restriction resulted in the smaller price decline estimate of $1.37 per pound.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to each of the increases. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached each of its recommendations to increase the salable quantity and allotment percentage for Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increases, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 21, 2007, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch and Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2007; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the 2006–2007 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.225, paragraph (a) and (b) are revised to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

§ 985.225 Salable quantities and allotment percentages—2006–2007 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 2,984,817 pounds and an allotment percentage of 153 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,205,208 pounds and an allotment percentage of 55 percent.

Dated: April 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1831 Filed 4–10–07; 1:10 pm]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE83

Liquidation and Debt Collection Activities

AGENCY: U.S. Small Business Administration (SBA or Agency).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to guaranteed loan and debenture liquidation and litigation found in rules governing the 7(a) Guaranteed Loan program and the Certified Development Company program. It codifies statutory language contained in the Small Business Investment Act, and revises the Agency's guidance on the proper liquidation and litigation of defaulted SBA guaranteed loans and debentures. These rules will give program participants authority to liquidate small business loans in a more timely fashion, and creates a process for identifying loans and debentures that could be disposed of in an asset sale conducted or overseen by SBA.

DATES: This rule is effective May 14, 2007.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Loan Programs Division, Office of Financial Assistance, (202) 205–7505, or by e-mail at *james.hammersley@sba.gov.*

SUPPLEMENTARY INFORMATION: On November 3, 2005, SBA published proposed rules to revise and update regulations on liquidating and litigating SBA 7(a) and 504 loans (70 FR 66800, November 3, 2005). The initial period for public comment ended on January 6, 2006, but was reopened for additional comments on January 25, 2006. The extended comment period ended on February 24, 2006.

Comment Summary

In total, SBA received 138 responses to the proposed regulations. Of these,

133 were submitted by SBA lender participants (''Lenders'') or Certified Development Company (''CDC'') principals, two of the comments were submitted by Lender and CDC trade association representatives, two were submitted by third-party service providers, and one was submitted by the Chairman of the House Committee for Small Business.

One hundred eleven of the 138 respondents were generally opposed to portions of the proposed regulations. Lenders were virtually unanimous in expressing their objection to SBA requiring them to complete the liquidation of all collateral securing a defaulted SBA loan before requesting SBA's purchase of its guaranteed portion. Lenders and CDCs also objected to the proposed rule provision under which Lenders and CDCs would have deemed to have given their consent, for loans made on or after the effective date that later go into default, to sell the defaulted loans in an asset sale. CDC commenters generally did not object to the principles behind having CDCs liquidate defaulted loans, but believed the rules lacked sufficient detail on their implementation for the lending community. The most prevalent comment focused on the need to compensate CDCs that perform liquidation and litigation activities.

Section-by-Section Analysis of Comments

Five general comments were received in relation to the proposed definition of an Authorized CDC Liquidator to be included in § 120.10. One comment expressed a view that the definition as written is too restrictive and that the liquidation function should be a fundamental requirement for all CDC participants. SBA has decided to retain the definition as proposed to provide CDCs and SBA with the flexibility to obtain necessary expertise in liquidations.

Seven comments were submitted opposing the proposed definition in § 120.10 for Loan Program Requirements. The comments centered on concerns regarding program compliance and potential denial of an SBA guarantee resulting from interpretations of outdated standard operating procedures (''SOPs''), policy notices, and other loan documentation forms provided by SBA. Another commenter stated that including SOPs, Notices and Forms in the definition raises these items for enforcement purposes to a status equivalent to regulations without granting participants adequate notice and the right to submit comments. A third comment challenges the enforceability of Agency SOPs and notices in legal actions before a court of law, with the lender remaining unconvinced that lender compliance with respect to dynamic changes in SBA procedures or policy would be enforceable. A final commenter felt the proposed definitions could be another way to reinforce that Lenders should rely solely on written instruction and not expect direct assistance from SBA representatives.

SBA acknowledges the dynamic nature of SOPs, Agency Notices and other policy and procedural guidelines. However, SBA's proposed definition is not designed to create conditions for releasing itself of the obligation to purchase its guaranteed portion of 7(a) loans. The definition was drafted to build awareness of all the related material the Agency provides to participants in SBA's loan programs. SOPs and Agency Notices are released by SBA to aid lenders in understanding current policy, procedures, and processes. These documents can be issued only after internal Agency clearance, including reviews by offices engaged in measuring Agency risk and compliance with Congressional intent. Forms and other documents are also subject to periodic Office of Management and Budget (''OMB'') review to measure regulatory burden and the impact on small businesses. These reviews ensure that SBA is reasonable in its program delivery. SBA also believes that by incorporating these additional elements in the definition, it will prompt more attention by program participants to stay abreast of changing program requirements, including those brought about through the Agency's periodic reassessment of its loan programs.

In addition, this definition merely codifies current law and practice in a more clearly stated form. CDCs are already held to the substance of this definition. Section 120.826, which was enacted through notice and comment rulemaking in 2003, states that CDCs ''must operate in accordance with all 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, debentures, and agreements between the CDC and SBA.''

Lenders are also already held to the substance of this definition. Lenders sign a Loan Guarantee Agreement which requires a lender to comply with SBA's ''rules and regulations.'' Section 120.524(a)(1) states that SBA may deny liability under a 7(a) loan if lender has failed to comply materially with ''any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization.'' The National 7(a) Loan Authorization Boilerplate (paragraph E) states that SBA's guarantee on each 7(a) loan is contingent upon the lender's compliance with current SOPs.

It is for these reasons that the proposed rule is therefore adopted as written.

Proposed § 120.180 revised the current § 120.180 to clarify that Loan Program Requirements in effect when a Lender or CDC undertook a specific action with respect to a given 7(a) or 504 loan will govern that action. The proposed rule makes use of the new term Loan Program Requirements in order to better specify the rules which govern an SBA loan financing transaction. No comments were received in reference to this rule, and thus the rule is adopted as final.

Proposed new § 120.181 clarifies that Lenders or CDCs and their contractors are independent contractors and that SBA is not responsible for their actions. Two comments in support and ten comments in opposition to this proposed regulation were received. Support was general in nature, with no specific reasons cited. Comments in opposition to the proposed regulation noted a CDC's past inability to represent SBA in legal proceedings, SBA legal staff coordination issues, and also raised the issue of the availability of liability insurance for firms engaged in liquidation and litigation activity. The matter of legal representation of the SBA's interest in CDC litigation is granted by Congress in § 510(c)(1)(B) of the Small Business Investment Act. Pursuant to the statute, CDCs are to litigate any matter related to the performance of liquidation and foreclosure functions in a reasonable and sound manner according to commercially accepted practices pursuant to a litigation plan approved in advance by SBA. The concern about coordination with SBA legal staff would be resolved through SBA's review and action on the liquidation and litigation plan provided by the CDC pursuant to revised § 120.540. The Agency is not aware of any lack of availability of liability insurance for CDCs since this has not been a problem with Lenders participating in the 7(a) program. The new rule is thus adopted as proposed.

Proposed new § 120.197 imposes a notification requirement to the SBA Office of Inspector General by all Lenders, CDCs, Borrowers and others when instances of fraud may have occurred. Twenty comments were received on this proposed regulation, three in support and 17 in opposition. One commenter who opposed the regulation stated that it appears to

extend beyond the scope and intent of this regulatory action, and suggested it be treated as a separate matter. Another opposing commenter echoed the sentiments of many in identifying this notification requirement as another Suspicious Activity Reporting System (''SARS'') requirement already required of federal depository institutions. A commenter qualified his support of the proposal, insisting that this requirement be enforced upon bank and non-bank lenders alike. A fourth comment opposed to the proposal focused on the Agency's pursuit of lenders unaware of a fraudulent action and whether the Lender, absent factual evidence, should have timely reported suspected fraud.

SBA has provided similar guidance in the past to Lenders, CDCs, and SBA personnel in program operating procedures. These guidelines were useful when SBA underwrote much of the 7(a) and 504 loan portfolio. With current loan activity, however, predominantly delivered through delegated authority processes such as the Preferred Lender Program (''PLP''), the Preferred Certified Lender Program (''PCLP''), and SBAExpress, the element of ensuring program integrity and a level of accountability shifts to the program participants. This new rule formalizes the reporting requirement into regulation for program participants. § 120.197 is retained as proposed.

Minor revisions to § 120.440 received no substantive comments and are therefore revised as proposed.

SBA received two comments in support of the revisions proposed for § 120.453. The proposed rule amends the heading and the existing regulation on PLP lender servicing, and directs the reader to revised subpart E for general instruction on SBA loan servicing responsibilities. SBA is adopting the revisions as proposed.

In the proposed rule, § 120.500 along with §§ 120.510–120.513 were to be deleted. Additionally, a revision to the heading preceding this section was to be revised. Section 120.500 was a general introductory paragraph regarding general loan administration policies applicable to both loan servicing and loan liquidation. No comments were received and the section is deleted as proposed. No comments were received regarding the name change in the heading for Subpart E. The heading for this Subpart is now changed to read Servicing and Liquidation, and is adopted as proposed.

Section 120.510 pertains to the servicing of SBA direct loans and immediate participation loans under the 7(a) program. SBA no longer makes direct or immediate participation loans and received no comments on its proposed deletion. SBA deletes this section as proposed.

Section 120.511 identifies the Lender as the entity responsible for servicing SBA guaranteed loans, holding Loan Instruments, and accepting borrower payments of principal and interest. These responsibilities have been revised and incorporated into standards for loan servicing for Lenders in new § 120.536. No comments were received regarding this proposed deletion. The existing regulation is therefore deleted.

Existing § 120.512 describes Lender responsibilities for servicing and liquidating an SBA loan in the 7(a) program once SBA has purchased its guaranteed interest. This regulation requires Lenders with loans for which SBA has purchased the guaranteed portion to submit liquidation plans on each loan to SBA for approval. The regulation also provides SBA with the discretionary authority to service or liquidate these loans and to have Lenders assign to SBA the related Loan Instruments. Lender liquidation responsibilities for all SBA loans have been reformatted as standards set forth in new § 120.535. The requirement for submission of liquidation plans for 7(a) guaranteed loans has been eliminated except for loans processed as CLP loans, which, by statute, still require the submission of liquidation plans to SBA. Finally, discretionary authority for SBA to service and liquidate loans where it has purchased the guaranteed portion has been incorporated into new § 120.535(d). No comments were received, thus in recognition of the revisions, SBA is deleting the existing regulation in § 120.512.

Current § 120.513 outlines servicing actions requiring SBA's prior written consent. The proposed rule amends these requirements and promulgates the revised regulations under new § 120.536. SBA received no comments and is therefore deleting the existing regulation.

In § 120.520, SBA proposed to amend the heading for the section; reuse the existing subsection, and add two new subsections. Section 120.520(a) detailed SBA's proposal to require Lenders in the 7(a) program to liquidate all collateral securing a defaulted SBA guaranteed loan prior to requesting SBA purchase of its guaranteed portion. The requirement to liquidate collateral first would only apply to loans made on or after May 14, 2007, with loans made prior to the date subject to SBA guarantee purchase provisions in place at the time the loan was approved. SBA received 62 comment letters opposing this proposal as written. The primary objection centered on the adverse financial effects imposed on Lenders arising from delaying guarantee purchase until all collateral recoveries have been exhausted. One commenter said Lenders will be forced to carry the SBA portion as a non-performing asset, and that this will require greater regulatory capital reserves. Another commenter stated that it would be detrimental to a potential borrower (and the local economy) for SBA guaranteed loans not to be made not because of the lack of a government backed guarantee, but because of the time and cost that it takes to claim the guarantee.

