

Rules and Regulations

Federal Register

Vol. 72, No. 86

Friday, May 4, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN Number 3245 AF49

Business Loan Program; Lender Examination and Review Fees

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule implements a recent amendment to the Small Business Act authorizing the Small Business Administration (SBA) to assess fees to Lenders participating in SBA's 7(a) loan guarantee program (Lenders) to cover the costs of examinations, reviews, and other Lender oversight activities. The rule describes the methodology for fee assessment. Lenders will pay the actual costs to SBA of the on-site examinations and reviews, and will be allocated off-site review/monitoring costs based on each Lender's proportionate share of loan dollars that SBA has guaranteed in the SBA portfolio. The rule also describes the billing and payment processes.

DATES: This rule is effective June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, Office of Lender Oversight, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205-3049.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 7(a) of the Small Business Act, 15 U.S.C. 636(a), authorizes SBA to guarantee loans made by Lenders to eligible small businesses. Currently, there are nearly 5,000 Lenders authorized to make such SBA guaranteed loans that have outstanding 7(a) loans. SBA conducts off-site reviews/monitoring and on-site exams/reviews of these Lenders to ensure they

are processing loans in accordance with prescribed standards and to minimize losses. Section 5(b)(14) of the Small Business Act (15 U.S.C. 634(b)(14)), authorizes SBA to require these Lenders to pay fees to cover "the costs of [the] examinations, reviews, and other Lender oversight activities." Congress granted SBA this new fee authority under section 131 of Division K of Public Law 108-447, enacted December 8, 2004. Examination and review costs primarily consist of contractor charges for assistance with (i) on-site examinations; (ii) on-site reviews; and (iii) off-site reviews/monitoring activities.

On September 5, 2006, SBA published a proposed rule seeking comments by October 5, 2006 on its proposal implementing SBA's statutory exam/review fee authority. 71 FR 52296. SBA published a subsequent notice extending the comment period for the proposed Lender review fee to November 9, 2006. 71 FR 59411. The primary purpose of the fee is to cover the costs that SBA currently absorbs for on-site Lender examinations and reviews and off-site review and monitoring activities. On-site and off-site review and monitoring activities are performed to ensure that Lenders are processing, servicing, and liquidating loans in accordance with prescribed SBA standards. By ensuring that Lenders are performing their SBA-required responsibilities in accordance with prescribed standards, SBA reduces the costs of the 7(a) program and its risk of losses from the program.

Under this rule, Lenders will be charged fees for two distinct oversight activities performed by SBA with the assistance of contractors. First, Lenders receiving an on-site review or examination by SBA's review and examination contractors will be charged for the contractors' actual review or examination cost. This cost will be charged to the Lender by SBA after completion of the review or examination for payment according to the terms of the invoice. SBA plans to review only those Lenders with a total outstanding 7(a) portfolio of more than \$10 million in SBA guaranteed dollars, although it reserves the right to review Lenders with smaller portfolios if SBA determines in its discretion that circumstances warrant. Second, all Lenders will be charged a fee for

contractor costs associated with SBA's off-site review/monitoring activities. The fee will be based upon each Lender's pro-rata share of the total outstanding 7(a) portfolio, measured by SBA guaranteed dollars. Each Lender's off-site review fee will be determined using that Lender's outstanding guaranteed dollars, relative to that of SBA's outstanding guaranteed portfolio, as of September 30 of each year. Guaranteed dollars outstanding includes guarantees of both loans held by the Lender and loans sold into the secondary market, securitized, or for which a Lender has sold a participating interest. It also includes loans that have been purchased by SBA but have not yet been charged-off. SBA may waive the off-site review/monitoring fee when SBA determines that it is not cost effective to collect the fee. Currently, SBA expects to waive the off-site review/monitoring fee for Lenders with a fee of less than \$200.

The rule also authorizes SBA to charge a fee to cover the costs of the additional expenses that SBA incurs in carrying out Lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out Lender oversight activities). However, SBA does not plan at this time to charge Lenders for these costs. A discussion of the comments received and considered and a section by section analysis follows.

II. Comments Received and Considered

With approximately 5,000 individual Lenders, SBA received only 56 comments on the proposed Lender review fee. Forty-nine of the comments were from 7(a) Lenders other than Small Business Lending Companies (SBLCs), and three comments were from SBLCs. Three comments were from trade organizations, and one comment came from a regulatory organization. Comments generally covered the following areas: (i) The fee levels were excessive; (ii) there was no incentive to control costs; (iii) the fee could drive small Lenders out of the program; (iv) use of other regulators or SBA staff to perform the reviews; (v) the manner and methodology used for the reviews and review fees (generally concerning the off-site review fee); and (vi) other comments.

