prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subject in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

Dade County. That portion of Dade County beginning at the intersection of Northwest 87th Avenue and Northwest 103rd Street (State Highway 932); then east along Northwest 103rd Street (State Highway 932) (also known as 49th Street) to the section line dividing sections 4 and 5, T. 53 S., R. 41 E.; then south along the section line dividing sections 4 and 5, T. 53 S., R. 41 E., to Northwest 36th Street (State Highway 948); then west along Northwest 36th Street to Northwest 87th Avenue; then north along Northwest 87th Avenue to the point of beginning.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12395 Filed 5–8–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB73

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is revising its deposit insurance regulations by adopting three substantive amendments and numerous technical amendments. The purpose of these amendments is to increase the public's understanding of the regulations through simplification. The substantive amendments in the final rule will: Relax the FDIC's recordkeeping requirements for certain agency or fiduciary accounts; create a six-month ''grace period'' following the death of a depositor for the restructuring of accounts; and clarify the insurance coverage of revocable trust accounts when an account is held by the depositor pursuant to a formal ''living trust'' agreement.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, (202) 898–8839, or Joseph A. DiNuzzo, Senior Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Simplifying the deposit insurance regulations is one of the FDIC's corporate operating projects under its Strategic Plan. The purpose is to promote public understanding of deposit insurance and, particularly, to clarify and illustrate rules that have been misunderstood. The public's misunderstanding of certain of the rules has been reflected in the large volume of letters and phone calls received by the FDIC concerning deposit insurance. Also, this simplification effort is in furtherance of section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), requiring the federal banking agencies to reduce regulatory burden and improve efficiency.

The FDIC's insurance regulations are codified at 12 CFR part 330. In recent years, the FDIC has revised these regulations twice (not including a third revision that dealt only with certain disclosure requirements). In 1980, following the termination of the Federal Savings and Loan Insurance Corporation (FSLIC), the FDIC issued uniform regulations applicable to deposits in all insured depository institutions including those previously insured by the FSLIC. The issuance of uniform regulations was mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73 (1989)). In 1993, the FDIC revised the rules applicable to the deposits of employee benefit plans and retirement plans. This revision was mandated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242 (1991)). Notwithstanding these relatively recent revisions, the Board of Directors (Board) believes that the final rule is necessary for the purpose of simplification.

All revisions to the insurance regulations must be consistent with section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a). Section 11(a) provides that deposits maintained by a depositor in the same capacity and the same right at the same insured depository institution must be aggregated and insured up to $100,000. The FDI Act does not define ''depositor'', ''capacity'' or ''right''. Through the insurance regulations, the FDIC has implemented these terms by recognizing different categories of accounts based on ownership. Each type of account is entitled to separate insurance up to the $100,000 limit if it satisfies certain requirements. For example, single ownership accounts owned by a particular depositor are not added to qualifying joint accounts partly owned by the same depositor.

The final rule is the product of a process that began in May of 1996. At that time, the FDIC published an Advance Notice of Proposed Rulemaking (ANPR). See 61 FR 25596 (May 22, 1996). The ANPR was followed, in May of 1997, by the publication of a proposed rule. See 62 FR 26435 (May 14, 1997). The evolution of the final rule is discussed in greater detail below.

The final rule does not complete the FDIC's simplification efforts. As discussed below, the FDIC is still studying other possible revisions to its insurance regulations pertaining to joint accounts and ''payable-on-death'' accounts.

II. The Proposed Rule

Through the ANPR (61 FR 25596), the FDIC broadly solicited comments on how the insurance regulations could be simplified. Also, the FDIC sought comments on a number of specific revisions. The comment period ended on August 20, 1996. Almost all of the comments (sixty-eight in number) supported the FDIC's simplification efforts.

The FDIC did not include some of the revisions mentioned in the ANPR in the proposed rule (62 FR 26435). In particular, the proposed rule did not include revisions that would: (1) Eliminate the first step in the two-step process for determining the insurance coverage of joint accounts under current § 330.7 (new § 330.9); and (2) expand the list of qualifying beneficiaries for revocable trust accounts under current § 330.8 (new § 330.10). In publishing the proposed rule, the FDIC explained that these revisions required additional study. Before deciding on these revisions, the Board wished to learn more about the extent to which the revisions would affect the scope of deposit insurance coverage.

The proposed rule suggested three substantive revisions to the insurance regulations: (1) Relaxing the recordkeeping rules for fiduciary accounts; (2) providing a ''grace period'' following the death of a depositor; and (3) clarifying the operation of the revocable trust account rules in cases in which an account is held by a depositor in connection with a ''living trust.'' Each of these revisions is discussed in detail below.

A. Recordkeeping Rules for Fiduciary Accounts

The FDIC's recordkeeping rules are largely premised on the concept of ''pass-through'' insurance. If an agent on behalf of a principal deposits funds at an insured depository institution, the FDIC does not treat the agent as the owner of the deposit for purposes of the $100,000 insurance limit. Rather, the FDIC insures the funds to the principal or actual owner. In other words, the insurance coverage ''passes through'' the agent to the owner. See 12 CFR 330.6 (new 330.7).

