mailing address for the receipt of classified documents.

* * * * *

(c) * * *

(2) Confidential matter may be transported by one of the methods set forth in paragraph (c)(1) of this section, by U.S. express or certified mail. Express or certified mail may be used in transmission of Confidential documents to Puerto Rico or any United States territory or possession.

* * * * *

60. In § 95.45, paragraph (a) is revised to read as follows:

§ 95.45 Changes in classification.

(a) Documents containing classified National Security Information must be downgraded or declassified as authorized by the NRC classification guides or as determined by the NRC. Requests for downgrading or declassifying any NRC classified information should be forwarded to the NRC Division of Facilities and Security, Office of Administration, Washington, DC 20555–0001. Requests for downgrading or declassifying of Restricted Data will be forwarded to the NRC Division of Facilities and Security for coordination with the Department of Energy.

* * * * *

61. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter containing classified information.

Documents containing classified information may be destroyed by burning, pulping, or another method that ensures complete destruction of the information that they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the CSA.

62. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The facility may deliver all documents and matter containing classified information to the Commission, or to a person authorized to receive them, or must destroy all classified documents and matter. In either case, the facility shall submit a certification of nonpossession of classified information to the NRC Division of Facilities and Security within 30 days of the termination of the facility clearance.

(b) In any instance where a facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the CSA, dispose of classified documents in a manner specified by the CSA.

63. Section 95.57 is revised to read as follows:

§ 95.57 Reports.

Each licensee or other person having a facility clearance shall report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in 10 CFR part 73, appendix A:

(a) Any alleged or suspected violation of the Atomic Energy Act, Espionage Act, or other Federal statutes related to classified information (e.g., deliberate disclosure of classified information to persons not authorized to receive it, theft of classified information). Incidents such as this must be reported within 1 hour of the event followed by written confirmation within 30 days of the incident; and

(b) Any infractions, losses, compromises, or possible compromise of classified information or classified documents not falling within paragraph (a) of this section. Incidents such as these must be entered into a written log. A copy of the log must be provided to the NRC on a monthly basis. Details of security infractions including corrective action taken must be available to the CSA upon request.

(c) In addition, NRC requires records for all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Facilities and Security. These may be submitted either on an ''as completed'' basis or monthly. The information may be submitted either electronically by an on-line system (NRC prefers the use of a dial-in automated system connected to the Division of Facilities and Security) or by paper copy using NRC Form 790.

Dated at Rockville, MD, this 22nd day of March, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–7842 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC16

Deposit Insurance Regulations; Joint Accounts and ''Payable-on-Death'' Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing the insurance coverage of joint ownership accounts and revocable trust (or payable-on-death) accounts. The amendments are almost identical to the amendments proposed by the FDIC in July 1998; they supplement other revisions that became effective in July. The purpose of the amendments is to increase the public's understanding of the insurance rules through simplification.

The final rule makes three changes to the deposit insurance regulations. First, it eliminates step one of the two-step process for determining the insurance coverage of joint accounts. Second, it changes the insurance coverage of ''payable-on-death'' accounts by adding parents and siblings to the list of ''qualifying beneficiaries''. Third, it makes certain technical amendments to the FDIC's rules regarding the coverage of accounts held by agents or fiduciaries.

DATES: Effective April 1, 1999.

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

SUPPLEMENTARY INFORMATION:

I. Simplifying the Insurance Regulations

Federal deposit insurance plays a critical role in assuring stability and public confidence in the nation's financial system. Deposit insurance cannot play this role, however, unless the rules governing the application of the $100,000 insurance limit are understood by depositors. Misunderstandings can lead to a loss of depositors' funds with a resulting loss of public confidence.