SBA has considered the arguments presented by the commenters and seeks a reasonable alternative that improves the Agency's ability to manage its portfolio without hampering the Lenders' ability to participate in the 7(a) program. SBA notes the high volume of loan activity generated by its Lenders over the last five years and seeks to effectively manage the increased volume with the Agency's limited program resources. In modifying processes and procedures, SBA is adapting to the changing environment for small business lending and allowing lenders to perform more lending functions on SBA's behalf. Nonetheless, streamlined delivery methods and SBA's greater reliance on its lending partners has not lessened the Agency's attention to its fiscal management responsibilities for its loan programs and to the public.

In recognition of the adverse financial impact that could be experienced by Lenders, SBA has decided to allow Lenders to request purchase without the full disposition of all related loan collateral. Since comments objecting to a full liquidation prior to SBA purchase cited the work effort and legal restrictions associated with real property collateral disposition, SBA will allow real property to be liquidated subsequent to purchase, but will still require all chattels (business personal property) to be liquidated prior to purchase. To ensure consistent interpretation with existing regulations, SBA will also allow Lenders to request purchase on a defaulted loan when the small business borrower files for bankruptcy protection and a period of at least 60 days has elapsed since the last full installment payment. SBA believes that a nine month period following purchase, after which Lenders will be deemed to have consented to SBA's sale of a purchased loan pursuant to new § 120.546, will generally provide Lenders with a reasonable period of time for addressing the activity needed to liquidate most remaining collateral in an orderly manner. Also, Lenders will

continue to have the option to delay submitting a purchase request if they desire to liquidate real estate collateral prior to an SBA loan sale. Section 120.520(a) is revised to incorporate these changes resulting from the comments received.

Proposed new § 120.520(b) codified existing SBA policy regarding documentation requirements sufficient for SBA to determine if purchase of the guarantee is warranted. One commenter objected to the rule stating that the determination of what is sufficient for SBA is somewhat vague, and that the regulation should direct the Lender to particular Agency procedures or instruction guides. SBA noted that the proposed rule referred to new § 120.524 as SBA's justification for determining if purchase is warranted and that this regulation included the Lenders' requirement to comply materially with any Loan Program Requirements including statutes, regulations, SOPs, SBA notices and applicable forms. SBA believes this level of instruction is sufficient for program participants. The regulation is therefore adopted as proposed.

New § 120.520(c) clarifies SBA policy that a Lender's failure to perform all necessary servicing and liquidation actions subsequent to SBA's purchase of the guaranteed portion of a loan from the secondary market may lead to initiation of action to recover money SBA paid to the Registered Holder. Thirty-five comments were received all opposing the proposed regulation. Some felt the action of Lenders to purchase the guaranteed portion of their loans from the secondary market would threaten the true sale nature of other guaranteed portions sold to Registered Holders. SBA believes this premise to be inaccurate inasmuch as SBA lenders have always had the option to purchase defaulted loans. SBA does not pressure lenders to purchase loans nor is it necessary for a lender to purchase loans to protect its reputation in the industry. SBA believes the comments mask the real issue of SBA's ability to seek out documentation in a post-purchase review, and the remedies available to the Agency if such documentation is not provided by Lenders that have already received payment of the guaranteed portion.

The regulation is a codification of a long standing policy where SBA has sought repayment from Lenders that did not properly process, close, and service loans sold in the secondary market. This regulation sets out the requirement that a Lender provide a loan status report as well as documentation that SBA deems necessary to make a determination that the loan was processed, closed, and serviced in compliance with SBA rules and regulations.

Therefore, we conclude that codification of this long-standing policy will have no effect on the true sale nature of secondary market transactions.

Lenders have always been required to provide documentation needed by the SBA to justify the purchase. As indicated, this rule merely codifies existing Lender responsibilities to assist SBA in providing the documentation requested by SBA to affirm that its purchase of the guaranteed portion was based on the Lender's compliance with program requirements. To reinforce SBA's need to provide timely submission of documents, the rule alerts Lenders that SBA will consider the Lender's actions in conjunction with their continued participation in the Secondary Market. SBA retains its rights to suspend or revoke Secondary Market participation if it feels the Lender is not in full compliance with this regulation. Accordingly, SBA has added a sentence to point out the importance of post-purchase document submission and the rule is otherwise adopted as proposed.

No substantive comments were received regarding new rule § 120.520(d) relating to SBA's retention of rights of recovery in connection with the new rule. The rule is adopted as proposed.

Revised § 120.522(b)(1) seeks to limit SBA's obligation to pay accrued interest on loans requested for guarantee purchase. This limit applies to loans made on or after October 1, 2006, and will limit interest purchased to be no more than 120 days. SBA received 42 comments opposing the proposed rule. Commenters stated that the time limit would unnecessarily force ill-advised liquidations instead of accommodating workouts with borrowers. SBA encourages its Lenders to continue to work with SBA borrowers through periods of temporary difficulty and to provide short-term deferments or other assistance in appropriate situations. However, this limitation on interest to be paid is intended to help streamline and standardize SBA's purchase review process for the benefit of its participant Lenders, and already is a part of program requirements for SBAExpress loans. For other types of loans under existing regulations, a Lender may receive payment from SBA for more than 120 days interest only if the Lender submits a complete purchase request to SBA within 120 days of the earliest uncured payment default. Lenders that have submitted complete purchase packages within 120 days of default have historically involved a small percentage of loans. Determinations as to what may constitute complete purchase requests in specific situations have unnecessarily delayed overall purchase processing to the detriment of Lenders as a whole. Accordingly, SBA is adopting the 120 day interest limitation as set forth in the proposed regulation, and is deleting existing § 120.522(d) as proposed.

Revised § 120.524(a)(1) amends the current provision in the regulations and codifies SBA policy that when a Lender is not in material compliance with the Loan Program Requirements as defined in § 120.10, SBA at its discretion may be released from liability under a loan guarantee. Seventeen comments were received in opposition to this proposed revision. One commenter said that this rule would discourage Lenders from taking collateral that is difficult to perfect, and that a denial of liability by the Agency for lender noncompliance absent a verifiable loss would decrease program participation. Another comment stated that wide gaps in interpretation will harm the liquidation process and that this proposed rule removes any rational flexibility. Another commenter felt the rule as drafted is far too broad and is not fair to the participants. SBA has thoroughly considered the comments, but has decided to retain the rule with no changes. The rule does nothing more than incorporate the new definition of Loan Program Requirements and thereby clarifies the intent of the existing regulation while making clear to Lenders what sources of authority will be applied. The view that SBA would look to use this revision to avail itself of its right to deny liability is strikingly narrow and inconsistent with the approach to guarantee purchases applied by the Agency. SBA continually strives for uniformity in its purchase processes, employing supervisory and legal reviews, and quality assurance assessments in the Agency's purchase centers. These factors have reduced the number of complaints received from Lenders regarding varied interpretations of SBA liquidation and guarantee purchase policy. SBA does not anticipate a significant change in the number of denials of liability annually as a result of this rule. The rule thus is retained as proposed.

Revised § 120.524(a)(8) proposed extending the time within which a Lender can request guarantee purchase to 180 days following the maturity date on the SBA loan, or the end of all liquidation and debt collection activities. SBA received one comment in support of this proposal and is adopting the rule as proposed.

SBA received no comments on proposed § 120.524(b) and (d) and is adopting them as proposed.

Proposed rule § 120.535 outlined the standards for the servicing and liquidation of SBA loans. Fewer than six comments were received for each subparagraph, all in opposition to some section of the rule. One commenter objected to the unilateral authority of the SBA to take over servicing and liquidation from a Lender; however, this authority exists already in the current regulations and also in the SBA Form 750, Loan Guarantee Agreement. Upon consideration of the comments provided, SBA adopts the rule as proposed with an additional sentence at the end of each subparagraph emphasizing that the standard applies to all Lenders and CDCs irrespective of whether or not they normally manage a non-SBA portfolio.

There were no substantial comments received in reference to proposed new § 120.536 and the rule is adopted as proposed.

The Proposed rule re-designated §1A120.540 as § 120.545 and added a new § 120.540 devoted to SBA loan liquidation. Amended § 120.540(a) described SBA's oversight responsibilities for monitoring efforts by Lenders and Authorized CDCs to dispose of collateral. No comments were received opposing the rule by which SBA seeks to clarify Lender liquidation reporting responsibilities. By statute, all SBA loans made through the CLP delivery process by Lenders authorized to make CLP loans require liquidation plans to be submitted to SBA for defaulted loans. This requirement is different from the liquidation wrap-up report required of all Lenders for their completed SBA defaulted loan recoveries. The rule therefore is adopted as proposed.

Proposed § 120.540(b) specified the requirement for submission of written liquidation plans for prior SBA approval. As proposed, all Authorized CDC Liquidators, and Lenders that have made an SBA loan under the CLP delivery method, are required to submit a written liquidation plan to SBA for prior approval. Twelve comments were received in opposition to this proposed rule. The focus of the commenters' objections centered on PLP lender liquidation activities and the need for SBA to exempt the PLP lender from this rule. The rule, however, pertains to loans approved under the CLP delivery method irrespective of the lender's designation. As mentioned above, CLP loan liquidations require the statutory submission of a liquidation plan for prior written approval. SBA is unable to change this practice without a change in legislation. SBA retains the text of the rule as proposed.

Proposed § 120.540(c) provided guidance on litigation involving SBA loans. Eighteen comments were received on this proposed rule, one in support and 17 in opposition. Comments in opposition tended to focus on the number of legal matters contained in the definition of Non-Routine litigation and its limit on costs and expenses of $10,000. Commenters acknowledged SBA's proposal to increase the dollar amount of legal fees considered to be for Routine Litigation, however, some comments sought an even higher threshold amount. SBA has reviewed the comments, but has retained the rule as proposed. It has been the Agency's experience that most legal matters in excess of $10,000 are in fact, non-routine and rarely involve actions that are not in dispute.

No substantive comments were received regarding amended § 120.540(d) regarding SBA's ability to take over debt collection litigation of a 7(a) or 504 loan and thus the regulation is adopted as written.

In amended § 120.540(e), SBA provided a process for Lenders and CDCs to amend previous liquidation and litigation plans. One comment opposed this proposed amendment stating that the litigation rules and procedures as revised by the proposal will continue to increase the need for SBA to review and approve litigation plans on a repeated basis during the course of a matter [which] will cause significant delays. SBA agrees with the suggestion that the revised regulations are likely to increase the work involving liquidation and litigation. SBA's experience, however, has been that in many non-routine litigation cases, the increase in fees was not cost effective to the Agency when compared with actual recoveries. This proposed rule therefore is necessary to protect the Agency and preserve taxpayer funds arising from liquidation recoveries. The rule is adopted with no changes.

