Rules and Regulations

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FEDERAL ELECTION COMMISSION

11 CFR Part 9004

[Notice 2005–15]

Travel on Behalf of Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Announcement of effective date.

SUMMARY: The Commission is announcing the effective date for amendments to the regulations regarding the proper rates and timing for payment for travel on behalf of Presidential candidates during the general election on means of transportation that are not offered for commercial passenger service, including government conveyances. The publication of these final rules in the **Federal Register** occurred on December 15, 2003 and included an announcement that the effective date would be published at a later date once the regulations had been before Congress for 30 legislative days pursuant to the Presidential Election Campaign Fund Act. Publication of the effective date notice was inadvertently delayed. Further information is provided in the supplementary information that follows.

DATES: The effective date for the revisions to 11 CFR 9004.6 and 9004.7 at 68 FR 69595, and published on December 15, 2003, was April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 15, 2003, the Commission published the ''Final Rules and Transmittal of Regulations to Congress for Travel on Behalf of Candidates and Political Committees'' in order to implement several changes to its rules governing travel in connection with a Federal election. 68 FR 69583 (Dec. 15, 2003). The final rules provided new and revised regulations regarding the proper rates and timing of payment for travel on behalf of political committees and candidates by means of transportation that are not offered for commercial passenger service, including government conveyances. One portion of the rulemaking amended regulations in 11 CFR 9004.6 and 9004.7, promulgated pursuant to the Presidential Election Campaign Fund Act, 26 U.S.C. 9009(c) (pertaining to Presidential candidates receiving public funding for the general election).

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 *calendar* days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 *legislative* days before they are finally promulgated. The final rules at 11 CFR 9004.6 and 9004.7 were transmitted to Congress on December 10, 2003. Thirty legislative days expired in both the Senate and the House of Representatives on March 31, 2004.

In the December 15, 2003 Final Rules and Transmittal to Congress, the Commission stated that a separate notice would be published to announce the effective date of the amendments to 11 CFR 9004.6 and 9004.7. This publication provides that separate notice, which was inadvertently delayed. Accordingly, the Commission hereby announces the effective date of amended 11 CFR 9004.6 and 9004.7, as published at 68 FR 69583, *et seq.* (Dec. 15, 2003), as April 2, 2004, which was more than thirty legislative days after the transmittal of the final rules to Congress.

The Commission notes that the 2003 publication of the Final Rules, in combination with the inadvertent delay in the publication of this effective date notice, may have caused some confusion as to which regulations were applicable to publicly funded Presidential candidates in the 2004 general election. In light of these circumstances, the Commission intends to exercise its discretion by not pursuing potential violations of the travel reimbursement rules in 11 CFR 9004.6(b)(2) and 9004.7(b)(5) and (8) that occurred between April 2, 2004, and June 9, 2005, so long as the reimbursement for campaign travel was provided in accordance with either pre- or post-revision 11 CFR 9004.6 or 9004.7. In addition, the Commission notes that, for reimbursement of travel that occurred during the 2004 general election cycle, calculations based on either pre-or post-revision 11 CFR 9004.6 or 9004.7 will be permissible in the context of audits or repayment of public funds pursuant to 26 U.S.C. 9007.

Dated: June 3, 2005.

Bradley A. Smith,

Commissioner, Federal Election Commission.

[FR Doc. 05–11422 Filed 6–8–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC90

Deposit Insurance Coverage; Accounts of Qualified Tuition Savings Programs Under Section 529 of the Internal Revenue Code

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comments.

SUMMARY: The FDIC is revising its insurance regulations for accounts of qualified tuition savings programs under section 529 of the Internal Revenue Code.

Qualified tuition programs that are savings plans or prepaid tuition plans may be established by states or state instrumentalities under section 529 of the Internal Revenue Code. Interests in qualified tuition savings programs are ''securities'' under the federal securities laws. Under the FDIC's existing insurance regulations, a state public instrumentality that issues securities is treated as a corporation for deposit

insurance purposes. As a result, the deposits of the state public instrumentality are insured up to a total of only $100,000 in the aggregate. The deposits are not insured on a ''pass-through'' basis to the holders of the securities. Under the FDIC's new rule, the deposits of the state public instrumentality may be insured on a ''pass-through'' basis (*i.e.*, up to $100,000 for the beneficial interest of each participant) if the deposits represent interests or accounts in a state public instrumentality that is part of a qualified tuition savings program under section 529 of the Internal Revenue Code.

