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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–121–4]

Mexican Fruit Fly; Removal of Regulated 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 Mexican fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of regulated areas and removing restrictions on the interstate movement of regulated articles from that area. That action was necessary to relieve restrictions that were no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: The interim rule became effective on August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1236; (301) 734–6553.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

In an interim rule effective on August 26, 2003, and published in the **Federal Register** on August 29, 2003 (68 FR 51876–51877, Docket No. 02–121–3), we amended the regulations in § 301.64–4 by removing a portion of Los Angeles County, CA, from the list of regulated areas based on our determination that the Mexican fruit fly had been eradicated from those areas. Upon the effective date of our August 2003 interim rule, there were no longer any areas in California designated as regulated areas because of the Mexican fruit fly.

Comments on the interim rule were required to be received on or before October 28, 2003. 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 Order 12866 and the Regulatory Flexibility Act, Executive Orders 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.

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 68 FR 51876–51877 on August 29, 2003.

Authority: 7 U.S.C. 7701–7772; 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 15th day of July 2004.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16542 Filed 7–20–04; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, and 618

RIN 3052–AC06

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, our) issues this final rule amending regulations governing domestic and international lending, certain intra-Farm Credit System (FCS or System) consent requirements concerning similar entity participation transactions, provisions of general financing agreements (GFAs), and related services.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which time either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434;
or
James Morris, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objectives of the final rule are to conform our regulations to statutory amendments to the Farm Credit Act of 1971, as amended (Act), and to reduce regulatory burden imposed on System institutions, while helping ensure compliance with the Act and FCA regulations. We expect the rule to improve the flow of credit to System customers, make similar entity participation transactions less burdensome, and help ensure compliance with the Act and FCA regulations.

II. Background

On May 21, 2003, we published a proposed regulation for public comment. (*See* 68 FR 27757.) As discussed in the proposed rule's

preamble, we are amending our rules to conform our regulations to the Act, as amended by the Farm Security and Rural Investment Act (Pub. L. 107–171) (2002 Farm Bill or FSRIA); address public comments concerning regulatory burden; [1] and help ensure that FCS association lending complies with the Act and our regulations.

III. Comments

We received comments on the proposed rule from the Farm Credit Council (Council), four Farm Credit Banks (FCBs), and an agricultural credit bank. In general, commenters expressed support for our efforts to reduce regulatory burden and conform our regulations to the Act. However, the Council and some FCBs asked for clarification or expressed concern about our proposal to help ensure that FCS association lending complies with the Act and our regulations. Another FCB requested that we eliminate the proposal.

After carefully considering the comments, we adopt the final rule as proposed with clarification of § 614.4125(a), regarding the compliance of FCS association lending with the Act and our regulations.

IV. FCA's Section-by-Section Response to Comments

A. Domestic Title III Lending

In response to our earlier regulatory burden solicitation, CoBank, ACB (CoBank) requested that we amend § 613.3100 concerning financing for domestic borrowers and asked that we amend § 613.3100(c)(2) concerning financing certain activities for which financing might not be available under the Rural Electrification Act. In commenting on our proposed rule, CoBank acknowledged our efforts to reduce regulatory burden by providing the clarifications sought. In addition, the Council stated that the System commends the FCA for responding to CoBank's request for clarification of authorities and reducing regulatory burden. No other comments were received on these proposed amendments. Accordingly, we adopt the proposed amendments at §§ 613.3100(b)(2)(ii), 613.3100(c)(1)(v), and 613.3100(c)(2) as final.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

Sections 613.3100(b)(2)(ii) and 613.3100(c)(1)(v)—Domestic Lending

In our final rule we clarify that a bank operating under title III may finance a subsidiary or other entity in which eligible cooperatives or certain eligible utilities have an ownership interest. As amended, § 613.3100(b)(2)(ii) clarifies that a title III bank may provide limited financing to a subsidiary or other entity in which an eligible cooperative has an ownership interest. As amended, § 613.3100(c)(1)(v) clarifies that a title III bank may provide limited financing to a subsidiary or other entity in which certain eligible utilities have an ownership interest. If the eligible cooperative or eligible utility owns less than 50 percent of the entity, then the financing provided may not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

