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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–093–3]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mediterranean fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas. The interim rule was necessary to relieve the restrictions that were no longer needed to prevent the spread of Mediterranean fruit fly to noninfested areas of the United States. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

EFFECTIVE DATE: The interim rule became effective on June 27, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly) regulations contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective June 27, 2002, and published in the **Federal Register** on July 3, 2002 (67 FR 44523–44524, Docket No. 01–093–2), we amended the regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas in § 301.78–3(c). The interim rule was necessary to relieve restrictions that were no longer needed to prevent the spread of Medfly to noninfested areas of the United States. As a result of that action, there are no longer any areas in the continental United States quarantined because of the Medfly.

Comments on the interim rule were required to be received on or before September 3, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This action affirms an interim rule that amended the Medfly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas. The interim rule was necessary to relieve restrictions on interstate movement of regulated articles from that area.

The entities most likely to be affected are fruit sellers, nurseries, growers, packinghouses, certified farmers markets, and swapmeets. The area that we removed from the list of quarantined areas is a predominantly residential area with many apartment buildings. Available information indicates that there are no entities in the area that sell, process, handle, or move regulated articles interstate.

In the interim rule, we solicited comments, particularly those pertaining to the number and kind of small entities that may incur benefits or costs as a result of the action. We received no comments.

We therefore expect the effect of the interim rule on any affected entities should be minimally positive, as they will no longer be required to treat regulated articles to be moved interstate for Medfly.

For this reason, the termination of the quarantine on that portion of Los Angeles County, CA, should have only a minimal economic effect on any affected entities operating in this area. We anticipate that the economic effect of lifting the quarantine, though positive, will be no more significant than was the minimal effect of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 44523–44524 on July 3, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

Done in Washington, DC, this 1st day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28348 Filed 11–6–02; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 201 and 204

[Regulations A and D; Docket Nos. R–1123 and R–1134]

Extensions of Credit by Federal Reserve Banks; Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is publishing final amendments to

Regulation A that replace the existing adjustment and extended credit programs with programs called primary and secondary credit and also reorganize and streamline existing provisions of Regulation A. The final rule leaves the existing seasonal credit program essentially unchanged. The final rule is intended to improve the functioning of the discount window and does not indicate a change in the stance of monetary policy.

The Board also is amending the penalty provision of Regulation D, which is calculated based on the discount rate, to conform the calculation of penalties for reserve deficiencies to the new discount rate framework.

DATES: This final rule will become effective on January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Madigan, Deputy Director (202/452–3828) or William Nelson, Senior Economist (202/452–3579), Division of Monetary Affairs; or Stephanie Martin, Assistant General Counsel (202/452–3198) or Adrianne Threatt, Counsel (202/452–3554), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Existing Regulation A and the Board's Proposed Rule

Under existing Regulation A, three credit programs are available to depository institutions: (1) Adjustment credit, which is available for short periods of time, usually overnight, when a depository institution has exhausted other sources of funds; (2) extended credit, which is available for somewhat longer periods when assistance is not available from other sources; and (3) seasonal credit, which is available largely to small banks with a pronounced seasonal funding need. Over the past decade, the interest rate on adjustment credit has been 25 to 50 basis points below the federal funds rate, which is the rate that applies to uncollateralized overnight loans in the interbank market. The rates for extended and seasonal credit are set by formulas based on market interest rates and typically have been at or above the basic discount rate.

The below-market rate for adjustment credit creates incentives for an institution to borrow at the discount window to exploit the spread between the discount rate and the higher market rate for short-term funds. The current regulation therefore requires that an institution first exhaust other available sources of funds and explain its need for adjustment credit. The regulation also prohibits the use of discount window credit to finance the sale of federal funds. Because of these restrictions, a Reserve Bank must evaluate the financial situation of each borrower to determine that both the reason for borrowing at the discount window and the depository institution's use of borrowed funds are appropriate.

Reserve Bank administration of adjustment credit tends to create uncertainty among depository institutions about their access to discount window credit. In addition, institutions that have borrowed at the discount window after advertising their need for funds in the market have expressed concern that borrowing at the window signals weakness and is a source of stigma. Concerns such as these in some cases have deterred depository institutions from borrowing at the discount window during very tight money markets when doing so would have been appropriate. This in turn has hampered the ability of the discount window to buffer shocks to the money markets.

To improve the operation of the discount window, the Board proposed to replace the existing adjustment and extended credit programs with primary and secondary credit programs (67 FR 36544, May 24, 2002). The Board proposed that primary credit be available to generally sound institutions on a very short-term basis, usually overnight, with little or no administrative burden on the borrower and that borrowers of primary credit not be required to exhaust other sources of funds before obtaining short-term primary credit. The Board also proposed that primary credit be available for periods of up to a few weeks to generally sound institutions that cannot reasonably obtain such funding in the market. The Board proposed no restrictions on the purposes for which the borrower could use primary credit. The proposal contemplated that Reserve Banks would establish a System-wide set of criteria, based on supervisory and other relevant information, which would be used to determine whether an institution was in generally sound financial condition and thus eligible for primary credit. The Board proposed that primary credit normally be available at a rate above the target federal funds rate of the Federal Open Market Committee (FOMC) and that the initial primary credit rate be 100 basis points above the target federal funds rate.

Under the proposed rule, institutions not eligible for primary credit would be permitted to borrow secondary credit to meet temporary funding needs, consistent with the institution's timely return to a reliance on market funds. A Reserve Bank also could extend secondary credit to facilitate the resolution of serious financial difficulties of an institution. The Board proposed that the initial rate be set by formula 50 basis points above the primary credit rate. The Board's proposal contemplated that the secondary credit program would require more Reserve Bank administration than the primary credit program.

The proposed regulation retained the existing seasonal credit program without substantive change, although the Board specifically requested comment regarding whether that program was still necessary and, if so, what the applicable interest rate should be.

Overview of Comments Received

The Board received 61 comments on the proposed rule from depository institutions of various sizes, trade associations that represent depository institutions, individuals, and Reserve Banks. This section presents an overview of the main points contained in the comments received. The section-by-section analysis of the final rule, set forth below, discusses the comments in greater detail and responds to the major concerns expressed by commenters.

