Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Pub. L. 104–208, enacted on September 30, 1996, and Pub. L. 105–135, enacted on December 2, 1997, with respect to SBA financing in the 504 Program, and would clarify existing regulations. In the 504 program, the proposed regulations would authorize multiple businesses to obtain SBA financing for a specific 504 Project, allow a 504 Borrower to lease long term no more than 20 percent of the 504 Project, describe how much a Borrower must contribute to a 504 Project, and modify allowable fees paid by a Borrower, Third Party Lender, and CDC. In addition, the proposed rule would allow certain fees incurred by a CDC in the closing of a 504 loan, up to $2,500 per closing, to be eligible administrative costs.

DATE: Comments must be submitted on or before July 6, 1998.

ADDRESS: Comments should be mailed to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, 202–205–6660.

SUPPLEMENTARY INFORMATION: Public Law 105–135, the ''Small Business Reauthorization Act of 1997'' (1997 legislation), enacted on December 2, 1997, and Public Law 104–208 (1996 legislation), enacted on September 30, 1996, amended the Small Business Investment Act of 1958 (15 U.S.C. 601 *et seq.*). These proposed regulations would implement the amendments required by the 1996 legislation and some of the amendments required under the 1997 legislation, and make other changes.

Changes to the 504 Program

The 1997 legislation and the 1996 legislation require SBA to amend its regulations to implement the statutes. SBA is also proposing some other program changes.

- Section 502 of the Act authorizes SBA to provide financial assistance through a CDC to assist a small business concern to acquire, construct, convert, or expand its plant facility as a 504 Project pursuant to section 504 of the Act. SBA interpreted the statute to permit the Agency to assist only one identifiable business for any particular project. The 1997 legislation authorizes SBA to provide such financial assistance to more than one identifiable small business. SBA proposes to amend Section 120.801 of its regulations to allow SBA to work with a CDC to assist multiple small businesses for any specific 504 Project, allowing two or more unrelated small businesses to seek SBA financial assistance for a qualified 504 Project.
- SBA is also proposing to amend its regulations with respect to Eligible Passive Companies in order to make that rule consistent with the 1997 legislation. Current 13 CFR 120.111 allows SBA to assist an Eligible Passive Company to use loan proceeds to acquire property to lease to an Operating Company. SBA is proposing to amend 13 CFR 120.111 to authorize SBA to provide financing to an Eligible Passive Company which could use the proceeds to lease property to multiple unrelated Operating Companies. This proposed change would make the Eligible Passive Company provision consistent with the proposed change to 13 CFR 120.801.
- The 1996 legislation amended the Act with respect to the amount of a Borrower's contribution to the financing of a 504 Project. SBA is proposing to amend 13 CFR 120.910 of its regulations to require the Borrower to contribute at least 15 percent of the total cost of the 504 Project if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has been in business for 2 years or less, or if the Project is the acquisition, construction, conversion, or expansion of a limited or single purpose building. The Borrower must contribute at least 20 percent of the total cost of the Project if both these conditions exist.
- The 1996 legislation requires that not less than 50 percent of a Project's cost must be financed by a Third Party Lender if the Borrower's contribution is made under the conditions described above for proposed 13 CFR 120.910. This proposed revision of 13 CFR 120.920 implements that change.
- The 1997 legislation amended the Act to permit a 504 Borrower to lease long term no more than 20 percent of a new 504 Project if the Borrower would immediately occupy no less than 60 percent of the property. To comply with the 1997 legislation, SBA is proposing to amend 13 CFR parts 120.131 and 120.870 to authorize a Borrower to lease long term up to 20 percent of the rentable space in a 504 Project to third parties when the Borrower will occupy at least 60 percent of the rentable space with plans to occupy another 20 percent of the rentable space within 3 years. The present law allows a Borrower in a 504 Project to lease up to 33 percent of a new facility if the Borrower can show that it will need additional space within 3 years and that it will fully use the facility within 10 years. Under the proposed rule, the Borrower will have the option of showing that it will ultimately use 80 percent of the rentable space within 3 years, and that it plans to lease long term 20 percent of the space to others. The effect of this change will be to allow a business to construct a building in a good location without being compelled to show that it will use all of the space. Thus, the proposed rule will alleviate the present strict restrictions on the use of property.
- 13 CFR 120.862(b) sets forth specific public policy goals a CDC may use to qualify a 504 Project or support an increased amount of 504 financing. 13 CFR 120.862(b)(3) lists expanding Minority Enterprise Development as one of the public policy goals. SBA is proposing to amend 13 CFR 120.862(b)(3) to direct the reader to the correct section in SBA's regulation designating the specific minority groups to which the subsection applies. 13 CFR 120.862 (b)(7) lists as one of the public policy goals the assistance of businesses affected by Federal budget reductions. SBA is proposing to amend 13 CFR 120.862(b)(7) by clarifying that the public policy goal is to assist any eligible small business in an area

affected by such reductions, not only those businesses which can show that they were affected adversely by the budget reduction. Therefore, if a geographic area has been adversely affected by Federal budget reductions, SBA can assist a business located in that area or moving to that area without showing that the particular business was affected.

