protection in the event that the intermediating FCM or foreign firm becomes insolvent. Moreover, Rule 30.6(a) requires that foreign futures and foreign options customers receive a Rule 1.55 written disclosure explaining that the treatment of customer funds outside the U.S. may not afford the same level of protection offered in the U.S. These protections exist whether the intermediating firm is a U.S. FCM or a firm exempt from such registration under Rule 30.10.[4]

4. The Commission further notes, however, that, in February 1998, Rule 30.6 was amended to permit an FCM to open a commodity account for a foreign futures or foreign options customer without providing the Rule 1.55 risk disclosure statement or obtaining an acknowledgment of receipt of such statement, provided that the customer is, at the time at which the account is opened, one of several types of sophisticated customers enumerated in Rule 1.55(f) (''Rule 1.55(f) customers'').[5] While the amendment to Rule 30.6(a) extinguished the obligation to provide a standardized risk disclosure statement to Rule 1.55(f) customers at the time of the account opening, the Commission stated that FCMs have obligations to these customers independent of such a duty that would be material in the circumstances of a given transaction.[6]

5. After careful consideration of the issue, the Commission has determined that intermediaries should advise all customers (regardless of their level of sophistication) to consider making appropriate inquiries relating to the treatment of customer funds by depositories located outside the jurisdiction of the intermediating firm. Accordingly, the Commission has determined that an FCM, at a minimum, must provide each foreign futures or foreign option customer with a written disclosure tracking the language in either: (1) Rule 1.55(b)(7);[7] or (2) Paragraphs 6 and 8 of Appendix A to Rule 1.55(c).[8] Rule 30.10 firms must provide each foreign futures or foreign options customer with a written disclosure tracking the language in either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. The Commission further encourages all firms, whether domestic or foreign, to provide a Rule 1.55 written risk disclosure to all customers, regardless of each customer's respective level of experience. The Commission notes that, in any instance where a firm provides a Rule 1.55(f) customer with a written disclosure, it is not necessary for the firm to obtain an acknowledgment of receipt. In addition, those FCMs that already have provided customers with a disclosure tracking either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) (or in the case of Rule 30.10 firm, a comparable disclosure statement prescribed by its home country regulator) need not provide those same customers with an additional written disclosure.

6. For the reasons set forth above, the Commission is revising its interpretation of the secured amount requirement set forth in Rule 30.7. The Commission believes that the Rule 30.7 acknowledgment required of FCMs, or other appropriate acknowledgment required by Rule 30.10 firms, only applies to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. If an FCM receives from the initial depository the acknowledgment described in Rule 30.7, furnishes to each foreign futures or foreign options customer a written disclosure statement tracking the language set forth in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) and otherwise complies with the provisions of Rule 30.7, then it may include all funds maintained in the separate account or accounts in calculating its secured amount requirement. A Rule 30.10 firm must satisfy the same requirements, except that it may provide each foreign futures or foreign options customer with a comparable disclosure statement prescribed by its home regulator.

7. If an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the above written disclosure statement (and in certain circumstances, receive from customers an acknowledgment of receipt), then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

8. The Commission's interpretation of the Rule 30.7 secured amount requirement will apply to all regulated activities with all new and existing foreign futures and foreign options customers as of the effective date of this interpretation. The Commission's interpretation does not alter any other requirement set forth in Rule 30.7 or any other section of Part 30.

Issued in Washington, D.C. on August 29, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–22775 Filed 9–5–00; 8:45 am]

BILLING CODE 6351–01–P

[4] Although orders for expanded relief exempt foreign firms from compliance with Rule 1.55, sales practice standards and the treatment of customer funds constitute two of the specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Appendix A to Part 30 .

[5] 63 FR 8566 (February 20, 1998). The list of sophisticated customers referenced in Rule 1.55(f) closely tracks, with one exception, the list of ''eligible swap participants'' in Rule 35.1.

[6] *Id. at 8569.*

[7] Rule 1.55(b)(7) reads as follows:

Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

[8] Appendix A to Rule 1.55(c) is the Generic Risk Disclosure Statement, which FCMs may use as an alternative to the Risk Disclosure Statement prescribed in Rule 1.55(b). The Commission understands that most FCMs, in particular those that are most active in international markets, use the Generic Risk Disclosure Statement.

Paragraphs 6 and 8 of Appendix A to Rule 1.55(c) read as follows:

6. Deposited cash and property.

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Transactions in other jurisdictions.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 103

RIN 1076–AD73

Loan Guaranty, Insurance, and Interest Subsidy

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior (DOI), Bureau of Indian Affairs (BIA) proposes to revise the regulations that implement the Loan Guaranty, Insurance, and Interest Subsidy Program. This Program authorizes the Secretary of DOI to guaranty or insure loans made by private lenders to individual Indians and to organizations of Indians, and to assist qualified borrowers with a portion of their

interest payments. These revised regulations will clarify and shorten existing regulatory language, reflect evolved BIA policies, address issues that have emerged over the years, and enhance some features of the Program.

DATES: Comments must be received on or before November 6, 2000.

ADDRESSES: Mail comments to George Gover, Acting Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C St., NW, Mail Stop 4640–MIB, Washington, DC 20240; or hand deliver them to Room 4640 at the above address. Mail comments to the attention of the Desk Officer for Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503.

You also may supply comments via electronic mail by sending them to *loanregs@bia.gov*. Comments will be available for inspection at the above mailing address from 9 a.m. to 4 p.m., Monday through Friday beginning approximately 2 weeks after publication of this document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David B. Johnson, Division of Indian Affairs, Office of the Solicitor, 202–208–3401.

SUPPLEMENTARY INFORMATION: The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established in the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974, and the regulations implementing it have existed since 1975. There has never been any extensive or significant revision of these regulations, and in fact most of the regulations remain as they were originally drafted. BIA believes that revising these regulations in the manner proposed below will clarify and shorten part 103, reflect evolved BIA policies, address issues that have emerged over the years, and enhance some features of the Program.

The new regulations are drafted in plain language, to encourage understanding. BIA also has made some substantive changes in the regulations, in response to the history of the Program. For example, BIA hopes these new regulations will encourage lenders to take a fresh look at the insurance feature of the program, which has never been used.

Publication of the proposed rule by DOI provides the public with an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

The following table shows how the proposed new regulations relate to the regulations currently in effect:

Old regulatory section	Now at section	Is there any intended substantive change in the rule?
103.1	103.44	Very little. BIA has changed definitions predominantly to clarify the program. Some old definitions have been deleted, and some new ones have been added.
103.2	103.1, 103.2, 103.20	No.
103.3	103.4, 103.15(*l*)	Yes. Regulations no longer permit loans for the borrower's housing. Also, BIA has deleted some unnecessary provisions.
103.4	103.12(c), 103.26(d), 103.27	No.
103.5	103.12(h), 103.26(*l*), 103.30(h)	No.
103.6	103.12(h), 103.26(*l*), 103.30(h)	No.
103.7	103.25, 103.26	No.
103.8	103.25	No.
103.9	103.10, 103.11	Yes. Regulations expand on how BIA qualifies lenders under the program, and now provide for up to three levels of lender approval.
103.10	103.4, 103.7, 103.10, 103.15(c)	No.
103.11.		
103.16, 103.18	No..	
103.12	103.13, 103.16, 103.18	No.
103.13	103.5, 103.6	Yes. Regulations no longer limit loans to partnerships or other non-tribal organizations to $500,000. Also, regulations now clearly allow a single borrower to have up to 2 separately guaranteed loans or one loan guarantee and any number of insured loans at a time.
103.14	103.5, 103.6	Yes. Regulations no longer mention housing as an appropriate use of insured loan funds. Regulations no longer require tribal lenders to have specific prior approval to make insured loans to other tribes or Indian organizations. Lenders can now make insured loans of up to $100,000 without specific prior approval. Upon obtaining specific prior approval, lenders may make insured loans to an individual of up to $500,000, or more for a tribe or business entity. The limit on the number of insured loans a lender may make to a borrower has been deleted. BIA also has deleted other provisions as unnecessary.
103.15	103.9, 103.12, 103.13	Yes. BIA has revised the application procedure to eliminate redundancy and to capture more information concerning the borrower.
103.16	103.4(d)	No.
103.17	103.4(c), 103.12(k)	Yes. Regulations now require the borrower to be current on any debt that the guaranteed or insured loan is to refinance.
103.18	103.14	No.
103.19	103.16, 103.18	No.
103.20	103.16, 103.18	No.
103.21	103.34	No.
103.22	103.36(b) and (c)	Yes. Regulatory language has been revised to curtail certain abuses.
103.23	103.34(a)	No.
103.24	103.15(c)	No.
103.25	103.15(d) and (e)	No.
103.26	103.15(f)	Yes. Regulations no longer allow prepayment penalties. BIA has deleted other provisions as unnecessary or confusing.