Support for the Proposal

Of the 30 letters that addressed the primary and secondary credit programs, approximately 14 generally supported moving to an above-market discount window framework. These commenters indicated that replacing the existing below-market discount window facility with an above-market framework would provide more easily accessible funding on more predictable and transparent terms with less burden on borrowers and would remove incentives to borrow in order to exploit interest rate spreads. Owing to the removal of the requirements that a borrower exhaust other funding sources and prove its need for credit and the addition of the requirement that primary credit borrowers be in generally sound financial condition, some supporters of the proposal thought that the stigma associated with discount borrowing would decrease. Commenters also indicated that an above-market framework would provide depository institutions with an incentive to manage their liquidity more prudently under normal market conditions in order to avoid paying the penalty rate but would make it easier for banks to obtain overnight funding during periods of very tight money markets. Supporters

also stated that an above-market lending facility would be more akin to the lending facilities of other central banks.

Questions About the Need for Proposed Changes

Some commenters questioned the underlying reasons the Board gave for proposing an above-market framework. Several commenters questioned the Board's statement that some depository institutions were deterred from coming to the discount window because of perceptions that discount window borrowing indicated financial weakness. One commenter asserted that, because of limits on lending to undercapitalized institutions, borrowing at the window was more likely to indicate strength than weakness, while others asserted that market participants did not view borrowing as an important factor when assessing financial strength.[1] Still another commenter argued that the current low volume of borrowing did not indicate reluctance to borrow, but rather indicated that depository institutions were using the window appropriately as a backup rather than primary source of liquidity.[2] Other commenters questioned the need for an above-market rate for purposes of limiting volatility in the federal funds market because they thought that the existing controls and incentives adequately limited volatility.

Concerns About the Proposal

Sixteen commenters, eight of whom opposed the proposal, expressed various concerns about the proposal. Commenters' concerns focused mainly on the proposed 100-basis-point spread between the target federal funds and primary credit rates. Other commenters expressed concern that lending funds at an above-market rate inappropriately would introduce a profit motive into actions related to monetary policy, thereby creating a conflict of interest for the Federal Reserve System.[3]

Many commenters expressed concern that the proposal either would not address or would exacerbate the problems that the Board identified as reasons for changing to an above-market framework. Although some critics of the proposal thought that the new framework would prevent extreme spikes in the federal funds rate, many commenters thought that volatility, especially intraday volatility, would increase rather than decrease. Other commenters thought that depository institutions would be at least as reluctant as they are currently to seek discount window credit because stigma would remain or because the above-market rate would deter borrowing. Still other commenters asserted that the Board's proposal would not be less burdensome for borrowers. Suggested Alternatives to and Suggestions Regarding the Board's Proposal.

Some commenters who expressed general concern about the proposed above-market structure suggested that the Board modify or consider alternatives to its proposal. One commenter suggested that the problems with the current discount window programs were not burden and stigma, but rather were uncertainty about the programs and inconsistent requirements and expectations throughout the System. This commenter suggested leaving the current discount window programs in place but clarifying the Reserve Banks' credit policies, expectations, and requirements and applying those criteria more consistently throughout the Federal Reserve System.[4] Another commenter proposed that the Board try to cap the federal funds rate through late-day open market operations rather than change its credit programs. Other commenters thought that the Federal Reserve should make credit available continuously and at market rates.[5] Comments Regarding Seasonal Credit.

Over half the comments the Board received were in response to the Board's solicitation for comment about the continued need for the seasonal credit program. Forty-five commenters addressed the seasonal credit program, with 39 in favor of retaining and six in favor of eliminating the program. These comments are discussed in detail below in the section on seasonal credit.

Summary of Final Rule

For the reasons discussed in detail below in the section-by-section analysis, the Board's final amendments to Regulation A substantively are nearly identical to the rule the Board proposed in May 2002. Most notably, the final rule replaces the existing adjustment and extended credit programs with primary and secondary credit programs, and the Reserve Banks will offer these new types of credit at rates that exceed the FOMC's target federal funds rate. The Board has included in the final rule a section under which the primary credit rate could be lowered in a financial emergency in the absence of a quorum of the Board. The Board is retaining the seasonal credit program with only minor technical changes.

Section-by-Section Analysis

The Above-Market Lending Framework—§§ 201.4 and 201.51.

The Above Market Framework Generally and Market Volatility

A number of commenters argued that moving to an above-market discount window framework generally would increase volatility, especially in light of the proposed 100-basis-point initial spread of the primary credit rate over the target federal funds rate, and therefore would not accomplish one of the Board's stated goals.[6]

It is possible that certain measures of volatility of the federal funds rate—particularly those that give some weight to small deviations from the target, such as the intraday standard deviation of the federal funds rate—will increase under the above-market framework. However, the Board believes that an above-market framework will reduce the potential for more extreme, unintended movements in the funds rate. These extreme movements arguably are more problematic than smaller ones because they tend to occur in the context of, and can exacerbate, conditions of market stress. Most depository institutions will not have an incentive to borrow from the window until the federal funds rate rises to the primary credit rate, at which point institutions likely will view the window as an attractive alternative. The presence of the discount window as a funding option should ensure that the federal funds rate will not rise significantly above the primary credit

[1] One commenter argued that the manner in which discount window borrowing is reported makes it difficult to identify individual borrowers. Others thought that discount window activity was at best a secondary indicator of financial strength because market participants rely on other sources when determining an institution's soundness.

[2] The Board believes that a number of factors, including improved account management by depository institutions, contribute to the relatively low level of borrowing at recent spreads of the federal funds rate over the discount rate. However, the Board also believes that the current framework of below-market lending, with its attendant need to administer lending heavily, remains a potential deterrent to appropriate borrowing, especially during periods when the overall condition of the financial sector is weak.

[3] Another commenter argued that if a depository institution were to deteriorate as a result of reselling funds obtained through the primary credit program, the public might blame the Federal Reserve.

[4] The Board notes that the Federal Reserve System has taken steps over the past decade that have been intended to clarify requirements and decrease stigma.

[5] The Board notes that this approach would be inconsistent with operation of primary and secondary credit facilities as backup sources of liquidity and reserves for depository institutions.

[6] These commenters generally thought that an above-market structure would allow sellers routinely to increase the federal funds rate all the way up to the ceiling established by the discount rate, thereby increasing the cost of funds generally.

rate, so the primary credit rate effectively will serve as a cap on and limit potential volatility in the federal funds rate.

