels of beneficiaries whose interests in the trust depend on certain conditions, including the death of a ''higher-tiered'' beneficiary. In the proposed rule the FDIC noted that Alternative One generally would result in an increase in deposit insurance coverage because, unlike under the current rules, beneficiaries would not be required to have an unconditional interest in the trust in order for the account to qualify for per-beneficiary coverage.

The second alternative in the proposed rule provided, in essence, for a separate category of ownership for living trust accounts, insuring such accounts up to $100,000 per account owner (''Alternative Two''). An individual grantor would be insured up to a total of $100,000 for all living trust accounts he or she had at the same depository institution, regardless of the number of beneficiaries named in the trust, the grantor's relationship to the beneficiaries and whether there were any defeating contingencies in the trust. The coverage for a living trust account would be separate from the coverage afforded to any single-ownership accounts or qualifying joint accounts the owner might have at the same depository institution. Where there were joint owners of a living trust account, the account would be insured up to $100,000 per grantor. Such accounts also would be separately insured from any joint accounts either grantor might have at the same insured depository institution. In the proposed rule the FDIC noted that Alternative Two likely would result in reduced coverage for owners of living trusts naming more than one qualifying beneficiary because per-beneficiary coverage would be eliminated.

III. Comments on the Proposed Rule

The FDIC received forty-three comments on the proposed rule. Thirty-seven comments were from banks and savings associations and six were from state and national depository institution trade associations. Twenty-five comments were in favor of Alternative One or a modified version of that alternative and sixteen were in favor of Alternative Two. Two comments discussed the characteristics of both alternatives without expressing a preference for either one. Many of the comments on the proposed rule praised the FDIC for attempting to simplify and clarify the living trust rules. All the comment letters are available on the FDIC Web site, *http://www.fdic.gov/regulations/laws/federal/propose.html.*

Seventeen comments expressed support for Alternative One as proposed. In general, those commenters said Alternative One would provide more coverage for depositors than Alternative Two and would be more in line with the current coverage available for POD accounts. As such, depositors would not have to place their money with more than one institution or through deposit brokers to obtain full insurance coverage on their deposits. Along these lines, two commenters mentioned that Alternative One would assist depositors in estate-planning efforts by allowing them to place a sizable portion of their assets at one insured institution. Several comments lauded the certainty provided by Alternative One. One stated that ''[Alternative One] provides the amount of coverage and the clarity and understanding of living trust accounts that our customers deserve.'' Another argued that it would be inequitable to treat POD accounts and living trust accounts differently because they both are in the owner's control during his or her lifetime and may be modified at any time prior to the owner's death.

Eight of the twenty-five commenters who supported Alternative One, however, expressed concerns about certain aspects of the alternative and asked the FDIC to modify Alternative One before finalizing it. One state financial institution trade association voiced strong opposition to ''any requirement for financial institutions to: Obtain any part of a trust document; provide a certification of trust existence; and specifically identify a qualifying beneficiary's interest in trust assets or relationship to the grantor(s).''

A national depository institutions trade group cautioned that the proposed recordkeeping requirements might jeopardize the protections afforded under certain state laws for financial institutions in dealing with trusts. It cited ''compelling practical reasons'' against the proposed recordkeeping requirements in Alternative One, noting that:

- Unlike POD accounts, for which the only document is the institution's account—opening record, living trusts can be lengthy, complicated documents that identify multiple tiers of beneficiaries.
- It is often difficult for bankers to get information from accountholders who may be confused by the complexity and terminology of their living trust documents.
- Living trusts can be amended or revoked at any time and depository institutions should not be expected to repeatedly contact their customers to determine whether their account information is current.
- Customers might perceive such recordkeeping requirements as an invasion of privacy.

Two other trade associations and several depository institutions echoed these views.