Old regulatory section	Now at section	Is there any intended substantive change in the rule?
103.27	103.12(a) and (f), 103.13(b), 103.16(a), 103.26(i).	No.
103.28	103.30(e), (f) and (g), 103.39(c)	No.
103.29	103.12(j), 103.13(b), 103.30(d) and (i).	No.
103.30	Not applicable	No. BIA has deleted former regulatory language because it is unnecessary or redundant of other legal provisions.
103.31	Not applicable	No. BIA has deleted former regulatory language because it is unnecessary or redundant of other legal provisions.
103.32	Not applicable	No. BIA has deleted former regulatory language because it is unnecessary or redundant of other legal provisions.
103.33	103.15(m)	No. BIA has deleted some regulatory language because it is unnecessary or redundant of other legal provisions.
103.34	103.12(c) and (e), 103.13(b), 103.30(m).	No.
103.35	103.34(a), 103.43	No.
103.36	103.35, 103.36, 103.37, 103.38, 103.39.	Yes. BIA has extended the deadlines by which the lender must notify BIA and take action in response to a default. BIA also has specified some conditions under which it might waive a failure to adhere to strict regulatory deadlines. Also, regulations now fix the date through which BIA is liable to pay the lender for interest accruing on the loan.
103.37	103.35, 103.36, 103.37, 103.38, 103.39.	Yes. BIA has extended the deadlines by which the lender must notify BIA and take action in response to a default. BIA also has specified some conditions under which it might waive a failure to adhere to strict regulatory deadlines. Also, regulations now fix the date through which BIA is liable to pay the lender for interest accruing on the loan.
103.38	103.38	Yes. BIA has deleted a provision that is obsolete.
103.39	Not applicable	No. BIA has deleted former regulatory language because it is unnecessary or redundant of other legal provisions.
103.40	103.37, 103.39(d)	Yes. Regulations now fix the date through which BIA is liable to pay the lender for interest accruing on the loan.
103.41	103.15, 103.18	No.
103.42	103.20, 103.21, 103.22, 103.23, 103.24.	Yes. Regulations no longer require the rate of interest subsidy to be established at the same time as the corresponding loan guaranty or insurance coverage. Also, interest subsidy will no longer be withdrawn before 3 years merely because the borrower's cash flow begins to equal or exceed industry norms.
103.43	103.8,	Yes. The date the premium is due now is 103.18, 103.19 tied to the date the loan closes, not the date BIA approves the loan guaranty application. Also, BIA now has fixed the amount of the premium on insured loans, which was inadvertently omitted in prior regulations.
103.44	103.15(a)	Yes. BIA now permits charges for reasonable and customary broker commissions.
103.45	103.15(j)	Yes. BIA now will guaranty or insure the amount of any late fees the lender assesses, subject to certain limitations.
103.46	103.30, 103.32	No.
103.47	103.15(k)	No.
103.48	103.15(l), 103.30(d)	No.
103.49	103.30, 103.39, 103.40	No.
103.50	Not applicable.	Yes. There is no longer a separate loan guaranty and insurance fund. See, the Federal Credit Reform Act of 1990, Pub. L. 101–508, Title XIII, § 13201(a).
103.51	103.28, 103.29	Yes. Regulations now address loan participation agreements.
103.52	103.14, 103.32, 103.33	No.
103.53	103.41	No.
103.54	Not applicable.	No. BIA has deleted former regulatory language because it was confusing and redundant of other legal provisions.
103.55.		
103.45		Yes. BIA has updated this provision.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

This rule will not have an effect of $100 million or more on the economy. Current and foreseeable funding levels for the Program will permit at most $82 million in new loans per annum. The rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The Program is designed to enhance, not hinder, productivity, competition, jobs, and the overall economy, and there is nothing inherent about the Program or the rule that will lead to adverse effects on the environment, public health or safety, or State, local, or tribal governments or communities.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. There is nothing in the rule to limit other efforts to encourage Indian economic development.

This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The Program does not create or limit any entitlement, has nothing to do with other grant or loan programs, and establishes no user fees.

This rule does not raise novel legal or policy issues. Part 103 has caused minimal legal review since 1975, and the new rule is in substance very similar to the existing rule.

Regulatory Flexibility Act

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The number of lenders who might be impacted by the changes in this document is limited by the relatively modest number of individual Indians and organizations of Indians whose loans can be guaranteed or insured under the Program.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. Current and foreseeable funding levels for the Program will permit at most $82 million in new loans per annum.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule is designed to clarify the roles and duties of the persons it may impact, and should in fact result in administrative savings. Any additional requirements imposed by the rule are either very limited in scope, or else in the nature of assembling information that lenders typically gather anyway.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. To the contrary, the rule implements the Program in order to encourage investment in new Indian businesses, and thereby increase U.S.-based competition, employment, productivity, and innovation.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. It does not impose any mandates at all. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Only a small segment of the private sector—the lending community—is directly affected by the rule, and the rule (1) is functionally very similar to existing law, and (2) relates to a Program that will permit at most $82 million in new loans per annum, based on current and foreseeable funding levels. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The Program enhances the security available to lenders, and does not inherently involve any action that could deprive anyone of property without just compensation. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The rule is directed at the relationship between lenders and the Federal Government, and does not impact States at all. This rule does not impose costs on States or localities, for the same reason.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I has been reviewed by DOI and sent to OMB for approval. You are invited to submit comments on the information collection request. You can receive copies of the OMB submission by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by requesting the information from the Bureau of Indian Affairs Information Collection Control Officer, 1849 C Street, NW, Mail Stop 4613 MIB, Washington, DC 20240. Please note that comments are available for public inspection during regular business hours. If you wish to have your name and address withheld, you must state this prominently at the beginning of your comments. We will honor that request to the extent allowable by law.

The purpose of the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.*, is to encourage private lending to individual Indians and organizations of Indians, by providing lenders with loan guaranties or loan insurance to reduce their potential risk. Lenders, borrowers, and the loan purpose all must qualify under Program terms. In addition, the Secretary of the Interior must be satisfied that there is a reasonable prospect that the loan will be repaid. BIA collects information under the proposed regulations to ensure compliance with Program requirements.

BIA must approve of a lender before it can make loans that are guaranteed or insured under the Program. Pre-approval is a one-time process that we estimate imposes on lenders an average burden of 2 hours, including time for reviewing instructions and preparing and submitting a BIA Loan Guaranty Agreement or Loan Insurance Agreement, as appropriate. After a lender is qualified as a BIA lender, the burden associated with individual loan guaranty or loan insurance applications is in large part one of gathering and submitting to BIA information the lender would ordinarily collect from its borrowers anyway, irrespective of the Program. The average burden of submitting a loan guaranty or insurance application is 2 hours, including time for reviewing instructions, searching data sources, and assembling the information needed. If BIA issues a guaranty certificate or approves an insurance agreement, the average burden to close the loan in accordance with this part is 1 hour. The average annual burden to maintain data and to prepare and submit reports is approximately 75 minutes, assuming an average of four reports each year. Interest subsidy calculations, where these are applicable, would increase the average annual burden to maintain data and submit reports to approximately 3.25 hours. Should the lender and borrower need to change material terms of the loan, there will be an additional reporting burden of approximately 1 hour. Finally, if the lender experiences a default, the burden associated with following the procedures in this part ranges from 30 minutes to 4.5 hours.

Based upon historical records, each year BIA anticipates approximately 64 applications for loan guaranties. Although there have never been any loan insurance applications, apparent need suggests that BIA will receive approximately 20 additional loan

insurance applications or notices of loan insurance per year. Of the combined 84 applications/notices, BIA expects that it will guarantee or insure approximately 64 new loans each year, of which approximately 45 will receive interest subsidy.