Some commenters stated that an above-market discount window framework would place an upper limit on the federal funds rate but argued that the Board should not establish a ceiling on the federal funds rate without also establishing a floor, noting that net sellers of federal funds are disadvantaged by declines in the federal funds rate. The most effective means of establishing a floor would be for the Federal Reserve to pay interest on excess reserve account balances, because a depository institution would have no incentive to lend or sell reserves at a lower rate than the rate of interest those reserve balances could earn. However, the Federal Reserve does not have explicit statutory authority to pay interest on reserve balances at this time.

Although it might be desirable to limit both upward and downward volatility, those limits need not be implemented simultaneously in order to produce beneficial results. The potential advantages of the proposed discount window changes are considerable even in the absence of a rate floor, and delaying implementation of the above-market framework would unnecessarily defer those advantages without any countervailing benefit. The Board therefore has determined that implementation of the above-market framework should proceed without delay.

Primary Credit

Reserve Banks will extend primary credit at a rate above the target federal funds rate on a very short-term basis (typically overnight) to depository institutions that the Reserve Banks judge to be in generally sound financial condition. Reserve Banks will determine eligibility for primary credit according to a set of criteria that is uniform throughout the Federal Reserve System and based mainly on examination ratings and capitalization, although supplementary information, including market-based information when available, also could be used. An institution that is eligible to receive primary credit need not exhaust other sources of funds before coming to the discount window, nor will it be prohibited from using primary credit to finance sales of federal funds. However, in view of the above-market price of primary credit, the Board expects that a depository institution will continue to use the discount window as a backup source of liquidity, which is the intended purpose of a central bank lending facility, rather than as a routine one. Reserve Banks will extend primary credit on an overnight basis with minimal administrative requirements, unless an aspect of the request for funds suggests that the credit extension would not meet the conditions of primary credit. Reserve Banks also may extend primary credit to eligible institutions for periods of up to several weeks if such funding is not available from other sources. However, longer-term extensions of primary credit will be subject to greater administration than are overnight loans. The text of § 201.4(a) is essentially the same as that of the Board's proposal, although the final rule includes language highlighting the backup nature of the primary credit facility.

1. Interest Rates for Primary Credit

Several commenters supported the Board's proposal that the initial primary credit rate be 100 basis points above the target federal funds rate. These commenters thought that a 100-basis-point spread generally was appropriate and would encourage most financial institutions first to seek credit elsewhere. One commenter thought the proposed spread was acceptable because the Federal Reserve does a good job of keeping the federal funds rate near the target.

The Board received numerous comments, however, that expressed specific concern about the proposed initial primary credit rate. Many commenters, even those that generally supported the proposal, argued that the 100-basis-point spread the Board proposed was too wide and would undermine the Board's articulated goals for the primary credit program. These commenters thought that a discount rate of the target federal rate plus 100 basis points was too high because it was overly punitive, would deter institutions from borrowing at the discount window, and would allow sellers of federal funds to bid the federal funds rate up during periods of limited trading, low reserve volume, or late-day trading. Other commenters thought that a 100-basis-point spread between the target federal funds and discount rates would thwart the Board's efforts to remove the stigma associated with discount window borrowing and to encourage depository institutions and industry analysts to view the window as a normal liquidity source for sound institutions.

Several commenters liked the idea of setting the primary credit rate at rate above the target federal funds rate but suggested that a spread of as few as 25 to as many as 50 basis points would be preferable to the 100-basis-point initial spread the Board proposed.[7] Other commenters suggested alternative mechanisms for setting the rate, such as setting the rate at a certain percentage, rather than a certain number of basis points, above the target federal funds rate.[8]

The Board notes that an appreciable spread between the primary credit and target federal funds rate is necessary for the success of the above-market discount window programs. Given the large number of financial institutions in the United States and the tremendous variation in their sizes and other characteristics, the availability and price of market funding sources available to U.S. financial institutions also vary widely. If the primary credit rate were not at least as high as the highest rate on sources of comparable funding in the market, then some depository institutions frequently would find the primary credit program, rather than the open market, to be the most attractive source of funds. If routine use of the window occurred, the Federal Reserve still would need to administer the discount window heavily to deter institutions from making undue use of primary credit.

Although it is difficult to determine the appropriate rate at which to extend primary credit to ensure that it remains a backup funding source, empirical evidence from several sources suggests that 100 points above the target federal funds rate is an appropriate initial rate. These data cast doubt on whether a lesser spread would accomplish this goal of ensuring that the discount window remains a backup source of liquidity.

Experience with the Special Liquidity Facility (SLF) that the Federal Reserve System established to address unusual liquidity strains that arose during the months surrounding the date change on January 1, 2000, is instructive. The SLF was similar to the primary credit program in many ways because

[7] Although most commenters who suggested a particular rate did not explain their rationale, one commenter argued that a 50-basis-point spread would be appropriate because the commenter asserted that approximately half the large spikes in the federal funds rate were at about that level. Another commenter indicated that a 50- to 60-basis-point spread would be appropriate because that would ensure that the central bank rate was slightly higher than the market rate but would keep the market rate from becoming excessive.

[8] One of these commenters suggested that the amount of the spread should depend on the level of the target federal funds rate, such that the lower the federal funds rate, the lower the spread and vice versa. Another suggested tying the primary credit rate to the collateralized repo rate rather than the federal funds rate.

eligibility was limited to financially sound institutions, administration of the facility intentionally was quite limited, and funding was available at a fixed spread of 150 basis points above the federal funds rate. Despite the penalty rate, there were 42 instances in which institutions borrowed from the SLF for a period of two to ten consecutive days and 14 instances in which institutions borrowed for periods of more than ten consecutive days. This suggests that the SLF was an attractive source of longer-term, rather than overnight, funding for some institutions despite the 150-basis-point spread above market rates, which in turn suggests that those financially sound institutions might not have had access to cheaper funding in the open market.

In addition, Federal Reserve staff conversations with representatives of correspondent banks and other depository institutions found that the overnight funding options for banks without access to the national money markets were priced from 3/16 to 1 percentage point over the federal funds rate, with the largest spread being charged by an institution that preferred that its customers first exhaust other sources of short-term funding.