No comments were received regarding amended §§ 120.540(f) and (g). Amended § 120.540(f) provided SBA with a waiver of requirements in amended paragraphs (b),(c) and (e) of this section in cases requiring immediate actions and decisions. New § 120.540(g) provided an appeals process for Lenders with CLP loans and for Authorized CDC Liquidators when they disagreed with a decision by SBA regarding a proposed liquidation plan. The rules are retained as proposed.

New § 120.541(a) provided timelines for SBA approval of liquidation and litigation plans submitted by Lenders and CDCs. This section also states the timelines for actions specified in new § 120.536(b)(5) and § 120.536(b)(6) which are established by statute with respect to CDCs. These timelines differ from the ten day timeline found in new § 120.541(c) which is mandated by § 7(a)(19) of the Small Business Act. SBA is making minor technical corrections to the cross-references stated in the proposed rules. One commenter objected to the proposed new rule citing the potential impact on recoveries that may result from CDCs waiting for a 15-day approval from SBA, and the potential for these approval periods to be extended indefinitely. The commenter is encouraged to review statutory requirements placed on SBA if it is unable to respond within 15 business days. § 510(c)(2)(E) of the Small Business Investment Act requires SBA to provide a written notice of no decision stating the reasons for the SBA's inability to act on the plan or request, along with an estimate of the additional time needed by SBA to act on the plan or request, and the nature of any additional information or documentation impeding the SBA from acting on the plan or request. Also, SBA reporting requirements to Congress as mandated in § 510(e)(2)(E) create a quality control check on SBA's progress in reaching an expedient decision to Lenders and CDCs. Thus, the rule is adopted as proposed.

New § 120.542 regulated the payment of legal fees and other expenses in conjunction with defaulted SBA loans. Thiry-four comments were received regarding this new rule, one in support and 33 in opposition. Twenty-eight of the 33 comments submitted in opposition are from CDC principals, or the industry's trade association representative. In the proposed rule, SBA had specifically requested comments from CDCs on this issue. Commenters objected to CDCs assuming risk and responsibilities for liquidation and litigation activity, yet not being adequately compensated for their additional involvement. One commenter could not understand why a CDC would request these new responsibilities under the proposed compensation scenario. Another commenter recommended that SBA define by task the items that it believes should be routine and under the $5,000 cap. A third commenter felt that in applying § 120.542(a)(2) of the proposed rule, conflicts may occur on whether SBA specifically directed CDCs to take action which could lead to a violation under proposed rule § 120.542 (b)(2). A fourth commenter felt that SBA

should compensate CDCs for the additional expenses associated with locating and selecting liability insurance protection for the work it will assume on SBA's behalf.

SBA has evaluated the comments provided and agrees that some form of compensation is warranted for requiring a CDC to incorporate the liquidation function into its CDC's practice. Commenters supported the position taken by the CDC trade association that involves compensation as a percentage of proceeds received from recoveries subject to a cap of $25,000. Having fees derived from recoveries and not from the unpaid principal balance on a loan is responsive to SBA's policy objective that liquidation fees paid to CDCs should be based on work performed in the recovery process. The suggestion of a monetary cap, while noteworthy in concept, would be counterproductive in practice. Authorized CDC liquidators could limit their liquidation activities to the $25,000 threshold, and would lose incentive to seek recoveries beyond this discrete limit. With much of a liquidator's upfront time and effort incurred irrespective of the loan size, SBA sees a real benefit to maximizing recoveries for Authorized CDC liquidators as well as the SBA. The Agency, however, recognizes a time element to liquidation in which, as time goes on, the additional recovery potential is overshadowed by a decrease in the value of the underlying asset. In an effort to retain a real incentive to liquidators while limiting the practice of avoiding final disposition of a collateral asset, SBA has agreed to allow Authorized CDC liquidators to use net recoveries on the defaulted CDC debenture as a base unit for computing a fee for liquidation activity. SBA initially will allow a percentage of net recoveries not to exceed 10%, with the fee dropping by at least 50% after the first $25,000 in fee income is realized. SBA will evaluate these fee percentages from time to time, and provide notice of a change in permissible fee percentages when appropriate through notice published in the **Federal Register**. SBA would also look for all liquidation activity to be completed within nine months of SBA's purchase of the CDC debenture. This would amount to eleven months after the date of default, and would conform to similar timetables for Lenders liquidating real property in the 7(a) program.

To accomplish this change, SBA has inserted a new § 120.542(c). SBA has re-designated proposed § 120.542(c) and § 120.542(d) as § 120.542(d) and § 120.542(e) and implements the section as proposed. The new § 120.542(c) would provide CDCs with guidance on the form of compensation acceptable to SBA for CDC loan liquidation activity. This would not include SBA compensating the CDC for liability insurance coverage. SBA views that element as a normal cost of doing business and provides no similar relief to Lenders in the 7(a) program.

The issue of legal fee compensation for work performed by Authorized CDC Liquidators on behalf of the Agency involves several factors. SBA welcomes the use of qualified counsel to address legal matters affecting the Agency's ultimate recovery. SBA is not, however, in a position to provide Authorized CDC Liquidators with unbridled authority to incur substantial legal fees. SBA needs to be able to weigh prospective recovery options against the costs of securing those recoveries and only approve those actions which best serve the needs of the Agency. Since SBA purchases the full amount of the defaulted CDC debenture, SBA is the sole financial beneficiary of the recovery efforts. Consequently SBA is unwilling to modify the proposed rules regarding payment by SBA of legal fees, and adopts §§ 120.542(a) and (b) as proposed.

New § 120.546 proposed conditions under which SBA would have the opportunity to include defaulted SBA loans in an asset sale process. SBA received one comment in support and 31 comments in opposition to the proposed rule. Commenters objected to new § 120.546(b)(1)(i) which provides for implied consent to an asset sale if Lenders request SBA to purchase the guaranteed portion of a loan directly from the Registered Holder in a secondary market transaction. The option to purchase a loan from the secondary market investor, which exists already, would be the only way for a Lender to avoid this outcome. Many small Lenders objected to this option, noting that the capital needed to purchase the guaranteed portion from the secondary market is comprised of funds that otherwise would have been available for additional small business lending. These same Lenders added that the increased level of non-performing assets would have detrimental capital consequences and would serve as the impetus for leaving the program. Other commenters stated that forced asset sales inevitably cause lenders to participate with a third party, not the SBA, and greatly reduces flexibility in reaching a workout with a small business. Comments also focused on whether these purchases from the secondary market jeopardize the accounting of these transactions as true sales, and if Lenders would have to retain the guaranteed portion of the loan on their books even if sold in a secondary market transaction.

SBA has evaluated the comments and has modified its proposal in this final rule with respect to 7(a) loans sold on the Secondary Market. SBA recognizes the possibility that under some circumstances recoveries from sales of collateral and foreclosure proceedings arranged prior to SBA's purchase of the loan from the Registered Holder might be higher than recoveries from a sale of that loan in an asset sale. In the final rule, SBA retains the provision that deems the Lender to have consented to an asset sale for loans approved on or after the effective date of this regulation for which the Lender subsequently sells the gurantee portions in the secondary market that later default and are purchased by SBA from the Registered Holder. SBA, however, adds a new subparagraph which gives Lenders the option, regardless of the fact that they already are deemed to have consented to the asset sale, to request SBA withhold the loan from such a sale based on a pending sale of collateral or the existence of an existing foreclosure proceeding. The Lender will have 15 business days from the date of SBA's purchase to submit such a request. Liquidation actions contemplated but not underway at the time of SBA's purchase will not be sufficient justification for withholding a loan from inclusion in an asset sale. SBA will consider the Lender's request and, in SBA's sole discretion, SBA may provide the Lender with limited additional time to complete loan restructuring and/or liquidation activities.

SBA also revises § 120.546(b)(1) by adding two additional subparagraphs one to include defaulted SBA loans where SBA has purchased its guaranteed portion from the Lender and nine months have elapsed from the date of SBA's purchase, and the other to give Lenders the option of giving written consent to an asset sale for those Lenders that determine this form of asset disposition to be in their best interest.

Regardless of the circumstances leading up to an asset sale, the Lender is not released from its obligations to continue to properly service and liquidate the loan up to the point the loan is transferred in an asset sale. A new subparagraph (b)(4) has been added to the final rule to this effect. Finally, Lenders that wish to pursue additional recovery on loans after the nine-month period subsequent to purchase always have the option to repay the guaranty purchase amount disbursed by SBA,

and release SBA from further participation in the loan.

New § 120.546(c)(1) extends similar guidance on the sale of defaulted PCLP Loans. Since SBA purchases the full amount of the defaulted debenture, the rule does not require PCLP CDC consent. Thirteen comments were received, all in opposition to the regulation. One commenter stated that since PCLP CDCs have reserves established for loan losses, they should have some say in the decision to initiate an asset sale on a defaulted CDC loan. SBA's loss exposure in a defaulted CDC debenture is larger than that of the PCLP CDC. Therefore, the Agency believes it is in the SBA's best interest to take control of the disposition of the defaulted asset. In those instances where a PCLP CDC can demonstrate to SBA's satisfaction that an asset sale should be withheld in favor of an imminent liquidation event, SBA may further examine its avenues for recovery. Notwithstanding these circumstances, SBA will determine the course of disposition for the defaulted debenture. The regulation is therefore adopted without change.

New § 120.546(c)(2) grants SBA, upon its purchase of a Debenture, and in its sole discretion, the right to sell the defaulted SBA loan in an asset sale. Thirteen comments objecting to this proposed rule were received. The comments centered on the perceived loss of a local presence to coordinate an orderly liquidation of the loan and the diminution of value that would result from an SBA asset sale. However, SBA may solicit from the CDC that originated a particular loan the CDC's views concerning how to best maximize recovery from the loan with regard to the timing of including that loan in an asset sale. SBA will retain the provision in the final rule granting the Agency the authority, in its sole discretion, to sell a defaulted 504 loan in an asset sale.

Amended § 120.826 revises the basic requirements for operating a CDC to include, if authorized by SBA, liquidating and litigating 504 loans. SBA received one comment in support of the regulation and nine opposed to the proposal. Those opposed to the proposed revision cite a lack of preparedness, training and source of income for CDCs to perform these functions. One commenter felt that the agency must issue more specific Loan Program Requirements for CDCs before attempting to mandate that CDCs adhere to what are now somewhat general standards. Another stated that since there are published guidelines for liquidation, SBA should provide CDCs with a litigation plan format for use in submitting such plans. A small CDC acknowledged that it does not have the staff, expertise or funds to properly maintain litigation and liquidation functions, stating that if the CDC were to be forced to pay for the liquidation procedure out of pocket without compensation from the SBA, it would cause serious hardship for the CDC.

Much of the revised text in the regulation incorporates the Loan Program Requirements definition discussed above and the authorization of CDC liquidators. Commenters are concerned that some of the identified source documents are outdated and may lead to inadvertent confusion with CDCs attempting to assume liquidation and litigation activities. SBA is well aware of the need for CDC training and will work with the industry to develop comprehensive course materials to provide a baseline competency level. SBA legal staff likewise will assist in the development of training materials and reporting requirements to SBA. This support will help those CDCs that recognize the importance of their contribution to this exercise and give each CDC an opportunity to comply with this regulation. As noted above in the discussion of § 120.546, SBA has revised the rule to allow for compensation in some instances. In all other respects, SBA will retain the regulation as proposed.