In all, BIA estimates the total annual Program compliance burden to range from approximately 4.75 to 12.75 hours per loan, with the average loan causing a burden of approximately 6.18 hours. Most compliance burdens fall below this average. For purposes of the following table, BIA assumes the average hourly wage per respondent to be $20.00:

CFR Sections	BIA form(s)?	Number of respondents	Frequency of responses	Total annual responses	Annual burden hours	Cost per hour	Cost to respondents
103.11	Yes	12	1	12	24	$20	$480
103.12, 103.13, 103.14, 103.21	Yes	84	1	84	168	20	3,360
103.17	No	64	1	64	32	20	640
103.18	Yes	64	1	64	32	20	640
103.23	Yes	45	4	180	90	20	1,800
103.26	No	64	1	64	32	20	640
103.32	No	64	1	64	16	20	320
103.33	No	64	4	256	64	20	1,280
103.34	No	10	1	10	10	20	200
103.35	Yes	20	1	20	10	20	200
103.36	No	20	1	20	20	20	400
103.37	Yes	7	1	7	14	20	280
103.38	Yes	7	1	7	7	20	140
				852	519		10,380

The foregoing estimates cover labor only; they do not include the costs of postage, energy, supplies, or other fixed costs that lenders may allocate toward Program compliance, which is expected to be minimal.

Organizations and individuals are invited to comment on (a) the necessity of the information for proper performance of the functions of the bureau and its practical utility, (b) the accuracy of the bureau's estimate of the burden of the collection, the validity of the methodology and assumptions used, (c) the quality, utility, and clarity of the information to be collected, (d) whether the burden can be minimized on the respondents by any means such as electronic, mechanical, automation. Organizations and individuals who desire to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the U.S. Department of the Interior.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BIA on the proposed regulations.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of this regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§''and a numbered heading; for example, § 103.13 How does a lender apply for loan insurance coverage?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Public Comments

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C St., NW, Mail Stop 4640–MIB, Washington, DC 20240. You also may comment via the Internet to *loanregs@bia.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [1076–AD73]'' and your home and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202–208–4499. Finally, you may hand-deliver comments to Room 4640 at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowed by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

Drafting Information: The primary author of this document is David B. Johnson, Division of Indian Affairs, Office of the Solicitor, Department of the Interior.

List of Subjects in 25 CFR Part 103

Indians—Insurance, Interest subsidy, and Loan guaranty.

For the reasons given in the preamble, BIA proposes to revise part 103 in chapter I of title 25 of the Code of Federal Regulations as set forth below.

25 CFR PART 103—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

Subpart A—General Provisions

Sec.

Subpart B—How a Lender Obtains a Loan Guaranty or Insurance Coverage

Subpart C—Interest Subsidy

Subpart D—Provisions Relating to Borrowers

Subpart E—Loan Transfers

Subpart F—Loan Servicing Requirements

Subpart G—Default and Payment by BIA

Subpart H—Definitions and Miscellaneous Provisions

Authority: 25 U.S.C. 1498, 1511.

Subpart A—General Provisions

§ 103.1 What does this part do?

This part explains how to obtain and use a BIA loan guaranty or loan insurance agreement under the Program, and who may do so. It also describes how to obtain and use interest subsidy payments under the Program, and who may do so.

§ 103.2 Who does the Program help?

The purpose of the Program is to encourage eligible borrowers to develop viable Indian businesses through conventional lender financing. The Program benefits different parties in different ways. The direct function of the Program is to help lenders reduce excessive risks on loans they make. That function in turn helps borrowers secure conventional financing that might otherwise be unavailable.

§ 103.3 Who administers the Program?

Authority for administering the Program ultimately rests with the Secretary, who may exercise that authority directly at any time. Absent a direct exercise of authority, however, the Secretary delegates Program authority to BIA officials through the U.S. Department of Interior Departmental Manual. A lender should submit all applications and correspondence to the BIA regional office serving the borrower's location. In some cases, the regional office may refer the lender either to the BIA field office or agency serving the borrower's specific location, or else to BIA's central office in Washington, D.C.

§ 103.4 What kinds of loans will BIA guarantee or insure?

In general, BIA may guarantee or insure any loan made by an eligible lender to an eligible borrower to conduct a lawful business organized for profit. There are several important exceptions:

(a) The business must contribute to the economy of an Indian tribe or its members, and be located on or near an Indian reservation;

(b) The borrower may not use the loan for relending purposes;

(c) If any portion of the loan is used to refinance an existing loan, the borrower must be current on the existing loan; and

(d) BIA may not guarantee or insure a loan if it believes the lender would be willing to extend the requested financing without a BIA guaranty or insurance coverage.

§ 103.5 What size loan will BIA guarantee or insure?

BIA can guarantee or insure a loan of up to $500,000 for an individual Indian, or more for an acceptable Indian business entity, Tribe, or tribal enterprise involving two or more persons. BIA can limit the size of loans it will guarantee or insure, depending on the resources BIA has available.

§ 103.6 To what extent will BIA guarantee or insure a loan?

(a) BIA can guarantee up to 90 percent of the unpaid principal and accrued interest due on a loan.

(b) BIA can insure up to the lesser of:

(1) Ninety percent of the unpaid principal and accrued interest due on a loan; or

(2) Fifteen percent of the aggregate outstanding principal amount of all loans the lender has insured under the Program as of the date the lender makes a claim under its insurance coverage.

(c) BIA's guaranty certificate or loan insurance agreement should reflect the

lowest guaranty or insurance percentage rate that satisfies the lender's risk management requirements.

(d) Absent exceptional circumstances, BIA will allow no more than:

(1) Two simultaneous guarantees under the Program covering outstanding loans from the same lender to the same borrower; or

(2) One loan guaranty under the Program when the lender simultaneously has one or more outstanding loans insured under the Program to the same borrower.

§ 103.7 Must the borrower have equity in the business being financed?

The borrower must be projected to have at least 20 percent equity in the business being financed, immediately after the loan is funded. If a substantial portion of the loan is for construction or renovation, the borrower's equity may be calculated based upon the reasonable estimated value of the borrower's assets after completion of the construction or renovation.

§ 103.8 Is there any cost for a BIA guaranty or insurance coverage?

BIA charges the lender a premium for a guaranty or insurance coverage.

(a) The premium is:

(1) Two percent of the portion of the original loan principal amount that BIA guarantees; or

(2) One percent of the portion of the original loan principal amount that BIA insures, without considering the 15 percent aggregate outstanding principal limitation on the lender's insured loans.

(b) Lenders may pass the cost of the premium on to the borrower, either by charging a one-time fee or by adding the cost to the principal amount of the borrower's loan. Adding the premium to the principal amount of the loan will not make any further premium due. BIA will guarantee or insure the additional principal to the same extent as the original approved principal amount.

Subpart B—How a Lender Obtains a Loan Guaranty or Insurance Coverage

§ 103.9 Who applies to BIA under the Program?

The lender is responsible for determining whether it will require a BIA guaranty or insurance coverage, based upon the loan application it receives from an eligible borrower. If the lender requires a BIA guaranty or insurance coverage, the lender is responsible for completing and submitting a guaranty application or complying with a loan insurance agreement under the Program. Borrowers should not apply to BIA for a guaranty or insurance coverage, and should refrain from direct contact with BIA personnel with respect to a lender's application.

§ 103.10 What lenders are eligible under the Program?

(a) Except as specified in paragraph (c) of this section, a lender is eligible under the Program, and may be considered for BIA approval, if the lender is:

(1) Regularly engaged in the business of making loans;

(2) Capable of evaluating and servicing loans in accordance with reasonable and prudent industry standards; and

(3) Otherwise reasonably acceptable to BIA.

(b) Eligible lenders may include tribes making loans from their own funds.

(c) The following lenders are not qualified to issue loans under the Program:

(1) An agency or instrumentality of the Federal Government;

(2) A lender that borrows money from any Federal Government source, other than the Federal Reserve Bank System, for purposes of relending;

(3) A lender that does not include the interest on loans it makes in gross income, for purposes of chapter 1, title 26 of the United States Code; and

(4) A lender that does not keep any ownership interest in loans it originates.

§ 103.11 How does BIA approve lenders for the Program?

(a) BIA approves each lender by entering into a loan guaranty agreement and/or a loan insurance agreement with it. BIA may provide up to three different levels of approval for a lender making guaranteed loans, depending on factors such as:

(1) The number of loans the lender makes under the Program;

(2) The total principal balance of the lender's Program loans;

(3) The number of years the lender has been involved with the Program;

(4) The relative benefits and opportunities the lender has given to Indian business efforts through the Program; and

(5) The lender's historical compliance with Program requirements.

(b) BIA will consider a lender's loan agreement and/or loan insurance agreement suspended as of:

(1) The effective date of a change in the lender's corporate structure;

(2) The effective date of a merger between the lender and any other entity; or

(3) The start of any legal proceeding in which substantially all of the lender's assets may be subject to disposition through laws governing bankruptcy, insolvency, or receivership.

