

11. Section 1651.5 is amended by revising the section heading and the first sentence to read as follows:

**§ 1651.5 Spouse of the participant.**

For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was married on the date of death. \* \* \*

12. Section 1651.14 is amended by revising paragraph (c) to read as follows:

**§ 1651.14 How payment is made.**

\* \* \* \* \*

(c) *Payment to the participant's spouse.* The spouse of the participant may request that the TSP transfer all or a portion of the payment to an eligible retirement plan (including the spouse's TSP account, if he or she already has one). A transfer to a spouse's TSP account is permitted only if the spouse is not receiving monthly payments from the account. In order to request such a transfer, a spouse must file Form TSP-13-S, Spouse's Election to Transfer to IRA or Other Eligible Retirement Plan, with the TSP record keeper.

\* \* \* \* \*

**PART 1655—LOAN PROGRAM**

13. The authority citation for part 1655 is revised to read as follows:

**Authority:** 5 U.S.C. 8433(g) and 8474; 50 U.S.C. App. 526.

14. Section 1655.7 is amended by revising paragraph (c) to read as follows:

**§ 1655.7 Interest rate.**

\* \* \* \* \*

(c) The interest rate calculated under this section remains fixed until the loan is repaid, unless the participant informs the TSP record keeper that he or she entered into active duty military service and requests that the interest rate on a loan issued before entry into active duty military service be reduced to an annual rate of 6 percent for the period of such service. The participant must provide the record keeper with the beginning and ending dates of active duty military service.

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 107**

RIN 3245-AE88

**Small Business Investment Companies**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would allow a Small Business Investment Company (SBIC) to assume control over a small business concern, without notice to the SBA and to retain such control for a period of up to five years, or longer with SBA's approval. The proposed rule would also allow an SBIC to sell equity securities in a portfolio concern to a competitor of that portfolio concern.

**DATES:** Comments must be received on or before June 17, 2002.

**ADDRESSES:** Written comments should be sent to Leonard W. Fagan, Investment Division, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Harry Haskins, Deputy Associate Administrator, Investment Division, 202-205-6734.

**SUPPLEMENTARY INFORMATION:** The Small Business Investment Corrections Act of 2000, Public Law 106-554, Title IV, section 402, amended section 103(5)(A)(i) of the Small Business Investment Act (Act) to clarify that a small business concern controlled by venture capital firms, including licensed small business investment companies (SBICs), does not for that reason cease to qualify as independently owned and operated. The statute reads, "regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment." (15 U.S.C. 662(5)(A)(i)).

This proposed rule simplifies SBA's present regulation governing control of a small business and brings it into conformity with the Act, as amended in 2000. It also removes a regulatory restriction on the right of an SBIC to sell securities of a small business to a competitor of that business.

The intent of the rule is to implement a statutory change designed to allow SBICs the freedom to operate in the fashion of modern venture capital investors. SBA intends through this rule to permit the type of control that a modern venture fund would exercise while developing an investment, yet avoid the control typical of a holding company operating a firm as a subsidiary and deriving profits through earnings and cash flow.

The legislative history indicates that Congress envisioned only the kind of control that a modern venture capital fund focusing on capital gains would exercise. The legislative history (H.Rpt. 106-520) states that Congress did not

intend for SBICs to exercise the control typical of a holding company or a continuing business operation conducted through a subsidiary for the purpose of accruing earnings on an annualized or cash flow basis.

Proposed § 107.865(a) is a statement of general policy. It differs from the present regulation by broadly permitting SBICs to exercise control over a portfolio concern through ownership of voting securities, management agreements, voting trusts, majority representation on the board of directors, or any other means. The proposed rule also changes the definition of the "Investor Group", those entities whose ownership interests are aggregated for the purpose of determining whether control exists. Under the current regulation, the Investor Group consists of all SBICs that invest in a portfolio company, even if there is no affiliation among them, and all of the SBICs' Associates as defined in § 107.50. The proposed rule defines the Investor Group as an SBIC and its Associates, but does not aggregate the interests of two or more unrelated SBICs. SBA believes that unrelated SBICs should have as much freedom to co-invest with one another as they do to co-invest with venture funds that are not SBICs.