Revised §§ 120.841, 120.845, and 120.846 were revised to make minor changes to incorporate the use of the Loan Program Requirements definition in the qualification for ALP and PCLP status. No substantive comments were received and the regulations are adopted as proposed.

Amended § 120.848 revised subparagraphs (a) and (f) to incorporate the use of the Loan Program Requirements definition and to cross-reference this regulation with the servicing regulations now contained in Subpart E. With just two comments received among the 138 respondents over the expanded 60 day review period, SBA adopts the regulation as proposed.

Section 120.854(a)(2) was amended in the proposed rule to identify material non-compliance with any Loan Program Requirement as grounds for enforcement action against a CDC. SBA received a number of general comments opposing this regulation on the grounds that the statement is too vague, open to interpretation, and needs clarification. The revised paragraph proposed is only a technical change in the wording of what is already established as the determinants for enforcement actions against a CDC. Thus, the regulation is adopted as proposed.

Amended § 120.970(a) was a minor revision proposed to incorporate the use of the Loan Program Requirements in the general subparagraph and to cross-reference this regulation with servicing regulations now contained in Subpart E. SBA received no substantive comments on this revision and adopts the text in the final rule.

New § 120.975 identified the CDC entities that are eligible to become Authorized CDC Liquidators. Section 120.975(a) covered those requirements for PCLP CDCs to be designated Authorized CDC Liquidators. Five comments were received in opposition to the proposed regulation, two were received in support. One commenter objecting to the proposed regulation stated that there is no rationale for requiring them to handle non-PCLP liquidation cases just because they are involved in the PCLP program. Another commenter said that all CDCs, not just PCLP CDCs, should be engaged in 504 loan liquidation and litigation either directly with qualified staff, or by agreement with a qualified third-party provider acceptable to SBA. Those commenters in support of the proposal have the existing capability to perform the functions and simply request that the compensation be reflective of the effort involved in the exercise.

In proposing the regulation, SBA adhered to the provisions of § 510(b)(1)(ii) of the Small Business Investment Act (''the SBI Act''). That statute specifies that all PCLP CDCs operating under § 508 of the SBI Act be deemed eligible, subject to having experienced staff or using an approved contractor. The statute does not limit PCLP CDCs to liquidating and litigating only PCLP loans. The regulation conditions PCLP CDCs' authority to liquidate and litigate their non-PCLP loans by requiring the entity to meet one of two operational criteria. SBA believes most, if not all PCLP CDCs, would meet one of these two criteria and would be required to use their delegated authority to liquidate and handle debt collection litigation. Given the diversity of opinion on this proposal, and the decreased SBA staff devoted to 504 loan liquidation and litigation activity, SBA has decided to retain § 120.975(a) as proposed in the final rule.

New § 120.975(b) provided guidance on all other CDCs becoming Authorized CDC Liquidators. Eight comments were filed on this subparagraph, two in support and six in opposition to the regulation. Some of those objecting to the proposal stressed the limited resources they have for fulfilling this

function and the hardship it will likely cause. Others felt no need to promulgate separate qualification requirements because they support having all CDCs as Authorized CDC Liquidators. Once again, the criteria followed the language of the SBI Act, and thus are retained as proposed. SBA recognizes the concerns expressed by smaller CDCs and will work closely with industry leaders to ensure that training resources are available and to identify qualified third-party providers for those unable to staff these functions internally.

New § 120.975(c) added a legal counsel qualification requirement to ensure that SBA is aware of the parties engaged in debt collection litigation on behalf of the Agency. No meaningful comments were received regarding this requirement and the regulation is adopted as proposed.

New § 120.975(d) established the process for CDCs to make application for authority to liquidate and litigate. No substantive comments were received on this subparagraph and the regulation is adopted as proposed.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35).

Executive Order 12866

The Office of Management and Budget has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866 thus requiring Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Final Rule

The objective of the final rule is to clarify and make uniform SBA's existing regulations governing lenders participating in the 7(a) business loan program (Lenders) and Certified Development Companies (CDCs) that are performing loan servicing, liquidation and debt collection litigation. Parts of the rule have been drafted in response to a statutory directive arising from Pub. L. 106–554. Other parts of the final rule have been written as a codification of both longstanding Agency policy, and new direction in the area of liquidation and debt collection. The final rule will promote better understanding of Agency requirements by Lenders and CDCs, and improve oversight and management by SBA of Lender and CDC liquidation and debt collection litigation.

B. Baseline Costs of Existing Regulatory Framework

SBA 7(a) loan programs presently require Lenders to submit liquidation plans for most defaulted loans, except for those made pursuant to the SBAExpress program. SBA estimates that these requirements currently result in the submission of about 4,000 liquidation plans per year. The approximate time needed for lenders to complete a liquidation plan is two hours at an average cost of $30 per hour, resulting in a total annual cost to Lenders of $240,000.

Presently, CDCs that are authorized to perform liquidation activities on 504 loans submit about 100 liquidation plans per year. The approximate time needed for CDCs to complete a liquidation plan is two hours at an average cost of $30 per hour, resulting in a total annual cost to CDCs of $6,000.

SBA's 7(a) loan programs also presently require Lenders to submit litigation plans to SBA for approval. Lenders currently submit to SBA approximately 3,000 litigation plans per year. Preparation of each plan takes about one hour, at an average cost of $150 per hour for private counsel time, for a total annual cost to Lenders of $450,000. SBA reimburses Lenders for their share of reasonable, customary and necessary attorney fees, including those incurred for the preparation of litigation plans. CDCs submit to SBA only a small number of litigation plans presently, because SBA currently handles most litigation involving 504 loans.

SBA takes an average of one hour to review and respond to each liquidation and litigation plan submitted by Lenders and CDCs. This equates to 4,000 hours for Lender liquidation plans at an average cost of $30 per hour, for a total of $120,000. For review of CDC liquidation plans by SBA, 100 hours is required at an average cost of $30 per hour, for a total of $3,000. For Lender litigation plans, 3,000 hours of SBA review time is required at an average cost of $30 per hour, for a total of $90,000. SBA processes approximately 54,000 servicing and liquidation actions per year for Lenders and CDCs. The average action takes one-half hour for SBA to process, for a total of 27,000 hours processing time. At $30 per hour, this equates to a total cost to SBA of $810,000. Therefore, the total administrative cost to SBA under the current regulatory framework for these activities is approximately $1,023,000.

C. Potential Benefits and Costs of the Final Rule

1. Potential Benefits and Costs to Lenders

The rule would provide benefits for Lenders because it reduces the costs associated with submitting liquidation plans to SBA for review and approval. The only subprogram unaffected by the final rule would be for those loans approved under the Certified Lenders Program which by statute require the submission of a liquidation plan to SBA. Submission of liquidation plans is currently required for most lending programs by SBA procedures and regulations. SBA estimates that ending this requirement will enable Lenders to eliminate the preparation and submission to SBA of at least 4,000 liquidation plans a year. The approximate time to complete and submit a plan to SBA is about two hours at an average cost of $30 per hour. Consequently, eliminating the requirement to submit liquidation plans will save Lenders about $240,000 per year.

Other benefits for Lenders would result from the proposal to raise the dollar threshold for non-routine litigation (for which submission to SBA for pre-approval is required) from $5,000 to $10,000. With the higher dollar threshold, Lenders would be required to submit fewer litigation plans to SBA. The Agency anticipates that approximately 500 fewer plans annually would be required to be submitted to the Agency as a result of this change. Because preparation of each plan takes about one hour at an average cost of $150 per hour, SBA estimates that the enactment of the final rule would result in a cost savings of $75,000.

Finally, the final rule would reduce the operational costs associated with preparing requests for loan servicing and liquidation actions taken by Lenders that require prior SBA approval. These changes would simplify and reduce the costs of loan servicing and liquidation processes for Lenders.

SBA does not know of any specific costs that would be imposed on Lenders as a result of this rule except for the loss of income that would result from the limitation of interest on guarantees purchased by SBA to 120 days. It has, however, been SBA's experience in tracking the receipt of completed guarantee purchase request filings that such a limitation would affect only a small percentage (estimated at around 10%) of SBA guaranty purchases. In review of the comments to the proposed rule, Lenders objected to this limitation, viewing it as an encroachment on a source of income. SBA would like to note that current accounting practices generally limit the accrual of interest on defaulted loans to 90 days, and that after that date the loan would be placed in non-accrual status. This loss expressed by Lenders in their comments to the proposed rule relates to SBA bringing its

program provisions into greater conformance with more traditional banking practices.

In the proposed rule, SBA sought comment on any monetized quantitative or qualitative costs of Lenders' compliance with the rule. One comment filed by the Chairman of the House Small Business committee felt the proposed rule did not properly detail the indirect effects of the rule on small businesses. The thrust of the comment centered on the adverse impact the rule would have on small lenders and CDCs, and consequently local small business concerns. The committee Chairman felt the increased administrative burden resulting from these proposed changes to existing regulations would drive Lenders and CDCs from the program thus contracting the available sources of small business capital. According to the comment, this second order level of analysis must be performed lest the Congress initiate legislation to enjoin the regulations from taking effect.

SBA wishes to thank the Chairman for providing comment to the proposed rule, and would like to outline its response. In his comment letter, the Chairman identified the proposed rule as a modification of the existing regulatory structure that has proven successful in implementing the Small Business Act and the Small Business Investment Act. As it is, the final rule pertaining to CDC liquidation and debt collection activity performed by qualified CDCs is consistent with the statutory requirements mandated by § 510 of the Small Business Investment Act. In the preamble to the proposed rule, SBA explained the basis for the lengthy delay in fulfilling the legal mandate to promulgate regulations consistent with the statute. This final rule fulfills the Agency's responsibility to Congress under the Act. CDCs will retain the option to conduct their own liquidation and debt collection activity or to utilize a services of another CDC. The final rule also devises a form of compensation that offsets the additional operational costs associated with implementation of a liquidation function.

SBA acknowledges the Chairman's comments regarding the adverse impact the proposed rules could have on small 7(a) lenders that would be required to liquidate all collateral before seeking SBA purchase of the guarantee. SBA has decided to modify the final rule to require only the liquidation of business personal property (chattels) prior to seeking purchase. If a Lender only has business real property pledged against the SBA loan, the Lender can seek either a request for guarantee purchase or may elect to liquidate the property first. This option is presently available in the existing regulations cited in the comments as being successful in implementing the Small Business Act and the Small Business Investment Act.

2. Potential Benefits and Costs to CDCs

As provided by statute, this final rule would enable qualified CDCs to seek authority to perform liquidation and debt collection litigation, and by doing so, qualified CDCs would be determining that the benefits of conducting their own recovery on defaulted loans would outweigh any burdens associated with the preparation and submission to SBA of liquidation and litigation plans as set forth in the final rule. Such benefits would include the ability to pursue quicker liquidations and possibly achieve higher recoveries as a result.