Unfortunately, some of the FDIC's insurance rules have been widely misunderstood. See 63 FR 38521 (July 17, 1998). This confusion prompted the FDIC to initiate a simplification effort. As a result of that effort, the FDIC issued a final rule, effective July 1, 1998, to ''clarify and simplify'' the FDIC's deposit insurance regulations. See 63 FR 25750 (May 11, 1998). The final rule made numerous technical and substantive amendments to the insurance regulations, including the use of plainer language and examples. To further simplify and clarify the deposit insurance rules, in July 1998, the FDIC published a proposed rule to amend the regulations dealing with joint accounts and ''payable-on-death'' (or POD) accounts. See 63 FR 38521 (July 17, 1998). The proposed rule is described in detail below.

II. The Proposed Rule

A. Joint Accounts

Under the FDIC's insurance rules, qualifying joint accounts are insured separately from any single ownership accounts maintained by the co-owners at the same insured depository institution. See 12 CFR 330.9(a). A joint account is a ''qualifying'' joint account if it satisfies certain requirements: (1) The co-owners must be natural persons; (2) each co-owner must personally sign a deposit account signature card; and (3) the withdrawal rights of the co-owners must be equal. See 12 CFR 330.9(c)(1). The requirement involving signature cards is inapplicable if the account at issue is a certificate of deposit, a deposit obligation evidenced by a negotiable instrument, or an account maintained for the co-owners by an agent or custodian. See 12 CFR 330.9(c)(2).

Assuming these requirements are satisfied, the current rules (i.e., the rules in effect prior to the effective date of this final rule) provide that the $100,000 insurance limit shall be applied in a two-step process. First, all joint accounts owned by the same combination of persons at the same insured depository institution are added together and insured to a limit of $100,000. Second, the interests of each person in all joint accounts, whether owned by the same or some other combination of persons, are added together and insured to a limit of $100,000. See 12 CFR 330.9(b).

The two-step process for insuring joint accounts has been misunderstood by bank employees as well as depositors. This widespread confusion has resulted in the loss by some depositors of significant sums of money. For example, at one failed depository institution, three individuals held three joint accounts (and no other types of accounts). The interest of each individual was less than $100,000. The individuals chose to place all of their funds in joint accounts so that each of them would have access to the money in the event of an emergency or sudden illness. When the institution failed, step one of the two-step process required the aggregation of the three joint accounts. The amount in excess of $100,000 was uninsured.

In this example, all of the funds owned by the three joint owners could have been insured if the funds had been held in individual accounts as opposed to joint accounts. Thus, the depositors did not suffer a loss because they placed too much money in a single depository institution that failed. Rather, they suffered a loss simply because they misunderstood the FDIC's regulations. See also *Sekula* v. *FDIC,* 39 F.3d 448 (3d Cir. 1994).

In order to simplify the coverage of joint accounts, the FDIC proposed to eliminate the first step of the two-step process.

B. POD Accounts

Under the current rules (i.e., the rules in effect prior to the effective date of this final rule), qualifying revocable trust (or POD) accounts are insured separately from any other types of accounts maintained by either the owner or the beneficiaries at the same insured depository institution. See 12 CFR 330.10(a).

A POD account is a ''qualifying'' POD account if it satisfies certain requirements: (1) The beneficiaries must be the spouse, children or grandchildren of the owner; (2) the beneficiaries must be specifically named in the deposit account records; (3) the title of the account must include a term such as ''in trust for'' or ''payable-on-death to'' (or any acronym therefor); and (4) the intention of the owner of the account (as evidenced by the account title or any accompanying revocable trust agreement) must be that the funds shall belong to the named beneficiaries upon the owner's death. If the account has been opened pursuant to a formal ''living trust'' agreement, the fourth requirement means that the agreement must not place any conditions upon the interests of the beneficiaries that might prevent the beneficiaries (or their estates or heirs) from receiving the funds following the death of the owner. Such conditions are known as ''defeating contingencies''.

Assuming these requirements are satisfied, the $100,000 insurance limit is not applied on a ''per owner'' basis. Rather, the $100,000 insurance limit is applied on a ''per beneficiary'' basis to all POD accounts owned by the same person at the same insured depository institution. For example, a POD account owned by one person would be insured up to $500,000 if the account names five qualifying beneficiaries.