Fee Levels

Some commenters asserted that the overall fees described in the proposed notice were generally excessive. A few commenters stated that the off-site fees were excessive and other commenters expressed that the on-site review or examination fees were too high.

SBA awards the contracts for the reviews and examinations in accordance with Federal procurement statutes and regulations, and makes the awards to those contractors that can best meet the program's needs while at the same time obtaining the best value for the Government. Further, SBA and its contractors work together to minimize costs whenever possible. For example, SBA may direct the on-site review or examination contractor to reduce its loan review sample sizes for SBA Supervised Lenders with small portfolios or no current lending activity. With respect to the cost of the on-site examinations, as we noted in the proposed rule, SBA's costs compare favorably to the assessments performed by other Federal regulators, which are similar in size and scope to SBA's examinations. For example, the Comptroller of the Currency's current annual assessment on a bank with \$1 billion in assets is approximately \$232,000, and the Office of Thrift Supervision assesses the same size institution approximately \$215,682, whereas the annualized cost for an SBA Supervised Lender on a 24 month exam cycle with \$1 billion in outstanding loan balances (with 71% of that portfolio guaranteed by SBA) would average \$132,830. With respect to the off-site review fee, we note that the average size of an outstanding 7(a) loan is approximately \$110,000 in SBA guaranteed dollars. The current off-site review fee is estimated to be \$73 per million in outstanding guarantee dollars. Therefore, for the off-site review, the average outstanding 7(a) loan would cost the Lender an additional \$8 per year, which SBA does not believe to be an unreasonable burden for Lenders.

Consequently, SBA believes that both the off-site and on-site cost-based fees are reflective of the market for such services and are fair and reasonable.

Cost Control

Many of the commenters raised concerns as to future efforts to control the costs of SBA's oversight activities. These commenters contended that SBA has little incentive to control costs if oversight costs are passed along to Lenders, and that SBA should consult with Lenders before increasing any of

the review fees. In addition, several commenters were concerned that SBA would pass along to the Lenders the Agency's costs associated with Lender oversight.

SBA does not believe that the Lender fee structure will result in reduced efforts by SBA to minimize costs. For each of the contracts under which the examinations and reviews are conducted, SBA ensures that the contract cost is fair and reasonable in accordance with applicable law. In addition, SBA currently controls costs in general through fixed price contracts, contract monitoring and, as noted above, through coordinating the work with the contractors to minimize costs. For example, SBA works to control the costs of the on-site review primarily through a fixed-price contract, which currently ranges from \$21,000 to \$26,000 per review. The only variable rate component is for travel to and from the Lender's site, and these expenses are carefully evaluated for reasonableness by Office of Lender Oversight staff as part of the invoicing process. SBA also works closely with the Farm Credit Administration, its current contractor for on-site examinations, to control examination costs for SBLCs. For example, SBA and Farm Credit Administration have worked to ensure that the sample size of loans reviewed during the examination process is reflective of the SBLC's portfolio size. Finally, most of SBA's costs associated with the off-site reviews/monitoring are also fixed. These fixed costs minimize the potential for increased costs, and help ensure that costs will remain controlled during the life of the contracts (on-site reviews and off-site reviews/monitoring). As the contracts or agreements are re-competed or renewed, as appropriate, SBA will continue to consider cost as one of several important considerations in determining which offers or proposed agreements provide the best value to the government.

SBA also believes that Lender concerns with respect to SBA charging a fee to cover its own internal costs are misplaced. As noted in the proposed rule, the statute upon which the rule is based authorizes the Agency to charge a fee to cover the Agency's internal Lender oversight costs. However, it is not the Agency's intention to charge a fee to cover such costs at the present time. Should SBA later decide to include charges for other Lender oversight activities, SBA will provide Lenders a notice describing the costs to be included in the fee.

Many commenters suggested that SBA should establish a maximum charge for

oversight activity fees and consult with Lenders before increasing the fees. As noted above, SBA minimizes the fees through competitive bidding processes, and by working with its contractors to reduce costs where possible (while still maintaining strong risk management capabilities). Therefore, SBA believes there is no need to establish a maximum fee threshold and, with respect to the comment on consultation, SBA will continue its practice of consulting with its Lenders through informal discussions and contacts.