- The 1996 legislation requires SBA to charge the Borrower a fee of not more than 0.9375 percent on the unpaid principal balance of the loan as determined at 5-year anniversary intervals. SBA is amending 13 CFR 120.971 of its regulations to implement this change. In addition, 13 CFR 120.971(a)(3) raises the minimum servicing fee from .5 percent to .625 percent.
- SBA is proposing to insert a new Section 120.972 in 13 CFR to implement the 1996 legislation which requires SBA to collect a one-time fee equal to 50 basis points on the total participation in a Project by a Third Party Lender when that Third Party Lender occupies a senior credit position to that of SBA. In addition, under the proposed regulation, SBA will collect an annual fee from each CDC equal to 0.125 percent of the outstanding principal balance of any Debenture guaranteed by SBA after September 30, 1996. The CDC must pay the fee from the servicing fees collected by the CDC and not from additional fees imposed on the Borrower.
- Currently, under 13 CFR 120.921(d), any future advance by a Third Party Lender in excess of the outstanding balance and accrued interest must be subordinated to the CDC/SBA lien unless the future advance is to collect payments, maintain collateral, or protect the Third Party Lender's lien position on the Third Party Loan. SBA has been unable at times to realize the full benefit of its lien position, despite its regulations requiring future advances to be subordinate to the CDC/SBA lien.

Moreover, if a Third Party Lender wants to make additional capital available to a 504 Borrower, it easily can do so through another loan. SBA is proposing to revise 13 CFR 120.921(d) to state that the Third Party Loan cannot be open-ended as to amount, and after completion of the 504 Project, a Third Party Lender may only make a future advance under the Third Party Loan to collect amounts due on the Third Party Loan note, maintain collateral or protect its lien.

- SBA also has been unable to realize the full benefit of its lien position because of prepayment penalties, late fees, and escalated interest after default due under the Third Party Loan. Accordingly, SBA also proposes to add a new paragraph (e) to 13 CFR 120.921 that would state that the Third Party Lender's lien is subordinate to the CDC/SBA lien with respect to prepayment penalties, late fees, and escalated interest after default due under the Third Party lien.
- When a small business defaults on a Third Party Loan, SBA may choose to assume the obligations of the Borrower. The 1996 legislation amended the Act to ensure that when SBA assumes such obligation for Projects approved after September 30, 1996, it only will pay the interest rate on the note in effect immediately prior to the date of the Borrower's default. SBA is proposing to redesignate and revise present paragraph (e) of Section 120.921 of 13 CFR to become new paragraph (f) stating that SBA only will pay the interest rate in effect immediately prior to the date of the Borrower's default with respect to a Project approved after September 30, 1996.
- SBA is proposing to amend 13 CFR 120.802 to clarify the definition for Third Party Loan and 13 CFR 120.801(c)(3) to reflect that definition.
- Currently, Section 120.870(c)(1) of 13 CFR requires the term of a lease of the Project premises to be at least equal to the terms of the Debenture. However, this may not be necessary if the Project is only machinery and equipment. Therefore, SBA proposes to delete machinery and equipment from the definition to clarify that the length of a lease for machinery and equipment is a credit issue.

Changes to CDC Closing Fees

Section 120.883 of 13 CFR sets forth administrative costs which may be paid with the proceeds of a loan funded by a 504 Debenture rather than out of the Borrower's own resources. Section 120.971 of 13 CFR sets forth the fees that a CDC may charge a Borrower.

Throughout the history of the 504 Program, most of the services required to prepare 504 loan documents and close a 504 loan have been performed for CDCs, at CDC cost, by legal counsel, paralegals, and CDC staff. The CDC has then charged its Borrower a fee at closing to reimburse the CDC for these expenses (''CDC Closing Fee''). Although this CDC Closing Fee reimburses the CDC for expenses the CDC pays to its own lawyers, the Borrower is not considered to be paying a legal fee, since the Borrower is not represented by CDC counsel. The Borrower pays separately the legal fees of its legal counsel.

Under the 504 Program, loan proceeds may be used to pay eligible Project costs and eligible administrative costs. Eligible Project costs are costs directly attributable to the Project including professional fees essential to the Project for services such as architecture, engineering, and environmental studies. The Borrower's legal fees for Project-related matters such as zoning, title searches, and recording fees, as well as interest and points on the interim construction loan, are eligible Project costs. The Borrower's legal fees associated with the closing are not eligible Project costs.