The fact that agency accounts are insured on a ''pass-through'' basis does not mean that agency accounts represent a separate category of ownership or that agency accounts are entitled to insurance up to $100,000 separate from all other accounts. On the contrary, agency accounts are subject to aggregation with any other accounts maintained by or for the principal in the same right and capacity at the same insured depository institution. For example, funds in an account held by an agent for a principal, in the principal's single ownership capacity, will be aggregated with any single ownership accounts held directly by the principal.

''Pass-through'' insurance as described above is subject to an important qualification. Under section 12(c) of the FDI Act (12 U.S.C. 1822(c)), the FDIC is not required to recognize as the owner of a deposit any person whose interest is not disclosed on the records of the failed depository institution. In other words, in the absence of adequate disclosure, an account held by an agent is not entitled to ''pass-through'' insurance coverage. The FDIC has implemented section 12(c) by establishing certain recordkeeping rules for accounts held by agents or fiduciaries.

Under the FDIC's recordkeeping rules, the deposit account records of the failed depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. See 12 CFR 330.4(b)(1) (new 330.5(b)(1)). Assuming such disclosure, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor. See 12 CFR 330.4(b)(2) (new 330.5(b)(2)).

The rules quoted above are based upon a basic principle: In paying insurance, the FDIC is entitled to rely on the account records of the failed depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records are considered binding on the depositor, and no other records shall be considered, as to the manner in which the funds are owned. See 12 CFR 330.4(a)(1). In other words, under the current regulations, the account records must be unclear or ambiguous before the FDIC will consider evidence outside of the account records in determining the ownership of an account.

The FDIC's strict reliance on the account records serves multiple purposes. First, it enables the FDIC to estimate the amount of insured deposits when considering resolution options for a failing insured depository institution. Speed and accuracy in accounting for the assets and liabilities of the failing institution are critical when the institution is resolved through a purchase and assumption agreement (i.e., a transfer of some assets and liabilities, including the deposit liabilities, to a healthy depository institution). Second, strict reliance on the account records enables the FDIC to pay insurance very quickly following the failure of an institution. If the FDIC could not rely on the records, depositors would not receive their insurance until the FDIC had completed a lengthy investigation as to the actual legal ownership of the accounts. Third, strict reliance on the records discourages the making of fraudulent claims for insurance. If depositors were not bound by the account records, some depositors over the $100,000 limit might be tempted to fabricate outside evidence (such as agency or trust agreements) as to the actual ownership of their accounts.

For the reasons stated above, the insurance regulations purposefully restrict the FDIC's ability to consider outside evidence (i.e., evidence outside of the deposit account records) in determining the ownership of an account for insurance purposes. Again, under the current or unrevised regulations, outside evidence will not be considered unless the FDIC determines—in its own discretion—that the account records are unclear or ambiguous.

At times, the restrictions on the FDIC's ability to consider outside evidence has produced results that could be viewed as severe. At one failed bank, for example, a deposit account was held by a title company as agent for customers who were buying or selling houses. Because the bank's deposit account records did not indicate the agency nature of the account, the funds were deemed to be owned by the title company and insured to a limit of $100,000. The funds were not insured up to $100,000 on a ''pass-through'' basis for the interest of each customer (in aggregation with any other account(s) that each customer might have held at the same bank). This result was severe because the name of the agent by itself was suggestive of a possible agency or fiduciary relationship.

The proposed rule addressed the problem by adding a provision to the regulations that would relax the FDIC's recordkeeping requirements in certain situations. Specifically, the proposed rule provided that the FDIC would be free to consider outside evidence of ownership if the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. Examples of accounts covered by the proposed rule would be accounts in the name of escrow agents or title companies.

In requesting comments on this part of the proposed rule, the FDIC also requested comments on the recordkeeping requirements applicable to accounts held by multiple levels of fiduciaries. See 12 CFR 330.4(b)(3) (new 330.5(b)(3)). These requirements specify two methods for disclosing such multi-tiered relationships. Under the second method, according to the current regulations, the deposit account records must state that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others. See 12 CFR 330.4(b)(3)(ii)(A). In complying with this requirement, fiduciaries have opened accounts with awkward and unwieldy account titles. To alleviate this problem, the FDIC proposed to require—under the second method—that the account records merely indicate that there are multiple levels of fiduciary relationships.

B. ''Grace Period'' Following the Death of a Depositor

The second substantive revision included in the proposed rule was the creation of a ''grace period'' following the death of a depositor. Under the deposit contract or applicable state law, the death of a depositor may result in an immediate and automatic change in ownership of the deposit account. This is significant for insurance purposes because deposit insurance is based primarily on legal ownership. Though ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage, the regulations provide that ownership under state law of deposited funds is a necessary condition for deposit insurance. See 12 CFR 330.3(h) (new 330.3(h)).

Under the current regulations, the FDIC presumes—for certain types of accounts—that the ownership of the account changes immediately upon the death of a depositor. This presumption is applied to accounts characterized by survivorship rights, i.e., joint accounts and revocable trust or ''payable-on-death'' (POD) accounts. For the sake of uniformity, the FDIC applies this presumption irrespective of the laws of the state in which the depository institution is located. In some cases, following the death of a depositor, the presumption will cause a dramatic decrease in deposit insurance coverage.