Impact on Small Lenders

Many commenters asserted that the fee might force smaller Lenders out of SBA lending due to increased costs, damaging SBA's lending program. SBA believes that the fee will not have such an impact. First, we believe that the financial impact of the review fees themselves will be relatively minimal on most 7(a) Lenders, especially small Lenders. Since on-site reviews will generally only be performed on Lenders with SBA portfolios of at least \$10 million in SBA guaranteed dollars, the overwhelming majority of Lenders will not be subject to on-site reviews, and will thus not be impacted by the on-site review cost. Of the approximately 5,000 SBA 7(a) Lenders, only about 350, or about 7 percent of all Lenders, have portfolios of greater than \$10 million, and these Lenders hold about 84% of the outstanding SBA guaranteed dollars. In addition, it is SBA's expectation that on-site reviews would be normally performed approximately every two years and, thus, Lenders will not be bearing an annual on-site review cost. Off-site reviews will be performed on all 7(a) Lenders; however, the fee is relatively small for Lenders with lesser portfolios. The proposed rule stated that the cost for off-site reviews was expected to be approximately \$82 for every \$1 million SBA guaranteed dollars held by a Lender. SBA has revised its fee estimate and, due to several factors, we now estimate the cost of off-site reviews/monitoring to be approximately \$73 for every \$1 million in SBA guaranteed dollars. Thus, for a Lender with \$10 million in SBA guaranteed loan dollars, the off-site review fee at this time would be \$730. We do not believe this to be an unduly burdensome fee upon Lenders.

Second, we note that many Lenders in the 7(a) program are local community banks. A major role of these banks is to be a source of funds within the community, and to lend those funds to small business borrowers in need of those funds to pursue their dreams and opportunities. Since SBA is a "credit

elsewhere" program—i.e., recipients of 7(a) loans have not been able to obtain credit on reasonable terms from any other source—the banks are not willing to serve these customers without the SBA Guarantee. We believe that Banks—particularly local banks that must serve their community—will continue to offer SBA guaranteed loans to borrowers unable to obtain financing on such reasonable terms elsewhere.

Finally, SBA believes that the off-site reviews and monitoring and additional on-site reviews that the fee will sustain will dramatically improve the Agency's risk management of the 7(a) program. Off-site reviews/monitoring will enable SBA to quickly and continually spot Lenders with poorly performing portfolios and work with those Lenders to turn around their performance. Regular on-site reviews will allow SBA to ensure that its highest risk 7(a) Lenders are meeting their program obligations and complying with Agency origination, underwriting, servicing, and liquidation requirements. Expanding the number of on-site reviews will enable SBA to educate more Lenders on the correct origination, servicing and liquidation procedures for Agency loans. By doing so, it is SBA's expectation that more Lenders will comply with Agency guidelines, cutting the Agency's processing times and possibly reducing program losses. These benefits would reduce SBA's costs, which may be passed along to its lending partners and borrowers through reductions in other fees and ultimately improve the 7(a) program.

In the proposed rule, SBA indicated that it might establish a minimum fee threshold (below which it would waive the off-site fee) if it believed that collection costs would be high relative to the fee collected. SBA has determined that, currently, it will be cost effective to the Agency to waive the off-site review fee for Lenders with a total fee of less than \$200 in lieu of incurring the cost associated with collecting these smaller fees. By setting this threshold, SBA estimates it will eliminate the fee for approximately 4,050 Lenders, while still collecting approximately 93 percent of the off-site review costs. SBA reserves the right to adjust this threshold from time to time in its sole discretion, and will periodically review the cost of collecting the off-site fee to determine if the threshold should be adjusted or eliminated. For example, if technological improvements reduce the cost of collections, SBA may reduce or eliminate the threshold at which it waives the fee. Such changes would be made through an SBA Notice. All Lenders owing more than the threshold

amount will be required to pay the entire fee. It is important to note that the paying Lenders will not be paying more because the smaller fees are being waived for some Lenders; rather, SBA will absorb those costs.

As a result, SBA believes the review fees will not have a detrimental effect upon the 7(a) program. Furthermore, the Agency believes that the size of the fee is not an undue burden on smaller Lenders, and that the establishment of a fee waiver threshold will further reduce the impact on smaller Lenders. Therefore, we do not believe that the imposition of the fee will cause smaller Lenders to leave the 7(a) program.