Eligible administrative costs are amounts the Borrower pays for services connected with closing, but not directly attributable to the Project itself. These include SBA's guarantee fee, the CDC's processing fee, and 504 closing agent fees. The Borrower's legal fees associated with the closing are not eligible administrative costs. Until March 1, 1996, the CDC Closing Fee was an eligible administrative cost. By regulation, the Borrower could pay the CDC Closing Fee out of the proceeds of a 504 loan up to a maximum of $2,500. Since then, SBA has not recognized the CDC Closing Fee as an eligible administrative cost, and Borrowers must reimburse the CDC out of their own resources.

CDCs, Borrowers, and SBA share a common interest in minimizing legal fees to reduce costs to the Borrower. During the period before March 1, 1996, some in the 504 industry felt that SBA's regulation influenced the market rate for legal fees and other miscellaneous expenses associated with 504 Closings. They argued that attorney fees charged CDCs by CDC counsel were maintained at an artificially high level because the CDC Closing Fee was an eligible administrative cost financed out of the loan proceeds. They further argued that the reference in the regulation to a $2,500 limitation established a minimum base for the attorney fees.

SBA received 15 comments concerning these issues during the comment period following publication of its proposed rule changes in 60 FR 64356 on December 15, 1995. Most of them supported retaining the CDC Closing Fee as an eligible administrative cost. SBA believed, however, that legal expenses associated with the 504 Closing should be determined by the competitive marketplace and that there was some merit in the contention that the eligibility of the CDC Closing Fee as an administrative cost resulted in higher attorney fees. Despite the opposition expressed in most of the comments received, SBA decided to exclude the

CDC Closing Fee from eligible administrative costs and eliminated the $2,500 reference in its final rule published in 61 FR 3226, dated January 31, 1996.

SBA expected that these regulatory changes would reduce attorney fees. It also anticipated downward competitive pressure on such fees as more attorneys became designated to perform expedited 504 loan closings.

CDCs have been closing loans under the new rules for nearly 2 years. Approximately 140 attorneys are now enrolled as designated closing attorneys, and more than 50 percent of all 504 loans close under the expedited process. Yet fees associated with 504 closings charged CDCs by CDC counsel do not appear to have decreased.

Legislation enacted since the rule became effective has imposed additional fees upon Borrowers. Industry representatives indicate that the combination of increased fees and the inability to pay the CDC Closing Fee out of the Debenture proceeds has reduced access by small businesses to the 504 Program. Because the fees now are not eligible administrative costs, they must be paid by the Borrowers from other resources. Not all Borrowers can afford to pay these costs without use of the Debenture proceeds.

In an effort to assist its small business customers, SBA is proposing to make CDC Closing Fees eligible administrative costs up to a maximum of $2,500 per Closing.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Last year, SBA made approximately four thousand 504 loans. Currently there are approximately 300 CDCs, less than 15 of which are Premier CDCs. While the 1997 legislation removes the limit on the number of CDCs that can become Premier CDCs, SBA anticipates that, at most, only half of the CDCs would be affected by this rule. Thus the changes to the Program in the proposed rule, including the changes to the Closing Fee provisions and the changes implementing P.L. 104–208 and P.L. 105–135 will not constitute a significant impact on a substantial number of small businesses.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 120, chapter I, title 13, Code of Federal Regulations as follows:

PART 120—BUSINESS LOANS

1. The authority citation for Part 120 would continue to read as follows:

Authority: 15 U.S.C. 634 (b)(6) and 636(a) and (h).

2. Amend § 120.111 by revising the first sentence to read as follows:

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to one or more Operating Companies for the conduct of the Operating Company's business (references to one Operating Company include multiple Operating Companies, as applicable). * * *

* * * * *

3. Amend § 120.131(a) by adding a new sentence at the end to read as follows:

§ 120.131 Leasing part of new construction or existing building to another business.

(a) * * * (See § 120.870(c) for an exception with respect to 504 Projects.)

* * * * *

4. Amend § 120.801 by revising the first sentence of paragraph (a) and paragraph (c)(3) to read as follows:

§ 120.801 How is a 504 Project financed?

(a) One or more small businesses may apply for 504 financing through a CDC serving the area in which the 504 Project is located. * * *

* * * * *

(c) * * *

(3) *Third Party Loan* comprising the balance of the financing, collateralized by a first lien on the Project property (see section 120.920).

* * * * *

5. Amend § 120.802 by revising the definition of Third Party Loan to read as follows:

§ 120.802 Definitions.

* * * * *

Third Party Loan is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source that is part of the Project financing.

* * * * *

6. Amend § 120.862 by revising the parenthetical clause in paragraph (b)(3) and by revising paragraph (b)(7) to read as follows:

§ 120.862 Other economic development objectives.