Section 613.3100(c)(2)—Purposes for Financing Electric and Telecommunication Utilities

In our final rule we clarify that a bank for cooperatives (BC) or agricultural credit bank (ACB) may provide financing for subsidiaries of cooperatives or other entities that are eligible to borrow under § 613.3100(c)(1)(ii) for energy-related or public utility-related purposes even if such purposes would be ineligible for financing by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB). The legislative history of the Act clearly demonstrates that Congress intended for BCs and ACBs to provide financing for certain limited ''non act'' purposes.[2] We amend this section to clarify that a subsidiary that is eligible to borrow under § 613.3100(c)(1)(iii) may also obtain financing for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in § 613.3100(c)(1)(ii). Operation of a licensed cable television utility is one example of such purpose.

B. Conforming FCA Regulations To Reflect Recent Amendments to the Act

FSRIA amended section 3.7 of the Act to authorize a bank operating under title III of the Act to finance certain international transactions involving ''agricultural supplies,'' and amended sections 3.1(11)(B) and 4.18A of the Act so that one type of FCS institution no longer needs approval from another type of FCS institution when it participates with a non-FCS lender in certain loans to a similar entity. We proposed amendments to §§ 613.3200 and 613.3300(d) to reflect these statutory changes. In its comment on the proposed rule, the Council stated that the System supports the action taken by FCA to amend its regulations to reflect the changes to the Act made by the FSRIA and urged their enactment. No other comments were received on these proposed amendments. Accordingly, we adopt the proposed amendments to §§ 613.3200 and 613.3300(d) as final.

Section 613.3200(a)—International Lending

In our final rule we conform our regulations to changes in section 3.7 of the Act made by FSRIA that authorize a bank operating under title III of the Act to finance certain international transactions involving ''agricultural supplies.'' We amend § 613.3200(a) by adding a definition of ''agricultural supply.'' The definition of ''agricultural supply'' in § 613.3200(a)(1) includes a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products. The term ''farm supply,'' which is included in the new definition of ''agricultural supply,'' is defined in § 613.3200(a)(2).

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

Section 613.3300(d)—Participations and Other Interests in Loans to Similar Entities

In our final rule we amend our regulations to conform them to changes FSRIA made in the Act regarding similar entity transactions.[3] FCS institutions are no longer required to obtain the approvals required by former § 613.3300(d). Although the FSRIA removed the statutory provisions that were the basis of the § 613.3300(d) approval requirements, it did not remove the statutory requirement that a bank operating under title III not participate in a loan to a similar entity under section 3.1 if the similar entity has a loan or loan commitment outstanding with an FCB or association, unless agreed to by the FCB or

[1] On August 18, 1998, we published a document in the **Federal Register** inviting the public to identify existing FCA regulations and policies that impose unnecessary burdens on the System. *See* 63 FR 44176.

[2] ''Non act'' purpose means a purpose that is ineligible for financing by the RUS or the RTB as described in § 613.3100(c)(1)(ii).

[3] ''Similar entity'' means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

association. Therefore, while we delete former § 613.3300(d) to reflect the elimination of other statutory approval requirements, we add a new section to reflect this statutory requirement. New § 613.3300(d) requires a bank operating under title III to obtain the agreement of an FCB or association in order to participate in a loan to a similar entity under title III if the similar entity has a loan or a loan commitment outstanding with the FCB or association. Because all FCBs have transferred their direct lending authority to their associations, this provision currently requires consent from associations only.