For example, a husband and wife could hold a joint account, a joint revocable trust (or POD) account for the benefit of their child, and two individual accounts in their respective names. Assuming the satisfaction of all applicable requirements, these four accounts could be insured up to a total of $500,000. Upon the death of either the husband or wife, however, the surviving spouse would become the sole owner of the joint account and the joint revocable trust account. Under the FDIC's established interpretation of the current regulations, the joint account would be transformed into a single ownership account subject to aggregation with the surviving spouse's individual account. (The single ownership account in the name of the deceased spouse would continue to be insured separately from the other accounts.) Moreover, the maximum coverage of the joint revocable trust account would be reduced from $200,000 to $100,000 (i.e., $100,000 for each combination of settlors and qualifying beneficiaries). In total, the maximum coverage of the four accounts would be reduced—immediately upon the death of the husband or wife—from $500,000 to $300,000.

If the depository institution failed before the surviving spouse restructured the accounts or transferred funds to another institution, in the example above, the loss to the surviving spouse could be very substantial. (For the single ownership account in the name of the deceased spouse, the insurance money would be paid to the trustee of the decedent's estate.)

The interpretation described above has been criticized as ''penalizing'' the survivors of deceased depositors. Some people have complained that the immediate restructuring of an account upon the death of a depositor may not be practicable. For example, in order to restructure an account, the survivor of an accountholder may be required to present proof of the accountholder's death to the depository institution. Also, during a time of grief, the survivors may not view the restructuring of bank accounts as a matter of high priority.

Another criticism of the FDIC's interpretation of the current regulations is that some state laws might not provide for the immediate change in ownership presumed by the FDIC.

In response to the criticisms and concerns described above, the proposed rule created a ''grace period'' of six months following the death of a depositor. During this ''grace period,'' the insurance coverage of the decedent's accounts would not change unless the accounts were restructured by those authorized to take such action. Because the six-month ''grace period'' was not intended to reduce coverage, the proposed rule also provided that the ''grace period'' would not be applied if its application would result in a decrease in deposit insurance coverage.

The six-month ''grace period'' prescribed by the proposed rule was consistent with a policy applied by the former FSLIC. The rationale of that policy was to ''lessen hardship.''

In publishing the proposed rule, the FDIC specifically requested comments as to whether six months was the appropriate length of time for the ''grace period.''

C. The Insurance Coverage of ''Living Trust'' Accounts

The third substantive revision included in the proposed rule was the insertion into the regulations of language clarifying the insurance coverage of accounts held pursuant to ''living trust'' agreements. A ''living trust'' is a formal revocable trust in which the owner retains control of the trust assets during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable.

As a type of revocable trust account, a ''living trust'' account is subject to the rules prescribed by § 330.8 (new § 330.10). Subject to the requirements discussed below, that section of the regulations provides that funds deposited in a revocable trust account (also referred to as a ''payable-on-death'' or ''POD'' account or ''Totten trust'' account) shall be insured up to $100,000 for the prospective interest of each of the owner's designated beneficiaries. Such insurance is separate from the insurance coverage afforded to any single ownership accounts held by the owner or beneficiary at the same insured depository institution. The revocable trust account will not be entitled to such separate insurance, however, unless the account satisfies certain requirements. First, each of the designated beneficiaries must be the owner's spouse, child or grandchild. Second, the beneficiaries must be specifically named (i.e., named by name) in the account records of the depository institution. Third, the title of the account must include a term such as ''in trust for'' or ''payable-on-death to'' (or any acronym therefor). Fourth, the revocable trust agreement must provide unequivocally that the funds shall belong to the designated beneficiaries upon the death of the owner. See 12 CFR 330.8(a) (new 330.10(a)).

In many cases, the trust agreement is simply the signature card for the account. Generally, in these cases, the fourth requirement above does not present a problem because the signature card will not include any conditions upon the interests of the designated beneficiaries. In other words, the signature card—in simple language—will provide that the funds shall belong to the beneficiaries upon the death of the owner. In contrast, most formal ''living trust'' agreements provide that the funds might belong to the beneficiaries depending upon various conditions. The FDIC refers to such conditions as ''defeating contingencies'' if they create the possibility that the beneficiaries or the estate or heirs of the beneficiaries will never receive the funds following the death of the owner. In the presence of a ''defeating contingency,'' the revocable trust account will not be entitled to separate insurance coverage under § 330.8 (new § 330.10). Rather, the account will be aggregated with any single ownership accounts held by the owner at the same insured depository institution.

The subject of ''defeating contingencies'' is explained at length in FDIC Advisory Opinion 94–32 (May 18, 1994). That advisory opinion is entitled ''Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts).'' Though this advisory opinion is available upon request, the FDIC continues to receive numerous inquiries regarding the insurance coverage of ''living trust'' accounts. Moreover, even people who have read the Guidelines often remain confused about the coverage of such accounts.

In response to the public's confusion, the proposed rule inserted clarifying language into the regulations. Specifically, the proposed rule stated that the presence of a ''defeating contingency'' in a ''living trust'' agreement would prevent the account from receiving separate insurance coverage (i.e., separate from any single ownership accounts held by the owner at the same insured depository institution).