SBA expects that CDCs would incur some additional costs as a result of this rule. SBA anticipates that CDCs would be required to submit to the Agency for approval about 300 liquidation plans per year, an increase of 200 from the approximately 100 liquidation plans CDCs currently submit annually. SBA estimates that the average time for completion of each plan would consist of two hours at an average cost of $30 per hour. Therefore, the annual cost of submitting the plans under the final rule would be $18,000 per year, for an overall cost increase of $12,000 from the $6,000 annual cost under the current regulatory framework. CDCs that receive delegated liquidation authority under the final rule would also incur added costs through acquiring resources and creating the necessary internal structures to engage in liquidation and litigation activities. SBA had sought comments from the public on any other monetized, quantitative or qualitative costs of CDCs' compliance with this rule and has decided on a compensation structure detailed below.

3. Potential Benefits and Costs for SBA and the Federal Government

The final rule would benefit SBA because it would eliminate the need for most Lenders to submit liquidation plans to SBA (the exception is for Lenders under the Certified Lenders Program, which are required to submit liquidation plans by statute; the number of liquidation plans submitted by such Lenders currently is minimal, and SBA expects even further reduction under the rule). SBA estimates that ending this requirement would eliminate the need for SBA to review about 4,000 liquidation plans a year. The approximate time required for SBA to review a liquidation plan is one hour at an average cost of $30 per hour. Consequently, there would be a cost savings to SBA of $120,000 per year.

Another benefit for SBA would result from the proposal to raise the dollar threshold for non-routine litigation (for which submission to SBA for pre-approval is required) from $5,000 to $10,000. SBA anticipates that approximately 500 fewer plans annually would be required to be submitted to the Agency as a result of this change. Because review of each plan takes about one hour at an average cost of $30 per hour, SBA estimates that the final rule would result in a cost savings of $15,000. In addition, SBA would not be required to reimburse Lenders for the Agency's proportionate share of the costs incurred by Lenders in connection with the preparation of these litigation plans, resulting in a further savings of approximately $50,000.

Although under the final rule SBA would be required to review liquidation plans submitted by qualified CDCs (estimated at 300 liquidation plans per year), this would not represent a significant increase in SBA administrative costs because currently SBA reviews approximately 100 such plans per year as well as provides assistance to CDCs on the preparation of such plans.

The final rule would also reduce SBA administrative costs associated with oversight of the Agency's business loan assistance programs by delegating greater servicing and liquidation responsibilities to Lenders and CDCs, and reducing their need to seek the prior approval of SBA for their proposed recovery activities and for various specific liquidation actions. This would decrease the amount of time required for SBA personnel to manage these programs. It is estimated that reviews of at least 30% (16,200) of the approximately 54,000 servicing and liquidation actions SBA currently processes annually would be eliminated. This would save an average of one-half hour processing time per action for a total time savings of 8,100 hours at $30 per hour, or $243,000.

In addition to increasing consistency among SBA's loan programs and creating more uniformity in processing guaranty purchase requests, the final rule would save taxpayer dollars by limiting payment of interest on purchased loans to 120 days, except for loans where the guaranteed portion has been sold in the Secondary Market. This change would not be a burden on Lenders because Lenders typically place loans on interest non-accrual after 90 days of delinquency and SBA already

limits interest purchased to 120 days in the fastest growing program (SBAExpress). However, it is estimated that such a limitation in the proposed rule would affect only a small percentage (estimated at around 10%) of future SBA guaranty purchases.

Finally, the proposed rule would facilitate SBA's transformation initiative by enabling the sale of groups of 7(a) and 504 loans in asset sales. To this end, the rule provides that Lenders which do not purchase the guaranteed portion of a defaulted 7(a) loan from a Registered Holder in the Secondary Market and have SBA purchase the guaranteed portion will have provided their consent for SBA to include the loan in an asset sale. This may turn out to be the most cost-effective approach for Lenders, particularly those with limited capital or operational resources to complete the liquidation exercise. Asset sales would also be available to CDCs, including those operating with limited funding since a sale may be the most expedient approach to disposing of defaulted loans.

Costs imposed on SBA as a result of the rule would include personnel and administrative costs associated with implementing appeals processes to which Lenders and Authorized CDC Liquidators may be entitled under the final rule when they disagree with a decision by an SBA field office or servicing center regarding a liquidation or litigation plan, when they disagree with an SBA determination to deny reimbursement of liquidation or litigation fees or costs, or when SBA denies applications from non-PCLP CDCs requesting authority to handle liquidation and debt collection litigation.

D. Final Rule Is the Best Available Means To Reach the Regulatory Objective

This final rule is SBA's best available means for achieving its regulatory objective of clarifying and making uniform existing SBA regulations and policy, which currently only partially address liquidation and debt collection litigation and vary across Agency lending programs.

With respect to CDCs that are eligible for and request liquidations and debt collection authority from SBA, the rule merely implements § 307(b) of Pub. L. 106–554, which requires SBA to promulgate regulations to carry out § 510 of the SBI Act, 15 U.S.C. 697g, regarding CDC liquidation and debt collection litigation authority. SBA considers those statutory provisions applicable to CDCs to be mandatory, and SBA has not identified any reasonable alternative to this proposed rule implementing the statutory mandate.

Executive Order 12988

This final action meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In particular, the regulations provide for rights of appeal to Lenders and CDCs in the event they are aggrieved by an Agency decision, thereby limiting the possibility of litigation by these entities. The final action does not have retroactive or preemptive effect.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that the rule has no federalism implications warranting preparation of a federalism assessment.

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

This rule directly affects only those CDCs that are eligible for and that request, authority from SBA to conduct liquidation and debt collection litigation, along with an unknown number of small lending institutions. SBA assumes, therefore, that this final rule may have an impact on a substantial number of small entities. However, the rule merely implements statutory mandates and, further, SBA has determined that the impact on entities affected by the rule will not be significant for the reasons set forth below.

The final rule would enable qualified CDCs to seek authority to perform liquidation and debt collection litigation, and by doing so, qualified CDCs would be determining that the benefits of conducting their own recovery on defaulted loans would outweigh any burdens associated with the preparation and submission to SBA of liquidation and litigation plans as set forth in these regulations. Such benefits include the ability to pursue liquidations more quickly and potentially achieve higher loan recoveries. In the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996, CDCs that conducted their own liquidation achieved a slightly higher overall recovery rate than did SBA in the comparison group of cases handled directly by the Agency.

Subject to the new provisions contained in § 120.542, SBA would also be reimbursing CDCs for their reasonable, customary and necessary expense disbursements related to liquidation activities on particular loans, which would include title reports and title insurance on real estate collateral; appraisals; costs for the care and preservation of collateral; fees for lien recordings, filings and lien searches; and fees for legal services provided by outside counsel in litigating on a particular loan account.

SBA anticipates that approximately 80 of the 270 SBA-approved Certified Development Companies will apply to become Authorized CDC Liquidators. CDCs participating in the Premier Certified Lenders Program (PCLP) would not be required to seek authority to conduct liquidation and debt collection litigation on their PCLP loans since they are already required to do so by statute and regulation. PCLPs, however, will be required to liquidate and litigate their non-PCLP loans by this rule if they are notified by SBA that they meet either of the requirements to be an Authorized CDC Liquidator in order to have one consistent standard for all their loans.

CDCs are expected, by statute, to submit liquidation plans to the Agency for prior written approval. It is also assumed that all CDCs would qualify as a small CDC based on SBA size standards for non-depository, credit intermediaries. Based on the level of current CDC liquidation activity, SBA estimates receiving an industry total of 300 liquidation plans per year compared with a portfolio of over 33,400 outstanding CDC debentures for $11.9 billion as of September 30, 2005. SBA estimates that the average time for completion of each plan will necessitate two hours at an average cost of $30 per hour, which is based on a mid-level professional salary level of $60,000 per year. Therefore, the total annual cost to the CDC industry for all plans submitted would be $18,000 per year. Using a 1 percent default rate on $11.9 billion in debentures outstanding (300 liquidations divided by 33,400 debentures times $11.9 billion outstanding) results in an estimated liquidation portfolio of $119 million. With their debentures representing no more than five percent of the outstanding CDC debenture portfolio at fiscal year end, small CDCs would be no more likely to assume the industry expense burden than larger CDCs. The additional costs from enacting the final rule could be recaptured in liquidation

recoveries equivalent to just 2.0% of the estimated debenture balance in default. Based on this assessment, SBA concludes that this final rule will not have a significant impact on small CDCs.

The rule would also not impose a significant economic impact on small lending institutions in the 7(a) program for similar reasons. SBA size standards for small banks, savings institutions and credit unions is up to $165 million in total assets. A current review of the outstanding 7(a) loans finds over 95% of the SBA portfolio held by 400 of 5,200 registered lender participants, each of them larger in size than the stated size standard for small depository lending institutions. Most liquidations will be undertaken by the more active lenders whose total assets or average annual receipts far exceed the size standard for credit intermediaries. Consequently, this group will also incur the majority of liquidation expenses associated with collateral dispositions, leaving small lending institutions marginally impacted by this final rule. Small lenders that decide to sell the guaranteed portion of an SBA loan in the secondary market could actually benefit from the savings associated with the use of an asset sales mechanism. This benefit is derived from the availability of an asset disposition alternative that may be less costly for small lenders than the effort and expenses involved in planning, preparing and implementing a loan liquidation exercise. The low level of loan activity from small lenders may have a marginal overall effect on the program, but for individual small lenders the savings may be meaningful.

SBA recognizes that not all small lenders will opt for implied consent and will purchase the guaranteed interest from the secondary market. This purchase exercise, and the related cost of liquidating the SBA loan could increase the marginal costs of operating in the program; however, until SBA has more definitive data on which of the two options small lenders actually select, the impact on small lenders is indeterminate. SBA will monitor small lender liquidation activity for the next 2 years following enactment of the final rule and will re-examine its burden analysis on small lenders at that time to determine if changes are necessary.

SBA's assessment of the impact on small lenders filing a written request to have SBA to refrain from selling the unguaranteed portion of a defaulted loan in an asset sale is referenced in the discussion of the Paperwork Reduction Act detailed below.

Lenders would also realize a cost savings associated with eliminating the need to submit liquidation plans to SBA (except for Lenders under the Certified Lenders Program which are required to submit liquidation plans by statute), which is currently required by SBA procedures and regulations. SBA estimates that ending this requirement will enable Lenders to eliminate the preparation and submission to SBA of at least 4,000 liquidation plans a year. The approximate time to complete and submit these plans to SBA is about two hours at an average cost of $30 per hour. The average cost is based on a mid-level professional salary level of $60,000 per year. Consequently, eliminating the requirement to submit liquidation plans will save Lenders about $240,000 per year. The rule also reduces the number of loan servicing and liquidation actions taken by Lenders that require prior SBA approval as compared with existing SBA requirements, and makes the remaining prior approval requirements similar among the various SBA loan programs, thereby simplifying the loan servicing and liquidation process for SBA participating Lenders. In addition, as pointed out above, small lending institutions will be required to submit fewer litigation plans since the proposed rule raises the dollar threshold for Non-Routine Litigation from $5,000 to $10,000. SBA anticipates that approximately 500 fewer plans will be required to be submitted to the Agency as a result of this change. Since preparation of each plan takes about one hour at an average cost of $150 per hour, which is based on a nationwide estimate of the billing level for attorneys qualified to perform this type of work, SBA estimates that the final rule will result in a cost savings of $75,000.