C. Ensure Loan Making Complies With the Act and FCA Regulations

During examinations of some System institutions, we have identified loans that fail to comply with various requirements of the Act and our regulations. The Act provides FCA broad authorities and remedies with respect to such ''ineligible'' loans. For example, FCA may require a direct lender association to divest itself of the loan. In appropriate cases, FCA may use its cease and desist or civil money penalty authorities. However, a review of GFAs between FCBs and the ACB and their direct lender associations has revealed that, while most GFAs address ineligible loans in some fashion, they do not all expressly prohibit funding ineligible loans.

We proposed an amendment to § 614.4125(a) that, without in any way limiting our other authorities or remedies under the Act, would mandate that the GFA between the funding bank and the direct lender association require that the amount of financing available be based solely on loans that comply with the Act and FCA regulations.

We received several comments on the proposal. The Council and three FCBs asked for clarification of the word ''solely'' in our proposal and noted that GFAs calculate available funding on the basis of other assets such as farmer notes, purchase money mortgages, acquired property, and leases in addition to loans. In the final rule, we rephrase the regulation to clarify that the regulatory requirement concerning GFA provisions was not meant to imply that the GFA cannot include certain assets other than loans in calculating available financing.

The Council and an FCB noted that some GFAs do not provide 100-percent credit for all loans, and asked us to clarify that any reduction to the borrowing base for an eligible loan should not exceed the amount of credit given. We clarify in the final rule that if FCA determines that a loan is ineligible, then the amount of financing available must be recalculated without that ineligible loan.

The Council and an FCB asked for clarification and expressed concern whether ''minor'' or ''technical'' [4] credit administration errors could be interpreted by FCA as not complying with the Act or FCA regulations, necessitating recalculation of the GFA. For those reasons, another FCB requested that we eliminate this proposal. The intent of this rule is not to eliminate loans with credit administration errors from the amount of financing available to an association. Our final rule clarifies our intent to address ineligible loans. For example, a loan would be ineligible if it violated the requirements in part 613 of our regulations or the first lien, loan-to-value, or lending and leasing limit requirements of part 614 of our regulations.

Subpart C—Bank/Association Lending Relationship

Section 614.4125(a)—Funding and Discount Relationships Between Farm Credit Banks or Agricultural Credit Banks and Direct Lender Associations

The final rule modifies the language proposed in order to provide appropriate clarification. The final rule amends § 614.4125(a) so that each GFA must require that the amount of financing available to a direct lender association not be based on loans that are ineligible under the Act and our regulations. Furthermore, if financing under a GFA is based on a loan that we determine is ineligible under the Act and our regulations, then the amount of financing available must be recalculated without that ineligible loan.

We reiterate that the new regulatory requirements with respect to GFAs' treatment of ineligible loans do not limit in any way FCA's remedies or actions with respect to loans that do not comply with FCA regulations or with the Act in any other respect. Nor does the addition of new regulatory requirements with respect to GFAs' treatment of ineligible loans limit, in any way, FCA's remedies or actions with respect to other types of assets held by FCS institutions that fail to comply with FCA regulations or with the Act.

D. Related Services

In response to our earlier regulatory burden solicitation discussed in Section III above, CoBank requested clarification that it has the same authority to provide related services under title I of the Act as FCBs and the same authority to provide related services under title III of the Act as BCs. We proposed regulations in §§ 618.8000(b) and 618.8005(c) to provide that clarification.[5] In commenting on our proposed rule, CoBank acknowledged our efforts to reduce regulatory burden by providing the clarifications sought. In addition, the Council stated that the System commends the FCA for responding to CoBank's request for clarification of authorities and reducing regulatory burden. No other comments were received on these proposed amendments. Accordingly, we adopt the proposed amendments to §§ 618.8000(b) and 618.8005(a) and (c) as final.

