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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064-AC13

Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulation entitled "Interest on Deposits." Section 18(g) of the Federal Deposit Insurance Act (FDI Act) requires that the FDIC by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. The interest on deposits regulation implements this prohibition. The amendment provides as an exception to the prohibition, the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the Board of Governors of the Federal Reserve System (FRB). This amendment is in accordance with the FDIC's review of its regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Marc Goldstrom, Counsel, Regulation and Legislation Section, Legal Division, (202-898-8807); or Louise Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs, (202-942-3599).

SUPPLEMENTARY INFORMATION:

Background

Section 18(g) of the FDI Act provides that the Board of Directors of the FDIC shall by regulation prohibit the payment

of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. (12 U.S.C. 1828(g)). Accordingly, the FDIC promulgated regulations prohibiting the payment of interest or dividends on demand deposits at 12 CFR part 329. Section 11 of the Banking Act of 1933 (12 U.S.C. 371a) prohibits member banks from paying interest on demand deposits and is implemented by Regulation Q, (12 CFR part 217) of the FRB.

Section 18(g) of the FDI Act also provides that the FDIC shall make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB (12 U.S.C. 1828(g)). Generally, member banks, state nonmember banks and insured branches of foreign banks are subject to the same prohibition and exceptions to such prohibition, albeit under different statutes and regulations.

From time to time the FRB issues or authorizes a new exception to the prohibition applicable to member banks, and the FDIC later issues or authorizes a similar exception affecting state nonmember banks and insured branches of foreign banks. In situations when the FRB issued or authorized an exception to the prohibition, but the FDIC had yet to act, state nonmember banks and insured branches of foreign banks faced a possible competitive disadvantage with respect to member banks.

In order to eliminate the potential for any such competitive disadvantage in the future and in light of the FDIC's statutory mandate to make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks, the FDIC published a notice of proposed rulemaking in the **Federal Register** on October 16, 1997 (62 FR 53769). The proposed amendment would allow for the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the FRB. The effect of the amendment is that state nonmember banks and insured branches of foreign banks would become subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the

FDIC had issued or authorized the specific exception.

The FDIC received a total of 19 comments on the proposal. Comments were received from eleven banks, one bank holding company, one individual, and six trade associations. Twelve commenters expressed support for the proposal and two expressed disagreements. However, one of those disagreeing with the proposal appeared to have misunderstood its effects. That commenter seemed to believe that the proposed rule would eliminate the prohibition entirely.

The other commenter expressing disapproval claimed that it would be detrimental to smaller independent banks and their customers, without explaining why he believed this to be the case. For the reasons stated in the notice of proposed rulemaking, the FDIC has decided to issue a final rule that is the same as the proposed rule.

Of the comments received, seven believed that the prohibition should be removed altogether. The FDIC may not at this time consider such action because section 18(g) of the FDI Act requires the FDIC to impose the prohibition by regulation. Thus, until such time as Congress repeals or amends section 18(g) of the FDI Act, the prohibition against paying interest on demand deposits must be maintained.

One regional trade association asked the FDIC to support the American Bankers Association (ABA) initiatives to develop new money market deposit accounts for commercial entities. The ABA recently asked the FRB to amend its regulations to create a money market deposit account (MMDA) that would allow up to twenty-four transactions a month for commercial entities not eligible for NOW accounts. The FRB declined, claiming that an MMDA that provided for twenty-four transactions instead of the current limit of six transactions would effectively circumvent the statutory prohibition against the payment of interest on demand deposits.

The regional trade association has now asked the FDIC to authorize an MMDA that allows twenty-four transactions per month and to encourage the FRB to do the same. The regional trade association argues that such an MMDA is necessary because banks are at a competitive disadvantage with brokerage firms and credit unions,

which are able to offer their business customers interest-bearing accounts with unlimited checking.

The FDIC is aware that the prohibition on the payment of interest on demand deposits puts banks at a competitive disadvantage and may encourage an otherwise unnecessary use of resources to avoid the prohibition. Nonetheless, the FDIC agrees with the FRB that authorizing such an MMDA would effectively circumvent the statutory prohibition. The FDIC also believes that the most appropriate way to address this issue is through a statutory change. Accordingly, organizations interested in pursuing this matter may wish to urge Congress to remove the prohibition.

Final Rule

The FDIC is adopting its proposed rule without change.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The effect of this rule is that state nonmember banks and insured branches of foreign banks will become subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC has issued or authorized the specific exception.

Paperwork Reduction Act

The final rule will not constitute a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Consequently, no material has been submitted to the Office of Management and Budget for review.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) provides generally for agencies to report rules to Congress and for Congress to review rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget (OMB) has determined that this final revision to part 329 does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 329

Banks, banking, interest rates.

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends part 329 of title 12 of the Code of Federal Register as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1819, 1828(g) and 1832(a).

2. Section 329.3 is added to read as follows:

§ 329.3 Exception to prohibition on payment of interest.

Section 329.2 shall not apply to the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the Board of Governors of the Federal Reserve System.

By order of the Board of Directors.

Dated at Washington, D.C., this 10th day of February, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 98-4142 Filed 2-18-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-1]

Amendment to Class E Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Topeka, Forbes Field, KS. A review of the Class E airspace for Forbes Field indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect on this rule is to comply with the criteria of FAA Order 7400.2D and to provide controlled Class E airspace for aircraft operating under Instrument Flight Rules.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 23, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE-520, Federal Aviation Administration, Docket Number 98-ACE-1, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic, Division, Airspace Branch, ACE-520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Topeka, Forbes Field, KS. A review of the Class E airspace for Topeka, Forbes Field indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Topeka, Forbes Field, KS, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is