In addition, this regulation merely codifies the existing SBA practice of requiring the submission of liquidation and litigation plans by Lenders and CDCs, but reduces any burden from this requirement as to litigation plans by raising the dollar threshold for Non-Routine Litigation from $5,000 to $10,000, as noted above. Further, the performance standards for 7(a) and 504 loan servicing and liquidation contained in these regulations merely codify existing SBA policy as set forth in SOPs and currently existing lending standards. In addition, it is a prudent lending practice for Lenders to prepare plans prior to undertaking liquidation and debt collection litigation. Therefore, this rule does not impose any new or unnecessary requirements on these small entities.

It is for these aforementioned reasons that SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

SBA has determined that this rule imposed additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Ch. 35; (1) Application for Liquidation Authority; (2) the Liquidation Plan; (3) the Litigation Plan; and (4) Request for Emergency Waiver. SBA received twenty comments objecting to the estimates used by SBA in its Paperwork Reduction Act analysis pertaining to authorizing CDCs to liquidate and litigate, and preparing liquidation and litigation plans acceptable to SBA. In complying with the Paperwork Reduction Act, SBA is obligated to address the estimated time taken by the public to complete the forms recommended for use. The information requested by SBA is maintained by Lenders in the normal course of their daily liquidation activity. SBA is requesting the Lenders disclose what they would readily have available in operating a liquidation function of a commercial lending practice. SBA is cognizant of the preparation work involved in a liquidation report filing, but does not view the form filing as taking more than 2 hours of work by a mid-level professional.

When evaluating the burden associated with filing litigation plans, SBA looks only to those instances when loan recovery through litigation is probable. SBA is also considering only those contemplated legal actions as non-routine in nature. When this level of filtering is applied to an estimate of the annual number of initial liquidations filed with SBA, the total cost estimate of $450,000 per year is reasonable.

The final rule provides Lenders with a limited opportunity to request SBA refrain from including the unguaranteed portion of an SBA loan with the SBA-purchased guaranteed portion in an asset sale conducted or overseen by SBA. This written notice would include an explanation supporting the Lender's request and would take the form of a simple letter. SBA has determined that this level of effort does not give rise to a cost analysis under the Paperwork Reduction Act.

Thus, based on its review of these proposed liquidation activities, SBA maintains that its estimates used in determining the costs of additional reporting or recordkeeping requirements under the Paperwork Reduction Act are accurate. SBA therefore makes no changes to the information collections in this final rule. In addition, SBA has

submitted these information collections to OMB for review and will publish a notice in the **Federal Register** announcing the results of the review.

List of Subjects in 13 CFR Part 120

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), 697(a)(2), and 697(g).

■ 2. Amend § 120.10 by adding the definitions of ''Authorized CDC Liquidator'' and ''Loan Program Requirements'', and by adding a sentence to the end of the definition of ''SOPs'' as follows:

§ 120.10 Definitions.

* * * * *

Authorized CDC Liquidator is a CDC in good standing with authority under the Act and SBA regulations to conduct liquidation and certain debt collection litigation in connection with 504 loans, as authorized by § 120.975.

* * * * *

Loan Program Requirements are requirements imposed upon Lenders or CDCs by statute, SBA regulations, any agreement the Lender or CDC has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) and 504 loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in § 120.802.

* * * * *

SOPs * * * SOPs are publicly available on SBA's Web site at *http://www.sba.gov* in the online library.

Subpart A—Policies Applying to All Business Loans

■ 3. Amend the undesignated center heading immediately preceding § 120.180 to read as follows:

Applicability and Enforceability of Loan Program Requirements

■ 4. Revise § 120.180 to read as follows:

§ 120.180 Lender and CDC compliance with Loan Program Requirements.

Lenders must comply and maintain familiarity with Loan Program Requirements for the 7(a) program, as such requirements are revised from time to time. CDCs must comply and maintain familiarity with Loan Program Requirements for the 504 program, as such requirements are revised from time to time. Loan Program Requirements in effect at the time that a Lender or CDC takes an action in connection with a particular loan govern that specific action. For example, although loan closing requirements in effect when a Lender or CDC closes a loan will govern the closing actions, a Lender or CDC's liquidation actions on the same loan are subject to the liquidation requirements in effect at the time that a liquidation action is taken.

■ 5. Add § 120.181 to read as follows:

§ 120.181 Status of Lenders and CDCs.

Lenders, CDCs and their contractors are independent contractors that are responsible for their own actions with respect to a 7(a) or 504 loan. SBA has no responsibility or liability for any claim by a borrower, guarantor or other party alleging injury as a result of any allegedly wrongful action taken by a Lender, CDC or an employee, agent, or contractor of a Lender or CDC.

■ 6. Revise the undesignated center heading immediately preceding § 120.195 to read as follows:

Reporting

■ 7. Add § 120.197 to read as follows:

§ 120.197 Notifying SBA's Office of Inspector General of suspected fraud.

Lenders, CDCs, Borrowers, and others must notify the SBA Office of Inspector General of any information which indicates that fraud may have occurred in connection with a 7(a) or 504 loan. Send the notification to the Assistant Inspector General for Investigations, Office of Inspector General, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

Subpart D—Lenders

■ 8. Amend § 120.440 by revising the section heading and the first sentence to read as follows:

§ 120.440 The Certified Lenders Program.

Under the Certified Lenders Program (CLP), designated Lenders process and close 7(a) loans and service and liquidate such loans in accordance with subpart E of this part. * * *

■ 9. Revise § 120.453 to read as follows:

§ 120.453 Responsibilities of PLP Lenders for servicing and liquidating 7(a) loans.

Servicing and Liquidation responsibilities for PLP Lenders are set forth in subpart E of this part.

■ 10a. Revise the heading of subpart E to read as follows:

Subpart E—Servicing, Liquidation and Debt Collection Litigation of 7(a) and 504 Loans

■ 10b. Remove § 120.500 and §§ 120.510 through § 120.513, and the undesignated center heading immediately preceding § 120.510 entitled ''Servicing''.

■ 11. Revise § 120.520 to read as follows:

§ 120.520 Purchase of 7(a) loan guarantees.

(a) *When SBA will purchase*—(1) *For loans approved on or after May 14, 2007.* A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured, provided all business personal property securing the defaulted SBA loan has been liquidated. A Lender may also submit a request for purchase of a defaulted 7(a) loan when a Borrower files for federal bankruptcy once a period of at least 60 days has elapsed since the last full installment payment. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses. SBA considers liquidation of business personal property collateral to be completed when a Lender has exhausted all prudent and commercially reasonable efforts to collect upon these assets. In addition, SBA, in its sole discretion, may purchase the guaranteed portion of a loan at any time whether in default or not, with or without the request from a Lender.

(2) *For loans approved before May 14, 2007.* The regulations applicable to the time that a Lender may make demand for purchase that were in effect immediately prior to this date will govern such loans.

(b) *Documentation for purchase.* SBA will not purchase its guaranteed portion of a loan from a Lender unless the Lender has submitted to SBA documentation that SBA deems sufficient to allow SBA to determine whether purchase of the guarantee is warranted under § 120.524.

(c) *Purchase of loans sold in Secondary Market.* When the Lender has sold the guaranteed portion of a loan in the Secondary Market, under subpart F of this part, Lenders must perform all necessary servicing and liquidation actions for such loan even after SBA has purchased the guaranteed portion of such loan from a Registered Holder (as that term is defined in § 120.600(i)). In the event that SBA purchases its guaranteed portion of such a loan from the Registered Holder, Lenders must

provide SBA with a loan status report within 15 business days of such purchase. This report should include but not be limited to, a status report on the borrower and current condition of the collateral, plans for any type of loan workout or loan restructuring, existing liquidation activities including the sale of loan collateral, or the status of ongoing foreclosure proceedings. The report should accompany requested documentation that SBA deems sufficient to be able to review the Lender's administration of the loan under § 120.524. A Lender's failure to provide sufficient documentation may constitute a material failure to comply with SBA requirements under § 120.524(a)(1), and may lead to initiation of an action for recovery from the Lender of all or some of the moneys SBA paid to a Registered Holder on a guarantee. SBA will also evaluate the Lender's continued participation in the Secondary Market and may restrict further sale of guaranteed portions into the Secondary Market until SBA determines that the Lender has provided sufficient documentation for purchases.

(d) *No waiver of SBA's rights.* Purchase by SBA of the guaranteed portion of a loan, or of a portion of SBA's guarantee of a loan, either through a negotiated agreement with a Lender or otherwise, does not waive any of SBA's rights to recover from the responsible Lender any money paid on the guarantee based upon the occurrence of any of the events set forth in § 120.524(a) in connection with that loan.

■ 12. Amend § 120.522 by revising the section heading and paragraph (b), and removing paragraph (d), to read as follows:

§ 120.522 Payment of accrued interest to the Lender or Registered Holder when SBA purchases the guaranteed portion.

* * * * *

(b) *Payment to Lender*—(1) *For loans approved on or after May 14, 2007.* SBA will pay up to a maximum of 120 days interest to a Lender at the time of guarantee purchase.

(2) *For loans approved before May 14, 2007.* The regulations applicable to the amount of interest that SBA will pay to a Lender upon loan default that were in effect immediately prior to this date will govern such loans.

* * * * *

■ 13. Amend § 120.524 by revising paragraphs (a)(1), (a)(8), and (b) through (d) to read as follows:

§ 120.524 When is SBA released from liability on its guarantee on loans?

(a) * * *

(1) The Lender has failed to comply materially with any Loan Program Requirement for 7(a) loans.

* * * * *

(8) The Lender has failed to request that SBA purchase a guarantee within 180 days after maturity of the loan. However, if the Lender is conducting liquidation or debt collection litigation in connection with a loan that has matured, SBA will be released from its guarantee only if the Lender fails to request that SBA purchase the guarantee within 180 days after the completion of the liquidation or debt collection litigation;

* * * * *

(b) If SBA determines, at any time, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any moneys paid on the guarantee plus interest from the Lender responsible for those events.

(c) If the Lender's loan documentation or other information indicates that one or more of the events in paragraph (a) of this section occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA by a Lender or other party will not prejudice, or be construed as effecting any waiver of, SBA's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

* * * * *

■ 14. Remove the undesignated center heading immediately preceding § 120.530.

■ 15. Add the following new § 120.535 through § 120.536 to read as follows:

§ 120.535 Standards for Lender and CDC loan servicing, loan liquidation and debt collection litigation.

(a) *Service using prudent lending standards.* Lenders and CDCs must service 7(a) and 504 loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements. Those Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a government guarantee.

(b) *Liquidate using prudent lending standards.* Lenders and Authorized CDC Liquidators must liquidate and conduct debt collection litigation for 7(a) and 504 loans in their portfolio no less diligently than for their non-SBA portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan. Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards followed by commercial lenders that liquidate loans without a government guarantee. They are also to operate in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan.

(c) *Absence of actual or apparent conflict of interest.* A CDC must not take any action in the liquidation or debt collection litigation of a 504 loan that would result in an actual or apparent conflict of interest between the CDC (or any employee of the CDC) and any Third Party Lender, associate of a Third Party Lender, or any person participating in a liquidation, foreclosure or loss mitigation action.