Subpart A—Related Services

Section 618.8000(b)—Definitions and Sections 618.8005(a) and (c)—Eligibility

In our final rule we revise §§ 618.8000(b) and 618.8005(c) to clarify that ACBs have the same authority to offer related services under title III of the Act as BCs, and the same authority to offer related services under title I of the Act as FCBs. In § 618.8000(b) we delete the phrase, ''on-farm, aquatic, or cooperative operations'' in order to eliminate any possible confusion about limitations on related services offerings under title III. Similarly, in § 618.8005(c) we delete the phrase, ''appropriate to cooperative operations of.'' In § 618.8005(a) we add the phrase ''appropriate to on-farm and aquatic operations'' to the existing paragraph, in order to reflect the statutory limitation on related services offered under title I.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 613

Advertising, Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

[4] Examples cited included minor effective interest rate disclosure errors or borrowers that did not receive timely interest rate change notices.

[5] The proposed regulation did not affect our authorized related services list discussed at part 618, subpart A, of our regulations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

■ For the reasons stated in the preamble, parts 613, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

■ 1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

■ 2. Amend § 613.3100 by revising paragraphs (b)(2)(ii), (c)(1)(v), and (c)(2) to read as follows:

§ 613.3100 Domestic lending.

* * * * *

(b) * * *

(2) * * *

(ii) Any legal entity in which an eligible cooperative (or a subsidiary or other entity in which an eligible cooperative has an ownership interest) has an ownership interest, *provided that* if the percentage of ownership attributable to the eligible cooperative is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible cooperative multiplied by the value of the total assets of such entity; or

* * * * *

(c) * * *

(1) * * *

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(ii) of this section (or a subsidiary or other entity in which an eligible utility under paragraph (c)(1)(ii) has an ownership interest) has an ownership interest, *provided that* if the percentage of ownership attributable to the eligible utility is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible utility multiplied by the value of the total assets of such entity.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in paragraph (c)(1)(ii), including, without limitation, financing to operate a licensed cable television utility.

* * * * *

■ 3. Amend § 613.3200 as follows:

■ a. Revise paragraph (a); and

■ b. Remove the words ''farm supplies'' and add in their place, the words ''agricultural supplies'' each place they appear in paragraphs (b) introductory text, (c) introductory text, and (c)(1).

§ 613.3200 International lending.

(a) *Definitions.* For the purpose of this section only, the following definitions apply:

(1) *Agricultural supply* includes:

(i) A farm supply; and

(ii) Agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products.

(2) *Farm supply* refers to an input that is used in a farming or ranching operation.

* * * * *

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

■ 4. Revise § 613.3300(d) to read as follows:

§ 613.3300 Participations and other interests in loans to similar entities.

* * * * *

(d) *Approval by other Farm Credit System institutions.* A bank for cooperatives or agricultural credit bank may not participate in a loan to a similar entity under title III of the Act if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under the Act, unless agreed to by the Farm Credit Bank or association.

PART 614—LOAN POLICIES AND OPERATIONS

■ 5. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart C—Bank/Association Lending Relationship

■ 6. Amend § 614.4125(a) by adding a second and third sentence to read as follows:

§ 614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) * * * Each general financing agreement must require that the amount of financing available to a direct lender association not be based on loans that are ineligible under the Act and the regulations in this chapter. If financing under a general financing agreement is based on a loan that FCA determines is ineligible under the Act and the regulations in this chapter, then the amount of financing available must be recalculated without that ineligible loan.

* * * * *

PART 618—GENERAL PROVISIONS

■ 7. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

■ 8. Amend § 618.8000(b) by revising the first sentence to read as follows:

§ 618.8000 Definitions.

* * * * *

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient's operations, including control of related financial matters.

* * *

* * * * *

§ 618.8005 [Amended]

■ 9. Amend § 618.8005 by:

■ a. Adding the phrase ''appropriate to on-farm and aquatic operations'' after the word ''services'' in paragraph (a); and
■ b. Removing the phrase ''appropriate to cooperative operations of'' and adding in its place, the word ''to'' in paragraph (c).

