positive impact on small and large handlers by assuring that all exemption applications and reviews are handled equitably following approved standardized procedures.

The committee discussed alternatives to this change, including not making any changes, but determined that specific procedures were needed to facilitate: (1) Exempting handlers from minimum quality testing; (2) revoking exemptions when handlers violate requirements under the marketing order; and (3) processing appeals to the committee's actions. These procedures are expected to ensure that all such requests are treated equitably. The committee's vote was unanimous.

The information collection requirements for the ACP Form–5, which handlers will complete and forward to the committee to request exemption from minimum quality requirements under the order, was previously submitted to the Office of Management and Budget (OMB) and approved under OMB No. 0581–0230. Thus, this action will not impose any additional reporting or recordkeeping requirements on either small or large pistachio 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The AMS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Further, the committee's meetings are widely publicized throughout the pistachio industry and all interested persons are encouraged to attend the meetings and participate in the committee's deliberations. Like all committee meetings, the April 12, 2005, meeting was a public meeting and all entities, both large and small, were encouraged to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on July 22, 2005 (70 FR 42256). Copies of the rule were provided to the committee and handlers by the committee staff. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended September 20, 2005. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation and other information, it is found that this finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 42256, July 22, 2005), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 983, which was published at 70 FR 42256 on July 22, 2005, is adopted as a final rule without change.

Dated: October 24, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–21489 Filed 10–27–05; 8:45 am]

BILLING CODE 3410–02–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: Final rule.

SUMMARY: The FDIC is adopting a final rule governing the insurance coverage of deposits of qualified tuition savings programs under section 529 of the Internal Revenue Code. The final rule makes no substantive changes to a previous interim final rule. Under the rule, the deposits of a qualified tuition savings program will be insured on a ''pass-through'' basis to the program participants. In other words, the deposits will be insured up to $100,000 for the interest of each participant in aggregation with the participant's other deposits (if any) at the same insured depository institution.

DATES: The final rule will be effective on December 27, 2005.

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. Qualified Tuition Programs

Section 529 of the Internal Revenue Code provides tax benefits for ''qualified tuition programs.'' See 26 U.S.C. 529(a). Such programs include prepaid tuition programs (which may be created by states or educational institutions) as well as tuition savings programs (which must be sponsored by states or public instrumentalities). See 26 U.S.C. 529(b)(1). A tuition savings program is defined by section 529 as a program 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).

Under laws administered by the Securities and Exchange Commission (SEC), interests in a qualified tuition savings program must be sold by a public instrumentality (such as a state investment trust) so that the interests in the program will be exempt from registration under section 2(b) of the Investment Company Act. See 15 U.S.C. 80a–2(b). This means that a participant in a state qualified tuition savings program cannot acquire an asset through the program or public instrumentality. Rather, the participant must acquire an interest or account in the public instrumentality.

Some state 529 programs have provided participants with the option of investing their funds directly in bank deposits. Other state programs have expressed an interest in creating such an option. As stated above, participants in a 529 program must acquire an interest in the public instrumentality. They cannot acquire a particular asset. This means that the public instrumentality, not the participant, will be the legal owner of any bank deposit purchased by or through the public instrumentality.

The fact that any bank deposit will belong to the public instrumentality raises issues under the FDIC's insurance regulations. These issues are discussed below.

II. The FDIC's 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 business or investment trusts that must file registration statements with the SEC. Generally, this rule also applies to investment trusts that would be required to file registration statements with the SEC ''but for'' certain sections of the Investment Company Act, including section 2(b).

An exception exists for the deposits of a qualified tuition savings program sponsored by a state or public instrumentality. Although such programs are covered by section 2(b) of the Investment Company Act, the FDIC does not treat the public instrumentality as a corporation with insurance coverage limited to $100,000 in the aggregate. Rather, the FDIC provides insurance coverage up to $100,000 for the interest of each investor or plan participant. The FDIC provides this ''pass-through'' coverage through an interim final rule published in June of 2005. See 70 FR 33689 (June 9, 2005).

In adopting the interim final rule, the FDIC relied upon the fact that qualified tuition savings programs—in placing participants' funds at banks in a manner that satisfies the FDIC's requirements for ''pass-through'' insurance coverage—do not function in the manner of ordinary business trusts or investment companies. In a qualified tuition savings program, the deposits are equivalent to brokered deposits. Assuming the satisfaction of certain disclosure requirements, brokered deposits are insured on a ''pass-through'' basis to the broker's customers. See 70 FR at 33691. Also, in adopting the interim final rule, the FDIC relied upon the Congressional purpose behind section 529. That purpose is to encourage persons to save money for post-secondary educational expenses. Without ''pass-through'' coverage of deposits, some persons may choose not to participate in 529 programs. *See id.*

III. The Public Comments

In response to the publication of the interim final rule, the FDIC received seven public comments. These comments were submitted by three bankers' associations, one state regulator, one holding company, one bank, and one banking information company.

One of the comments did not address the substance of the rule but noted a grammatical error (involving noun/verb agreement). The other comments supported the interim final rule, though two changes were suggested. Each of the suggested changes is discussed in turn below.

First, a recommendation was made to create a separate insurance category for the deposits of qualified tuition savings programs so that a participant's funds in a 529 deposit would not be aggregated with the participant's funds in other deposit accounts (if any) at the same insured depository institution. This suggested treatment would be similar to the FDIC's treatment of the deposits of employee benefit plans. *See* 12 CFR 330.14.