(d) *SBA rights to take over servicing or liquidation.* SBA may, in its sole discretion, undertake the servicing, liquidation and/or litigation of any 7(a) or 504 loan. If SBA elects to service, liquidate and/or litigate a loan, it will notify the relevant Lender or CDC in writing, and, upon receiving such notice, the Lender or CDC must assign the Loan Instruments to SBA and provide any needed assistance to allow SBA to service, liquidate and/or litigate the loan. SBA will notify the Borrower of the change in servicing. SBA may use contractors to perform these actions.

§ 120.536 Servicing and liquidation actions that require the prior written consent of SBA.

(a) *Actions by Lenders and CDCs.* Except as otherwise provided in a Supplemental Guarantee Agreement with a Lender or an Agreement with a CDC, SBA must give its prior written consent before a Lender or CDC takes any of the following actions:

(1) Increases the principal amount of a loan above that authorized by SBA at loan origination.

(2) Confers a Preference on the Lender or CDC or engages in an activity that creates a conflict of interest.

(3) Compromises the principal balance of a loan.

(4) Takes title to any property in the name of SBA.

(5) Takes title to environmentally contaminated property, or takes over operation and control of a business that handles hazardous substances or hazardous wastes.

(6) Transfers, sells or pledges more than 90% of a loan.

(7) Takes any action for which prior written consent is required by a Loan Program Requirement.

(b) *Actions by CDCs only (other than PCLP CDCs).* SBA must give its prior written consent before a CDC, other than a PCLP CDC, takes any of the following actions with respect to a 504 loan:

(1) Alters substantially the terms or conditions of any Loan Instrument.

(2) Releases collateral having a cumulative market value in excess of 10 percent of the Debenture amount or $10,000, whichever is less.

(3) Accelerates the maturity of the note.

(4) Compromises or releases any claim against any Borrower or obligor, or against any guarantor, standby creditor, or any other person that is contingently liable for moneys owed on the loan.

(5) Purchases or pays off any indebtedness secured by the property that serves as collateral for a defaulted 504 loan, such as payment of the debt(s) owed to a lien holder or lien holders with priority over the lien securing the loan.

(6) Accepts a workout plan to restructure the material terms and conditions of a loan that is in default or liquidation.

(7) Takes any action for which prior written consent is required by a Loan Program Requirement.

(c) *Documentation requirements.* For all servicing/liquidation actions not requiring SBA's prior written consent, Lenders and CDCs must document the justifications for their decisions and retain these and supporting documents in their file for future SBA review to determine if the actions taken by the Lender or CDC were prudent, commercially reasonable, and complied with all Loan Program Requirements.

■ 16. Remove the undesignated center heading before § 120.540 entitled ''Liquidation of Collateral.''

§ 120.540 [Redesignated as § 120.545]

■ 17. Redesignate § 120.540 as § 120.545, and remove paragraph (f) from newly designated § 120.545.

■ 18. Add new § 120.540 through § 120.542 to read as follows:

§ 120.540 Liquidation and litigation plans.

(a) *SBA oversight.* SBA may monitor or review liquidation through the review of liquidation plans which all Authorized CDC Liquidators and certain Lenders must submit to SBA for approval prior to undertaking liquidation, and through liquidation wrap-up reports which Lenders must submit to SBA at the completion of liquidation. SBA will monitor debt collection litigation, such as judicial foreclosures, bankruptcy proceedings and other state and federal insolvency proceedings, through the review of litigation plans, as set forth in this section.

(b) *Liquidation plan.* An Authorized CDC Liquidator and a Lender for a loan made under its authority as a CLP Lender must, prior to undertaking any liquidation, submit a written proposed liquidation plan to SBA and receive SBA's written approval of that plan.

(c) *Litigation plan.* An Authorized CDC Liquidator and a Lender must obtain SBA's prior approval of a litigation plan before proceeding with any Non-Routine Litigation, as defined in paragraph (c)(1) of this section. SBA's prior approval is not required for Routine Litigation, as defined in paragraph (c)(2) of this section.

(1) Non-Routine Litigation includes:

(i) All litigation where factual or legal issues are in dispute and require resolution through adjudication;

(ii) Any litigation where legal fees are estimated to exceed $10,000;

(iii) Any litigation involving a loan where a Lender or Authorized CDC Liquidator has an actual or potential conflict of interest with SBA; and

(iv) Any litigation involving a 7(a) or 504 loan where the Lender or CDC has made a separate loan to the same borrower which is not a 7(a) or 504 loan.

(2) Routine Litigation means uncontested litigation, such as non-adversarial matters in bankruptcy and undisputed foreclosure actions, having estimated legal fees not exceeding $10,000.

(d) *Decision by SBA to take over litigation.* If a Lender or Authorized CDC Liquidator is conducting, or proposes to conduct, debt collection litigation on a 7(a) loan or 504 loan, SBA may take over the litigation if SBA determines that the outcome of the litigation could adversely affect SBA's administration of the loan program or that the Government is entitled to legal remedies that are not available to the Lender or Authorized CDC Liquidator. Examples of cases that could adversely affect SBA's administration of a loan program include, but are not limited to, situations where SBA determines that:

(1) The litigation involves important governmental policy or program issues.

(2) The case is potentially of great precedential value or there is a risk of adverse precedent to the Government.

(3) The Lender or Authorized CDC Liquidator has an actual or potential conflict of interest with SBA.

(4) The legal fees of the Lender or Authorized CDC Liquidator's outside counsel are unnecessary, unreasonable or not customary in the locality.

(e) *Amendments to a liquidation or litigation plan.* Lenders and Authorized CDC Liquidators must submit an amended liquidation or litigation plan to address any material changes arising during the course of the liquidation or litigation that were not addressed in the original plan or an amended plan. Lenders and Authorized CDC Liquidators must obtain SBA's written approval of the amended plan prior to taking any further liquidation or litigation action. Examples of such material changes that would require the approval of an amended plan include, but are not limited to:

(1) Changes arising during the course of Routine Litigation that transform the litigation into Non-Routine Litigation, such as when the debtor contests a foreclosure or when the actual legal fees incurred exceed $10,000.

(2) If SBA has approved a litigation plan where anticipated legal fees exceed $10,000, or has approved an amended plan, and thereafter the anticipated or actual legal fees increase by more than 15 percent.

(3) If SBA has approved a liquidation plan, or an amended plan, and thereafter the anticipated or actual costs of conducting the liquidation increase by more than 15 percent.

(f) *Limited waiver of need for a written liquidation or litigation plan.* SBA may, in its discretion, and upon request by a Lender or Authorized CDC Liquidator, waive the requirements of paragraphs (b), (c) or (e) of this section, if one of the following extraordinary circumstances warrant such a waiver: the need for expeditious action to avoid the potential risk of loss on the loan or dissipation of collateral exists; an immediate response is required to litigation by a borrower, guarantor or third party; or another urgent reason arises. The Lender or Authorized CDC Liquidator must obtain SBA's written consent to such waiver before undertaking the Emergency action, if at all practicable. SBA's waiver will apply only to the specific action(s) which the Lender or Authorized CDC Liquidator has identified to SBA as being necessary to address the Emergency. The Lender or Authorized CDC Liquidator must, as soon after the Emergency as is practicable, submit a written liquidation or litigation plan to SBA or, if appropriate, a written amended plan, and may not take further liquidation or litigation action without

written approval of such plan or amendment by SBA.

(g) *Appeals.* A Lender for loans made under its authority as a CLP Lender or an Authorized CDC Liquidator that disagrees with an SBA office's decision pertaining to an original or amended liquidation plan, other than such portions of the plan that address litigation matters, may submit a written appeal to the AA/FA within 30 days of the decision. The AA/FA or designee will make the final Agency decision in consultation with the Associate General Counsel for Litigation. A Lender or Authorized CDC Liquidator that disagrees with an SBA office's decision pertaining to an original or amended litigation plan, or the portion of a liquidation plan addressing litigation matters, may submit a written appeal to the Associate General Counsel for Litigation within 30 days of the decision. The Associate General Counsel for Litigation will make the final Agency decision in consultation with the AA/FA.

§ 120.541 Time for approval by SBA.

(a) Except as set forth in paragraph (c) of this section, in responding to a request for approval under §§ 120.540(b), 120.540(c), 120.536(b)(5) or 120.536(b)(6), SBA will approve or deny the request within 15 business days of the date when SBA receives the request. If SBA is unable to approve or deny the request within this 15-day period, SBA will provide a written notice of no decision to the Lender or Authorized CDC Liquidator, stating the reason for SBA's inability to act; an estimate of the additional time required to act on the plan or request; and, if SBA deems appropriate, requesting additional information.

(b) Except as set forth in paragraph (c) of this section, unless SBA gives its written consent to a proposed liquidation or litigation plan, or a proposed amendment of a plan, or any of the actions set forth in § 120.536(b)(5) or § 120.536(b)(6), SBA will not be deemed to have approved the proposed action.

(c) If a Lender seeks to perform liquidation on a loan made under its authority as a CLP Lender by submitting a liquidation plan to SBA for approval, SBA will approve or deny such plan within ten business days. If SBA fails to approve or deny the plan within ten business days, SBA will be deemed to have approved such plan.

§ 120.542 Payment by SBA of legal fees and other expenses.

(a) *Legal fees SBA will not pay.* (1) SBA will not pay legal fees or other costs that a Lender or Authorized CDC Liquidator incurs:

(i) In asserting a claim, cross claim, counterclaim, or third-party claim against SBA or in defense of an action brought by SBA, unless payment of such fees or costs is otherwise required by federal law.

(ii) In connection with actions of a Lender or Authorized CDC Liquidator's outside counsel for performing non-legal liquidation services, unless authorized by SBA prior to the action.

(iii) In taking actions which solely benefit a Lender or Authorized CDC Liquidator and which do not benefit SBA, as determined by SBA.

(2) SBA will not pay legal fees or other costs a Lender or CDC incurs in the defense of, or pay for any settlement or adverse judgment resulting from, a suit, counterclaim or other claim by a borrower, guarantor, or other party that seeks damages based upon a claim that the Lender or CDC breached any duty or engaged in any wrongful actions, unless SBA expressly directed the Lender or CDC to undertake the allegedly wrongful action that is the subject of the suit, counterclaim or other claim.

(b) *Legal fees SBA may decline to pay.* In addition to any right or authority SBA may have under law or contract, SBA may, in its discretion, decline to pay a Lender or Authorized CDC Liquidator for all, or a portion, of legal fees and/or other costs incurred in connection with the liquidation and/or litigation of a 7(a) loan or 504 loan under any of the following circumstances:

(1) SBA determines that the Lender or Authorized CDC Liquidator failed to perform liquidation or litigation promptly and in accordance with commercially reasonable standards, in a prudent manner, or in accordance with any Loan Program Requirement or SBA approvals of either a liquidation or litigation plan or any amendment of such a plan.

(2) A Lender or Authorized CDC Liquidator fails to obtain prior written approval from SBA for any liquidation or litigation plan, or for any amended liquidation or litigation plan, or for any action set forth in § 120.536, when such approval is required by these regulations or a Loan Program Requirement.

(3) If SBA has not specifically approved fees or costs identified in an original or amended liquidation or litigation plan under § 120.540, and SBA determines that such fees or costs are not reasonable, customary or necessary in the locality in question. In such cases, SBA will pay only such fees as it deems are necessary, customary and reasonable in the locality in question.