DATES: The amendment is effective June 9, 2005. Written comments must be received by the FDIC no later than August 8, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments.
- E-mail: *comments@fdic.gov.* Include ''Part 330—Accounts of Qualified Tuition Programs'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions must include the agency name and use the title ''Part 330—Accounts of Qualified Tuition Programs.'' The FDIC may post comments on its Web site at: *http://www.fdic.gov/regulations/laws/federal/propose.html.*

- Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. The FDIC's Existing Regulation

Under the applicable section of the FDIC's insurance regulations, the deposits of a corporation are insured up to $100,000 in the aggregate. See 12 CFR 330.11(a)(1). This rule applies to ordinary corporations as well as to certain business or investment trusts. The applicable subsection of the FDIC's regulations is 12 CFR 330.11(a)(2), which provides as follows: ''Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.''

When this rule was proposed in 1976, the FDIC explained the purpose as follows: ''It has been recognized that certain trusts, commonly known as 'business trusts,' so closely resemble corporations that they may in essence be viewed as de facto corporations. Such trusts are generally characterized by the fact that the trust corpus consists of funds or other property originally contributed by the beneficiaries themselves for the purpose of making a profit through the conduct of a business. In this respect, the beneficiaries are in fact closely analogous to shareholders in a corporation. Where such trusts or other business entities are engaged in the business of soliciting funds from the public for investment purposes, they are, with certain exceptions, subject to the Investment Company Act of 1940. Heretofore, where such funds have been invested in bank certificates of deposit, there has existed some confusion as to whether the deposits are insured according to each individual investor's beneficial interest in the trust or, alternatively, according to the aggregate deposits held by the trust in each insured bank. The Board seeks to relieve that confusion by announcing its intention to determine the extent of federal deposit insurance of accounts held by such investment companies by application of the same rules which govern the insurance of accounts held by corporations.'' 41 FR 49492, 49493 (November 9, 1976).

The FDIC's rule applies to business or investment trusts that must file registration statements with the Securities and Exchange Commission (SEC). The rule also applies to investment trusts that would be required to file such statements ''but for'' certain sections of the Investment Company Act, including section 2(b). Governmental entities, including state public instrumentalities, are generally not required to register with the SEC under the Investment Company Act because section 2(b) makes the Investment Company Act inapplicable to them. See 15 U.S.C. 80a–2(b).[1]

II. Qualified Tuition Programs

Section 529 of the Internal Revenue Code provides tax benefits for ''qualified tuition programs,'' including qualified tuition savings plans. See 26 U.S.C. 529(a). Section 529 authorizes the creation of prepaid tuition plans and tuition savings plans. Tuition savings plans under section 529 must be sponsored by a state or state public instrumentality.[2] See 26 U.S.C. 529(b)(1). Section 529 defines the tuition savings programs that are required to be sponsored by a state or state public instrumentality as programs under which a person ''may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account'' (and which meets certain requirements). 26 U.S.C. 529(b)(1)(A)(ii).

Some state programs have permitted participants to have the option of investing their tuition savings payments directly in bank deposits. In past reviews of a few of these programs, the FDIC staff has advised program representatives that the deposits may be insured to the participants if the participants are the actual owners of the deposits.

More recently, the FDIC has learned that the SEC has taken the position that, under the federal securities laws, the offer and sales of interests in section 529 tuition savings plans will not be exempt from registration under the Securities Act of 1933 unless such interests are in or directly with a state public instrumentality, such as a state investment trust, or other state entity. This means that a participant in a state qualified tuition savings program must

[1] In 1988, the FDIC reconsidered its treatment of investment trusts. Specifically, the FDIC put forth a proposed rule that would have drawn a distinction between most business or investment trusts and so-called ''unit investment trusts,'' in which the trust assets are invested in ''an identified, static portfolio of time deposits with the same or nearly the same maturity dates.'' 53 FR 39746 (October 12, 1988). The FDIC's proposed rule was never adopted as a final rule. Rather, the proposed rule was withdrawn. *See* 54 FR 52399 (December 21, 1989).