Reviews by Other Regulators or SBA Staff

Several commenters suggested that it might be more efficient for SBA to have others perform on-site reviews. Most recommended using staff from financial regulators, while one proposed using local SBA staff to perform the reviews, and another expressed concern with SBA finalizing the rule before attempting to coordinate the reviews with state and federal regulators who have primary supervisory authority over the Lenders.

SBA believes that financial regulators generally do not have significant knowledge of SBA's 7(a) loan program; we would be concerned about a lack of consistency in the reviews performed. Thus, it could be difficult to rely on review results as a component of our Lender monitoring process, particularly when comparing review results between peers. In addition, by controlling reviews through dedicated contractors, we have maximum flexibility to move resources where immediately needed to timely address most pressing risk issues to SBA.

It is also not feasible for local SBA staff to perform the on-site reviews. Local SBA staff is dedicated to program development and outreach which, by being separate from the Lender oversight functions, avoids the appearance of any conflict between the two. In addition, the Agency does not currently have staff with the training and experience necessary to perform risk-based reviews or safety and soundness examinations.

Review Fee Methodology

SBA received a number of comments on the manner and methodology that SBA proposed for assessing the review fees. These comments concerned: (i) The frequency of the off-site review process, (ii) using a different approach to determine the off-site review fee, and

(iii) applying the fee to loans already in Lenders' portfolios.

Many commenters raised concerns about the frequency of the off-site reviews. Some expressed that reviewing and updating Lender risk ratings on a quarterly basis was too frequent, while others suggested that the frequency of the risk ratings be tied to each Lender's relative risk—less risky Lenders being subject to updated risk ratings less often than riskier Lenders.

All lenders Risk Rating are updated on a quarterly base. Quarterly updating allows SBA to better monitor both individual Lender and portfolio-wide performance trends. Portfolio performance may change dramatically from quarter to quarter. Therefore, quarterly reviews may detect changes that threaten the 7(a) program sooner than reviews performed less frequently. The quarterly comparison enables SBA to regularly identify those Lenders with the greatest risk and to review them timely and more closely.

Because the risk rating system was designed to compare each Lender's risk to SBA relative to its peers, it is essential to perform a risk rating on all Lenders each review cycle. If the Agency did not compare the performance of all Lenders in a peer group, Lenders would not be accurately rated for relative risk. For example, if SBA only risk rated the worst performing Lenders in each peer group (removing the best performing Lenders from the analysis), the relatively better performing Lenders in this higher risk subset would appear to be performing better than they are because they would only be compared to even higher risk Lenders rather than both higher and lower risk Lenders. In addition, under the risk rating system, individual Lender ratings may rise or fall every quarter, as each Lender's performance becomes relatively more or less risky. Unless all Lenders are risk rated each quarter, SBA will be unable to detect positive or negative performance trends.

Several commenters requested that SBA consider adding a minimum fee component to the cost allocation methodology for the off-site review fee. These commenters suggested that SBA should charge each Lender a minimum fee, and then allocate the remainder of the cost to Lenders based upon the size of their 7(a) loan portfolios. The commenters reasoned that since at least a minimal level of contractual off-site review work is performed on each Lender, all Lenders should pay at least a minimal fee. However, some commenters supported SBA's proposal to provide a waiver or exemption of the fee for small volume lenders.

SBA has decided against charging a minimum fee. Charging a minimum fee for lower volume Lenders would run counter to SBA's determination to absorb those costs that are not cost effective to collect and equitably assess the remaining cost to higher volume lenders. This comment also appears to be based on the erroneous assumption that the Lenders who pay the fee will be subsidizing the Lenders who will have the fees waived. The paying Lenders will not be subsidizing the non-paying Lenders because SBA currently plans to absorb the costs of the waived fees. In addition, a minimum fee allocation methodology may result in a disproportionate distribution of the review costs relative to each Lender's participation level.

Several commenters suggested that SBA consider revising the formula upon which to base the off-site review fee. Rather than base the fee on portfolio size in SBA guaranteed dollars outstanding, commenters proposed that the fee be based upon such factors as the number of loans outstanding, average size of the loans in each Lenders' portfolio, historical portfolio performance, annual origination volume, and Lender risk ratings. The Agency believes that SBA guaranteed dollars outstanding is the factor most directly related to risk because it is a direct measure of the Agency's maximum risk exposure should SBA be forced to honor its loan guarantees.