The only restriction in proposed § 107.865(a) is a five-year limit on SBIC control. This will be measured from the initial assumption of control, regardless of interruptions in control. SBA considers five years sufficient time for a viable seed stage company to become an operating business, or to generally develop the investment in a portfolio concern prior to divestiture for gain. It should also suffice for the reversal of the declining fortunes of an operating business. Moreover, the vast majority of SBICs are organized as limited partnerships with a life span not much in excess of ten years.

The proposed rule retains § 107.865(b) with one clarification in the introductory text. Section 107.865(b) outlines the circumstances under which SBA will presume control over a small business for the purpose of determining when control begins or ends. The proposed language clarifies that this paragraph relates only to control based on ownership of voting securities. Control through other means, as specified in § 107.865(a), may still exist even if the conditions in paragraph (b) are not met.

The proposed rule retains § 107.865(c), which sets forth rebuttals to the presumption of control based on ownership of voting securities.

Proposed § 107.865(d) allows extension of control over portfolio

concerns if an SBIC has made reasonable efforts to divest itself of control within the five-year period, but is unable to complete the divestiture in time. It also allows for SBA, in its discretion, to extend the period of control if necessary to protect the financial stability of the portfolio concern.

SBA believes that an investment for venture capital purposes is based primarily on an expectation of capital gains resulting from the divestiture of equity investments or conversion of warrants. SBA does not believe that conducting the ongoing operations of a portfolio concern for the purpose of receiving regular income is consistent with venture capital investing.

As stated above, SBA believes five years is generally sufficient time for profitable and effective venture capital investing. Consequently, SBA will not allow control beyond five years, except in limited circumstances.

Proposed § 107.865(d) makes clear that an SBIC may provide additional financing to a concern it controls regardless of the provisions of § 107.730(a)(1).

The rule would remove § 107.865 (e) and (f) as unnecessary and would redesignate § 107.865(g) as § 107.865(e).

Section 107.885(b) requires an SBIC that controls a small business to obtain SBA's prior approval before selling the small business's equity securities to a competitor of the small business. SBA anticipates that SBICs may exit from an investment by a sale to a strategic investor. SBA believes control of such situations is best left to negotiations between the SBIC and the small business. Consequently, SBA proposes to remove § 107.885(b).

#### **Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act, and the Paperwork Reduction Act**

The Office of Management and Budget (OMB) did not review this proposed rule as a "significant" regulatory action under Executive Order 12866. The proposed rule implements technical corrections to the SBIC program. This proposed rule will not have an annual effect on the economy of \$100 million or more, adversely affect the economy in a material way, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of loan programs or other government programs, or raise novel legal or policy issues arising out of legal mandates or the President's priorities.

For purposes of Executive Order 12988, the SBA has determined that this proposed rule was drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that order.

This regulation 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, under Executive Order 13132, the SBA determines that this proposed rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

This proposed rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. Ch.35.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. § 603(a)) Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule directly affects all SBICs, of which there are currently 432. SBA estimates that approximately 75 percent of these SBICs are small entities. Therefore, SBA has determined that this proposed rule will have an impact on a substantial number of small entities.

However, SBA has determined that the impact on entities affected by the proposed rule will not be significant. The effect of the proposed rule will be to allow SBICs the flexibility to choose the optimal structure for their investments without having to notify or seek approval from SBA. SBA expects the impact of the proposed rule will be a reduction in the paperwork burden for SBICs. SBA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small SBICs. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact either on SBICs, or on companies that receive funding from SBICs.