Moreover, a spread on the order of 100 basis points has been used by some, but not all, foreign central banks on their Lombard discount window facilities. Perhaps most notably, the European Central Bank generally has employed a spread of 100 basis points. Conversations with staff of some of these central banks indicate that the experience with spreads of this size generally has been positive and has been consistent with achieving those central banks' goals.

In view of the foregoing evidence, the Board believes that an initial spread of 100 basis points is appropriate and anticipates that a primary credit rate consistent with such a spread will be established as of January 9, 2003. The Board notes, however, that this is only the initial rate. The Reserve Banks are required to establish the primary credit rate, subject to the review and determination of the Board, at least every two weeks or more often if the Board deems necessary. The System therefore can set a primary credit rate at a lesser, or greater, spread above the federal funds rate as needed in light of actual experience with the primary credit program.[9]

Because a change in the stance of monetary policy between now and the recommended initiation of the new programs on January 9, 2003, cannot be ruled out, it is uncertain at this point what level of the primary credit rate will correspond with a spread of 100 basis points on that date. Section 201.51(a), which describes the primary credit rate, therefore at this time simply will state that the primary credit rate is a rate above the target federal funds rate of the FOMC. When the Reserve Banks establish and the Board determines the rate to be in effect on January 9, 2003, the Board will amend § 201.51(a) to indicate the initial primary credit rate for each Reserve Bank. The Board's amendment will be effective on January 9, 2003.

2. Eligibility Criteria

The Board proposed that eligibility for primary credit be determined mainly by a depository institution's supervisory ratings and capitalization, although supplementary information, when available, also could be used. Under the Board's proposed rule, institutions that were rated CAMELS 1 or 2 or SOSA 1 and at least adequately capitalized almost certainly would be eligible for primary credit, while institutions rated CAMELS 4 or 5 almost certainly would not be eligible. Institutions rated CAMELS 3 or SOSA 2 that are at least adequately capitalized might be eligible, depending on supplementary information.[10] The Board noted that this recommendation aligned very closely with the categorization of institutions for purposes of determining access to daylight credit.

Several commenters specifically addressed the eligibility criteria for primary credit. Most of these commenters thought that the proposed criteria generally were appropriate, although some suggested changes. Several commenters argued that the criteria should rely more heavily on examination ratings and minimize reliance on other types of information in determining eligibility for primary credit. One commenter thought that the guidelines would be more clear, concise, and uniform if the Federal Reserve only took supervisory ratings into account and did not allow supplementary information if a depository institutions were rated CAMELS 1 or 2.[11] Another commenter suggested that institutions that are rated CAMELS 5 or that are critically undercapitalized either should be precluded from obtaining credit or should be charged a much higher penalty rate than the Board proposed. In contrast, other commenters expressed concern that the proposed eligibility criteria relied too heavily on supervisory data. These commenters expressed concern that reliance on an institution's soundness was not appropriate in a system of secured lending and suggested that the Federal Reserve instead should base its lending programs and credit decisions on the type of collateral an institution offers.

The Board believes that, in order to ensure uniformity of credit eligibility throughout the Federal Reserve System, the criteria must rely heavily on objective supervisory data, which reflect determinations made by an institution's primary regulator after an extensive review process. However, the Board also recognizes that an institution could experience significant changes in its financial strength between examinations, in which case the institution's supervisory ratings might not reflect its current soundness and creditworthiness. To protect the Reserve Banks from the risks and to avoid the allocative distortions that could be involved in lending to such an institution, the Board believes that the eligibility criteria must allow for the use of some amount of supplementary information, including market-based information when available, to confirm that an institution's most recent supervisory data accurately reflect the institution's current condition.

Under the final rule, the Board anticipates that the Reserve Banks will initially adopt criteria that are substantially similar to those articulated in the Board's proposal with some additional elements that will make the eligibility criteria identical to those for daylight credit. The classification scheme used by Reserve Banks for determining access to daylight credit is well developed and provides a good measure of the general soundness of depository institutions. Reserve Banks and depository institutions already have extensive experience with these criteria,

[9] One commenter expressed concern that the Reserve Banks would establish and the Board determine the spread between the federal funds and primary credit rates, rather than setting the actual rate. The Board notes that the primary credit rate will not be determined by establishing a fixed spread above the federal funds rate or by using any other formula. Rather, the Reserve Banks will establish the actual primary credit rate, subject to the review and determination of the Board.

[10] CAMELS (Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to market risk) ratings, applicable to domestically chartered institutions, are set on a scale of 1 through 5, with 5 representing the highest degree of supervisory concern. SOSA (Strength of Support Assessment) ratings, applicable to foreign banking organizations, are set on a scale of 1 through 3, with 3 indicating the highest degree of supervisory concern.

[11] This commenter argued that the other information the Board proposed to take into account was irrelevant to a Reserve Bank's risk regarding secured overnight loans and that considering such information would lead to uncertainty about borrowing privileges.

and using them to determine eligibility for both the daylight credit and primary credit programs generally should be straightforward for the Reserve Banks and should be more transparent for borrowers. Using a single set of criteria for both programs also should simplify explanations of Reserve Bank credit programs to depository institutions and the public.

Under the criteria that would be applied at the outset of the program, institutions' eligibility would be based on CAMELS (or SOSA and ROCA) ratings, capitalization, and, at the Reserve Bank's discretion, supplementary information.[12] More specifically, institutions that are at least adequately capitalized and rated CAMELS 1 or 2 (or SOSA 1 and ROCA 1, 2, or 3) would almost certainly be eligible for primary credit. Institutions that are at least adequately capitalized and rated CAMELS 3 (or SOSA 2 and ROCA 1, 2, or 3) generally would be eligible. Institutions that are at least adequately capitalized and rated CAMELS 4 (or SOSA 1 or 2 and ROCA 4 or 5) would be eligible only if an ongoing examination indicated a substantial improvement in condition. Institutions that are not at least adequately capitalized, or that are rated CAMELS 5 (or SOSA 3 regardless of the ROCA rating), would not be eligible for daylight or primary credit.

In summary, eligibility for primary credit will be restricted to institutions that are in generally sound financial condition. The Reserve Banks will be responsible for determining the general soundness of the institutions in their districts. At the outset of the program, the Reserve Banks will use the criteria that are already used for determining eligibility for daylight credit.