(c) If a lender's loan agreement and/or loan insurance agreement is suspended under paragraph (b) of this section, the lender, or its successor in interest, must enter into a new loan guaranty agreement and/or loan insurance agreement with BIA in order to secure any new BIA loan guarantees or insurance coverage.

§ 103.12 How does a lender apply for a loan guaranty?

To apply for a loan guaranty, a BIA-approved lender must submit to BIA a loan guaranty application request form, together with each of the following:

(a) A copy of the borrower's complete loan application;

(b) A description of the borrower's equity in the business being financed;

(c) A copy of the lender's independent credit analysis of the borrower's business, repayment ability, and loan collateral (including insurance), plus the lender's evaluation of the extent to which the borrower will need technical assistance that the lender will be unable to provide;

(d) An original report from a nationally-recognized credit bureau, dated within 90 days of the date of the lender's loan guaranty application package, outlining the credit history of the borrower and each co-maker or guarantor of the loan (if any);

(e) Appropriate title and/or lien searches for each asset to be used as loan collateral;

(f) A copy of the lender's loan commitment letter to the borrower, showing at a minimum the proposed loan amount, purpose, interest rate, schedule of payments, and security (including insurance requirements), and the lender's material terms and conditions for funding;

(g) The lender's good faith estimate of any loan-related fees and costs it will charge the borrower, as authorized under this part;

(h) Evidence that the lender has complied with, and caused the borrower to comply with, all applicable Federal, State, local, and tribal laws implicated by financing the borrower's business, including (for example):

(1) Copies of all permits and licenses required to operate the borrower's business;

(2) Environmental studies required for construction and/or business operations under NEPA and other environmental laws;

(3) Archeological or historical studies required by law; and

(4) A plat map and/or certification by a registered surveyor indicating that the

proposed business will not be located in a special flood hazard area, as defined by applicable law;

(i) A written explanation from the lender indicating why it needs a BIA guaranty for the loan, and the minimum loan guarantee percentage it will accept;

(j) If any significant portion of the loan will be used to finance construction, renovation, or demolition work, the lender's:

(1) Insurance and bonding requirements for the work;

(2) Proposed draw requirements; and

(3)Proposed work inspection procedures;

(k) If any significant portion of the loan will be used to refinance or otherwise retire existing indebtedness:

(1) A clear description of all loans being paid off, including the names of all makers, cosigners and guarantors, maturity dates, payment schedules, uncured delinquencies, collateral, and payoff amounts as of a specific date; and

(2) A comparison of the terms of the loan or loans being paid off and the terms of the new loan, identifying the advantages of the new loan over the loan being paid off.

§ 103.13 How does a lender apply for loan insurance coverage?

BIA-approved lenders can make loans insured under the Program in two ways, depending on the size of the loan:

(a) For loans in an original principal amount of up to $100,000 per borrower, the lender can make each loan in accordance with the lender's loan insurance agreement, without specific prior approval from BIA.

(b) For loans in an original principal amount of over $100,000, the lender must seek BIA's specific prior approval in each case. The lender must submit a loan insurance coverage application request form, together with the same information required for a loan guaranty under § 103.12, except for the information required by § 103.12(i).

(c) The lender must submit a loan insurance application package even for a loan of less than $100,000 if:

(1) The total outstanding balance of all insured loans the lender is extending to the borrower under the Program exceeds $100,000; or

(2) the lender makes a request for interest subsidy, pursuant to § 103.21.

§ 103.14 Can BIA request additional information?

BIA may require the lender to provide additional information, whenever BIA believes it needs the information to properly evaluate a new lender, guaranty application, or insurance application. After BIA issues a loan guaranty or insurance coverage, the lender must let BIA inspect the lender's records at any reasonable time for information concerning the Program.

§ 103.15 Are there any prohibited loan terms?

A loan agreement guaranteed or insured under the Program may not contain:

(a) Charges by the lender styled as ''points,'' loan origination fees, or any similar fees (however named), except that if authorized in the loan agreement, the lender may charge the borrower a reasonable annual loan servicing fee that:

(1) Is not included as part of the loan principal; and

(2) Does not bear interest;

(b) Charges of any kind by the lender or by any third party except for the reasonable and customary cost of legal and architectural services, broker commissions, surveys, compliance inspections, title inspection and/or insurance, lien searches, appraisals, recording costs, premiums for required hazard, liability, key man life, and other kinds of insurance, and such other charges as BIA may approve in writing;

(c) A loan repayment term of over 30 years;

(d) Payments scheduled less frequently than annually;

(e) A balloon repayment schedule;

(f) A prepayment penalty;

(g) An interest rate greater than what BIA considers reasonable, taking into account the range of rates prevailing in the private market for similar loans;

(h) A variable interest rate, unless the rate is tied to a specific prime rate published from time to time by a nationally recognized financial institution or news source;

(i) An increased rate of interest based on default;

(j) A fee imposed for the late repayment of any installment due, except for a late fee that:

(1) Is imposed only after the borrower is at least 30 days late with payment;

(2) Does not bear interest; and

(3) Equals no more than the lesser of 5 percent of the late installment or $100;

(k) An ''insecurity'' clause, or any similar provision permitting the lender to declare a loan default solely on the basis of its subjective view of the borrower's changed repayment prospects;

(l) A requirement that the borrower take title to any real or personal property purchased with loan proceeds by a title instrument containing restrictions on alienation, control or use of the property, unless otherwise required by applicable law; or

(m) A requirement that a borrower which is a tribe provide as security a general assignment of the tribe's trust income. If otherwise lawful, a tribe may provide as loan security an assignment of trust income from a specific source.

§ 103.16 How does BIA approve or reject a loan guaranty or insurance application?

(a) BIA reviews each guaranty or insurance application, and may evaluate each loan application independently from the lender. BIA bases its loan guaranty or insurance decisions on many factors, including compliance with this part, and whether there is a reasonable prospect of loan repayment from business cash flow, or if necessary, from liquidating loan collateral. Lenders are expected to obtain a first lien security interest in enough collateral to reasonably secure repayment of each loan guaranteed or insured under the Program, to the extent that collateral is available.

(b) BIA approves applications by issuing an approval letter, followed by the procedures in § 103.18. If the guaranty or insurance application is incomplete, BIA may return the application to the lender, or hold the application while the lender submits the missing information. If BIA denies the application, it will provide the lender with a written explanation, with a copy to the borrower.

§ 103.17 Must the lender follow any special procedures to close the loan?

(a) BIA officials or their representatives may attend the closing of any loan or loan modification that BIA agrees to guarantee or insure. For guaranteed loans, and insured loans that BIA must individually review under this part, the lender must give BIA notice of the date of closing at least 5 business days before closing occurs.

(b) The lender must supply BIA with copies of all final, signed loan closing documents within 30 days following closing. To the extent applicable, loan closing documents must include the following:

(1) Promissory notes;

(2) Security agreements, including pledge and similar agreements, and related financing statements (together with BIA's written approval of any assignment of specific tribal trust assets under § 103.15(m), or of any security interest in an individual Indian money account);

(3) Mortgage instruments or deeds of trust (together with BIA's written approval, if required by 25 U.S.C. 483a, or if the mortgage is of a leasehold interest in tribal trust property);

(4) Guarantees (other than from BIA);

(5) Construction contracts, and plans and specifications;

(6) Leases related to the business (together with BIA's written approval, if required under 25 CFR part 162);

(7) Attorney opinion letters;

(8) Resolutions made by a Tribe or business entity;

(9) Waivers or partial waivers of sovereign immunity; and

(10) Similar instruments designed to document the loan, establish the basis for a security interest in loan collateral, and comply with applicable law.

(c) Unless BIA indicates otherwise in writing, the Lender must close a guaranteed or insured loan within 60 days of any approval provided under § 103.16.

§ 103.18 How does BIA issue a loan guaranty or confirm loan insurance?

(a) A loan is guaranteed under the Program when all of the following occur:

(1) BIA issues a signed loan guaranty certificate bearing a series number, an authorized signature, a guaranty percentage rate, the lender's name, the borrower's name, the original principal amount of the loan, and such other terms and conditions as BIA may require;

(2) The loan closes and funds;

(3) The lender pays BIA the applicable loan guaranty premium; and

(4) The lender meets all of the conditions listed in the loan guaranty certificate.

(b) A loan is insured under the Program when all of the following occur:

(1) The loan's purpose and terms meet the requirements of the Program and the lender's loan insurance agreement with BIA;

(2) The loan closes and funds;

(3) The lender notifies BIA of the borrower's identity and organizational structure, the amount of the loan, the interest rate, the payment schedule, and the date on which the loan closing and funding occurred;

(4) The lender pays BIA the applicable loan insurance premium;

(5) If over $100,000 or if the loan requires interest subsidy, BIA approves the loan in writing; and

(6) If over $100,000 or if the loan requires interest subsidy, the lender meets all of the conditions listed in BIA's written loan approval.