Although the FDIC recognizes the deposits of employee benefit plans as a separate ownership category for purposes of applying the $100,000 insurance limit, this special treatment is based upon a specific statutory provision. See 12 U.S.C. 1821(a)(1)(D). No such statutory provision exists for the deposits of qualified tuition savings programs. In the absence of any such statutory provision, the FDIC is reluctant to recognize a new deposit insurance ownership category.

Moreover, no apparent reason exists to treat the deposits of qualified tuition savings programs differently than deposits held by agents or custodians. In the case of such deposits, the FDIC provides ''pass-through'' insurance coverage (assuming the satisfaction of certain disclosure requirements) but the FDIC does not insure such deposits separately from all other deposits. Rather, the FDIC aggregates the funds of each owner with the owner's other accounts (if any) at the same insured depository institution. Under these circumstances, the FDIC has decided not to create a new deposit ownership category for the deposits of qualified tuition savings programs under section 529 of the Internal Revenue Code.

Second, a recommendation was made to include specific language about treating each participant's funds ''as a deposit account of the participant.'' Although this language would not change the substance of the rule, the suggested language could clarify the effect (*i.e.*, to provide separate insurance coverage for the funds of each participant). For this reason, the FDIC has adopted the suggested language.[1]

[1] In advocating the suggested change, this comment explained the change as follows: ''[The change] would * * * further ensure that the participant's funds * * * would be aggregated with other deposit accounts of the participant held in the same bank, where appropriate, or would be appropriately segregated from other deposit accounts held by the same participant provided there are separate qualifying designated beneficiaries.'' The reference to ''qualifying beneficiaries'' suggests that insurance coverage may be sought under 12 CFR 330.10. That section of the insurance regulations deals with revocable testamentary trust accounts. Under 12 CFR 330.10, such accounts are insured up to $100,000 for the funds contributed by each owner for the benefit of each beneficiary (with ''beneficiary'' meaning a person who shall become the owner of the funds upon the owner's death). See 12 CFR 330.10(a). This ''per beneficiary'' coverage is not available, however, unless certain requirements are satisfied. First, the title of the bank account must reflect the testamentary nature of the account. This requirement can be satisfied through the use of a term such as ''payable-on-death'' or ''POD.'' See 12 CFR 330.10(b). Second, the names of the testamentary beneficiaries must be identified somewhere in the bank's deposit account records. See id. Third, the beneficiaries must be ''qualifying beneficiaries'' (*i.e.*, the owner's spouse, children, grandchildren, parents or siblings). See 12 CFR 330.10(a). By expressly providing that the funds of each participant will be treated as a separate ''account,'' the FDIC does not mean to affect any of the requirements for obtaining insurance coverage under 12 CFR 330.10. For example, as a result of the first requirement, no coverage will be available under 12 CFR 330.10 unless the bank establishes an account with ''POD'' or similar term in the account title. Also, coverage under 12 CFR 330.10 will not be available for a participant's funds in a qualified tuition savings program unless the participant is permitted under 26 U.S.C. 529 and the applicable state law to designate one or more beneficiaries who will receive the funds in the event of the participant's death.

IV. The Final Rule

Under the final rule, the deposits of a qualified tuition savings program under section 529 of the Internal Revenue Code will not be treated as the deposits of a corporation with coverage limited to $100,000 in the aggregate. Rather, the deposits will be insured up to $100,000 for the interest of each participant or investor (in aggregation with any other deposits of the participant or investor at the same insured depository institution). Such ''pass-through'' coverage will not be available, however, unless two requirements are satisfied. First, the funds in the account must be traceable to one or more particular investors. Second, the existence of any trust or custodial relationships must be disclosed in accordance with the FDIC's requirements at 12 CFR 330.5.

In providing insurance coverage up to $100,000 for each ''participant,'' the FDIC means to provide coverage up to $100,000 for each owner of the securities issued by the public instrumentality. In the 529 programs reviewed by the FDIC, these ''participants'' are the persons who contribute the funds. These persons may be referred to as ''account owners.'' A distinction exists between these contributors or ''account owners'' and the ''designated beneficiaries'' (*i.e.*, the persons who will go to college someday).

In the programs reviewed by the FDIC, the contributors retain some rights with respect to the funds (*e.g.*, the right to withdraw money under certain circumstances or the right to change the beneficiary). Assuming that the qualified tuition savings program is structured in this manner so that the securities are owned by the contributors, then the FDIC will treat the contributors as the ''participants.'' If the program is structured so that the securities are owned by the ''designated beneficiaries,'' however, then the FDIC will treat the beneficiaries as the ''participants.'' For example, the beneficiary would be the ''participant'' if no one but the beneficiary possesses the right to withdraw funds or to name a different beneficiary.

Again, the FDIC simply means to provide ''pass-through'' insurance coverage to the actual owners of the securities. The FDIC does not mean to dictate the terms of a qualified tuition savings program. Such programs must adhere to the requirements of section 529 and the applicable state law.

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 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 is disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant's funds shall be insured as a deposit account of the participant.

* * * * *

Dated at Washington, DC, this 6th day of October, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–20766 Filed 10–27–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22795; Directorate Identifier 2005–NM–193–AD; Amendment 39–14353; AD 2005–22–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Aerospatiale Model ATR42 and ATR72 airplanes. This AD requires a one-time inspection to determine the part number or markings of the fuel quality indicator (FQI) and replacement of any FQI having an incorrect part number. This AD results from a report that an FQI having an incorrect part number was installed on a Model ATR72 airplane. We are issuing this AD to ensure that a correct FQI is installed. An incorrect FQI could result in fuel starvation to the engine and consequent engine shutdown during flight.

DATES: This AD becomes effective November 14, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 14, 2005.

We must receive comments on this AD by December 27, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.