3. Reduction of Burden and Stigma

Some commenters disagreed that the proposed revisions would reduce the stigma of borrowing at the discount window and in particular noted that analysts and counterparties might infer that the bank could not obtain funds at market rates and therefore might be in financial difficulty if there were evidence that the bank were paying a premium for funds. [13]

The Board believes that the Federal Reserve can reasonably expect to achieve, over time, some reduction in stigma as a result of the primary credit program. Only generally sound institutions will be eligible to borrow primary credit, and the Board expects that most institutions will be eligible for primary credit. Market participants would have no reasonable basis for inferring that an institution believed to have borrowed primary credit was unsound.[14] Also, with credit no longer offered at a subsidy rate, the Federal Reserve will no longer require a borrowing institution first to exhaust other funding sources. As a result, borrowers will not have to make their funding needs known to the market, which should eliminate a key source of stigma cited by depository institutions. Depository institutions and persons attempting to assess the strength of those institutions also should have no concerns that financial regulators will view occasional use of primary credit as a potential indication of difficulties. In addition, the borrowings of those institutions that are believed to be lending the proceeds of discount window credit into the federal funds market clearly will indicate nothing adverse about their financial condition. Finally, reflecting the incentives created by an above-market framework, a significant proportion of primary credit borrowing is likely to occur when the overall money market has tightened significantly. Because occasions of tightening markets are well known to all money market participants and analysts, it will be easy for them to recognize that borrowing at such times reflects a general market situation rather than conditions particular to a single institution.

Secondary Credit

The Reserve Banks will offer secondary credit to institutions that do not qualify for primary credit. As with primary credit, secondary credit will be available as a backup source of liquidity on a very short-term basis, provided that the loan is consistent with a timely return to a reliance on market sources of funds. Longer-term secondary credit would be available if necessary for the orderly resolution of a troubled institution, although any such loan would have to comply with the limitations of § 201.5 regarding lending to undercapitalized and critically undercapitalized institutions. Unlike the primary credit program, secondary credit will not be a minimal administration facility because the Reserve Banks will need to obtain sufficient information about a borrower's financial situation to ensure that an extension of credit complies with the conditions of the program. The description of secondary credit at § 201.4(b) closely tracks the language of the Board's proposed rule but states that short-term secondary credit is a backup funding source.

The rate for secondary credit will be set by formula and will be above the primary credit rate. Initially, the spread between the primary and secondary credit rates will be 50 basis points.[15] Less sound borrowers are riskier and might have an incentive to use discount window borrowings to expand their balance sheets in a manner that likely would distort resource allocation, and the higher rate on secondary credit is designed to reduce this incentive. Even with the higher rate, some institutions might tend to rely routinely on secondary credit, so administration of secondary credit remains necessary. If experience eventually suggests that a 50-basis-point spread above the primary credit rate is either too high or too low to achieve the objectives of the secondary credit program, the Federal Reserve could adopt a different formula.

Seasonal Credit

The Board's proposed rule left the seasonal credit intact with two technical revisions. The Board proposed removing the requirement that a potential borrower first demonstrate that it has exhausted special industry lenders as a funding source, because in practice the Reserve Banks have not used this criterion for some time. In addition, the Board proposed eliminating the requirement that the seasonal credit rate

[12] ROCA (Risk management, Operation controls, Compliance, and Asset quality) ratings apply to the U.S. operations of a foreign banking organization. They are set on a scale of 1 to 5; as with CAMELS ratings, higher numbers indicate increased supervisory concern.

[13] Several commenters thought that stigma would remain until senior bank management, equity analysts, investors, rating agencies, and other market participants consider the discount window to be a ''normal'' source of liquidity. Some of these commenters suggested that only an intensive education campaign by the Federal Reserve targeted at those whose opinions influence perception of the discount window would achieve this result. Other commenters thought that financially sound institutions would not borrow at the window because the market would not be able to tell whether they obtained primary or secondary credit.

[14] Although the Federal Reserve System does not publish information on individual banks' use of the discount window, it is required by law to publish a weekly balance sheet for each Reserve Bank. The Federal Reserve also publishes weekly data on the aggregate amount the Federal Reserve System has lent under each discount window program.

[15] Although the Board received few comments specifically about the secondary credit program, those commenters that did reference the program generally thought that the proposed rate of 50 basis points above the primary credit rate was appropriate. However, one commenter suggested that a higher secondary credit rate should not reflect a risk premium, because all secondary credit would be collateralized fully. This commenter suggested that the higher rate was justified only by its ''incentive effect.'' Presumably this commenter was referring to the incentive a higher rate provides to less-sound institutions not to use discount window funding to expand their balance sheets inappropriately.

be at or above the basic discount rate, because that requirement would not be consistent with the pricing of primary credit. The Board specifically solicited comment on whether the seasonal credit program is still needed and, if so, whether the current formula for determining the rate remains appropriate. The majority of the comments that the Board received responded to this request.

Six commenters favored eliminating the seasonal credit program, arguing that small banks with seasonal needs had adequate access to other sources of liquidity and that the seasonal credit program was unnecessary. These commenters thought that the proposed primary and secondary credit programs could meet the needs of small banks. One commenter indicated that, if the Board kept the seasonal credit program, it should be available only to banks with less than $100 million in assets.

The Board received 39 comments from depository institutions, trade associations that represent small banks, and a Federal Reserve Bank urging the Board to retain the seasonal credit program, and most of these commenters also recommended retaining the existing rate formula.[16] The depository institutions argued that they continue to experience seasonal demand for which they have relatively few alternative funding sources. Some commenters indicated that they have no or very limited access to short-term capital markets and national money markets or that they can obtain credit through these channels only on unfavorable terms. Some small banks stated that they did not have access to the Federal Home Loan Banks (FHLBs), and some commenters with FHLB access stated that FHLB loans are for longer terms than needed to meet seasonal demand. Although many small banks indicated that their deposits generally have increased because of the recent decline in the equity markets, they expected that the availability of deposit funding would decrease as other investment options became more attractive. Some depository institutions also stated that obtaining liquidity by competing for additional deposits either was too expensive or was impossible because of a lack of core deposits in the community.

Several commenters indicated that eliminating the seasonal credit program would be harmful in other ways. Many institutions expressed concern that, without that program, the FHLBs would become their only viable alternative liquidity source and that they would be overly exposed to the FHLBs. Other depository institutions argued that if they could not obtain funding on terms comparable with those of the seasonal credit program, they in turn would not be able to compete effectively with other lenders, including the Farm Credit System, for agricultural loans.