III. The Final Rule

The FDIC received twenty-six written comments on the proposed rule. Most of the comments were submitted by depository institutions or their holding companies. Several comments were submitted by bankers' associations; several others were submitted by financial services companies. The FDIC also received a small number of comments from individuals and one comment from a building company. The comments are discussed below as they relate to the various components of the final rule.

A. Recordkeeping Rules for Fiduciary Accounts

Sixteen commenters addressed the proposed relaxation of the FDIC's recordkeeping requirements for agency or fiduciary accounts. All of the commenters expressed support for the proposed rule but some also expressed reservations. The concern expressed by some commenters was that the proposed rule might impose additional recordkeeping obligations or other regulatory burdens on insured depository institutions. The FDIC does not intend to create any such additional burdens. The proposed rule was directed at the FDIC itself and not at depository institutions. As previously explained, the proposed rule granted greater flexibility to the FDIC in considering outside evidence (i.e., evidence other than the deposit account records) in determining the ownership of an account. Specifically, the proposed rule provided that the FDIC would be free to consider outside evidence if the FDIC determined, in its sole discretion, that the titling of the account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. Examples are accounts in the names of escrow agents, title companies or entities (or nominees of such entities) whose primary business is to hold—for safekeeping reasons—deposits of others.

The Board has decided to adopt, in the final rule, the proposed revision to its recordkeeping requirements. As revised, these requirements will be codified at § 330.5. The revised requirements will increase the FDIC's ability to pay insurance to the real owners of some deposits without undercutting the general rule that unambiguous deposit account records of a failed depository institution are binding on depositors.

Also, the final rule includes two revisions to the recordkeeping requirements applicable to accounts held by multiple levels of fiduciaries. As revised, these requirements will be codified at paragraph (b)(3) of § 330.5. First, the FDIC has changed the regulation to clarify that there are two and not three methods of satisfying these recordkeeping requirements. Second, in connection with the second method of satisfying the requirements, the FDIC has removed the necessity of stating in the account records that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others. Instead, the deposit account records must expressly indicate that there are multiple levels of fiduciary relationships. The FDIC has made this change in recognition of the fact that fiduciaries have been placing the required information in the titles of deposit accounts. As a result of this revision, the titles of multi-tiered fiduciary accounts should be less unwieldy. Several commenters expressed support for this provision.

B. ''Grace Period'' Following the Death of a Depositor

Nineteen commenters addressed the proposed creation of a six-month ''grace period'' following the death of a depositor. As previously explained, this ''grace period'' primarily would affect the insurance coverage of deposit accounts with survivorship rights (i.e., joint accounts and revocable trust or ''payable-on-death'' accounts). During this ''grace period,'' the insurance coverage of such accounts would not change unless the accounts are restructured by those authorized to take such action. The FDIC would apply the ''grace period'' only if its application would increase rather than decrease deposit insurance coverage.

Only one commenter opposed the creation of a ''grace period.'' That commenter stated that deposit insurance should be based on the ownership of accounts. If ownership changes upon the death of a depositor, in the opinion of this commenter, the insurance coverage also should change. Another commenter did not oppose a ''grace period'' but expressed concern that it would create additional recordkeeping obligations on the depository institution. A third commenter supported a ''grace period'' but favored a ninety-day period as opposed to a six-month period. With the exceptions noted above, the commenters supported the proposed rule.

The Board has decided to adopt the proposed creation of a six-month ''grace period.'' The rule will be codified at paragraph (j) of § 330.3. The FDIC believes that the ''grace period'' is consistent with the general principle that insurance coverage is based on ownership but also based on the satisfaction of recordkeeping requirements. Following the death of a depositor, the actual ownership of an account will not be reflected by the account records unless the account is restructured. For example, a joint account immediately following the death of one of two co-owners will appear to remain a joint account. By themselves, the account records will not indicate that the account is a single ownership account until the account has been restructured by the survivor. The FDIC's strict reliance on ownership, under these circumstances, contrasts with the FDIC's general reliance on the account records.

The FDIC believes that a six-month ''grace period'' will create an equitable balance between ownership and recordkeeping in cases involving deceased depositors. Also, the FDIC does not believe that the ''grace period'' will create any recordkeeping burdens on the depository institution because the ''grace period'' is directed solely at the FDIC itself and the survivors of deceased depositors. The FDIC would apply the ''grace period'' only after the depository institution had failed.

In the case of a revocable trust account, the ''grace period'' will be triggered by the death of the owner but not by the death of a beneficiary. Similarly, in the case of an irrevocable trust account, the ''grace period'' will be triggered by the death of the legal owner or settlor but not by the death of a beneficiary. The death of the settlor may or may not be significant under the terms of the irrevocable trust agreement.

Under many ''living trust'' agreements (discussed in greater detail below), a revocable trust becomes irrevocable upon the death of the owner. Through the operation of the ''grace period,'' such ''living trust'' accounts that qualify as revocable trust accounts for insurance purposes could be insured up to six months as revocable trust accounts—rather than irrevocable trust accounts—notwithstanding the death of the owner.