#### **List of Subjects in 13 CFR Part 107**

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

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 107 as follows:

#### **PART 107—SMALL BUSINESS INVESTMENT COMPANIES**

1. The authority citation for part 107 continues to read as follows:

**Authority:** 15 USC 681 et seq., 683, 687(c), 687b, 687d, 687g, and 687m.

2. In § 107.865, revise the section heading and paragraphs (a), (b) and (d) to read as follows:

#### **§ 107.865 Control of a Small Business by a Licensee.**

(a) *In General.* You, or you and your Associates, (in the latter case, the "Investor Group") may exercise Control over a Small Business for purposes connected to your investment, through ownership of voting securities, management agreements, voting trusts, majority representation on the board of directors, or otherwise. The period of such Control will be limited to the fifth anniversary of the date on which such Control was initially acquired or, any earlier date specified by the terms of any investment agreement.

(b) *Presumption of Control.* Control over a Small Business based on ownership of voting securities will be presumed to exist whenever you or the Investor Group own or control, directly or indirectly:

(1) At least 50 percent of the outstanding voting securities, if there are fewer than 50 shareholders; or

(2) More than 25 percent of the outstanding voting securities, if there are 50 or more shareholders; or

(3) A block of at least 20 percent of the outstanding voting securities, if there are 50 or more shareholders and no other party holds a larger block.

\* \* \* \* \*

(d) *Extension of Control.* With SBA's prior written approval you, or the Investor Group, may retain Control for such additional period as may be reasonably necessary to complete divestiture of Control, or to ensure the financial stability of the portfolio company.

\* \* \* \* \*

#### **§ 107.865 [Removed and Redesignated]**

3. Remove the existing § 107.865(e) and (f) and redesignate § 107.865(g) as § 107.865(e).

**§ 107.885 [Amended]**

4. Amend 107.885 by removing paragraph (b) and removing the paragraph designation “(a)”.

Dated: May 13, 2002.

**Hector V. Barreto,**  
Administrator.

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002-NM-12-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 737-300, -400, -500, -600, -700, -700C, -800, -900; 747-400; 757; 767; and 777 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-300, -400, -500, -600, -700, -700C, -800, -900; 747-400; 757; 767; and 777 series airplanes. This proposal would require modifying the static inverter by relocating resistor R170 of the static inverter bridge assembly. This action is necessary to prevent a standby static inverter from overheating, which could result in smoke in the flight deck and cabin and loss of the electrical standby power system. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by July 1, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-12-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain “Docket No. 2002-NM-12-AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2890; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket 2002-NM-12-AD.” The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket 2002-NM-12-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The FAA has received reports that static inverters had overheated on several Boeing airplanes. In one incident, smoke entered the flight deck and the cabin, and the captain declared an emergency. The smoke was traced to the static inverter unit, a critical piece of equipment that converts battery power during a standby condition. The type of static inverter involved in this incident is used on the affected Boeing airplane models. Analysis conducted by the manufacturer indicates that the proximity of resistor R170 to capacitors C50 and C51 in the static inverter could lead to overheating and consequent damage or failure of those capacitors. The results of the analysis suggest that the combination of obstructed convection cooling and localized heat dissipation from resistor R170 resulted in sufficient energy to damage the adjacent capacitors. These conditions, if not corrected, could result in smoke in the flight deck and cabin and loss of the electrical standby power system.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Service Letters 737-SL-24-165, 747-SL-24-058, 757-SL-24-069, 767-SL-24-047, and 777-SL-24-028; dated October 3, 2000. The service letters describe procedures for modifying the static inverter by relocating resistor R170 of the static inverter bridge assembly and reidentifying the static inverter to indicate the new modification level. Accomplishment of the actions specified in the service letters is intended to adequately address the identified unsafe condition.

The service letters refer to Avionic Instruments Inc. Service Bulletin 1-002-0102-1000-24-24, dated July 19, 1999, as an additional source of service information for relocating R170 and reidentifying the static inverter.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service letters.