[2] Section 529 also authorizes the creation of prepaid tuition programs by states or by educational institutions under certain conditions.

acquire an interest or account in the state public instrumentality (a state trust) and may not directly acquire a bank deposit. Assuming that the assets of the state's 529 tuition savings program include bank deposits, these deposits will be owned by the state instrumentality (*i.e.*, the investment trust) and not by the individual participants or investors.

The Investment Company Act does not apply to state public instrumentalities pursuant to section 2(b). Under the FDIC's existing regulation, as previously discussed, a state public instrumentality that would be required to register under the Investment Company Act but for the general inapplicability of the Investment Company Act to state public instrumentalities under section 2(b) is treated as a corporation. This means that the deposits of the state public instrumentality or investment trust will be subject to aggregation. In other words, the aggregated deposits will be insured up to a total of only $100,000 and will not be insured up to $100,000 for the interest of each participant or investor. See 12 CFR 330.11(a).

This result is unwarranted. In the case of those qualified tuition savings programs brought to the attention of the FDIC, the qualified tuition savings programs do not function in the manner of ordinary business trusts or investment companies. In providing participants with bank deposit options for the monies paid for their interests or accounts in the state public instrumentality, the tuition savings programs are structured so that the funds held in accounts or representing interests of particular investors in the state public instrumentality can be traced to particular certificates of deposit. Thus, the deposits are equivalent to deposits placed at banks by or through deposit brokers. Under the FDIC's regulations, brokered deposits are not aggregated and insured up to $100,000 to the broker. Rather, such deposits are insured up to $100,000 on a ''pass-through'' basis to the broker's customers. See 12 CFR 330.7. This means that each customer's funds are aggregated with the customer's other accounts at the same insured depository institution (if any) and insured separately up to the $100,000 limit. See 12 CFR 330.7.

• ''Pass-through'' coverage as described above is contingent upon the satisfaction of certain requirements. First, the account records of the insured depository institution must reveal the fact that the nominal accountholder (*e.g.*, the broker) is a mere agent or custodian and not the actual owner of the funds. See 12 CFR 330.5(b)(1). Second, the interests of the actual owners must be revealed in records maintained by the depository institution or the broker or some other party. See 12 CFR 330.5(b)(2). Third, the deposits actually must be owned by the alleged actual owners and not by the nominal accountholder. See 12 CFR 330.3(h); 12 CFR 330.5(a)(1).

In the case of those qualified tuition savings programs brought to the attention of the FDIC, an issue exists as to whether the deposits are owned by the state public instrumentality or investment trust as opposed to being owned by the participants or investors. While the participants or investors are the beneficial owners of the accounts of or interests in the state public instrumentality, the participants' monies paid to the state trust for accounts or interests are assets of the state public instrumentality and are, in many cases, invested by the state trust as instructed by the participants or investors. Otherwise, however, the requirements for ''pass-through'' coverage have been satisfied.

As stated above, in the plans reviewed by the FDIC, the funds of particular investors can be traced to particular certificates of deposit. This fact strongly suggests that the deposits should be insured up to $100,000 for the beneficial interest of each investor as opposed to being insured up to only $100,000 for the entire state 529 tuition savings plan. Accordingly, the FDIC has decided to amend its insurance regulations so that the deposits of a state public instrumentality that is an investment trust for a qualified tuition savings program under section 529 of the Internal Revenue Code may be insured on a ''pass-through'' basis provided that (1) each deposit may be traced to one or more particular investors; and (2) the FDIC's disclosure rules for ''pass-through'' coverage have been satisfied.

The FDIC is not amending its rules for other investment trusts governed by the FDIC's regulation at 12 CFR 330.11(a)(2). Generally, such trusts do not function in a manner similar to qualified tuition savings programs. In addition, such trusts do not exist for the same purpose as qualified tuition savings programs. In providing tax benefits for state-sponsored qualified tuition savings programs, Congress intended ''to encourage persons to save to meet post-secondary educational expenses.'' S. Rep. No. 104–281, at 106 (1996), reprinted in 1996 U.S.C.C.A.N. 1474, 1580. Providing ''pass-through'' coverage for the deposits of qualified tuition savings programs will be consistent with this purpose. Without ''pass-through'' coverage, persons may choose not to participate in these programs.