As mentioned above, only one commenter thought that six months was not the appropriate length of time for the ''grace period.'' That commenter favored a period of ninety days. As noted by other commenters, however, a six-month period is consistent with the six-month period of ''separate insurance'' following the assumption of the deposits of one insured depository institution by another insured depository institution (e.g., a merger). See 12 U.S.C. 1818(q). The FDIC agrees with the majority of the commenters that a period of six months is reasonable.

C. The Insurance Coverage of ''Living Trust'' Accounts

Twelve commenters addressed the proposed insertion into the regulations of language clarifying the insurance coverage of revocable trust accounts held pursuant to ''living trust'' agreements. As previously explained, this language would state expressly that the presence of a ''defeating contingency'' in the ''living trust'' agreement would prevent the account from receiving separate insurance coverage (i.e., separate from any single ownership accounts held by the owner at the same insured depository institution).

Ten commenters supported the proposed revision as a means of reducing depositors' confusion regarding the coverage of such accounts. The other two commenters did not oppose the insertion of clarifying language into the regulations but urged the FDIC to take stronger measures. Specifically, they urged the FDIC to abolish the concept of ''defeating contingencies'' altogether so that a ''living trust'' account would be entitled to separate insurance coverage irrespective of any such contingencies. The approach recommended by these commenters would represent an abrupt departure from the FDIC's established interpretation of the regulations. See FDIC Advisory Opinion 94–32 (May 18, 1994), entitled ''Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts).'' Though this approach would remove one source of confusion regarding the operation of the insurance regulations, the recommended approach could create other problems. For example, an owner's ''living trust'' agreement with various contingencies could specify that one qualifying beneficiary could assume ownership of the trust funds under one set of circumstances but that two qualifying beneficiaries (or no qualifying beneficiaries) could assume ownership of the funds under another set of circumstances. Following the failure of the depository institution, the FDIC would be faced with the problem of deciding whether the maximum separate insurance coverage of the account is $100,000 (one qualifying beneficiary) or $200,000 (two qualifying beneficiaries).

At this time, the FDIC is not prepared to abandon its long-standing interpretation of its regulations regarding the insurance coverage of ''living trust'' accounts. As a means of reducing some of the confusion surrounding these accounts, however, the Board has adopted—in the final rule—the proposed clarifying language. This language will be codified at paragraph (f) of § 330.10.

IV. Comments on Other Aspects of the Proposed Rule

In addition to addressing the three substantive revisions discussed above, some commenters addressed other aspects of the proposed rule. For example, several commenters applauded the insertion into the regulations of examples. Another commenter criticized the renumbering of the sections. Specifically, this commenter stated that the renumbering of the sections will affect the accuracy of training materials. Though this concern is understandable, the FDIC believes that renumbering is necessary as a means of increasing depositors' understanding of certain rules. For example, the placement of current paragraph (g) of § 330.3 in new § 330.4 will highlight this rule governing the continuation of separate deposit insurance after merger of insured depository institutions.

A number of commenters addressed the revisions in the ANPR that were not included in the proposed rule. Notably, several voiced disappointment that the FDIC had not included in the proposed rule revisions to the joint account and POD account rules. They emphasized that the current joint account rules, in particular, are very confusing to both the industry and the public. The Board is mindful of these comments and has instructed the staff to continue studying the policy, economic and other implications of amending the joint account and POD account rules. If the Board determines that such amendments are warranted, it will authorize the issuance of a proposed rule to obtain public comment on specific changes to those rules.

A comment regarding the insurance coverage of annuity contract accounts is addressed below in connection with new § 330.8.

V. Section-by-Section Discussion of the Final Rule

Section 330.1—Definitions

This section has been expanded to include some definitions currently placed in other sections of part 330. Also, ''Corporation'' has been defined as the FDIC.

Section 330.2—Purpose

This section has been reduced by eliminating a narrative description of the FDIC's authority to issue deposit insurance regulations. This information is unnecessary.

Section 330.3—General principles

This section has been amended in several ways. First, examples have been added to illustrate some of the general principles. Second, in recognition of its importance, current paragraph (g) of § 330.3 has been moved from this section to new § 330.4 dealing with the continuation of separate deposit insurance after merger of insured depository institutions. Third, current § 330.13 has been added to this section as new paragraph (g) dealing with bank investment contracts. Fourth, a new provision has been added to provide the survivors of deceased depositors with a six-month ''grace period'' for the restructuring of accounts. The provision is new paragraph (j). It is discussed in detail above.

Section 330.4—Continuation of separate deposit insurance after merger of insured depository institutions

This is a new section composed of the provisions in current paragraph (g) of § 330.3. It addresses the deposit insurance implications of bank mergers and acquisitions. The placement of the rule in a separate section of the regulations should make the rule more accessible.