If one of the named beneficiaries of a POD account is not a qualifying beneficiary, the funds corresponding to that beneficiary are treated for insurance purposes as single ownership funds of the owner (i.e., the account holder). In other words, they are aggregated with any funds in any single ownership accounts of the owner and insured to a limit of $100,000. See 12 CFR 330.10(b).

On a number of occasions, depositors have lost money upon the failure of an insured depository institution because they believed that POD accounts are insured on a simple ''per beneficiary'' or ''per family member'' basis. They did not understand the difference between qualifying beneficiaries and non-qualifying beneficiaries. Typically, in such cases, the named beneficiary has been a parent or sibling. In the absence of a qualifying beneficiary, the POD account has been aggregated with the owner's single ownership accounts.

In response to such cases, the FDIC proposed adding siblings and parents to the list of qualifying beneficiaries. The purpose of this proposal was to protect most depositors who misunderstand the rules governing POD accounts without abandoning the basic concept that insurance for such accounts is provided up to $100,000 on a ''per qualifying beneficiary'' basis.

III. The Final Rule

The FDIC received forty-one comments on the proposed rule. The commenters can be divided into five categories: depository institutions (25); banking trade associations (9); bank holding companies (3); individuals (3); and other (1) (a computer software company). Of these comments, the vast majority supported the proposed amendments. Only two comments were critical of the proposed amendments.

The typical comment on the joint account revision praised the FDIC for proposing to eliminate the ''most confusing and misunderstood'' part of the current insurance regulations. The most pervasive comment on the POD account revision was that the amendment to add parents and siblings as qualified beneficiaries has been ''long overdue''.

Of the two critical comments, one suggested that the FDIC lacks the authority to eliminate step one of the two-step process for insuring joint accounts. In the commenter's opinion, the elimination of step one would violate the statutory mandate that the FDIC—in applying the $100,000 insurance limit—must ''aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor * * *.'' 12 U.S.C. 1821(a)(1)(C). Specifically, the commenter argued that an account held by a particular combination of co-owners represents a single ''right and capacity''. In other words, under this argument, the combinations of co-owners—and not the individual persons—are the ''depositors'' of joint accounts. Therefore, such an account cannot be insured for more than the statutory insurance limit of $100,000 (as prescribed by step one).

The argument above is consistent with the FDIC's approach toward insuring joint accounts prior to 1967. It is inconsistent, however, with the FDIC's creation in 1967 of step two of the two-step process. See 32 FR 10408 (July 14, 1967). Under step two, the FDIC has treated the individual persons as the ''depositors''. Nothing in the Federal Deposit Insurance Act precludes this longstanding interpretation.

Through the elimination of step one, the regulations provide a simple $100,000 insurance limit for the interest of each person (a depositor) in all joint accounts (an ownership right and capacity). The FDIC believes that this result will be consistent with the statutory limit of $100,000 for ''the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right * * *.'' 12 U.S.C. 1821(a)(1)(C). Moreover, as recognized by the vast majority of commenters, this result will be much easier to understand than the two-step process. Accordingly, the Board has decided to adopt the proposed elimination of step one.

As a result of this final rule, the maximum insurance coverage of a particular joint account (or group of joint accounts owned by the same combination of persons) will no longer be $100,000. In the case of a joint account of $200,000 owned by two persons, for example, the maximum coverage will increase from $100,000 to $200,000 (or $100,000 for the interest of each owner). The maximum coverage that any one person can obtain for his/her interests in all qualifying joint accounts, however, will remain $100,000.

The second critical comment argued that the proposed amendments would not accomplish the objective of simplifying the regulations. In the case of the elimination of step one of the two-step process for insuring joint accounts (discussed above), this argument is unfounded. As recognized by the vast majority of commenters, a one-step process is simpler than a two-step process. In the case of the POD account amendment, the argument is stronger because the amendment will not eliminate the concept of ''qualifying beneficiaries''. By adding parents and siblings to the list of ''qualifying beneficiaries'', however, the amendment will reduce the number of cases in which a depositor's confusion results in a loss of funds. In other words, the amendment may not eliminate confusion but will protect most depositors from the negative consequences of such confusion. For this reason, the Board has decided to adopt the proposed amendment. Unlike the proposed rule, the final rule defines the terms ''parents'', ''brothers'' and ''sisters''.