III. Interim Final Rule and Request for Comments

Under the Administrative Procedure Act (APA), an agency generally must publish a proposed rule prior to adopting a final rule. An exception exists for cases in which ''the agency for good cause finds * * * that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interests.'' 5 U.S.C. 553(b)(3)(B). In such cases, the agency must incorporate and explain this finding in the published final rule. *Id.*

Here, the publication of a proposed rule is contrary to the public interest because a few states—relying upon advice from the FDIC staff—already have established qualified tuition savings programs with bank deposit options.[3] Consequently, an issue exists as to the insurance coverage of funds already invested by the participants in these programs. In making these investments, the participants may have relied upon the availability of ''pass-through'' insurance coverage. As previously discussed, ''pass-through'' coverage may not be available under the FDIC's existing regulation in interaction with the tax and federal securities laws.

In order to safeguard participants' funds, the FDIC has decided to revise its regulations through this interim final rule as opposed to leaving the insurance coverage of the funds in doubt during a comment period.

Under the APA, a rule generally must be published at least 30 days prior to the rule's effective date. An exception exists for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). Another exception exists for cases in which the agency finds ''good cause.'' 5 U.S.C. 553(d)(3). In this case, the new rule grants an exemption to the FDIC's regulation providing that investment or business trusts must be treated as corporations for purposes of determining deposit insurance coverage. See 12 CFR 330.11(a)(2). This exemption is necessary in order to safeguard the funds invested by participants in qualified tuition savings programs. Accordingly, the FDIC finds good cause for making the new rule effective immediately.

Although good cause exists for the promulgation of a final rule, the FDIC is

[3] The advice rendered by the FDIC staff was based upon the plan documents submitted to the FDIC. These documents described the participants or investors as the owners of the deposits.

interested in receiving comments as to how the rule might be improved. Therefore, comments are requested. Following the comment period, the FDIC will make needed changes, if any.

Paperwork Reduction Act

This rule contains no new collections of information as defined by the Paperwork Reduction Act. See 44 U.S.C. 3501 *et seq.* Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking. See 5 U.S.C. 603, 604. Because the amendment to part 330 is being published in interim final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act, the FDIC will report this rule to Congress so that the rule may be reviewed. See 5 U.S.C. 801 *et seq.*

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trust and trustees.

■ For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 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 330.11(a)(2) is revised to read as follows:

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) * * *

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage. An exception to this paragraph (a)(2) shall exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code (26 U.S.C. 529)). A deposit account of such a trust or business arrangement shall not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships are disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant's funds shall be insured to the participant.

* * * * *

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 16th day of May, 2005.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 05–11212 Filed 6–8–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD; Amendment 39–14029; AD 2005–07–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45A, CF6–50A, CF6–50C, and CF6–50E Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2005–07–05. That AD applies to General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. We published AD 2005–07–05 in the **Federal Register** on March 30, 2005, (70 FR 16096). A descriptive phrase was inadvertently left out of compliance paragraph (f). This document corrects compliance paragraph (f). In all other respects, the original document remains the same.

DATES: Effective June 9, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 05–6107, that applies to (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003, was published in the **Federal Register** on March 30, 2005, (70 FR 16096). The following correction is needed:

§ 39.13 [Corrected]

■ On page 16098, in the first column, in compliance paragraph (f), the third line, ''cycles-since-new (CSN), or 3,000 cycles-'' is corrected to read ''cycles-since-new (CSN) on the TMF assembly, or 3,000 cycles-''.

Issued in Burlington, MA, on June 2, 2005.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–11442 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17773; Airspace Docket No. 04–ASW–11]

RIN 2120–AA66

Modification of Restricted Areas 5103A, 5103B, and 5103C and Revocation of Restricted Area 5103D; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule (Airspace Docket No. 04–ASW–11) published in the **Federal Register** on December 13, 2004 (69 FR 72113). That action modified Restricted Areas 5103A