Section 330.5—Recognition of deposit ownership and recordkeeping requirements

This section is current § 330.4 with two substantive amendments. First, the FDIC's recordkeeping requirements have been amended by adding an exception to the general rule that the deposit account records of a depository institution must expressly disclose the existence of a fiduciary relationship in order for the FDIC to recognize the fiduciary nature of the account. The exception provides that the general requirement would not apply if the FDIC determines, in its sole discretion, that the titling of the account and the underlying deposit account records of the depository institution indicate the existence of a fiduciary relationship. The section specifies that the exception might apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company, or an entity (or its agent or nominee) whose business is to hold, for safekeeping reasons, deposits for others. Second, the recordkeeping requirements for accounts held pursuant to multi-tiered fiduciary relationships (current paragraph (b)(3) of § 330.3 and new paragraph (b)(3) of § 330.5) have been modified so that the titles of such accounts can be less unwieldy. These revisions are discussed above.

Section 330.6—Single ownership accounts

This section is current § 330.5. The definition of a ''sole proprietorship'' has been moved from this section to new § 330.1. Also, in the section dealing with a decedent's account, a cross-reference has been added to new paragraph (j) of § 330.3. The latter provides a six-month ''grace period'' for the restructuring of accounts following the death of a depositor.

Section 330.7—Accounts held by an agent, nominee, guardian, custodian or conservator

This section is current § 330.6. The provision on mortgage servicing accounts has been clarified to indicate that such accounts are not entitled to separate insurance. Rather, they are insured as custodial or agency accounts subject to aggregation with other accounts held by the owner at the same insured depository institution. Also, the provisions on annuity contract accounts have been moved from this section to new § 330.8.

Section 330.8—Annuity contract accounts

This is a new section composed of the provisions in current paragraph (f) of § 330.6. Under this section, funds held by an insurance company for the sole purpose of funding life insurance or annuity contracts are insured up to $100,000 per annuitant if certain requirements are satisfied. The FDIC is placing this rule in a separate section of the regulations—rather than keeping the rule in the section dealing with the ''pass-through'' coverage of agency accounts—because annuity contract accounts represent a separate category of insurance. Also, in stating that such accounts shall be insured separately in the amount of up to $100,000 per annuitant, the FDIC is adding the word ''separately.''

One commenter objected to the addition of the word ''separately.'' In the opinion of this commenter, the addition of this word would result in a windfall for insurance companies by creating a new category of insured deposits.

Subject to the requirements in the regulation, the FDIC's long-standing staff position is that annuity contract accounts represent a separate category of insured deposits. In other words, the revision does not create a new category of insured deposits but simply clarifies the existing coverage of such accounts. The need for such clarification is emphasized by the comment.

While adding the word ''separately,'' the FDIC has removed the phrase ''different right and capacity.'' The phrase is unnecessary and confusing.

Section 330.9—Joint ownership accounts

This section is current § 330.7. Though it has not been changed substantively, the section has been clarified through the addition of several examples.

Section 330.10—Revocable trust accounts

This section is current § 330.8. For the purpose of clarification, the section has been rephrased and examples have been added. Also, a paragraph has been added to clarify the insurance coverage of revocable trust accounts held pursuant to formal ''living trust'' agreements. The paragraph states specifically that the presence of a ''defeating contingency'' in the trust agreement would prevent a beneficiary's interest from receiving separate insurance under this section. The addition of this new paragraph is explained in detail above.

Section 330.11—Accounts of a corporation, partnership or unincorporated association

This section is current § 330.9. The definition of ''independent activity'' has been moved from this section to § 330.1.

Section 330.12—Accounts held by a depository institution as the trustee of an irrevocable trust

This section is current § 330.10. The modifications are slight and not substantive.

Section 330.13—Irrevocable trust accounts

This section is current § 330.11. The definitions of ''trust interest'' and ''non-contingent trust interest'' have been moved from this section to § 330.1.

Section 330.14—Retirement and other employee benefit plan accounts

This section is current § 330.12. It is unchanged except for the deletion of current paragraph (h)(2)(ii) of § 330.12, which required a notice to certain depositors within ten business days after July 1, 1995. That provision is obsolete.

Section 330.15—Public unit accounts

This section is current § 330.14. It is essentially unchanged.

Section 330.16—Effective dates

Changes have been made to this section to indicate that the designated effective dates apply to former changes to part 330. The FDIC has retained this information in part 330 because the effective dates might be relevant in connection with time deposits issued prior to December 19, 1991, until the maturity date of such deposits.

In addition to the changes explained above, two sections have been eliminated by the final rule. First, current § 330.13 (''Bank investment contracts'') has been reduced and moved to new paragraph (g) of § 330.3. Second, current § 330.15 (''Notice to depositors'') has been removed altogether as unnecessary.

VI. Paperwork Reduction Act

No collection of information pursuant to the Paperwork Reduction Act is contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The Board of Directors 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. 601 *et seq.*). The revisions to the deposit insurance rules will impose no new reporting, recordkeeping or other compliance requirements upon those entities. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. 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 SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed. The effective date is July 1, 1998.

List of Subjects in 12 CFR Part 330

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

The Board of Directors of the Federal Deposit Insurance Corporation hereby revises part 330 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

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

§ 330.1 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Corporation* means the Federal Deposit Insurance Corporation.

(c) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(d) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Independent activity.* A corporation, partnership or unincorporated association shall be deemed to be engaged in an ''independent activity'' if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Insured deposit* has the same meaning as that provided under section 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(j) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) *Natural person* means a human being.