Many of the commenters in favor of Alternative One without the proposed recordkeeping requirements suggested that the FDIC continue its current practice of ascertaining the existence of living trust beneficiaries and kinship information at the time an institution is closed. In addition to making the same points on the recordkeeping requirements as those noted above, another national trade association representing community banks said ''we do not see how the FDIC can avoid the time-consuming process of reviewing trust agreements when a bank failure occurs.''

Sixteen comments were in favor of Alternative Two. Generally, the consensus among these comments was, as expressed by one community banker, ''[Alternative Two is] easier [than Alternative One] to explain to the depositor and for the bank to keep track of.'' Another community banker described the option as ''straightforward.'' A common point made by several commenters was that, because of the simplicity of Alternative Two, depositors would be able to make an informed decision in placing living trust funds with depository institutions. Another community banker noted that Alternative Two would be the ''simplest, easiest and cleanest method'' of insuring living trust deposits and added that ''[w]e are not lawyers nor tax accountants and we should not have to 'dive' into someone's trust papers and try to decide how many beneficiaries, the relationships (of the parties) and if there are contingencies in the trust.''

Three commenters who favored Alternative Two suggested that under Alternative Two the insurance coverage for living trust accounts be increased to $200,000 to address the reduction in coverage some depositors might experience as a result of the rule change. *(This is not a viable option for the FDIC because it would take an act of Congress to increase the basic deposit insurance amount.)*

A large regional bank commented that Alternative Two ''appears to be the fairest treatment of these accounts as it treats them more like individual accounts. Since revocable accounts are generally used for the primary benefit of one, or sometimes two individuals, this seems more in line with policy of FDIC insurance than Alternative One.''

Many comments in support of Alternative Two acknowledged that Alternative One also offered advantages to depositors and would be an improvement over the current rule, but noted that Alternative One would place an added burden on financial institutions by imposing new recordkeeping requirements and would place institutions in the position of requesting information from depositors that they likely would be unwilling or unable to provide for privacy and other reasons. One medium-sized institution favored Alternative Two because ''we wouldn't have to track the names of the trust beneficiaries and their various interests.'' A community banker voiced support for Alternative Two, saying it would be ''easier to understand by the customer and bank personnel.'' She noted that customers would have the option to open POD accounts to obtain separate per-beneficiary POD coverage.

IV. The Final Rule

A. General Explanation

Upon considering the comments on the proposed rule, the FDIC has revised the current living trust account rules to provide for insurance coverage of up to $100,000 per qualifying beneficiary who, as of the date of an institution failure, would become entitled to the living trust assets upon the owner's death. This is a modified version of Alternative One in the proposed rule, based in part on a comment from a community banker that living trust coverage be based on beneficiaries ''without death related contingencies.'' Under the final rule, coverage will be determined on the interests of qualifying beneficiaries irrespective of defeating contingencies. A beneficiary whose trust interest is dependent on the death of another trust beneficiary, however, will not qualify.

For example, an account for a living trust providing that the trust assets go in equal shares to the owner's three children upon the owner's death would be eligible for $300,000 of deposit insurance coverage. If the trust provides that the funds would go to the children only if they each graduate from college prior to the owner's death, the coverage would still be $300,000, because defeating contingencies will no longer be relevant for deposit insurance purposes. Another example is where a trust provides that the owner's spouse becomes the owner of the trust assets upon the owner's death but, if the spouse predeceases the owner, the three children then become the owners of the assets. If the spouse is alive when the institution fails, the account will be insured up to a maximum of $100,000, because only the spouse is entitled to the assets upon the owner's death. If at the time of the institution failure, however, the spouse has predeceased the owner, then the account would be eligible for up to $300,000 coverage because there would be three qualifying beneficiaries entitled to the trust assets upon the owner's death.

