

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that this rule will not have a significant impact on a substantial number of small entities. The basis for this certification is that the Privacy Act applies only to "individuals," and individuals are not "small entities" within the meaning of the Regulatory Flexibility Act.

List of Subjects in 11 CFR Part 1

Privacy.

For the reasons set out in the preamble, chapter I of title 11 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRIVACY ACT

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

Authority: 5 U.S.C. 552a.

2. Section 1.14 is amended by redesignating paragraph (b) as paragraph (c), and by adding new paragraph (b) to read as follows:

§ 1.14 Specific exemptions.

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(b) (1) Pursuant to 5 U.S.C. 552a(j)(2), records contained in FEC 12, Office of Inspector General Investigative Files, are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (f), and the corresponding provisions of 11 CFR part 1, to the extent this system of records relates in any way to the enforcement of criminal laws.

(2) Pursuant to 5 U.S.C. 552a(k)(2), FEC 12, Office of Inspector General Investigative Files, is exempt from 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and the corresponding provisions of 11 CFR part 1, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, except for material that falls within the exemption included in paragraph (b)(1) of this section.

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Dated: January 17, 1995.

Danny Lee McDonald,

Chairman.

[FR Doc. 95-1476 Filed 1-19-95; 8:45 am]

BILLING CODE 6715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Seller Financing by Regulated Lenders

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This rule provides an exception to the requirement that third party financing for a certified development company project derived from the seller of the property being financed must be subordinate to the financing provided by the development company. It provides that if a regulated financial institution is providing the third party financing and is also the seller of the real estate being financed the requirement for such subordination may be waived at SBA's option. A condition for such waiver is that the real estate being sold was previously acquired by the institution as "other real estate owned" (OREO) as defined by the Financial Institutions Reform Recovery and Enforcement Act (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act (FDICIA). Also, as a condition of such waiver, an independent appraisal of the value of the property prepared by or under the control of the SBA or the participating Certified Development Company (CDC) is required, in order to insure that no conflict of interest will arise. This rule will grant small businesses receiving assistance under the SBA's certified development company program an opportunity to purchase OREO which is being made available to purchasers with sufficient financial strength to meet the lenders' credit requirements under FIRREA and FDICIA.

EFFECTIVE DATE: January 20, 1995.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Acting Director, Office of Rural Affairs & Economic Development, Small Business Administration, (202) 205-6485.

SUPPLEMENTARY INFORMATION: On March 18, 1994, SBA published in the **Federal Register** a proposed regulation amending 13 CFR 108.503-8(b)(2). That regulation requires that all seller financing be subordinated to SBA backed financing made under the SBA's development company loan program (59 FR 12864). SBA proposed to waive this restriction if the property being financed was classified as "other real estate owned" (OREO) which was owned by a financial institution which was financing the development company project in conjunction with SBA backed

financing. SBA received five comments which favored the proposed rule, one which opposed the change and one which addressed the issue of SBA adopting a general policy regarding real estate appraisals. Comments in support of the rule were from the trade associations representing the CDCs and independent bankers. They noted that existing lender regulations preclude a lender owning OREO from subordinating its financing if it is the seller of that property. The one comment against the rule expressed concern about lenders having the opportunity for self-dealing under the proposal.

SBA is adopting the proposal as published with one change. In response to the one concern expressed in the comments, SBA is requiring in this final rule that an independent appraisal of the property be prepared under the guidance of the CDC or SBA as a condition to granting a waiver under the final rule.

By this final rule, 13 CFR 108.503-8(b)(2) is amended to provide an exception to the current restriction which provides that where any part of the permanent financing for a development company project is supplied by the seller of the property on which the project is located, such financing must be subordinate to the development company financing. This rule permits a waiver of the general rule if the institution is the seller of property classified as "other real estate owned", and an independent appraisal of the value of the property prepared by or under the control of the SBA or a CDC demonstrates that the value of the property which will serve as collateral for the 503/504 loan is sufficient to support the loan.

Regulated financial institutions have increased their portfolios of "OREO" as a result of regulations issued pursuant to the Financial Institutions Reform Recovery and Enforcement Act (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act (FDICIA). The regulations governing lending institutions require that they have the OREO property recorded on their books at a fair market value based on an appraisal prepared in conformance with state or Federal appraisal standards. These regulations encourage lenders and appraisers to value such property at a value which should lead to relatively quick sales. This has resulted in the availability of very favorable real estate sales by those lenders with the ability to meet regulated loan-to-value ratios and other currently stringent credit requirements of the lenders. However, loan-to-value

ratios can not be met by lenders in possession of OREO property which is financed under the development company program if the lender/seller is required to take a second lien. This rule grants small businesses utilizing the development company program equal access to opportunities to acquire OREO real estate at favorable rates and terms from such lending institutions.

The existing rule was adopted to insure that the combination of a seller's price and terms of financing reflected a fair market transaction. Changes in lender regulations resulting from the FIRREA and the FDICIA and the independent fair market appraisals will protect small business borrowers and the government against the risk of overvaluation of the OREO property. Additionally, SBA field offices will be provided guidance to insure that on a case by case basis no conflict of interest arises from the application of this rule.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

SBA certifies that this final rule will not constitute a significant regulatory action for purposes of Executive Order 12866, since the change will not result in an annual economic effect of \$100 million or more.

SBA certifies that this final rule will not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

SBA certifies that this final rule will not impose new reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of Executive Order 12778.

Catalog of Federal Domestic Assistance 59.036 certified development company loans (503 loans); 59.041 certified development company loans (504 loans).

List of Subjects in 13 CFR Part 108

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA is amending Part 108 of title 13 of the Code of Federal Regulations as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.503-8(b)(2) is revised to read as follows:

§ 108.503-8 Third-party financing.

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(b) *Terms of third-party financing.*

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(2) Where the seller of property for the project supplies any part of the permanent financing of such project, such financing shall be subordinate to the 503 loan, provided that if the property is classified as "other real estate owned" by a national bank or other Federally regulated lender, and an independent appraisal prepared by or under control of the SBA or the participating 503 company demonstrates that the property is of sufficient value to support the 503 loan, SBA may waive the requirement for a subordinate position.

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Dated: December 23, 1994.

Philip Lader,
Administrator.

[FR Doc. 95-1502 Filed 1-19-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-100-AD; Amendment 39-9121; AD 95-02-02]

Airworthiness Directives; McDonnell Douglas Model DC-9 and DC-9-80 Series Airplanes, Model MD-88 Airplanes, and Model C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and Model C-9 (military) airplanes, that requires inspection of the tailcone release locking cable fitting assembly, and replacement or modification of the assembly, if necessary. This amendment is prompted by reports of the inability of the tailcone to deploy because the swaged ball on the cable had jammed after passing into the release handle

hole. The actions specified by this AD are intended to prevent the inability of the tailcone to deploy, which could impede the egress of passengers from the airplane during an emergency evacuation.

DATES: Effective February 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771. Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (310) 627-5336; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and Model C-9 (military) airplanes, was published in the **Federal Register** on October 18, 1994 (59 FR 52485). That action proposed to require inspections of the tailcone release locking cable fitting assembly, replacing or modifying fittings that do not operate properly, and the eventual replacement or modification of the fitting on all airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters supports the proposal.

One commenter regards the proposed inspection for proper operation of the fitting assembly as unnecessary and requests that the proposed rule be revised to delete this requirement. This