(l) *Non-contingent trust interest* means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

(m) *Sole proprietorship* means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(n) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(o) *Trust funds* means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(p) *Trust interest* means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

§ 330.2 Purpose.

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other.

(Example: Single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.* Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership.

(Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.)

The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency.* The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the ''noon buying rates for cable transfers'') quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) *Deposits in insured branches of foreign banks.* Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States and certain other locations.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits.* An ''international banking facility time deposit,'' as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Bank investment contracts.* As required by section 11(a)(8) of the Act (12 U.S.C. 1821(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits ''benefit responsive withdrawals or transfers'' (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term ''substantial penalty or adjustment'' used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) *Determination of the amount of a deposit*—(1) *General rule.* The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit.* The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements.* In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) *Continuation of insurance coverage following the death of a deposit owner.* The death of a deposit owner shall not affect the insurance coverage of the deposit for a period of six months following the owner's death unless the deposit account is restructured. The operation of this grace period, however, shall not result in a reduction of coverage. If an account is not restructured within six months after the owner's death, the insurance shall be provided on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

§ 330.4 Continuation of separate deposit insurance after merger of insured depository institutions.

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

§ 330.5 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership*—(1) *Evidence of deposit ownership.* Except as indicated in this paragraph (a)(1) or as provided in § 330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts.* In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements*—(1) *Disclosure of fiduciary relationships.* The ''deposit account records'' (as defined in § 330.1(e)) of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution. The general requirement for the express indication that the account is held in a fiduciary capacity will not apply, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements*—(i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§ 330.6 Single ownership accounts.

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to $100,000 in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney), the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of § 330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts.* Funds owned by a business which is a ''sole proprietorship'' (as defined in § 330.1(m)) and deposited in one or more deposit accounts in the name of the business shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to $100,000 in the aggregate; provided, however, that nothing in this paragraph (d) shall affect the operation of § 330.3(j). The deposit insurance provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of § 330.13.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.9.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured in accordance with paragraph (a) of this section for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

(e) *Custodian accounts for American Indians.* Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the ''BIA'') on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to $100,000, separately from any other accounts maintained by that person in the same insured depository institution.

§ 330.8 Annuity contract accounts.

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds;

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained by the corporation or the annuitants at the same insured depository institution.

§ 330.9 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners.

(Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to $100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* Step one: all qualifying joint accounts owned by the same combination of individuals shall be added together; the aggregate amount is insurable up to a limit of $100,000.

(Example: A qualifying joint account owned by ''A&B'' would be added to a qualifying joint account owned by ''B&A'' and the insurable limit on the combined balances in those accounts would be $100,000. Moreover, the insurable limit on a single qualifying joint account owned by ''A&B'' would be $100,000. Thus, any qualifying joint account (or group of qualifying joint accounts owned by the same combination of persons) with a balance over $100,000 will be over the insurance limit.)

Step two: the interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to $100,000.

(Example: ''A&B'' have a qualifying joint account with a balance of $100,000; ''A&C'' have a qualifying joint account with a balance of $150,000; and ''A&D'' have a qualifying joint account with a balance of $100,000. The balance in the account owned by ''A&C'' exceeds $100,000, so under step one the excess amount, $50,000, would be uninsured. A's combined ownership interests in the insurable amounts in the accounts would be $150,000, of which under step two $100,000 would be insured and $50,000 would be uninsured; B's ownership interest would be $50,000, all of which would be insured; C's insurable ownership interest would be $50,000, all of which would be insured; and D's ownership interest would be $50,000, all of which would be insured.)

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are ''natural persons'' (as defined in § 330.1(k)); and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of interests.* The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction ''and'' or ''or'' is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§ 330.10 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into an account evidencing an intention that upon the death of the owner the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term ''qualifying beneficiaries'' means the owner's spouse, child/children or grandchild/grandchildren.

(Example: If A establishes a qualifying account payable upon death to his spouse, two children and one grandchild, assuming compliance with the requirements of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.)

Accounts covered by this provision are commonly referred to as tentative or ''Totten trust'' accounts, ''payable-on-death'' accounts, or revocable trust accounts.

(b) *Required intention.* The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) *Interests of nonqualifying beneficiaries.* If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owner(s), and insured up to $100,000 per owner.

(Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for POD coverage up to $200,000 corresponding to the two qualifying beneficiaries (i.e., the spouse and child). The amount corresponding to the non-qualifying beneficiary (i.e., the nephew) would be deemed to be owned by B in her single ownership capacity and insured accordingly.)

(d) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to $100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the joint account provisions of § 330.9.

(e) *Definition of ''children'' and ''grandchildren''.* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term ''children'' includes any biological, adopted and step-children of the owner and ''grandchildren'' includes biological, adopted, or step-children of any of the owner's children.

(f) *Living trusts.* This section also applies to revocable trust accounts held in connection with a so-called ''living trust,'' a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the deposit account held in connection with the living trust may be eligible for deposit insurance under this section, assuming compliance with all the provisions of this part. If, however, for example, the living trust includes a ''defeating contingency'' relative to that beneficiary's interest in the trust assets, then insurance coverage under this section would not be provided. For purposes of this section, a ''defeating contingency'' is defined as a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner's death.