§ 103.19 When must the lender pay BIA the loan guaranty or insurance premium?

The premium is due within 30 calendar days of the loan closing. If not paid on time, BIA will send the lender written notice by certified mail, return receipt requested, that the premium is due immediately. If the lender fails to make the premium payment within 30 calendar days of the date of BIA's notice, BIA's guaranty certificate or insurance coverage with respect to that particular loan is void, without further action.

Subpart C—Interest Subsidy

§ 103.20 What is interest subsidy?

Interest subsidy is a payment BIA makes for the benefit of the borrower, to reimburse part of the interest payments the borrower has made on a loan guaranteed or insured under the Program. It is available to borrowers whose projected or historical earnings before interest and taxes, after adjustment for extraordinary items, is less than the industry norm.

§ 103.21 Who applies for interest subsidy payments, and what is the application procedure?

(a) An eligible lender must apply for interest subsidy payments on behalf of an eligible borrower, after determining that the borrower qualifies. Typically, the lender should include an application for interest subsidy at the time it applies for a guaranty or insurance coverage under the Program. A request for interest subsidy must be supported by the information required in §§ 103.12 and 103.13 (relating to loan guaranty and insurance coverage applications). BIA approves, returns, or rejects interest subsidy applications in the same manner indicated in § 103.16, based on the factors in § 103.20 and BIA's available resources.

(b) BIA's approval of interest subsidy for an insured loan may provide for specific limitations on the manner in which the lender and borrower can modify the loan.

§ 103.22 How does BIA determine the amount of interest subsidy?

Interest subsidy payments should equal the difference between the lender's rate of interest and the rate determined by the Secretary of the Treasury in accordance with 25 U.S.C. 1464. BIA may fix the amount of interest subsidy as of any date between the date of the borrower's application and the date BIA approves interest subsidy.

§ 103.23 How does BIA make interest subsidy payments?

The lender must send BIA reports at least quarterly on the borrower's loan payment history, together with a calculation of the interest subsidy then due. The lender's reports and calculation do not have to be in any specific format, but the reports must contain at least the information required by § 103.33. Based on the lender's reports and calculation, BIA will send interest subsidy payments to the borrower in care of the lender. The payments belong to the borrower, but the borrower and lender may agree in advance on how the borrower will use interest subsidy payments. BIA may verify and correct interest subsidy calculations and payments at any time.

§ 103.24 How long will BIA make interest subsidy payments?

(a) BIA will issue interest subsidy payments for the term of the loan, up to 3 years. If interest subsidy payments still are justified, the lender may apply for up to two 1-year extensions of this initial term. BIA will make interest subsidy payments on a single loan for no more than 5 years.

(b) BIA will choose the date from which it calculates interest subsidy years, usually the date the lender first extends the loan funds. Interest subsidy payments will apply to all loan payments made in the calendar years following that date.

(c) Interest subsidy payments will not apply to any loan payment made after the corresponding loan guaranty or insurance coverage stops under the Program, regardless of the circumstances.

Subpart D—Provisions Relating to Borrowers

§ 103.25 What kind of borrower is eligible under the Program?

(a) A borrower is eligible for a BIA-guaranteed or insured loan if the borrower is:

(1) An Indian individual;

(2) An Indian-owned business entity organized under Federal, State, or tribal law, with an organizational structure reasonably acceptable to BIA;

(3) A tribe; or

(4) A business enterprise established and recognized by a tribe.

(b) To be eligible for a BIA-guaranteed or insured loan, a business entity or tribal enterprise must be at least 51 percent owned by Indians. If at any time a business entity or tribal enterprise becomes less than 51 percent Indian owned, the lender either may declare a default as of the date the borrower stopped being at least 51 percent Indian owned and exercise its remedies under this part, or else continue to extend the loan to the borrower and allow BIA's guaranty or insurance coverage to become invalid.

§ 103.26 What must the borrower supply the lender in its loan application?

The lender may use any form of loan application it chooses. However, the borrower must supply the lender the information listed in this section in order for BIA to process a guaranty or insurance coverage application:

(a) The borrower's precise legal name, address, and tax identification number or social security number;

(b) Proof of the borrower's eligibility under the Program;

(c) A statement signed by the borrower, indicating that it is not delinquent on any Federal tax or other debt obligation;

(d) The borrower's business plan, including resumes of all principals and a detailed discussion of the product or service to be offered, market factors, the borrower's marketing strategy, and any technical assistance the borrower may require;

(e) A detailed description of the borrower's equity in the business being financed, including the method(s) of valuation;

(f) The borrower's balance sheets and operating statements for the preceding 2 years, or so much of that period that the borrower has been in business;

(g) The borrower's current financial statement, and the financial statements of all co-makers and guarantors of the loan (other than BIA);

(h) At least 2 years of financial projections for the borrower's business, consisting of pro-forma balance sheets, operating statements, and cash flow statements;

(i) A detailed list of all proposed collateral for the loan, including asset values and the method(s) of valuation;

(j) Recent appraisals for all real property and improvements to be used as collateral for the loan, to the extent required by law;

(k) A detailed list of all proposed hazard, liability, key man life, and other kinds of insurance the borrower will maintain on its business assets and operations;

(l) Evidence that the borrower's business will be conducted in compliance with all applicable Federal, State, local, and tribal laws, including (for example):

(1) Copies of all permits and licenses required to operate the borrower's business;

(2) Environmental studies required for construction and/or business operations under NEPA and other environmental laws;

(3) Archeological or historical studies required by law; and

(4) A plat map and/or certification by a registered surveyor indicating that the proposed business will not be located in a special flood hazard area, as defined by applicable law;

(m) If any significant portion of the loan will be used to finance construction, renovation, or demolition work:

(1) Written quotes for the work from established and reputable contractors; and

(2) To the extent possible, copies of all construction and architectural contracts for the work, plans and specifications, and applicable building permits;

(n) If the borrower is a tribe or a tribal enterprise, resolutions by the tribe and proof of authority under tribal law permitting the borrower to borrow the loan amount and offer the proposed loan collateral; and

(o) If the borrower is a business entity, resolutions by the appropriate governing officials and proof of authority under its organizing documents permitting the borrower to borrow the loan amount and offer the proposed loan collateral.

§ 103.27 Can the borrower get help preparing its loan application or putting its loan funds to use?

A borrower may seek BIA's assistance when preparing a loan application or when planning business operations, including assistance identifying and complying with applicable laws as indicated by § 103.26(l). The borrower should contact the BIA field or agency office serving the area in which the borrower's business is to be located, or if there is no separate field or agency office serving the area, then the borrower should contact the BIA regional office serving the area. BIA will either assist the borrower directly, or help the borrower locate the requested assistance free of charge or at a below market rate.

Subpart E—Loan Transfers

§ 103.28 What if the lender transfers part of the loan to another person?

(a) A lender may transfer one or more interests in a guaranteed loan to another person or persons, as long as the parties have in place an agreement that designates one person to perform all of the duties required of the lender under the Program and the loan guaranty certificate. Starting on the date of the transfer, only the person designated to perform the duties of the lender will be entitled to exercise the rights conferred by BIA's loan guaranty certificate, and will from that point forward be considered the lender for purposes of the Program. A lender under the Program must both own an interest in and service the guaranteed loan. BIA will not consider more than one person at any given time to be the lender with respect to any loan guaranty certificate. If the person designated to perform the duties of the lender in an agreement among loan participants is not the original lender, then the provisions of § 103.29 will apply (relating to sale or assignment of guaranteed loans), and the person designated to perform the duties of the lender must give BIA notice of its interest in the loan.

(b) Transferring any interest in an insured loan to another person will void the insurance coverage for that loan, except where the transfer is effected by a merger in which the lender is not the surviving entity. If a merger results in a change in the lender's identity, the lender's successor must notify BIA in writing of the change within 30 calendar days of the merger, and must re-apply to become an approved lender under the Program, as indicated in § 103.11.

§ 103.29 What if the lender transfers the entire loan?