In developing the final rule the FDIC was guided by two interwoven objectives: To simplify the existing rules and to provide coverage similar to POD account coverage. The FDIC believes the final rule achieves these objectives because it is reasonably straight-forward and because, as with POD accounts, coverage is based on the actual interests of qualifying beneficiaries. The final rule is similar to Alternative One but provides coverage based on qualifying beneficiaries who have an immediate interest in the trust assets upon the grantor's death. This concept is the same as the coverage theory applicable to POD accounts: To provide coverage based on the interests of the beneficiaries who will receive the account funds when the owner dies, determined as of the date of the institution failure. Alternative One could have allowed for potentially open-ended coverage in some situations, particularly where a trust provided for tiered, or sequential, beneficiaries whose interests in the trust depend on whether ''higher-tiered'' beneficiaries predecease them.

Moreover, Alternative One would have required that a depository institution's deposit account records indicate the name and ascertainable interest of each qualifying beneficiary in the trust. The FDIC was persuaded by a majority of comments contending that requiring institutions to maintain records on the names of living trust beneficiaries and their interests in the respective trusts would be unnecessary and burdensome. The FDIC agrees with the industry assessment of that proposed requirement because the grantor of a living trust might during his or her lifetime change the trust beneficiaries and modify the terms of the trust. Requiring the grantor to inform a depository institution of these changes and requiring depository institutions to maintain records on such information is impractical and unnecessarily burdensome. Hence, a key feature of the final rule is that it requires no recordkeeping requirement other than an indication on a depository institution's records that the account is a living trust account. Upon an institution failure, FDIC claims agents would identify the beneficiaries and determine their interests by reviewing the trust agreement obtained from the depositor. At that time depositors would attest to their relationship to the named beneficiaries.

In the final rule the FDIC has eliminated an unnecessary recordkeeping requirement. Specifically, the names of living trust beneficiaries will no longer have to be recorded in the deposit account records of an insured institution in order for the account to qualify for the deposit insurance provided for living trust accounts. The removal of this recordkeeping requirement supports the ongoing efforts of the FDIC and the other federal banking regulators, under the Economic Growth and Regulatory Paperwork Reduction Act (''EGRPRA''), to eliminate unnecessary regulatory requirements. Detailed information about the EGRPRA project is available at *http://www.egrpra.gov.*

The FDIC believes deposit insurance coverage under the final rule would match the coverage many depositors now expect for their living trust accounts. Generally, depositors believe that living trust coverage is essentially the same as POD account coverage. In other words, insurance is based on the number of qualifying beneficiaries with an ownership interest in the account, regardless of any conditions, or contingencies, affecting those interests. The final rule will match those expectations because it provides coverage more closely aligned with POD coverage than the former rules. The FDIC believes the final rule will provide bankers and depositors with a better understanding of the living trust account deposit insurance rules and will help to eliminate the present confusion surrounding the coverage of living trust accounts.

B. Treatment of Non-Qualifying Beneficiaries

The treatment of non-qualifying beneficiaries under the final rule will be the same as under the current POD rules. Interests of non-qualifying beneficiaries in a living trust will be insured as the owner's single-ownership (or individual) funds. As such, those interests will be added to any other single-ownership funds the owner holds at the same institution and insured to a total of $100,000 in that account-ownership capacity. For example, assume a living trust provides that the grantor's assets shall belong equally to her husband and nephew upon her death. A living trust account with a balance of $200,000 held for that trust would be insured for at least $100,000 because there is one qualifying beneficiary (the grantor's spouse) who, upon the institution failure, would be entitled to the funds upon the grantor's death. Because the nephew is a non-qualifying beneficiary, the $100,000 attributable to him would be insured as the grantor's single-ownership funds. If the grantor has no other single-ownership funds at the institution, the full $200,000 of the living trust account would be insured—$100,000 under the grantor's revocable trust ownership capacity and $100,000 under the grantor's single-ownership capacity. If, however, the grantor also has a single-ownership account with a balance of, say, $20,000, the $100,000 of the living trust account attributable to the nephew would be added to that amount and the combined amount, in the grantor's single-ownership capacity, would be insured to a limit of $100,000, leaving $20,000 uninsured. This result and calculation methodology is the same as under the current rules for POD accounts.