Section 201.4(c) of the final rule leaves the seasonal credit unchanged, except for technical revisions contained in the Board's proposal.

Lowering the Primary Credit Rate in a Financial Emergency

In a financial emergency, lowering the discount rate would help to prevent an undue tightening of money markets, even if the Federal Reserve's ability to provide reserves through open market operations were constrained by the timing or effects of the conditions giving rise to the financial emergency. Especially in light of the events of September 11, 2001, when the System needed to make monetary policy and lending decisions quickly, the Board believes that it is desirable to ensure that the primary credit rate is lowered expeditiously in response to a financial emergency.

Section 201.51(d)(2) of the Board's rule defines a financial emergency as a significant disruption to the U.S. money markets resulting from an act of war, military or terrorist attack, natural disaster, or other catastrophic event. Ideally, a quorum of the Board would be present to review and determine the primary credit rate at the time a financial emergency occurred. However, to ensure that the Board's determination to lower the rate in response to a financial emergency could take effect even in the absence of a quorum, § 201.51(d) of the Board's final rule provides that the primary credit rate is reduced to the FOMC's target federal funds rate if in a financial emergency a Reserve Bank has requested that the primary credit rate be established at the target federal funds rate and the Chairman of the Board (or, in the absence of the Chairman, his designee) certifies at the time of the financial emergency that a quorum of the Board is not available. If the primary credit rate were lowered as a result of this provision, the primary credit rate then would float with the target federal funds rate, which the FOMC would continue to set. This provision of Regulation A implements the Board's decision that lowering the primary credit rate to the target federal funds rate in a financial emergency is the appropriate course of action. The Federal Reserve Banks are establishing analogous internal procedures to address the possibility that their boards of directors or other duly authorized officials might be unavailable or otherwise unable to communicate a rate request to the Board in a timely manner during a financial emergency.

Reorganization of and Changes to Other Provisions of Regulation A

Section 201.1 Authority, Purpose and Scope

The Board's final rule amends this section to include as sources of authority sections 11(i)–11(j) and 14(d) of the Federal Reserve Act, which respectively provide the Board with rulemaking authority and general supervisory authority over the Reserve Banks and authorize the Reserve Banks, subject to the review and determination of the Board, to establish discount rates. This section also gathers all existing provisions concerning the scope of Regulation A into one section by incorporating language from existing § 201.7(a) regarding the circumstances under which U.S. branches and agencies of foreign banks are subject to the regulation.

Section 201.2 Definitions

This section remains unchanged except for the deletion of five definitions. The definition of ''eligible institution'' (existing § 201.2(j)) is unnecessary because it related only to the SLF that was established for use during the months surrounding the January 1, 2000, date change. The definition of ''targeted federal funds rate'' (existing § 201.2(k)) also originally was used only in connection with the SLF. Although the new emergency rate procedure provision also refers to the target federal funds rate, that provision

[16] Commenters offered various suggestions regarding the seasonal credit program. Some thought that the seasonal credit rate should be even lower than the existing rate formula provides, and one asked that the Reserve Banks offer borrowers a choice of fixed or variable rates. Another commenter opined that the Reserve Banks should accept a broader range of assets as collateral, consider a ''blanket pledging agreement'' such as that used by the FHLBs, and stop demanding to take physical possession of the collateral. (The Board notes that in fact only a small fraction of collateral is held physically by the Reserve Banks. Most collateral is held by the pledging institution or pledged electronically.) One commenter suggested that Reserve Banks should allow depository institutions to borrow up to the entire amount of the assets they pledge as collateral (in other words, with no ''haircut''). Some commenters indicated that the Federal Reserve should not require banks to demonstrate that their seasonal needs were for four consecutive weeks and should not vary an institution's seasonal credit line from month to month. Other commenters suggested that the Federal Reserve simplify both the eligibility criteria and the information requirements in connection with seasonal credit and requested that the Reserve Banks do more to promote awareness of the seasonal credit program.

explains precisely what the term means. The Board therefore believes that there is no need to define the term ''targeted federal funds rate'' in the definition section.

The Board also is deleting the terms ''liquidation loss,'' ''increased loss,'' and ''excess loss,'' (existing § 201.2(d)–(f), respectively). Liquidation loss and increased loss are used to derive the term excess loss, which is the amount the Board would owe the Federal Deposit Insurance Corporation (FDIC) under section 10B(b) of the Federal Reserve Act if outstanding Reserve Bank advances to a critically undercapitalized depository institution increased the FDIC's cost of liquidating that institution. Since the enactment of section 10B(b) in 1991, section 10B(b)'s payment provision has not been used. The Board continues to believe that the three definitions describe accurately and in detail the calculations required by section 10B(b) and, should it become necessary in the future, the Board would calculate the amount that it owed to the FDIC in accordance with the methods described in these three definitions. However, because the definitions only describe what the statute already requires, the Board believes that the regulation would be less cumbersome but no less accurate if § 201.5 of the final rule (regarding lending to undercapitalized and critically undercapitalized institutions) simply cross-referenced section 10B(b) of the Federal Reserve Act.

One commenter suggested that the Board amend its definition of ''depository institution'' to include bankers'' banks, which specifically are excluded from the definition under existing Regulation A. The Board previously has determined that the discount window is an appropriate source of liquidity for depository institutions that are subject to reserve requirements, and the definition of the term ''depository institution'' in Regulation A therefore is based on the provisions in section 19 of the Federal Reserve Act and in the Board's Regulation D regarding those institutions that must maintain reserves. Those provisions specifically exempt bankers' banks from maintaining reserves, and because bankers' banks generally avail themselves of that exemption the Board continues to believe that bankers' banks also generally should not have access to the discount window. The Board therefore is not changing its definition of ''depository institution'' for purposes of Regulation A. However, the Board notes that bankers' banks are free to choose to be subject to the reserve requirements of section 19 of the Federal Reserve Act and Regulation D. The Board previously has allowed Reserve Banks to grant discount window access to a bankers' bank that voluntarily maintain reserves, and the Board expects that practice to continue under this final rule.