Dated: July 15, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–16553 Filed 7–20–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 4767]

RIN 1400–AB49

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Elimination of Crew List Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Department's interim final regulations regarding the elimination of crew list visas.

DATES: The interim final rule became effective June 16, 2004. This rule is adopted as a final rule as of July 21, 2004.

ADDRESSES: You may view this rule online at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1205 or e-mail *ackerrl@state.gov.*

SUPPLEMENTARY INFORMATION: On December 13, 2002, the Department published a rule (67 FR 76711) proposing to eliminate crew list visas. After review of comments to the proposed rule, on March 18, 2004, the Department published an interim final rule which allowed a final comment period until May 17, 2004, followed by a 30 day period for further Department review of comments. The Department is now making final the interim final rule.

DHS has authorized this regulation pursuant to the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002. The requirements of 22 CFR 41.42 are being removed in coordination with the removal of similar requirements by DHS in its corresponding regulations.

What Are the Statutory Authorities Pertaining to the Crew List Visa?

Authority for the issuance of a crew list visa is derived from sections 101(a)(15)(D) and 221(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D) and 1201(f), respectively. Section 101(a)(15)(D) exempts aliens serving in good faith as crewmen on board a vessel (other than a fishing vessel having its home port or an operating base in the United States, unless temporarily landing in Guam), or aircraft from being deemed immigrants. Section 221(f), permits an alien to enter the United States on the basis of a crew manifest that has been visaed by a consular officer. However, the latter section does not require a consular officer to visa a crew manifest and it authorizes the officer to deny admission to any individual alien whose name appears on a visaed crew manifest. Further, according to the wording of section 221(f) the use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used only until such time as it becomes practicable to issue individual documents to each member of a vessel's or aircraft's crew.

Why Has the Department Eliminated the Crew List Visa?

The Department has eliminated the crew list visa for security reasons. Since the September 11, 2001 attacks, the Department has reviewed its regulations to ensure that every effort is being made to screen out undesirable aliens. By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States is be required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks. Additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date.

Did the Department Solicit Comments to the Interim Final Rule?

The Department did solicit comments, and 18 were received. This is in addition to the 82 comments received earlier to the proposed rule. The text of most of the comments was identical. Other letters expressed the same views. The substance of the comments was similar to comments made previously to the proposed rule. A summary of the comments received and the Department's responses follows.

Most of the commenters expressed disappointment that the United States issued the interim final rule despite opposition from the majority of commenters. They referred to the special circumstances of seafarers, which often made it difficult for them to know an exact itinerary in advance. The also mentioned the hardship for seafarers of the waiting time to receive a U.S. visa. Most commenters referred to proposed ILO Convention No. 185 and expressed the hope that the U.S. would have encouraged widespread ratification of this convention by providing more favorable treatment to holders of the seafarers identity document proposed by this convention. Previous commenters have remarked that the proposed ID could serve as a substitute for a passport and that its security features would make crew list visas more secure, even in the absence of consular interviews of all crew members, which is typical when crew list visas are issued. While the Department recognizes that a seafarer's ID containing biometrics could be useful, it is likely to take years for such a document to be developed and adopted widely. Further, one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant. Adoption of the new ID card will not address the need for interviews.

Regarding difficulties for crewmen obtaining individual visas caused by last-minute scheduling, the Department recognizes the problem, but continues to believe that the security of the U.S. demands individual crew visas despite the dislocations that the requirement may cause initially. Nevertheless, the Department hopes that shipping companies and unions will encourage their employees and members to obtain visas where there is a reasonable possibility that a crewman may be required to enter the U. S. at any time. The visa, once obtained, and depending upon bilateral reciprocity for like documents held by U.S. seamen, will generally be valid for up to five years. Therefore, once individual crew visas are obtained and used generally by seamen working for companies that ship to the U.S., there should be reasonable certainty that most of the crew will be able to enter the U.S. on short notice.