* * * * *

(b) Public Policy goals: * * *

(3) * * * (See § 124.105(b) for minority groups who qualify for this description.);

* * * * *

(7) Assisting businesses in or moving to areas affected by Federal budget reductions, including base closings, either because of the loss of Federal contracts in the area or the reduction in revenues in the area due to a decreased Federal presence.

7. Amend § 120.870 by revising paragraph (a)(1) and adding a new paragraph (c) to read as follows:

§ 120.870 Leasing Project Property.

(a) * * *

(1) The remaining term of the lease, including options to renew, exercisable solely by the lessee, equals or exceeds the term of the Debenture;

* * * * *

(c) If the Project is for new construction, a Borrower may lease long term no more than 20 percent of the rentable property in the Project to one or more tenants if the Borrower immediately occupies not less than 60 percent of the rentable property with plans to occupy the remaining 20 percent within 3 years.

8. Revise § 120.883 to read as follows:

§ 120.883 Eligible administrative costs for 504 loans.

The following administrative costs are not part of Project costs, but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

(a) SBA guarantee fee;

(b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);

(c) CDC processing fee;

(d) Borrower's out-of-pocket costs associated with the closing of the 504 loan (other than legal fees);

(e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of $2,500; and

(f) Underwriters' fee.

9. Revise § 120.910 to read as follows:

§ 120.910 How much must the Borrower contribute?

(a) The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property), in an amount equal to the following percentage of the Project cost, exclusive of administrative cost:

(1) At least 15 percent, if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has been in operation for 2 years or less;

(2) At least 15 percent, if the Project involves the acquisition, construction, conversion, or expansion of a limited or single purpose building or structure;

(3) At least 20 percent, if the Project involves both of the conditions described in paragraphs (a) (1) and (2) of this section; or

(4) At least 10 percent, in all other circumstances.

(b) The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

10. Revise § 120.920 to read as follows:

§ 120.920 Required participation by the Third Party Lender.

(a) *Amount of Third Party Loans.* A Project financing must include one or more Third Party Loans totaling at least as much as the 504 loan. However, the Third Party Loans must total at least 50 percent of the total cost of the Project if:

(1) The Borrower (or Operating Company, if the Borrower is an Eligible Passive Company) has been in operation for 2 years or less, or

(2) The Project is for the acquisition, construction, conversion, or expansion of a limited or single purpose asset.

(b) *Third Party Loan collateral.* Third Party Loans usually are collateralized by a first lien on the Project property. They cannot be guaranteed by SBA.

11. In § 120.921 revise and redesignate paragraphs (d) and (e) as paragraphs (e) and (f) and add a new paragraph (d) to read as follows:

§ 120.921 Terms of Third Party Loans.

* * * * *

(d) *Future advances.* The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect amounts due the Third Party Loan notes, maintain collateral, and protect the Third Party Lender's lien position on the Third Party Loan.

(e) *Subordination.* The Third Party Lender's lien will be subordinate to the CDC/SBA lien as to any prepayment penalties, late fees, and increased default interest due under the Third Party Loan.

(f) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate set forth in paragraph (b) of this section. With respect to any Project approved after September 30, 1996, SBA will only pay the interest rate on the note in effect prior to the date of the Borrower's default.

12. Amend § 120.971 by revising the first sentence of paragraph (a)(2) and paragraphs (a)(3), and (d)(2) to read as follows:

§ 120.971 Allowable fees paid by Borrower.

(a) * * *

(2) *Closing fee.* The CDC may charge a reasonable closing fee in an amount sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). * * *

(3) *Servicing fee.* The CDC will charge a monthly servicing fee of not less than 0.625 percent per annum nor more than 2 percent per annum on the unpaid balance of the loan as determined at 5-year anniversary intervals. A servicing fee in excess of 1.5 percent in a Rural Area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The servicing fee may be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made.

* * * * *

(d) * * *

(2) For loans approved by SBA after September 30, 1996, SBA charges a fee of not more than 0.9375 percent per annum on the unpaid principal balance of the loan as determined at 5-year anniversary intervals.

* * * * *

13. In part 120 redesignate § 120.972 as § 120.973, and add a new § 120.972 to read as follows:

§ 120.972 Third Party Lender participation fee and Development company fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee from the Third Party Lender equal to 50 basis points on its total participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the project.

(b) *Development company fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the debenture. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrowers.

Dated: April 28, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–11910 Filed 5–4–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–148–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models A200CT, B200, B200C, B200CT, 200T/B200T, 300, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) Models A200CT, B200, B200C, B200CT, 200T/B200T, 300, B300, and B300C airplanes. The proposed action would require replacing the main landing gear left and right actuator clevis assembly. Reports of main landing gear failure on two of the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the actuator clevis assembly in the main landing gear, which could result in loss