The subject of ''living trust'' accounts should be mentioned. A ''living trust'' account is a POD account opened pursuant to a formal ''living trust'' agreement. By expanding the list of ''qualifying beneficiaries'', the final rule will not remove the complicated methodology for determining the insurance coverage of such accounts. This methodology requires a determination as to whether the interest of each beneficiary is subject to any conditions or contingencies (referred to by the FDIC as defeating contingencies) that might prevent the beneficiary from receiving his/her share of funds following the death of the owner. Most ''living trust'' agreements include defeating contingencies. As a result, most ''living trust'' accounts are classified by the FDIC for insurance purposes as single ownership accounts. In other words, the account is aggregated with any single ownership accounts of the owner at the same depository institution and insured to a limit of only $100,000. See 12 CFR 330.10(f).

IV. Technical Amendments

Under the FDIC's rules regarding the insurance coverage of accounts held by agents or fiduciaries, the funds in such accounts are insured to the same extent as if deposited in the names of the principals. See 12 CFR 330.7(a). In other words, the insurance coverage ''passes through'' the agent or custodian to the principal or actual owner. The account will not be entitled to such ''pass-through'' coverage, however, unless the agency or fiduciary relationship is disclosed in the deposit account records. See 12 CFR 330.5(b).

The necessity of disclosing fiduciary relationships in the account records has been referred to as a ''recordkeeping requirement'' in the insurance regulations. The term ''recordkeeping requirement'' may suggest to some depository institutions that they possess an affirmative duty to collect information regarding fiduciary relationships. In fact, no such duty exists. For this reason, the FDIC has decided to rephrase certain sections of the regulations.

The final rule removes ''recordkeeping requirements'' from the section heading at 12 CFR 330.5 and the paragraph headings at 12 CFR 330.5(b) and 12 CFR 330.5(b)(4). Also, the term is removed from 12 CFR 330.14(a).

The paragraph at 12 CFR 330.5(b)(1) provides that no claim for insurance coverage based on a fiduciary relationship will be recognized unless the fiduciary relationship is disclosed in the account records. The final rule revises this paragraph so as to remove any suggestion that depository institutions are subject to reporting requirements with respect to accounts held by agents or fiduciaries. Specifically, the final rule changes language resembling a command directed at depository institutions (''[t]he 'deposit account records' * * * of an insured depository institution must expressly disclose * * * the existence of any fiduciary relationship'') to a statement describing the consequences of failing to disclose a fiduciary relationship (''[t]he FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed * * *'').

These amendments are technical. Their sole purpose is clarification. For this reason, the Board finds ''good cause'' for adopting these amendments without the rulemaking procedures generally required by the Administrative Procedure Act. See 5 U.S.C. 553. Inasmuch as this amendment will have no effect upon the operation of the insurance regulations, these procedures are unnecessary.

V. Effective Date

The Administrative Procedure Act generally requires the publication of a substantive rule at least thirty days before its effective date. One of the exceptions is for ''good cause''. 5 U.S.C. 553(d). In the case of this final rule, the Board finds ''good cause'' to make the amendments effective immediately upon publication in the **Federal Register**. ''Good cause'' exists because the amendments will not prejudice any depositor or depository institution. On the contrary, the amendments will result in increased insurance coverage for some depositors who may misunderstand the current rules (for example, two individuals with a qualifying joint account of $200,000; or an individual who has named a sibling as the beneficiary of a POD account). By making the amendments effective immediately, the Board will protect depositors of any FDIC-insured institutions that may fail within the thirty-day period following publication.

With certain exceptions, the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325) provides that the federal banking agencies may not impose new regulatory reporting requirements on insured depository institutions except on the first day of a calendar quarter after the date of publication. See 12 U.S.C. 4802(b). This rule is inapplicable because the final rule imposes no reporting, disclosure or other new requirements on insured depository institutions.