Section 201.3 General Requirements Governing Extensions of Credit

The Board is adopting § 201.3 as it appeared in the proposed rule. This section prescribes the Board's general rules governing a Federal Reserve Bank's extension of credit and combines in one place all the existing provisions of Regulation A that relate to the Reserve Bank's authority to extend credit, how credit is extended, and the requirements that apply to extensions of credit. This section states that credit to depository institutions generally will take the form of an advance but preserves a Reserve Bank's discretion to lend through discounting eligible paper if the Reserve Bank determines that a discount would be more appropriate for a particular depository institution. Section 201.3 cross-references the Reserve Banks' authority under section 13A of the Federal Reserve Act to lend to an institution that is part of the farm credit system, and accordingly the Board is deleting existing § 201.8 that deals with that topic.

Section 201.3 preserves existing text of Regulation A stating that a Reserve Bank has no obligation to make, increase, renew, or extend any advance or discount to a depository institution, and that any extension of credit the Reserve Bank chooses to make must be secured to the satisfaction of the Reserve Bank. The collateral policies of the Reserve Banks, as described in the Reserve Banks' Operating Circular No. 8, will remain unchanged. Section 201.3 contains existing text from § 201.4(d) providing that a Reserve Bank should ascertain whether an institution is undercapitalized or critically undercapitalized before extending credit to that institution and includes new text stating that if a Reserve Bank extends credit to such an institution then the Reserve Bank must follow special lending procedures.

Regarding the rules that apply to a borrower's use of central bank credit, § 201.3(d) contains new language that explicitly permits an institution that receives primary credit to use that credit to fund sales of federal funds without Reserve Bank permission. Recipients of secondary or seasonal credit would continue to need Reserve Bank permission to use Reserve Bank credit to fund sales of federal funds. The Board is deleting existing § 201.6(a), which provides that a depository institution may not use Federal Reserve credit as a substitute for capital, because the Board believes that other provisions of the statutes and regulations that it administers adequately address this issue. Section 201.5 Limitations on Availability and Assessments.

This section is unchanged from the proposed rule and describes the limitations on advances to an undercapitalized or critically undercapitalized depository institution set forth in section 10B(b) of the Federal Reserve Act and also applies those limitations to discounts for such institutions. In addition, § 201.5 discusses section 10B(b)'s requirement that the Board pay a specified amount to the FDIC if a Reserve Bank advance to a critically undercapitalized depository institution increases the loss the FDIC incurs when liquidating that institution. The existing regulation explains in detail through the definitions of ''liquidation loss,'' ''increased loss,'' and ''excess loss'' how the Board would calculate that amount. As discussed above, the proposed rule would delete these three definitions and simply provide that the Board will assess the Federal Reserve Banks for any amount the Board pays to the FDIC in accordance with section 10B(b) of the Federal Reserve Act.

Technical Amendment to Regulation D

In connection with its amendments to Regulation A, the Board is adopting a conforming amendment to § 204.7 of Regulation D. This section currently provides that the penalty charge for reserve deficiencies shall be 2 percentage points per year above the lowest rate (generally the adjustment credit rate) in effect for borrowings from the Federal Reserve Bank. In the recent past, the adjustment credit rate has consistently been set 50 basis points below the target federal funds rate, and the reserve deficiency charge therefore has been 150 basis points above the target federal funds rate.

The amendment to § 204.7 will base the charges for reserve deficiencies on the new primary credit rate in Regulation A and will authorize the Reserve Banks to assess charges for reserve deficiencies at a rate of 1 percentage point above the average primary credit rate. Under the revised formula, when the primary credit rate is 100 basis points above the target federal funds rate the reserve deficiency charge will be 200 basis points above the target federal funds rate. The conforming amendment will maintain approximate uniformity between the current and new levels of the deficiency charge.

The Board does not believe the slight difference between the current and new deficiency charge formulas is significant given the infrequency of reserve deficiency charges, the ability of the Reserve Banks to waive the charges under certain circumstances, and the future potential for variations in the spread between the target federal funds rate and the primary credit rate.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b), relating to notice and public participation, were not followed in connection with the adoption of the technical amendment to Regulation D because this change merely adjusts the penalty charged for reserve deficiencies to conform with the amended borrowing rates of Regulation A, while approximating the current level of the reserve deficiency charge. The Board for good cause finds that delaying the change in the penalty charge for reserve deficiencies in order to allow notice and public comment on the change is unnecessary.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendments to Regulation A will not have a significantly adverse economic impact on a substantial number of small entities.

Regulation A establishes rules under which Federal Reserve Banks may extend credit to depository institutions as a backup source of liquidity. The final rule replaces the existing adjustment and extended credit programs with primary and secondary credit programs. Like the existing regulation, the final rule does not require an institution to use those programs. The vast majority of institutions that choose to borrow under the new programs will be eligible for primary credit, which has fewer conditions, requirements, and administrative costs than the adjustment credit program that it replaces. The final rule does not materially alter the existing seasonal credit program, which is available to small depository institutions with pronounced seasonal funding needs, except to remove a prerequisite to borrowing that the Reserve Banks in practice have not used for some time.

Based on 2001 call report data, there are approximately 16,250 depository institutions in the United States that have assets of $150 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act. In 2001, approximately 161 small depository institutions received adjustment credit, none received extended credit, and approximately 156 received seasonal credit.[17] Although the Board solicited comment on the impact that the proposed rule would have on small depository institutions, no commenters specifically addressed that subject. However, the Board anticipates that the few small depository institutions that make use of the existing discount window programs will find the new programs to be comparatively more accessible and less burdensome, which should enable more efficient use of the discount window.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Parts 201 and 204

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

2. Sections 201.1 through 201.5 are revised to read as follows:

§ 201.1 Authority, purpose and scope.

(a) *Authority.* This part is issued under the authority of sections 10A, 10B, 11(i), 11(j), 13, 13A, 14(d), and 19 of the Federal Reserve Act (12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461).

(b) *Purpose and scope.* This part establishes rules under which a Federal Reserve Bank may extend credit to depository institutions and others. Except as otherwise provided, this part applies to United States branches and agencies of foreign banks that are subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as this part applies to depository institutions. The Federal Reserve System extends credit with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Appropriate federal banking agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and its implementing regulations.

(c)(1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An *insured bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(ii) A *mutual savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(iii) A *savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such act (12 U.S.C. 1781);

(v) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A *savings association* as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) that is an insured depository institution as defined in section 3 of the act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the act (12 U.S.C. 15(a)).