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

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any ''independent activity'' (as defined in § 330.1(g)) shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(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 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.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any ''independent activity'' (as defined in § 330.1(g)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an ''independent activity'' (as defined in § 330.1(g)) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to $100,000 in the aggregate.

§ 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

(a) *Separate insurance coverage.* ''Trust funds'' (as defined in § 330.1(o)) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following provisions:

(1) *Allocated funds of a trust estate.* If trust funds of a particular ''trust estate'' (as defined in § 330.1(n)) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.11(a)(2).

§ 330.13 Irrevocable trust accounts.

(a) *General rule.* Funds representing the ''non-contingent trust interest(s)'' (as defined in § 330.1(l)) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each ''trust interest'' (as defined in § 330.1(p)) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured up to $100,000, separately from the funds of any other such estate.

§ 330.14 Retirement and other employee benefit plan accounts.

(a) *''Pass-through''* insurance. Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a ''pass-through'' basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the FDIC's recordkeeping requirements, as prescribed in § 330.5, are satisfied.

(b) *Exception.* ''Pass-through'' insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act (12 U.S.C. 1831f) unless, at the time the deposit is accepted:

(1) The institution meets each applicable capital standard; and

(2) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis.

(c) *Aggregation*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457), which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) *Certain retirement accounts.* (i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457); and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to ''pass-through'' insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of $100,000 per plan.

(d) *Determination of interests*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account.* For the purposes of applying the rule under paragraph (c)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or ''457 Plan,'' excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion of an employee benefit plan's deposits which is not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(g) *Definitions of ''depositor'', ''employee benefit plan'', ''employee organization'' and ''non-contingent interest''.* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

(2) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of an accurate explanation of the requirements for ''pass-through'' deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for ''pass-through'' insurance coverage.

(3) *Disclosure when ''pass-through'' coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for ''pass-through'' insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within ten business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of ''employee benefit plan''.* For purposes of this paragraph (h), the term ''employee benefit plan'' has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

§ 330.15 Public unit accounts.

(a) *Extent of insurance coverage*—(1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* (i) Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) *Accounts of the District of Columbia.* (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) *Accounts of an Indian tribe.* Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the ''official custodian''*—(1) *Qualifications for an ''official custodian''.* In order to qualify as an ''official custodian'' for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one ''official custodian'' for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to $100,000.

(d) *Definition of ''political subdivision''.* The term ''political subdivision'' includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

§ 330.16 Effective dates.

(a) *Prior effective dates.* Former §§ 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 (see 12 CFR part 330, as revised January 1, 1998) became effective on December 19, 1993.

(b) *Time deposits.* Except with respect to the provisions in former § 330.12 (a) and (b) (see 12 CFR part 330, as revised January 1, l998) and current § 330.14(a) and (b), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

By order of the Board of Directors.

Dated at Washington, D.C., this 28th day of April, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–11987 Filed 5–8–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 98N–0294]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8–TCDD (dioxin), that was imposed in a final rule published on March 26, 1996. By lifting the stay of the effective date, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the current good manufacturing practice (CGMP) regulations for bottled water. FDA is required to issue monitoring requirements for the nine chemical contaminants under the Safe Drinking Water Act Amendments of 1996 (SDWA Amendments). FDA is using direct final rulemaking for this action because the agency expects that there will be no significant adverse comment on the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives significant adverse comments and withdraws this direct final rule. The companion proposed rule and direct final rule are substantively identical.

DATES: The regulation is effective November 9, 1998. Submit written comments by July 27, 1998. If no timely significant adverse comments are received, the agency will publish a notice in the **Federal Register** no later than August 6, 1998, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than August 6, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION:

I. Background

Before the enactment of the SDWA Amendments on August 6, 1996, section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) required that, whenever the Environmental Protection Agency (EPA) prescribed interim or revised National Primary Drinking Water Regulations (NPDWR's) under section 1412 of the Public Health Service Act (SDWA) (42 U.S.C. 300f through 300j–9)), FDA consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the **Federal Register** its reasons for not making such amendments.

In accordance with section 410 of the act, FDA published in the **Federal Register** of March 26, 1996 (61 FR 13258), a final rule (hereinafter ''the March 1996 final rule'') that amended the quality standard for bottled water by establishing or revising the allowable levels for 5 inorganic chemicals (IOC's) and 17 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 5 nonpesticide chemicals. This action was in response to EPA's issuance of NPDWR's consisting of maximum contaminant levels (MCL's) for the same 5 IOC's and 17 SOC's in public drinking water (see 57 FR 31776, July 17, 1992).

However, in the March 1996 final rule, FDA stayed the effective date for the allowable levels for the five IOC's (antimony, beryllium, cyanide, nickel, and thallium) and four of the SOC's (diquat, endothall, glyphosate, and dioxin). This action was in response to bottled water industry comments (responding to the August 4, 1993, proposal (58 FR 41612)) which asserted that additional monitoring for these nine chemicals required under the bottled water CGMP regulations would pose an undue economic burden on bottlers. If the agency had not stayed the effective date for the allowable levels,