C. Treatment of Life-Estate and Remainder Interests

Living trusts sometime provide for a life estate interest for designated beneficiaries and a remainder interest for other beneficiaries. The final rule addresses this situation by deeming each life-estate holder and each remainder-man to have an equal interest in the trust assets. Insurance is then provided up to $100,000 per qualifying beneficiary. For example, assume a grantor creates a living trust providing for his wife to have a life-estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are $300,000 and a living trust account is opened for that full amount. Unless otherwise indicated in the trust, the FDIC would deem each of the beneficiaries (all of whom here are qualifying beneficiaries) to own an equal share of the $300,000; hence, the full amount would be insured. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as under the final rule defeating contingencies are no longer relevant for insurance purposes.

Another example would be where the living trust provides for a life estate interest for the grantor's spouse and remainder interests for two nephews. In that situation the method for determining coverage would be the same as that indicated above: Unless otherwise indicated, each beneficiary would be deemed to have an equal ownership interest in the trust assets and coverage would be provided accordingly. Here the life-estate holder is a qualifying beneficiary (the grantor's spouse) but the remainder-men (the grantor's nephews) are not. As such (assuming an account balance of $300,000), the living trust account would be insured for at least $100,000 because there is one qualifying beneficiary (the grantor's spouse). The $200,000 attributable to the grantor's nephews would be insured as the grantor's single-ownership funds. If the grantor has no other single-ownership funds at the same institution, then $100,000 would be insured as the grantor's single-ownership funds. Thus, the $300,000 in the living trust account would be insured for a total of $200,000 and $100,000 would be uninsured. The FDIC believes this is a simple, balanced approach to insuring living trust accounts where the living trust provides for one or more life estate interests.

V. Effective Date

The final rule will become effective on April 1, 2004, the beginning of the first calendar quarter following the publication date of the final rule. The final rule will apply as of that date to all living trust accounts unless, upon a depository institution failure, a depositor who established a living trust account before April 1, 2004, chooses coverage under the previous living trust account rules. For any depository institution failures occurring between January 13, 2004, and April 1, 2004, the FDIC will apply the final rule if doing so would benefit living trust account holders of such failed institutions.

VI. Paperwork Reduction Act

The final rule will simplify the FDIC's regulations governing the insurance of living trust accounts. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The amendments to the deposit insurance rules will apply to all FDIC-insured depository institutions, including those within the definition of ''small businesses'' under the Regulatory Flexibility Act. The final rule eliminates an existing requirement for all FDIC-insured institutions to designate living trust beneficiaries in deposit account records. This change in recordkeeping will result in a marginal reduction in time and effort for depository institution staff which will not significantly affect compliance costs. The rule imposes no new reporting, recordkeeping or other compliance requirements. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final 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 (Pub. L. 105–277, 112 Stat. 2681).

IX. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') (5 U.S.C. 801 *et seq.*). As required by SBFERA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. Section 330.10(f) is revised to read as follows:

§ 330.10 Revocable trust accounts.

* * * * *

(f) *Living trust accounts.* (1) This section also applies to revocable trust accounts held in connection with a formal revocable trust created by an owner/grantor and over which the owner/grantor retains ownership during his or her lifetime. These trusts are usually referred to as living trusts. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the account held in connection with the living trust is eligible for the per-qualifying-beneficiary coverage described in paragraph (a) of this section. This coverage will apply only if, at the time an insured depository institution fails, a qualifying beneficiary would be entitled to his or her interest in the trust assets upon the grantor's death and that ownership interest would not depend on the death of another trust beneficiary. If there is more than one grantor, then the beneficiary's entitlement to the trust assets must be upon the death of the last grantor. The coverage provided in this paragraph (f) shall be irrespective of any other conditions in the trust that might prevent a beneficiary from acquiring an interest in the deposit account upon the account owner's death.