A few commenters objected to SBA applying the off-site review fee to loans originated before the fee rule effective date. The commenters suggested that SBA should only apply the off-site fee to loans originated after this rule's effective date, to enable Lenders to price the cost of the fee into their loan. This suggestion, however, does not consider that SBA's off-site monitoring approach takes into account a Lender's entire 7(a) portfolio when risk rating a Lender's portfolio. All of the loans in each Lender's portfolio are monitored as part of SBA's risk management process, and all of the loans are included in the portfolio analysis that SBA uses to determine which Lenders may present an unreasonable level of risk to SBA. To exclude earlier originated loans and their dollar risk from the analysis would present an incomplete picture of the portfolio's risk to SBA. Further, such a measure would have an unfair effect between Lenders: One Lender with a portfolio of \$10 million in SBA guaranteed dollars originated prior to the effective date would not be subject to the off-site review fee for the entire life of that portfolio, while another Lender with the same size portfolio of

loans all originating after the effective date would be subject to the fee. In sum, this suggestion fails to consider that all loans, including currently outstanding loans, represent some level of risk to SBA and must be monitored.

Other Miscellaneous Comments

One commenter requested that SBA exclude loans purchased by SBA, but not yet charged-off by SBA, from the off-site review fee calculation. SBA includes purchased loans in its off-site monitoring efforts to help assist its purchase centers in tracking charge-off and recovery data. SBA believes the cost associated with purchased loans will be minimal since the Agency has made a concentrated effort to reduce charge-off time.

One commenter suggested that SBA limit the number of on-site reviews performed on individual Lenders to a maximum of one review every two years. SBA intends to perform an on-site review approximately every other year on SBA's larger 7(a) Lenders. However, SBA must reserve the right to review or examine these Lenders more frequently (and review smaller Lenders) if it determines that particular Lenders present an unacceptably high level of risk to SBA. It is possible that Lenders may be subject to multiple on-site reviews within a two-year cycle when there are significant weaknesses uncovered during an earlier review that must be corrected in order to reduce SBA's risk. However, SBA may also determine that Lenders with poor portfolio performance, as measured by their off-site Lender risk rating and performance factors, should be subject to a follow up review. Such decisions will be made in SBA's sole discretion.

Finally, two commenters asserted that it was unreasonable to expect Lenders to pay the review fee within the 30 day time period. SBA believes that the response time is sufficient for payments to be made. We note that some federal financial institution regulators allow even less time for payment of assessment fees. However, if a Lender has an extraordinary situation and cannot timely make payment, it should contact the Office of Lender Oversight in writing to request additional time. The final rule provides that SBA may waive or abate the collection of interest, charges and/or penalties for delinquent payments if circumstances warrant.

SBA has carefully reviewed the comments received and adopts the rule as proposed with three minor changes. Specifically, SBA has deleted a cite reference to a current enforcement regulation as SBA may in the future propose the relocation and revision of

SBA's enforcement regulations, has added specific authority for SBA to waive the off-site review fee when it determines that it is not cost effective to collect the fee, and has clarified that Lenders will be required to pay a fee to cover other lender oversight activities only if SBA assesses such a fee.

III. 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 final rule constitutes a significant regulatory action under Executive Order 12866 thus requiring a Regulatory Impact Analysis. We provided such an analysis in the proposed rule published on September 5, 2006. In that analysis, SBA stated that, as it delegates more authority to its Lenders, there is a need for better and more comprehensive Lender oversight, which SBA has developed through the off-site (L/LMS) and on-site reviews and examinations. The rule implements the recent amendment to the Small Business Act authorizing SBA to assess Lenders fees to cover the costs of those examinations or reviews. The costs of these oversight activities primarily consist of contractor charges for assistance in carrying out the reviews and examinations. In its analysis, SBA noted that the benefits of the proposed fees for Lenders include that the costs of on-site examinations or reviews are allocated directly to those Lenders for whom the costs are incurred, and that the costs of L/LMS would be allocated according to each Lender's participation level as measured by SBA guaranteed dollars. Besides allocating its review and monitoring costs to its Lenders, SBA will benefit through the relative ease of administering the assessment process. The analysis indicates that SBA considered alternatives to the L/LMS cost allocation plan, but that an allocation based on dollars at risk, rather than for example the number of loans, is better related to risk and, therefore, the most equitable.