(c) *Fees for liquidation actions performed by Authorized CDC Liquidators.* Subject to paragraph (d) of this section, SBA will compensate Authorized CDC Liquidators for their liquidation actions on 504 loans, whether such actions are performed by the CDC or the CDC's contractor retained in accordance with § 120.975(a)(2) or (b)(2)(ii). The compensation fee will be a percentage (to be published in the **Federal Register** from time to time, but not to exceed 10%) of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan, up to a fee of $25,000 for such loan, and a lower percentage (also to be published in the **Federal Register** from time to time, but not to exceed 5%) of the realized net recovery proceeds above such amounts. The compensation fee limits set forth in this paragraph (c) do not include reasonable, customary and necessary administrative costs related to liquidation activities on such loan that are incurred in accordance with the liquidation plan, or amendments thereto, approved by SBA pursuant to § 120.540(b). The Authorized CDC Liquidator may compensate its contractor up to the amount it receives from SBA. All requests for compensation fees must be received by SBA within nine months from the date of SBA's purchase of the defaulted debenture. Fee requests not received within such timeframe will be automatically rejected.

(d) *Appeals—liquidation costs.* A Lender or Authorized CDC Liquidator that disagrees with a decision by an SBA office to decline to reimburse all, or a portion, of the fees and/or costs incurred in conducting liquidation may appeal this decision in writing to the AA/FA within 30 days of the decision. The decision of the AA/FA or designee will be made in consultation with the Associate General Counsel for Litigation, and will be the final Agency decision.

(e) *Appeals—litigation costs.* A Lender or Authorized CDC Liquidator that disagrees with a decision by SBA to decline to reimburse all, or a portion, of the legal fees and/or costs incurred in conducting debt collection litigation may appeal this decision in writing to the Associate General Counsel for Litigation within 30 days of the decision. The decision of the Associate General Counsel for Litigation will be made in consultation with the AA/FA, and will be the final Agency decision.

■ 19. Add a new § 120.546 to read as follows:

§ 120.546 Loan asset sales.

(a) *General.* Loan asset sales are governed by § 120.545(b)(4) and by this section.

(b) *7(a) loans*—(1) *For loans approved on or after May 14, 2007.* The Lender will be deemed to have consented to SBA's sale of the loan (guaranteed and unguaranteed portions) in an asset sale conducted or overseen by SBA upon the occurrence any of the following:

(i) SBA's purchase of the guaranteed portion of the loan from the Registered Holder for a loan where the guaranteed portion has been sold in the Secondary Market pursuant to subpart F of this part and after default, the Lender has not exercised its option to purchase such guaranteed portion; or

(ii) SBA's purchase of the guaranteed portion from the Lender, provided however, that if SBA purchased the guaranteed portion pursuant to § 120.520(a)(1) prior to the Lender's completion of liquidation for the loan, then SBA will not sell such loan in an asset sale until nine months from the date of SBA's purchase; or

(iii) SBA receives written consent from the Lender.

(2) For loans identified in paragraph (b)(1)(i) of this section, the Lender may request that SBA withhold the loan from an asset sale if the Lender submits a written request to SBA within 15 business days of SBA's purchase of the guaranteed portion of the loan from the Registered Holder and if such request addresses the issues described in this subparagraph. The Lender's written request must advise SBA of the status of the loan, the Lender's plans for workout and/or liquidation, including and pending sale of loan collateral or foreclosure proceedings arranged prior to SBA's purchase that already are underway, and the Lender's estimated schedule for restructuring the loan or liquidating the collateral. SBA will consider the Lender's request and, based on the circumstances, SBA in its sole discretion may elect to defer including the loan in an asset sale in order to provide the Lender additional time to complete the planned restructuring and/or liquidation actions.

(3) *For loans approved before May 14, 2007.* SBA must obtain written consent from the Lender for the sale of such loans in an asset sale.

(4) After SBA has purchased the guaranteed portion of a loan from the Registered Holder or from the Lender, the Lender must continue to perform all necessary servicing and liquidation actions for the loan up to the point the loan is transferred to the purchaser in an asset sale. The Lender also must cooperate and take all necessary actions to effectuate both the asset sale and the transfer of the loan to the purchaser in the asset sale.

(c) *504 loans*—(1) *PCLP Loans.* After SBA's purchase of a Debenture, SBA may at its sole discretion sell a defaulted PCLP Loan in an asset sale conducted or overseen by SBA, after providing to the PCLP CDC that made the loan advance notice of not less than 90 days before the date upon which SBA first makes its records concerning such loan available to prospective purchasers for examination.

(2) *All other 504 loans.* After SBA's purchase of a Debenture, SBA may at its sole discretion sell a defaulted 504 loan in an asset sale conducted or overseen by SBA.

Subpart H—Development Company Loan Program (504)

■ 20. Revise § 120.826 to read as follows:

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with all Loan Program Requirements. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain all records and submit all reports required by SBA.

■ 21. Amend § 120.841 by revising paragraph (c) to read as follows:

§ 120.841 Qualifications for the ALP.

* * * * *

(c) *Current reviews in compliance.* SBA-conducted oversight reviews must be current (within past 12 months) for applicants for ALP status, and these reviews must have found the CDC to be in compliance with Loan Program Requirements.

* * * * *

■ 22. Amend § 120.845 by revising the first sentence of paragraph (c)(1) to read as follows:

§ 120.845 Premier Certified Lenders Program (PCLP).

* * * * *

(c) * * *

(1) The CDC must be an ALP CDC in substantial compliance with Loan Program Requirements or meet the criteria to be an ALP CDC set forth in § 120.841(a) through (h).* * *

* * * * *

■ 23. Amend § 120.846 by revising paragraph (a)(3) to read as follows:

§ 120.846 Requirements for maintaining and reviewing PCLP Status.

(a) * * *

(3) Substantially comply with all Loan Program Requirements.

* * * * *

■ 24. Amend § 120.848 by revising paragraphs (a) and (f) to read as follows:

§ 120.848 Requirements for 504 loan processing, closing, servicing, liquidating and litigating by PCLP CDCs.

(a) *General.* In processing closing, servicing, liquidating and litigating 504 loans under the PCLP (''PCLP Loans''), the PCLP CDC must comply with Loan Program Requirements and conduct such activities in accordance with prudent and commercially reasonable lending standards.

* * * * *

(f) *Servicing, liquidation and litigation responsibilities.* The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans. Additional servicing and liquidation requirements are set forth in subpart E of this part.

* * * * *

■ 25. Amend § 120.854 by revising paragraph (a)(2) to read as follows:

§ 120.854 Grounds for taking enforcement action against a CDC.

* * * * *

(a) * * *

(2) The CDC has failed to comply materially with any Loan Program Requirement.

* * * * *

■ 26. Amend § 120.970 by revising paragraphs (a) and (h) to read as follows:

§ 120.970 Servicing of 504 loans and Debentures.

(a) In servicing 504 loans, CDCs must comply with Loan Program Requirements and in accordance with prudent and commercially reasonable lending standards.

* * * * *

(h) Additional servicing requirements are set forth in subpart E of this part.

■ 27. Add a new undesignated center heading after § 120.972 to read as follows:

Authority of CDCs To Perform Liquidation and Debt Collection Litigation

■ 28. Add § 120.975 to read as follows:

§ 120.975 CDC Liquidation of loans and debt collection litigation.

(a) *PCLP CDCs.* If a CDC is designated as a PCLP CDC under § 120.845, the CDC must liquidate and handle debt collection litigation with respect to all PCLP Loans in its portfolio on behalf of SBA as required by § 120.848(f), in accordance with subpart E of this part. With respect to all other 504 loans that a PCLP CDC makes, the PCLP CDC is an Authorized CDC Liquidator and must exercise its delegated authority to liquidate and handle debt-collection litigation in accordance with subpart E of this part for such loans, if the PCLP CDC is notified by SBA that it meets either of the following requirements to be an Authorized CDC Liquidator, as determined by SBA:

(1) The PCLP CDC has one or more employees who have not less than two years of substantive, decision-making experience in administering the liquidation and workout of defaulted or problem loans secured in a manner substantially similar to loans funded with 504 loan program debentures, and who have completed a training program on loan liquidation developed by the Agency in conjunction with qualified CDCs that meet the requirements of this section; or

(2) The PCLP CDC has entered into a contract with a qualified third party for the performance of its liquidation responsibilities and obtains the approval of SBA with respect to the qualifications of the contractor and the terms and conditions of the contract.

(b) *All other CDCs.* A CDC that is not authorized under paragraph (a) of this section may apply to become an Authorized CDC Liquidator with authority to liquidate and handle debt collection litigation with respect to 504 loans on behalf of SBA, in accordance with subpart E of this part, if the CDC meets the following requirements:

(1) The CDC meets either of the following criteria:

(i) The CDC participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 prior to October 1, 2006; or

(ii) During the three fiscal years immediately prior to seeking such authority, the CDC made an average of not less than ten 504 loans per year; and

(2) The CDC meets either of the following requirements:

(i) The CDC has one or more employees who have not less than two years of substantive, decision-making experience in administering the liquidation and workout of defaulted or problem loans secured in a manner substantially similar to loans funded with 504 loan program debentures, and who have completed a training program on loan liquidation developed by the Agency in conjunction with qualified CDCs that meet the requirements of this section; or

(ii) The CDC has entered into a contract with a qualified third party for the performance of its liquidation responsibilities and obtains the approval of SBA with respect to the qualifications of the contractor and the terms and conditions of the contract.

(c) *CDC counsel.* To perform debt collection litigation under paragraphs (a) or (b) of this section, a CDC must also have either in-house counsel with adequate experience as approved by SBA or entered into a contract for the performance of debt collection litigation with an experienced attorney or law firm as approved by SBA.

(d) *Application for authority to liquidate and litigate.* To seek authority to perform liquidation and debt collection litigation under paragraphs (b) and (c) of this section, a CDC other than a PCLP CDC must submit a written application to SBA and include documentation demonstrating that the CDC meets the requirements of paragraph (b) and (c) of this section. If a CDC intends to use a contractor to perform liquidation, it must obtain approval from SBA of both the qualifications of the contractor and the terms and conditions in the contract covering the CDC's retention of the contractor. SBA will notify a CDC in writing when the CDC can begin to perform liquidation and/or debt collection litigation under this section.

Dated: April 9, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–6946 Filed 4–11–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM370; Special Conditions No. 25–349–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane; Side Stick Controllers, Electronic Flight Control System: Lateral-Directional and Longitudinal Stability, Low Energy Awareness, Flight Control Surface Position Awareness, and Flight Characteristics Compliance Via the Handling Qualities Rating Method; Flight Envelope Protection: General Limiting Requirements, High Incidence Protection Function, Normal Load Factor (g) Limiting, and Pitch, Roll, and High Speed Limiting Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 7X airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include side stick controllers, electronic flight control systems, and flight envelope protections. These special conditions pertain to control and handling qualities of the airplane and protection limits within the normal flight envelope. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: April 4, 2007.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2002, Dassault Aviation, 9 rond Point des Champs Elysees, 75008, Paris, France, applied for FAA type certificate for its new Model Falcon 7X airplane. The Dassault Model Falcon 7X airplane is a 19 passenger transport