(a) A lender may transfer all of its rights in a guaranteed loan to any other person. To keep the BIA loan guaranty in effect, the acquiring person must send BIA written notice of the transfer, describing the borrower, the loan, BIA's loan guaranty certificate number, and the acquiring person's name and address. Starting on the date of the transfer, only the acquiring person will be entitled to exercise the rights conferred by BIA's loan guaranty certificate, and will from that point forward be considered the lender for purposes of the Program. The acquiring person must service the guaranteed loan and otherwise perform all of the duties required of the lender under the Program and the loan guaranty certificate. If the acquiring person fails to send BIA proper notice within 30 calendar days of the date of the transfer, BIA's loan guaranty certificate will be void, without further action.

(b) Transferring an insured loan to another person will void the insurance coverage for that loan, except where the transfer is effected by a merger in which the lender is not the surviving entity. In the event a merger results in a change in the lender's identity, the lender's successor must notify BIA in writing of the change within 30 calendar days of the merger, and must re-apply to become an approved lender under the Program, as indicated in § 103.11.

Subpart F—Loan Servicing Requirements

§ 103.30 What standard of care must a lender meet?

Lenders must service all loans guaranteed or insured under the Program in a commercially reasonable manner, in accordance with standards and procedures adopted by prudent lenders in the BIA region in which the borrower's business is located, and in accordance with this part. If the lender fails to follow any of these standards, BIA may reduce or eliminate entirely the amount payable under its guaranty or insurance coverage to the extent BIA can reasonably attribute the loss to the lender's failure. BIA also may deny payment completely if the lender gets a loan guaranty or insurance coverage through fraud, or negligently allows a borrower's fraudulent loan application or use of loan funds to go undetected. In particular, and without limitation, lenders must:

(a) Check and verify information contained in the borrower's loan application, such as the borrower's eligibility, the authority of persons acting on behalf of the borrower, and the title status of any proposed collateral;

(b) Take reasonable precautions to assure that loan proceeds are used as specified in BIA's guaranty certificate or written insurance approval, or if not so specified, then in descending order of importance:

(1) BIA's written loan guaranty approval;

(2) The loan documents;

(3) The terms of the lender's final loan commitment to the borrower; or

(4) The borrower's loan application;

(c) Whenever feasible, require the borrower to use automatic bank account debiting to make loan payments;

(d) Require the borrower to take title to real and personal property purchased with loan proceeds in the borrower's own name, except for real property to be held in trust by the United States for the benefit of a borrower that is a tribe;

(e) Promptly record all security interests and subsequently keep them in effect. Lenders must record all mortgages and other security interests in accordance with State and local law, including the laws of any tribe that may have jurisdiction. Lenders also must record any:

(1) Leasehold mortgages or assignments of income involving individual Indian or tribal trust land with the BIA office having responsibility for maintaining records on that trust land; and

(2) Assignments of individual Indian money accounts with the Office of Trust Funds Management within the United States Department of the Interior;

(f) Assure, to the extent reasonably practicable, that the borrower and any guarantor of the loan (other than BIA) keep current on all taxes levied on real and personal property used in the borrower's business or as collateral for the loan, and on all applicable payroll taxes;

(g) Assure, to the extent reasonably practicable, that all required insurance policies remain in effect, including hazard, liability, key man life, and other kinds of insurance, in amounts reasonably necessary to protect the interests of the borrower, the borrower's business, and the lender;

(h) Assure, to the extent reasonably practicable, that the borrower remains in compliance with all applicable Federal, State, local and tribal laws, including environmental laws and laws concerning the preservation of historical and archeological sites and data;

(i) Assure, to the extent reasonably practicable, that the borrower causes any construction, renovation, or demolition work funded by the loan to proceed in accordance with approved construction contracts and plans and specifications, which must be sufficient in scope and detail to adequately govern the work;

(j) Reserve for itself and BIA the right to inspect the borrower's business records and all loan collateral at any reasonable time;

(k) Promptly notify the borrower in writing of any material breach by the borrower of the terms of its loan, with specific instructions on how to cure the breach and a deadline for doing so;

(l) Participate in any probate, receivership, bankruptcy, or similar proceeding involving the borrower and any guarantor or co-maker of the borrower's debt, to the extent necessary to maintain the greatest possible rights to repayment; and

(m) Otherwise seek to avoid and mitigate any potential loss arising from the loan, using at least that level of care the lender would use if it did not have a BIA loan guaranty or insurance coverage.

§ 103.31 What loan servicing requirements apply to BIA?

(a) Once a lender extends a loan that is guaranteed or insured under the Program, BIA has no responsibility for decisions concerning it, except for:

(1) Any approvals required under this part;

(2) Any decisions reserved to BIA under conditions of BIA's guaranty certificate or insurance coverage; and

(3) Decisions concerning a loan that the lender has assigned to BIA or to which BIA is subrogated by virtue of paying a claim based on a guaranty certificate or insurance coverage.

(b) Lenders should not ask BIA personnel for advice or concurrence concerning any loan servicing decisions the lender alone is expected to make.

§ 103.32 What sort of loan documentation does BIA expect the lender to maintain?

For every loan guaranteed or insured under the Program, the lender must maintain:

(a) BIA's original loan guaranty certificate or insurance coverage approval letter, if applicable;

(b) Original signed and/or certified counterparts of all final loan documents, including those listed in § 103.17 (concerning loan documents the lender is to supply BIA), all renewals, modifications, and additions to those documents, and signed settlement statements;

(c) Originals or copies, as appropriate, of all documents gathered by the lender under §§ 103.12, 103.13 and 103.26 (concerning information submitted by the borrower in its loan application, and information supplied to BIA in the lender's loan guaranty or insurance coverage application);

(d) originals or copies, as appropriate, of all applicable insurance binders or certificates, including without limitation hazard, liability, key man life, and title insurance;

(e) a complete and current history of all loan transactions, including dated disbursements, payments, adjustments, and notes describing all contacts with the borrower;

(f) originals or copies, as appropriate, of all correspondence with the borrower, including default notices and evidence of receipt;

(g) originals or copies, as appropriate, of all correspondence, notices, news items or other information concerning the borrower, whether gathered by the lender or furnished to it, containing material information about the borrower and its business operations;

(h) originals or copies, as appropriate, of all advertisements, notices, title instruments, accountings, and other documentation of efforts to liquidate loan collateral; and

(i) originals or copies, as appropriate, of all notices, pleadings, motions, orders, and other documents associated with any legal proceeding involving the lender and the borrower or its assets, including without limitation judicial or non-judicial foreclosure proceedings, suits to collect payment, bankruptcy proceedings, probate proceedings, and any settlement associated with threatened or actual litigation.

§ 103.33 Are there reporting requirements?

(a) The lender must periodically report the borrower's loan payment history so that BIA can recalculate the government's contingent liability. Loan payment history reports must be quarterly unless BIA provides otherwise for a particular loan. These reports can be in any format the lender desires, as long as they contain:

(1) The lender's name;

(2) The borrower's name;

(3) A reference to BIA's Loan Guaranty Certificate or Loan Insurance Agreement number;

(4) The lender's internal loan number; and

(5) The date and amount of all loan balance activity for the reporting period.

(b) If applicable, the lender also must supply a calculation of any interest subsidy payments that are due, as indicated in § 103.23.

(c) If there is a transfer of any or all of the lender's ownership interest in the loan, the party receiving the ownership interest may be required to notify BIA, as indicated in §§ 103.28 and 103.29.

(d) If there is a default on the loan, the lender is required to notify BIA, as indicated in §§ 103.35 and 103.36.

(e) If the loan is prepaid in full, the lender must promptly notify BIA in writing so that BIA can eliminate the guaranty or insurance coverage from its active recordkeeping system.

§ 103.34 What if the lender and borrower decide to change the terms of the loan?

(a) The lender must obtain written BIA approval before modifying a loan guaranteed or insured under the Program, if the change will:

(1) Increase the borrower's outstanding principal amount (if a term loan), or maximum available credit (if a revolving loan).

(i) BIA will approve or disapprove a loan increase based upon the lender's explanation of the borrower's need for additional funding, and updated information of the sort required under §§ 103.12, 103.13, and 103.26, as applicable.

(ii) Upon approval by BIA and payment of an additional guaranty or insurance premium in accordance with §§ 103.8 and 103.19 and this section, the entire outstanding loan amount, as modified, will be guaranteed or insured (as the case may be) to the extent BIA specifies. The lender must pay the additional premium only on the increase in the outstanding principal amount of the loan (if a term loan) or the increase in the credit limit available to the borrower (if a revolving loan).

(iii) Lenders may not increase the outstanding principal amount of a loan guaranteed or insured under the Program if a significant effect of doing so would be to allow the borrower to pay accrued loan interest.

(2) Permanently adjust the loan repayment schedule.