(2) The term *depository institution* does not include a financial institution

[17] The Board notes that the volume for seasonal credit in 2001 was below average.

that is not required to maintain reserves under § 204.1(c)(4) of Regulation D (12 CFR 204.1(c)(4)) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Transaction account* and *nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR part 204).

(e) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2)(i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and its implementing regulations; or

(ii) Has received from its appropriate federal banking agency a composite CAMELS rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(f) *Viable,* with respect to a depository institution, means that the Board of Governors or the appropriate federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Extensions of credit generally.

(a) *Advances to and discounts for a depository institution.* (1) A Federal Reserve Bank may lend to a depository institution either by making an advance secured by acceptable collateral under § 201.4 of this part or by discounting certain types of paper. A Federal Reserve Bank generally extends credit by making an advance.

(2) An advance to a depository institution must be secured to the satisfaction of the Federal Reserve Bank that makes the advance. Satisfactory collateral generally includes United States government and federal-agency securities, and, if of acceptable quality, mortgage notes covering one-to four-family residences, state and local government securities, and business, consumer, and other customer notes.

(3) If a Federal Reserve Bank concludes that a discount would meet the needs of a depository institution or an institution described in section 13A of the Federal Reserve Act (12 U.S.C. 349) more effectively, the Reserve Bank may discount any paper indorsed by the institution, provided the paper meets the requirements specified in the Federal Reserve Act.

(b) *No obligation to make advances or discounts.* A Federal Reserve Bank shall have no obligation to make, increase, renew, or extend any advance or discount to any depository institution.

(c) *Information requirements.* (1) Before extending credit to a depository institution, a Federal Reserve Bank should determine if the institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution and, if so, follow the lending procedures specified in § 201.5.

(2) Each Federal Reserve Bank shall require any information it believes appropriate or desirable to ensure that assets tendered as collateral for advances or for discount are acceptable and that the borrower uses the credit provided in a manner consistent with this part.

(3) Each Federal Reserve Bank shall:

(i) Keep itself informed of the general character and amount of the loans and investments of a depository institution as provided in section 4(8) of the Federal Reserve Act (12 U.S.C. 301); and

(ii) Consider such information in determining whether to extend credit.

(d) *Indirect credit for others.* Except for depository institutions that receive primary credit as described in § 201.4(a), no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.4 Availability and terms of credit.

(a) *Primary credit.* A Federal Reserve Bank may extend primary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is in generally sound financial condition in the judgment of the Reserve Bank. Such primary credit ordinarily is extended with minimal administrative burden on the borrower. A Federal Reserve Bank also may extend primary credit with maturities up to a few weeks as a backup source of funding to a depository institution if, in the judgment of the Reserve Bank, the depository institution is in generally sound financial condition and cannot obtain such credit in the market on reasonable terms. Credit extended under the primary credit program is granted at the primary credit rate.

(b) *Secondary credit.* A Federal Reserve Bank may extend secondary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is not eligible for primary credit if, in the judgment of the Reserve Bank, such a credit extension would be consistent with a timely return to a reliance on market funding sources. A Federal Reserve Bank also may extend longer-term secondary credit if the Reserve Bank determines that such credit would facilitate the orderly resolution of serious financial difficulties of a depository institution. Credit extended under the secondary credit program is granted at a rate above the primary credit rate.

(c) *Seasonal credit.* A Federal Reserve Bank may extend seasonal credit for periods longer than those permitted under primary credit to assist a smaller depository institution in meeting regular needs for funds arising from expected patterns of movement in its deposits and loans. An interest rate that varies with the level of short-term market interest rates is applied to seasonal credit.

(1) A Federal Reserve Bank may extend seasonal credit only if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as a certain percentage, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year); and

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(d) *Emergency credit for others.* In unusual and exigent circumstances and after consultation with the Board of Governors, a Federal Reserve Bank may extend credit to an individual, partnership, or corporation that is not a depository institution if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. If

the collateral used to secure emergency credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, credit must be in the form of a discount and five or more members of the Board of Governors must affirmatively vote to authorize the discount prior to the extension of credit. Emergency credit will be extended at a rate above the highest rate in effect for advances to depository institutions.

§ 201.5 Limitations on availability and assessments.

(a) *Lending to undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 calendar days after the receipt of a written certification from the chairman of the Board of Governors or the head of the appropriate federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors. In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph (a)(3).

(b) *Lending to critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors. In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph (b)(2).

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that the Board pays to the FDIC due to any excess loss in accordance with section 10B(b) of the Federal Reserve Act. Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to 1 percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

§§ 201.6–201.9 [Removed]

3. Sections 201.6, 201.7, 201.8, and 201.9 are removed.

4. Section 201.51 is revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.

(a) *Primary credit.* The rate for primary credit provided to depository institutions under § 201.4(a) is a rate above the target federal funds rate of the Federal Open Market Committee.

(b) *Secondary credit.* The rate for secondary credit extended to depository institutions under § 201.4(c) is a rate above the primary credit rate.

(c) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.4(b) is a flexible rate that takes into account rates on market sources of funds.

(d) *Primary credit rate in a financial emergency.* (1) The primary credit rate at a Federal Reserve Bank is the target federal funds rate of the Federal Open Market Committee if:

(i) In a financial emergency the Reserve Bank has established the primary credit rate at that rate; and

(ii) The Chairman of the Board of Governors (or, in the Chairman's absence, his authorized designee) certifies that a quorum of the Board is not available to act on the Reserve Bank's rate establishment.

(2) For purposes of this paragraph (d), a financial emergency is a significant disruption to the U.S. money markets resulting from an act of war, military or terrorist attack, natural disaster, or other catastrophic event.

§ 201.52 [Removed]

5. Section 201.52 is removed.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Amend § 204.7 by revising the second sentence of paragraph (a)(1) to read as follows:

§ 204.7 Penalties.

(a) * * *

(1) * * * Federal Reserve Banks are authorized to assess charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 31, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–28115 Filed 11–6–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–13624; Airspace Docket No. 02–AEA–17]

RIN 2120–AA66

Revocation of Restricted Area R–5207, Romulus, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–5207 (R–5207), Romulus, NY. The FAA is taking this action in response to the Department of the Army's notification that the military no longer has an operational need for the restricted area.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.