VI. Paperwork Reduction Act

The final rule will simplify the FDIC's deposit insurance regulations governing joint accounts and POD accounts. It will not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The final rule will not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The amendments to the deposit insurance rules will apply to all FDIC-insured depository institutions and 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.

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 amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

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

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

2. In § 330.3, paragraph (h) is revised to read as follows:

§ 330.3 General principles.

* * * * *

(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 and of the 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.

* * * * *

3. In § 330.5, the section heading and paragraphs (b)(1), (b)(4) heading, and (b)(4)(i) are revised to read as follows:

§ 330.5 Recognition of deposit ownership and fiduciary relationships.

* * * * *

(b) *Fiduciary relationships*—(1) *Recognition.* The FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed, by way of specific references, in the ''deposit account records'' (as defined in § 330.1(e)) of the insured depository institution. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited. The express indication that the account is held in a fiduciary capacity will not be necessary, 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.

* * * * *

(4) *Exceptions*—(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.

* * * * *

4. In § 330.9, paragraph (b) is revised to read as follows:

§ 330.9 Joint ownership accounts.

* * * * *

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall 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 $60,000; ''A&C'' have a qualifying joint account with a balance of $80,000; and ''A&B&C'' have a qualifying joint account with a balance of $150,000. A's combined ownership interest in all qualifying joint accounts would be $120,000 ($30,000 plus $40,000 plus $50,000); therefore, A's interest would be insured in the amount of $100,000 and uninsured in the amount of $20,000. B's combined ownership interest in all qualifying joint accounts would be $80,000 ($30,000 plus $50,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $90,000 ($40,000 plus $50,000); therefore, C's interest would be fully insured.)

* * * * *

5. In § 330.10, paragraphs (a) and (e) are revised to read as follows:

§ 330.10 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into an account with respect to which the owner evidences an intention that upon his or her death 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, grandchild/grandchildren, parent/parents, brother/brothers or sister/sisters. (Example: If A establishes a qualifying account payable upon death to his spouse, sibling and two children, assuming compliance with the rules 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.

* * * * *

(e) *Definition of ''children'', ''grandchildren'', ''parents'', ''brothers'' and ''sisters''.* For the purpose of establishing the qualifying degree of kinship identified in paragraph (a) of this section, the term ''children'' includes biological, adopted and step-children of the owner. The term ''grandchildren'' includes biological, adopted and step-children of any of the owner's children. The term ''parents'' includes biological, adoptive and step-parents of the owner. The term ''brothers'' includes full brothers, half brothers, brothers through adoption and step-brothers. The term ''sisters'' includes full sisters, half sisters, sisters through adoption and step-sisters.

* * * * *

6. In § 330.14, paragraph (a) is revised to read as follows:

§ 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 rules prescribed in § 330.5 are satisfied.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 23rd day of March, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–7736 Filed 3–31–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–166–AD; Amendment 39–11099; AD 99–07–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 airplanes, that requires a one-time inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary. This amendment is prompted by reports of corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, apparently due to the improper brushing of cadmium on the hinge plates during manufacture. The actions specified by this AD are intended to detect and correct corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, which could result in reduced structural integrity of the airplane.

DATES: Effective May 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on June 26, 1998 (63 FR 34832). That action proposed to require a one-time inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

Two commenters support the proposed rule.

Requests To Revise Initial Inspection Method

Several commenters request that the FAA require, within 18 months, an ''external'' visual inspection for evidence of corrosion of the hinge plates with fairings removed. If corrosion is found during the ''external'' visual inspection, the commenters suggest that, prior to further flight, the one-time visual inspection specified in paragraph (a) of the proposed AD then be accomplished. If no corrosion is found during the ''external'' visual inspection, the commenters suggest that operators repeat the ''external'' visual inspection thereafter at intervals not to exceed 18 months, until the one-time visual inspection is accomplished within 6 years. The commenters state that because removing the pivot pin and horizontal stabilizer to conduct the proposed one-time visual inspection is very time consuming, it will cause an