supported by the fact that the SEC has existing temporary cease and desist authority. A temporary cease and desist order, while different from a capital withdrawal order, serves a similar purpose. Both are emergency remedies that can be expeditiously applied. Prior to issuing a temporary cease and desist order, the SEC must provide notice and opportunity for a hearing unless the SEC "* * determines that notice and hearing prior to entry would be impracticable or contrary to the public interest." 18

The more limited scope of the temporary cease and desist order is not problematic to the Department because the authority provides the SEC with the ability to issue such an order not only if a rule violation has occurred but also if one is threatened. Because the SEC is the appropriate regulatory agency for government securities brokers or dealers subject to § 402.2, an impending violation of a § 402.2 requirement could be cause for the issuance of a temporary cease and desist order. As discussed more fully in the preamble to the proposed rule, the Department believes that, in lieu of developing a separate capital withdrawal order provision, it should rely on the SEC's existing cease and desist order authority.

Consistent with this approach, the Department also is excluding this provision of Rule 15c3–1 from the compliance requirements for those government securities brokers and dealers registered under Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) that are subject to the SEC capital rule (i.e., interdealer brokers operating under § 402.1(e) and futures commission merchants).

In adopting the withdrawal provisions, the Department has restructured certain related definitions of terms into a Miscellaneous Provisions paragraph (i)(3) and has added a description of what constitutes an advance or loan of liquid capital, which is one component of the restricted activities.

C. Conforming Change

Due to the revisions of the minimum capital requirements under both the SEC and Treasury capital rules, a conforming change is required in the recordkeeping provisions of part 404. Specifically, paragraph 404.2(a)(4) contains references to the minimum dollar capital amounts required of government securities clearing brokers and dealers. The Department is revising these references in accordance with the fully

phased-in minimum capital level of \$250,000 required of clearing firms.

III. Special Analyses

It has been determined that these amendments are not a "significant regulatory action" as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

In the preamble to the proposed rules, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), the Department certified that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. In reviewing the final rules being adopted herein and in light of the fact that no comments were received, the Department has concluded that there is no reason to alter the previous certification.

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1535–0089.

Estimated total annual reporting burden: 5 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents: 5. Estimated annual frequency of response: Twice.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Forms Management Branch, Bureau of the Public Debt, Department of the Treasury, Parkersburg, West Virginia 26106–1328; and to the Office of Management and Budget, Paperwork Reduction Project 1535–0089, Attention: Desk Officer for Department of the Treasury, Washington, DC 20503.

List of Subjects

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 404

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR chapter IV is amended as follows:

PART 402—FINANCIAL RESPONSIBILITY

1. The authority citation for part 402 is revised to read as follows:

Authority: 15 U.S.C. 780-5(b)(1)(A), (b)(4).

2. Section 402.1 is amended by revising paragraphs (d) and (e)(1) to read as follows:

§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

* * * * *

- (d) Futures commission merchants. A futures commission merchant subject to § 1.17 of this title that is a government securities broker or dealer but is not a registered broker or dealer shall not be subject to the limitations of § 402.2 but rather to the capital requirement of § 1.17 or § 240.15c3–1, except paragraph (e)(3) thereof, of this title, whichever is greater.
- (e) Government securities interdealer broker. (1) A government securities interdealer broker, as defined in paragraph (e)(2) of this section, may, with the prior written consent of the Secretary, elect not to be subject to the limitations of § 402.2 but rather to be subject to the requirements of § 240.15c3-1 of this title (SEC Rule 15c3-1), except paragraphs (c)(2)(ix) and (e)(3) thereof, and paragraphs (e)(3) through (8) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

3. Section 402.2 is amended by revising paragraphs (b), (c) and (i), and by adding an OMB parenthetical at the end of the section to read as follows:

§ 402.2 Capital requirements for registered government securities brokers or dealers.

(b)(1) Minimum liquid capital for brokers or dealers that carry customer accounts. Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those persons within the meaning of § 240.15c3-1(a)(2)(i) of this title, shall have and maintain liquid capital in an amount not less than \$250,000 (see paragraph (a) of Appendix E to this section, § 402.2e, for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

(2) Minimum liquid capital for brokers or dealers that carry customer accounts, but do not generally hold customer funds or securities. Notwithstanding the provisions of

^{18 15} U.S.C. 78u-3(c)(1).