(*Example 1:* A is the owner of a living trust account with a deposit balance of $300,000. The trust provides that, upon A's death, her husband shall receive $100,000 and each of their two children shall receive $100,000, but only if the children graduate from college by age twenty-four. Assuming A has no other revocable trust accounts at the same depository institution, the coverage on her living trust account would be $300,000. The trust names three qualifying beneficiaries. Coverage would be provided up to $100,000 per qualifying beneficiary regardless of any contingencies.)
(*Example 2:* B is the owner of a living trust account with a deposit balance of $200,000. The trust provides that, upon B's death, his wife shall receive $200,000 but, if the wife predeceases B, each of the two children shall receive $100,000. Assuming B has no other revocable trust accounts at the same depository institution and his wife is alive at the time of the institution failure, the coverage on his living trust account would be $100,000. The trust names only one beneficiary (B's spouse) who would become the owner of the trust assets upon B's death. If when the institution fails B's wife has predeceased him, then the account would be insured to $200,000 because the two children would be entitled to the trust assets upon B's death.)

(2) The rules in paragraph (c) of this section on the interest of non-qualifying beneficiaries apply to living trust accounts. (*Example:* C is the owner of a living trust account with a deposit balance of $200,000. The trust provides that upon C's death his son shall receive $100,000 and his nephew shall receive $100,000. The account would be insured for *at least* $100,000 because one qualifying beneficiary (C's son) would become the owner of trust interests upon C's death. Because the nephew is a non-qualifying beneficiary entitled to receive an interest in the trust upon C's death, that interest would be considered C's single-ownership funds and insured with any other single-ownership funds C might have at the same institution. Assuming C has no other single-ownership funds at the institution, the full $200,000 in the living trust account would be insured ($100,000 in C's revocable trust account ownership capacity and $100,000 in C's single-ownership account capacity).

(3) For living trusts accounts that provide for a life-estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life-estate holder and each remainder-man will be deemed to have equal interests in the trust assets for deposit insurance purposes. Coverage will then be provided under the rules in this

paragraph (f) up to $100,000 per qualifying beneficiary.

(*Example 1:* D creates a living trust providing for his wife to have a life-estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are $300,000 and a living trust deposit account is opened for that full amount. Unless otherwise indicated in the trust, each beneficiary (all of whom here are qualifying beneficiaries) would be deemed to own an equal share of the $300,000; hence, the full amount would be insured. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as defeating contingencies are not relevant for insurance purposes.)

(*Example 2:* E creates a living trust providing for a life estate interest for her spouse and remainder interests for two nephews. The life estate holder is a qualifying beneficiary (E's spouse) but the remainder-men (E's nephews) are not. Assuming a deposit account balance of $300,000, the living trust account would be insured for *at least* $100,000 because there is one qualifying beneficiary (E's spouse). The $200,000 attributable to E's nephews would be insured as E's single-ownership funds. If E has no other single-ownership funds at the same institution, then $100,000 would be insured separately as E's single-ownership funds. Thus, the $300,000 in the living trust account would be insured for a total of $200,000 and $100,000 would be uninsured.)

(4) In order for a depositor to qualify for the living trust account coverage provided under this paragraph (f), the title of the account must reflect that the funds in the account are held pursuant to a formal revocable trust. There is no requirement, however, that the deposit accounts records of the depository institution indicate the names of the beneficiaries of the living trust and their ownership interests in the trust.

(5) Effective April 1, 2004, this paragraph (f) shall apply to all living trust accounts, unless, upon a depository institution failure, a depositor who established a living trust account before April 1, 2004, chooses coverage under the previous living trust account rules. For any depository institution failures occurring between January 13, 2004 and April 1, 2004, the FDIC shall apply the living trust account rules in this revised paragraph (f) if doing so would benefit living trust account holders of such failed institutions.

* * * * *

Dated at Washington, DC, this 13th day of January, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–1198 Filed 1–20–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30402; Amdt. No. 446]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on January 13, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows: