

shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a), the entries for Ohio and West Virginia are amended by adding new counties in alphabetical order to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

Ohio	*	*	*	*	*
	*	*	*	*	*
<i>Delaware County.</i>					
	*	*	*	*	*
<i>Franklin County.</i>					
	*	*	*	*	*
West Virginia	*	*	*	*	*
	*	*	*	*	*
<i>Monroe County.</i>					
	*	*	*	*	*

Done in Washington, DC, this 6th day of September 2006.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. E6–15059 Filed 9–11–06; 8:45 am]
BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD01

Deposit Insurance Regulations; Inflation Index; Certain Retirement Accounts and Employee Benefit Plan Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is finalizing its interim rule, with changes, that amended regulations to implement deposit insurance revisions made by the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005.

DATES: The final rule is effective on October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC issued an interim rule, effective April 1, 2006, to implement the deposit-insurance revisions in the Federal Deposit Insurance Reform Act of 2005 (Pub. L. 109–171) (“Reform Act”) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109–173). The comment period on the interim rule ended on May 22, 2006, 71 FR 14629 (Mar. 23, 2006) (“Interim Rule”).

The Reform Act made three substantive changes to the insurance coverage provisions of the Federal Deposit Insurance Act (12 U.S.C. 1813–1835a). Those changes are discussed in detail in the preamble to the Interim Rule. Summarizing: first, section 2103(a) of the legislation provides for an inflation index to be applied to the current maximum deposit insurance amount of \$100,000, defined in the Reform Act as the “standard maximum deposit insurance amount” (“SMDIA”). Beginning April 1, 2010, and every succeeding five years, subject to approval by the Board of Directors of the FDIC and the National Credit Union Administration Board, the current SMDIA could be increased by a cost-of-living adjustment.

Second, section 2103(c) of the Reform Act increases the deposit insurance limit for “certain retirement accounts” from \$100,000 to \$250,000, also subject to the inflation adjustment described above. The types of accounts that come within this provision are detailed below. And, third, section 2103(b) of the Reform Act provides per-participant coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits. The Reform Act eliminates the former requirement that an insured depository institution meet prescribed capital requirements before employee benefit plan deposits accepted by that institution would be eligible for per-participant coverage.

II. Comments on the Interim Rule

The FDIC received three written comments on the Interim Rule. Each of the comments was from a national banking industry trade association. The first trade association simply stated its support for the Interim Rule. The second association stated its support for

the Interim Rule and commended the FDIC for issuing the interim regulations and making them effective within two months of the passage of the Reform Act. The comment endorsed the FDIC's approach in amending its regulations to implement the deposit insurance revisions to the FDI Act.

The third banking industry trade group also expressed support for the Interim Rule and commended the FDIC for moving quickly to put the provisions into effect. In addition, this trade group suggested that the FDIC clarify through the use of examples the types of deposit accounts that are and are not eligible for the increased insurance coverage. In particular, the trade group noted that bankers have questions concerning some types of defined contribution plan accounts and that the nomenclature used in the FDIC's retirement account regulations might not match the terminology used and understood by bankers and depositors. The association also suggested that the FDIC provide a more detailed explanation of the term "self-directed" in connection with the eligibility of certain Keogh plan accounts and defined contribution plan accounts for the increased coverage of \$250,000.

The FDIC agrees with the trade group's comments and, therefore, has provided below a discussion more clearly specifying the types of retirement accounts that are, and are not, eligible for coverage up to \$250,000. We also provide a more detailed explanation of the term "self-directed." The FDIC intends to include this clarifying information in its educational materials to bankers and the public on deposit insurance coverage.

III. The Final Rule

A. Overview

The final rule makes no substantive changes to the Interim Rule. The only revisions to the regulation text are the technical changes explained below. As noted, the following discussion is in response to the suggestion made by one of the commenters that the FDIC be more specific about the types of retirement accounts eligible for the new \$250,000 coverage limit.

B. Types of Retirement Accounts Eligible for the Increased Coverage Limit of \$250,000

As specified in the FDI Act (12 U.S.C. 1821(l)), the types of accounts within this category of coverage continue to be comprised of: (1) Individual retirement accounts described in section 408(a) of the Internal Revenue Code ("IRC") (26 U.S.C. 408(a)) ("IRAs"); (2) eligible

deferred compensation plan accounts described in section 457 of the IRC (26 U.S.C. 457) ("Section 457 Plan Accounts"); and (3) individual account plans defined in section 3(34) of the Employee Retirement Income Security Act ("ERISA") (29 U.S.C. 1002) ("Defined Contribution Plan Accounts") and any plan described in section 401(d) of the IRC ("Keogh Plan Accounts"), to the extent that participants and beneficiaries under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans. Each of these types of retirement accounts is discussed below.

IRAs

Section 408(a) of the IRC defines an IRA as a "trust created or organized in the United States for the exclusive benefit of an individual or his or her beneficiaries, but only if the written governing instrument creating the trust meets [specified] requirements."¹ For purposes of deposit insurance coverage, IRAs include: *traditional* IRAs (into which individuals may make tax-deductible contributions, within prescribed dollar limitations, on which the earnings are tax-deferred); Roth IRAs² (into which individuals may make contributions (within prescribed dollar limitations) the earnings on which are tax-free; *Simplified Employee Pension* ("SEP") IRAs³ (into which employers may make contributions to traditional IRAs established by employees); and *Savings Incentive Match Plans for Employees* ("SIMPLE") IRAs⁴ (into which employers of eligible small companies are required to make either matching contributions to the plan or non-elective contributions paid to eligible employees regardless of whether the employee makes salary-reduction contributions to the plan).

¹ During the pendency of the Interim Rule a Puerto Rico resident asked whether IRAs issued by FDIC-insured banks in Puerto Rico would be eligible for the \$250,000 maximum insurance coverage provided under the Reform Act. The person expressed concern that such IRAs might not meet the definition of IRAs in the applicable provision of the FDI Act, 12 U.S.C. 1821(a)(3) ("Section 11(a)(3)"). Section 11(a)(3) encompasses IRAs "described in section 408(a) of [the Internal Revenue Code]" ("Section 408(a)"). In answer to the person's inquiry, the FDIC deems IRAs issued by banks in Puerto Rico to qualify as IRAs described in Section 408(a) because the IRA provisions of the Puerto Rico tax code are sufficiently similar to the provisions of Section 408(a). 13 L.P.R.A. 8569 (2005). This treatment of IRAs at FDIC-insured institutions in Puerto Rico is the same as the treatment of IRAs at credit unions in Puerto Rico insured by the National Credit Union Share Insurance Fund. 12 CFR 745.9-2.

² 26 U.S.C. 408A.

³ 26 U.S.C. 408(k).

⁴ 26 U.S.C. 408(p).

Like the other retirement accounts, all IRA products must be held in the form of deposits at FDIC-insured depository institutions to be eligible for FDIC deposit insurance coverage. An individual's interests in all these types of IRAs are combined with his or her interests in any of the other retirement accounts (eligible for the \$250,000 coverage limit) and insured to a limit of \$250,000. For example, if an individual has \$75,000 in a traditional IRA, \$100,000 in a Roth IRA and a \$100,000 interest in a self-directed Defined Contribution Plan Account, \$250,000 of the combined amount of the accounts would be insured and \$25,000 would be uninsured.

The increased coverage of \$250,000 for IRAs applies irrespective of whether an IRA is "self-directed," a subject more fully discussed below.

Section 457 Plan Accounts

Section 457 plans are defined in section 457 of the IRC to include eligible deferred compensation plans provided by state and local governments, as well as not-for-profit organizations. As provided under the applicable provisions of the FDI Act, deposit accounts held at FDIC-insured institutions in connection with Section 457 Plans are eligible for insurance coverage up to \$250,000 per plan participant. This coverage applies irrespective of whether the Section 457 Plan is "self-directed."

Self-Directed Defined Contribution Plan Accounts

A Defined Contribution Plan Account is defined in ERISA as a "pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains losses, and any forfeiture of accounts of other participants which may be allocated to such participant's account."⁵ As provided for in the applicable provisions of the FDI Act (as revised by the Reform Act), Defined Contribution Plan Accounts held in the form of deposits at FDIC-insured institutions are eligible for coverage up to \$250,000 per participant's interest; however, the FDI Act specifies that this coverage is provided only if the participants under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans. This means that only "self-directed" Defined Contribution Plan Accounts come within the "certain retirement account" category of

⁵ 29 U.S.C. 1002(34).

coverage. As indicated in the Interim Rule and discussed in more detail below, the FDIC continues to define the term “self-directed” to mean that the plan participants have the right to direct how their funds are invested, including the ability to direct that the funds be deposited at an FDIC-insured institution.

The most common type of Defined Contribution Plan Account is the popular section 401(k) plan, established under section 401(a) and 401(k) of the IRC (26 U.S.C. 401(a) and 401(k)). Self-directed Savings Incentive Match Plans for Employees held in the form of 401(k) plans (referred to as SIMPLE 401(k)s) qualify under this account category as well as self-directed defined contribution money purchase plans (in which employer contributions are fixed) and self-directed defined contribution profit-sharing plans (in which employer contributions are based on company profits).

Self-Directed Keogh Plan Accounts

Section 401(d) of the IRC describes a “trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees.” These so-called “Keogh” (or “H.R. 10”) plan accounts are designed for self-employed individuals. As provided for in the applicable provisions of the FDI Act (as revised by the Reform Act), “self-directed” Keogh plan accounts held in the form of deposits at FDIC-insured institutions are eligible for coverage up to \$250,000 per participant’s interest.

C. The Meaning of “Self-Directed”

As indicated in the Interim Rule and reiterated above, the FDIC continues to define the term “self-directed” to mean that plan participants have the right to direct that their funds be deposited into a specific FDIC-insured institution. One question the FDIC received on the Interim Rule was whether an open-ended plan, in which the participants could choose any investment, would be considered “self-directed.” A related question involved a feature of a plan where, if the employee does not make any other selection, he or she will be deemed to have chosen to invest funds in a deposit account. In response to the comment on an open-ended investment plan, as long as the participant has the right to choose a particular depository institution’s deposit as an investment, the FDIC would consider the account to be “self-directed.” Also, if a plan has as its “default” investment option deposits of a particular FDIC-insured institution, the FDIC would deem the plan to be

self-directed for deposit insurance purposes because, by inaction, the participant has directed that the funds be placed at an FDIC-insured institution. As explained in an FDIC advisory opinion, if a plan’s only investment vehicle is the deposits of a particular bank, so that participants have no choice of investments, the plan would not be deemed “self-directed” for deposit insurance purposes. FDIC Adv. Op. 93–65 (Sept. 17, 1993). If, however, a plan consists only of a single employer/employee, because the employer establishes the plan with a single-investment option of plan assets, the plan would be considered “self-directed.” Hence, single employer/employee defined contribution plans which limit the options of fund investments to deposits of a particular insured depository institution would be self-directed for deposit insurance purposes.

D. Accounts Not Qualifying for the Increased Coverage

In response to questions received during the comment period, it is important to emphasize that only the types of retirement accounts specified in the FDI Act are eligible for the increased retirement account insurance limit of \$250,000. Thus, accounts such as Coverdell education savings accounts, Health Savings Accounts and Medical Savings Accounts are not eligible for the increased coverage limit. Also, accounts established under section 403(b) of the IRC (annuity contracts for certain employees of public schools, tax-exempt organizations and ministers) do not come within the retirement account category.

Notably, defined-benefit plans (in which benefits are predetermined by an employee’s compensation, years of service and age) are not within the category of retirement accounts. For deposit insurance purposes, they are treated as employee benefit plans eligible for pass-through coverage up to \$100,000 per participant’s interest. 12 CFR 330.14(a). Defined contribution plan accounts and Keogh plan accounts that are not “self-directed” also would not be insured under the retirement account category. Instead, they would be insured as employee benefit plan accounts.

E. Technical Revisions

In the Interim Rule the FDIC inadvertently retained Section 457 accounts in the category of employee benefit plans under section 330.14(a) eligible for per-participant coverage of \$100,000. As noted, Section 457 Plan Accounts are eligible for the increased

coverage of \$250,000. The final rule corrects these technical errors.

IV. Paperwork Reduction Act

The final rule will implement statutory changes to the FDIC’s deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

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

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

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. 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.

List of Subjects in 12 CFR Part 330

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

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation adopts as a final rule the interim final rule amending 12 CFR part 330, which was published at 71 FR 14629 on March 23, 2006, with the following changes:

PART 330—DEPOSIT INSURANCE COVERAGE

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

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

■ 2. In section 330.14, revise paragraph (a); redesignate (b)(2)(A), (b)(2)(B), (b)(2)(C) as (b)(2)(i), (b)(2)(ii) and (b)(2)(iii), respectively; and revise newly designated (b)(2)(ii) to read as follows:

§ 330.14 Retirement and other employee benefit plan accounts.

(a) “Pass-through” insurance. Any deposits of an employee benefit plan in an insured depository institution shall be insured on a “pass-through” basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied. Deposits eligible for coverage under paragraph (b)(2) of this section that also are deposits of an employee benefit plan or deposits of an 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 \$250,000 for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied.

(b) * * *

(2) * * *

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

* * * * *

By order of the Board of Directors.

Dated at Washington DC, this 5th day of September 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6-15065 Filed 9-11-06; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25773; Directorate Identifier 2006-SW-16-AD; Amendment 39-14758; AD 2006-19-01]

RIN 2120-AA64

Airworthiness Directives; Eurocopter Model AS350B, B1, B2, B3, BA, D, and AS355E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter helicopters. This action requires, within 10 hours time-in-service (TIS), inspecting the tapered housing of each main servo-control (MSC) for a crack. If no crack is found, this AD requires, before further flight, retorquing the upper ball-end attachment nut of the MSC. If a crack is found, this AD requires, before further flight, replacing the MSC with an airworthy MSC. This amendment is prompted by the discovery of cracks in the tapered housings of MSCs. The actions specified in this AD are intended to detect a crack in the MSC tapered housing and to prevent loss of the attachment of the MSC to the upper attachment yoke, loss of the main rotor control, and subsequent loss of control of the helicopter.

DATES: Effective September 27, 2006.

Comments for inclusion in the Rules Docket must be received on or before November 13, 2006.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically;

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically;

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

- Fax: (202) 493-2251; or

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at <http://dms.dot.gov>, or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in

the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT:

Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified Eurocopter helicopters. This AD applies to MSCs not modified per MOD 073343 and on which the tightening torque of the attachment nut that secures the upper ball end has been increased by following MOD 073191 or complying with MET Work Card 67.30.00.402 since MET Revision 04-06 for Model AS350 helicopters and Revision 04.08 for Model AS355 helicopters. This action requires, within 10 hours TIS, inspecting the tapered housing of the MSC for a crack. If no crack is found, this AD requires before further flight, adjusting the torque of the upper ball-end attachment nut of the MSC to between 177-199 in-lbs (2-2.25 decanewton meters (daN·m)). If a crack is found, before further flight, this AD also requires replacing the MSC with an airworthy MSC. This amendment is prompted by the discovery of cracks in the tapered housings of MSCs. The condition, if not detected, could result in the loss of the attachment of the MSC to the upper attachment yoke, loss of main rotor control, and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on Eurocopter Model AS 350 and AS 355 helicopters. EASA advises of the discovery of cracks in the tapered housings of MSCs during scheduled inspections. EASA also advises that a very long crack in the tapered housing of an MSC can lead to loss of the attachment of the MSC concerned (sic) to the nonrotating swashplate and consequently loss of the helicopter.

Eurocopter has issued Alert Service Bulletin (ASB) Nos. 05.00.51 for Model AS350B, BA, BB, B1, B2, B3, and D helicopters, and 05.00.48 for Model AS355E helicopters, both dated February 27, 2006. The ASBs specify inspecting for a crack in the tapered housing of the MSC. The ASBs apply to all part numbers not modified per MOD 073343 and on which the tightening torque of the attachment nut that secures the upper ball end has been increased by following MOD 073191 or complying with MET Work Card 67.30.00.402 since MET Revision 04-06 for Model AS350 helicopters and Revision 04.08 for Model AS355