(3) Increase a fixed interest rate, convert a fixed interest rate to an adjustable interest rate, or convert an adjustable interest rate to a fixed interest rate.

(4) Allow any changes in the identity or organizational structure of the borrower.

(5) Allow any material change in the use of loan proceeds or the nature of the borrower's business.

(6) Release any collateral taken as security for the loan, except items sold in the ordinary course of business and promptly replaced by similar items of collateral, such as inventory.

(7) Allow the borrower to move any significant portion of its business operations to a location that is not on or near an Indian reservation.

(8) Be likely to materially increase the risk of a claim on BIA's guaranty or insurance coverage, or materially reduce the aggregate value of the collateral securing the loan.

(9) Cure a default for which BIA is to receive notice under § 103.35(b).

(b) In the case of an insured loan, the amount of which will not exceed $100,000 when combined with all other loans from the lender to the borrower, the lender need not obtain BIA's prior approval to make any of the loan modifications indicated in § 103.34(a), except as provided in § 103.21(b). However, all loan modifications must remain consistent with the lender's loan insurance agreement with BIA, and in the event of an increase in the borrower's outstanding principal amount (if a term loan), or maximum available credit (if a revolving loan), the lender must send BIA an additional premium payment in accordance with §§ 103.8, 103.19 and this section. The lender must pay the additional premium only on the increase in the outstanding principal amount of the loan (if a term loan) or the increase in the credit limit available to the borrower (if a revolving loan). To the extent a loan modification changes any of the information supplied to BIA under § 103.18(b)(3), the lender also must promptly notify BIA of the new information.

(c) Subject to any applicable BIA loan guaranty or insurance coverage conditions, a lender may extend additional loans to a borrower without BIA approval, if the additional loans are not to be guaranteed or insured under the Program.

Subpart G—Default and Payment by BIA

§ 103.35 What must the lender do if the borrower defaults on the loan?

(a) The lender must send written notice of the default to the borrower, and otherwise meet the standard of care established for the lender in this part. The lender's notice to the borrower should be sent as soon as possible after the default, but in any event before the lender's notice to BIA under paragraph (b) of this section. For purposes of the Program, ''default'' will mean a default as defined in this part.

(b) The lender also must send written notice of the default to BIA by certified mail, return receipt requested, within 60 calendar days of the default unless the default is fully cured before that deadline. This notice is required even if the lender grants the borrower a forbearance under § 103.36(a). One purpose of the notice is to give BIA the opportunity to intervene and seek assistance for the borrower, even though BIA has no duty, either to the lender or the borrower, to do so. Another purpose of the notice is to permit BIA to plan for a possible loss claim from the lender, under § 103.36(d). The lender's notice should clearly indicate:

(1) The identity of the borrower;

(2) The applicable Program guaranty certificate or insurance agreement number;

(3) The date and nature of all bases for default;

(4) If a monetary default, the amount of past due principal and interest, the date through which interest has been calculated, and the amount of any late fees, precautionary advances, or other amounts the lender claims;

(5) The nature and outcome of any correspondence or other contacts with the borrower concerning the default; and

(6) The precise nature of any action the borrower could take to cure the default.

§ 103.36 What options and remedies does the lender have if the borrower defaults on the loan?

(a) The lender may grant the borrower a temporary forbearance, even beyond any default cure periods specified in the loan documents, if doing so is likely to result in the borrower curing the default. However, BIA must approve in writing any forbearance or other agreement that:

(1) Permanently modifies the terms of the loan in any manner indicated by § 103.34(a);

(2) Would allow the borrower's default to extend beyond the deadline

established in § 103.36(d) for the lender to elect a remedy; or

(3) Is not likely to result in the borrower curing the default.

(b) The lender may make precautionary advances on the borrower's behalf during the default, if doing so is reasonably necessary to ensure that loan recovery prospects do not significantly deteriorate. Items for which the lender may make precautionary advances include, for example:

(1) Hazard, liability, or key man life insurance premiums;

(2) Security measures to safeguard abandoned business assets;

(3) Real or personal property taxes;

(4) Corrective actions required by court or administrative orders; or

(5) Essential maintenance.

(c) BIA will guaranty or insure the amount of precautionary advances from the date of each advance to the same extent as other amounts due under the loan, if:

(1) The borrower has demonstrated its inability or unwillingness to make the payment or perform the duty that jeopardizes loan recovery, including by undue delay in making the payment or performing the duty;

(2) The total expense of all precautionary advances by the lender does not at the time of the advance exceed 10 percent of the outstanding principal balance of the loan;

(3) Where loan document provisions do not require the borrower to repay precautionary advances (however termed) when made by the lender, or where the total expense of all precautionary advances by the lender will exceed 10 percent of the outstanding principal balance of the loan when made, the lender secures BIA's prior written approval; and

(4) The lender properly claims and documents all precautionary advances, if and when it submits a claim for loss under § 103.37.

(d) If the default remains uncured, the lender must send BIA a written notice by certified mail, return receipt requested, within 90 calendar days of the default to select one of the following remedies:

(1) In the case of a guaranteed loan, the lender may submit a claim to BIA for its loss;

(2) In the case of either a guaranteed or insured loan, the lender may liquidate all collateral securing the loan, and upon completion, if it has a residual loss on the loan, it may submit a claim to BIA for that loss; or

(3) The lender may negotiate a loan modification agreement with the borrower to permanently change the terms of the loan in a manner that will cure the default. If the lender chooses this remedy, it may take no longer than 45 calendar days from the date BIA receives the notice of remedy selection to finalize a loan modification agreement and secure BIA's written approval of it. However, the lender may at any time before the expiration of the 45-day period change its choice of remedy by sending BIA a notice otherwise complying with § 103.36(d)(1) or (2). If the lender fails to send BIA a notice changing its choice of remedy and does not finalize an approved loan modification agreement within the 45-day period, the lender's only permissible remedy under the Program will be to pursue the procedure specified in § 103.36(d)(2).

(e) Failure by the lender to provide BIA with notice of the lender's election of remedy within 90 calendar days of the default, as indicated in § 103.36(d), will invalidate BIA's loan guaranty certificate or insurance coverage for that particular loan, absent an express waiver of this provision by BIA. BIA may preserve the validity of a loan guaranty certificate or insurance coverage through waiver of this provision only when BIA determines, in its discretion, that:

(1) The lender consistently has acted in good faith, and

(2) The lender's failure to provide timely notice either:

(i) Has not caused any actual or potential prejudice to BIA; or

(ii) Was the result of the lender relying upon specific written advice from a BIA agent.

§ 103.37 What must the lender do to collect payment under its loan guaranty certificate or loan insurance coverage?

(a) For guaranteed loans, the lender must submit a claim for its loss on a form approved by BIA.

(1) If the lender makes an immediate claim under § 103.36(d)(1), it must send BIA the claim for loss within 90 calendar days of the default, by certified mail, return receipt requested. The lender's claim for loss may include interest that has accrued on the outstanding principal amount of the loan only through the date it submits the claim.

(2) If the lender elects first to liquidate the collateral securing the loan under § 103.36(d)(2), and has a residual loss after doing so, it must send BIA the claim for loss within 30 calendar days of completing all liquidation efforts. The lender must perform collateral liquidation as expeditiously and thoroughly as is reasonably possible, within the standards established by this part. The lender's claim for loss may include interest that has accrued on the outstanding principal amount of the loan only through the earlier of:

(i) The date it submits the claim;

(ii) The date the lender gets a judgment of foreclosure or sale (or the non-judicial equivalent) on the principal collateral securing the loan; or

(iii) 180 calendar days after the date of the default.

(b) For insured loans, after liquidating all loan collateral, the lender must submit a claim for its loss (if any) on a form approved by BIA. The lender must send BIA the claim for loss by certified mail, return receipt requested, within 30 calendar days of completing all liquidation efforts. The lender must perform collateral liquidation as expeditiously and thoroughly as is reasonably possible, within the standards established by this part. The lender's claim for loss may include interest that has accrued on the outstanding principal amount of the loan through the earlier of:

(1) The date it submits the claim;

(2) The date the lender gets a judgment of foreclosure or sale (or the non-judicial equivalent) on the principal collateral securing the loan; or

(3) 180 calendar days after the date of the default.

(c) Whenever the lender liquidates loan collateral under § 103.36(d)(2), it must vigorously pursue all reasonable methods of collection concerning the loan collateral before submitting a claim for its residual loss (if any) to BIA. Without limiting the generality of the preceding sentence, the lender must:

(1) Foreclose, either judicially or non-judicially, all rights of redemption the borrower or any co-maker or guarantor of the loan (other than BIA) may have in collateral under any mortgage securing the loan;

(2) Gather and dispose of all personal property pledged as collateral under the loan, in accordance with applicable law;

(3) Exercise all set-off rights the lender may have under contract or applicable law;

(4) Make demand for payment on the borrower, all co-makers, and all guarantors of the loan (other than BIA); and

(5) Participate fully in all bankruptcy proceedings that may arise involving the borrower and any co-maker or guarantor. Full participation might include, for example, filing a proof of claim in the case, attending creditors' meetings, and seeking a court order releasing the automatic stay of collection efforts so that the lender can liquidate affected loan collateral.

(d) BIA may require further information, including without limitation copies of any documents the lender is to maintain under § 103.32 and all documentation of liquidation efforts, to help BIA evaluate the lender's claim for loss.

(e) BIA will pay the lender the guaranteed or insured portion of the lender's claim for loss, to the extent the claim is based upon reasonably sufficient evidence of the loss and compliance with the requirements of this part.

§ 103.38 Is there anything else for BIA or the lender to do after BIA makes payment?

When BIA pays the lender on its claim for loss, the lender must sign and deliver to BIA an assignment of rights to its loan agreement with the borrower, in a document acceptable to BIA. Immediately upon payment, BIA is subrogated to all rights of the lender under the loan agreement with the borrower, and must pursue collection efforts against the borrower and any co-maker and guarantor, as required by law.

§ 103.39 When will BIA refuse to pay all or part of a lender's claim?

BIA may deny all or part of a lender's claim for loss when:

(a) The loan is not guaranteed or insured as indicated in § 103.18;

(b) The guarantee or insurance coverage has become invalid under §§ 103.28, 103.29, or 103.36(e);

(c) The lender has not met the standard of care indicated in § 103.30;

(d) The lender presents a claim for a residual loss after attempting to liquidate loan collateral, and:

(1) The lender has not made a reasonable effort to liquidate all security for the loan;

(2) The lender has taken an unreasonable amount of time to complete its liquidation efforts, the probable consequence of which has been to reduce overall prospects of loss recovery; or

(3) The lender's loss claim is inflated by unreasonable liquidation expenses or unjustifiable deductions from collateral liquidation proceeds applied to the loan balance; or

(e) The lender has otherwise failed in any material respect to follow the requirements of this part, and BIA can reasonably attribute some or all of the lender's loss to that failure.

§ 103.40 Will BIA make exceptions to its criteria for denying payment?

(a) BIA will not reduce or deny payment solely on the basis of §§ 103.39(c) or (e) when the lender making the claim for loss:

(1) Is a person to whom a previous lender transferred the loan under §§ 103.28 or 103.29 before maturity for value;

(2) Notified BIA of his acquisition of the loan interest as required by §§ 103.28 or 103.29;

(3) Had no involvement in or knowledge of the actions or circumstances that would have allowed BIA to reduce or deny payment to a previous lender; and

(4) Has not itself violated the standards set forth §§ 103.39(c) or (e).

(b) If BIA makes payment to a lender under this section, it may seek reimbursement from the previous lender or lenders who contributed to the loss by violating §§ 103.39(c) or (e).

§ 103.41 What happens if a lender violates provisions of this part?

In addition to reducing or eliminating payment on a specific claim for loss, BIA may either temporarily suspend, or permanently bar, a lender from making or acquiring loans under the Program if the lender repeatedly fails to abide by the requirements of this part, or if the lender significantly violates the requirements of this part on any single occasion.

§ 103.42 How long must a lender comply with Program requirements?

(a) A lender must comply in general with Program requirements during:

(1) The effective period of its loan guaranty agreement or loan insurance agreement; and

(2) Whatever additional period is necessary to resolve any outstanding loan guaranty or insurance claims or coverage the lender may have.

(b) Except as otherwise required by law, a lender must maintain records with respect to particular loans for no more than 6 years after either:

(1) The loan is repaid in full; or

(2) The lender accepts payment from BIA pursuant to a guaranty certificate or an insurance agreement.

(c) This section does not restrict any claims BIA may have against the lender or any other party arising from the Lender's participation in the Program.

§ 103.43 What must the lender do after repayment in full?

The lender must completely and promptly release of record all remaining collateral for a guaranteed or insured loan after the loan has been paid in full.

The release must be at the lender's sole cost. In addition, if the loan is prepaid the lender must notify BIA in accordance with § 103.33(e).

Subpart H—Definitions and Miscellaneous Provisions

§ 103.44 What certain terms mean in this part.

BIA means the Bureau of Indian Affairs within the United States Department of the Interior.

Default means:

(1) The borrower's failure to make a scheduled loan payment when it is due;

(2) The borrower's failure to meet a material condition of the loan agreement;

(3) The borrower's failure to comply with any other condition, covenant or obligation under the terms of the loan agreement within applicable grace or cure periods;

(4) The borrower's failure to remain at least 51 percent Indian owned, as provided in § 103.25(b);

(5) The filing of a voluntary or involuntary petition in bankruptcy listing the borrower as debtor;

(6) The imposition of a Federal, State, local, or tribal government lien on any assets of the borrower or assets otherwise used as collateral for the loan, except real property tax liens imposed by law to secure payments that are not yet due; and

(7) Any default defined in the loan agreement, to the extent the definition is not inconsistent with this part.

Equity means the value, after deducting all debt, of the borrower's tangible assets in the business being financed, on which a lender can perfect a first lien security interest. It can include cash, securities, or other cash equivalent instruments, but cannot include the value of contractual options, the right to pay below market rental rates, or similar rights if those rights:

(1) Are unassignable; or

(2) Can expire before maturity of the loan.

Indian means a person who is a member of a tribe as defined in this part.

Loan agreement means the collective terms and conditions under which the lender extends a loan to a borrower, as reflected by the documents that evidence the loan.

Mortgage, when used as a noun, means a consensual lien on real or personal property in favor of the lender, given by the borrower or a co-maker or guarantor of the loan (other than BIA), to secure loan repayment. The term ''mortgage'' includes ''deed of trust.''

NEPA means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Person means any individual or distinct legal entity.

Program means the BIA's Loan Guaranty, Insurance, and Interest

Subsidy Program, established under 25 U.S.C. 1481 *et seq.*, 25 U.S.C. 1511 *et seq.*, and this part 103.

Reservation means any land that is an Indian reservation, California rancheria, public domain Indian allotment, pueblo, Indian colony, former Indian reservation in Oklahoma, or land held by an Alaska Native corporation under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the United States Department of the Interior, or his authorized representative.

Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, rancheria, village, community or corporation that the Secretary acknowledges to exist as an Indian tribe.

§ 103.45 Information collection.

(a) The information collection requirements of §§ 103.11, 103.12, 103.13, 103.14, 103.17, 103.21, 103.23, 103.26, 103.32, 103.33, 103.34, 103.35, 103.36, 103.37, and 103.38 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned approval number 1076–0XXX. The information will be used to approve and make payments on Federal loan guarantees, insurance agreements, and interest subsidy awards. Response is required to obtain a benefit.

(b) The burden on the public to report this information is estimated to average from 15 minutes to 2 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Information Collection Control Officer, Bureau of Indian Affairs, MS 4613, 1849 C Street, NW., Washington, DC 20240.

Dated: August 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–22745 Filed 9–5–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office

32 CFR Part 326

NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DOD.

ACTION: Proposed rule.

SUMMARY: The National Reconnaissance Office (NRO) is proposing to add a new responsibility for NRO employees under the NRO Privacy Act Program. NRO employees are now required to participate in specialized Privacy Act training should their duties require dealing with special investigators, the news media, or the public.

This amendment is triggered by a change made to the Department of Defense Privacy Program (32 CFR part 310) on August 7, 2000, at 65 FR 48169.

DATES: Comments must be received by November 6, 2000 to be considered by the agency.

ADDRESSES: National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 321 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 326.5, is to be amended by adding paragraph (j)(11) to read follows:

§ 326.5 Responsibilities.

* * * * *

(j) Employees, NRO:

* * * * *

(11) Will participate in specialized Privacy Act training should their duties require dealing with special investigators, the news media, or the public.

* * * * *

Dated: August 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–22699 Filed 9–5–00; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063–0026(b); FRL–6864–7]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for action proposed to the Arizona State Implementation Plan on July 14, 2000 (65 FR 43727).

DATE: Any comments on this proposal must arrive by October 6, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (Air-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: On July 14, 2000, EPA proposed the following revisions to the Arizona State Implementation Plan (SIP).