SBA received several comments on costs and alternatives. SBA addressed these comments in the comments section of the preamble. For example, some commenters suggested that the proposed fee was excessive. SBA's examination and review costs primarily consist of contractor charges and contracts are awarded in accordance with Federal procurement statutes and regulations, while providing best value

for the Government. Consequently, SBA believes that both the off-site and on-site cost-based fees are reflective of the market for such services and are fair and reasonable. Some commenters also suggested that the fees would be prohibitive for small Lenders. As stated in the comments section, these fees will be waived for Lenders with small portfolios. The reviews may ultimately lead to greater compliance with Agency guidelines and less program losses, which may be passed along to Lenders through reductions in other fees. Therefore, SBA does not believe that the fees will force small Lenders out of SBA lending.

SBA received several comments recommending alternatives. For example, SBA received suggestions that the Agency consider setting minimum and maximum fee levels; tie review fees to risk ratings; and utilize other bank regulators for SBA program on-site reviews. The comment on minimum fees appears to be based on the erroneous assumption that the Lenders who pay the fees will be subsidizing the Lenders who will have the fees waived. Also, charging a minimum fee for lower volume Lenders would run counter to SBA's determination to absorb those costs that are not cost effective to collect. As to setting a maximum fee, SBA minimizes the fees through competitive bidding processes, through fixed price contracts and by working with its contractors to reduce costs where possible. Therefore, SBA believes there is no need to establish a minimum or a maximum fee threshold. Some commenters suggested that SBA should tie review fees to risk ratings. Risk Rating trends are indirectly incorporated into the fee methodology to the extent that better ratings could translate into less frequent on-site examinations and reviews. Another alternative suggested was that SBA utilize the other bank regulators for SBA program on-site reviews. SBA believes that utilizing the other bank regulators to perform SBA's reviews would cause concern about a lack of consistency in the reviews performed. Thus, it could be difficult to rely on review results as a component of our Lender monitoring process, particularly when comparing review results between peers. Therefore, SBA did not accept this alternative. For a more detailed discussion on the costs and alternatives, see the main text of the preamble.

Executive Order 12988

This final rule 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. This final rule will not have retroactive or pre-emptive effect.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the Federal 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 this final rule has no federalism implications warranting preparation of a federalism assessment.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the Agency to “publish a final regulatory flexibility analysis” which will “describe the impact of the final rule on small entities.” 5 U.S.C. 604(a). Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although this rulemaking may affect a substantial number of small entities, for the reasons stated below, SBA does not believe that this rule will have a significant economic impact on a substantial number of small entities.

This rule implements Small Business Act § 5(b)(14), which authorizes SBA to require 7(a) Lenders to pay examination and review fees. These fees are to be available to fund the costs of examinations, reviews, and other Lender oversight activities.

The review fees will apply to all 7(a) Lenders with outstanding SBA guaranteed loan balances. Nearly 5,000 Lenders are currently participating in the 7(a) program, of which 11 are active SBLC Lenders. SBA has determined that SBLCs are classified under the size standard for NAICS 522298. Three of the 11 active SBLCs are below the \$6.5 million in average annual receipts and are deemed small business concerns. Nearly all of the remaining 7(a) Lenders are covered under NAICS 522110 for commercial banks and other depository financial institutions. About 3,000 of the Lenders in this classification have less than \$165 million in assets and are deemed small business concerns. (Note: with the waiver to any Lender with less than \$200 in fees, SBA calculates that only approximately 300 Lenders that are classified as small will be affected.)

The final rule will not have a significant economic impact on a substantial number of the 3,000 Lenders covered under NAICS 522110. Most of

these Lenders have very small SBA portfolios and will only be subject to fees for the off-site reviews/monitoring. The annual fee, if assessed for all 3,000 small Lenders, for 98 percent of these Lenders will be less than \$945, the cost of a one year subscription to the “American Banker” magazine. SBA plans to waive the fees when it is not cost-effective to bill and collect. At this time, SBA has determined to waive the off-site fee for all Lenders with a fee of less than \$200. That determination may be revised periodically to reflect changes in SBA's costs. SBA estimates that the annual fee will be waived for approximately 2700 small Lenders. For approximately 250 small Lenders, the annual fee will be between \$200 and \$1,000. The largest of the approximately 50 remaining Lenders classified as small business concerns has over \$100 million in outstanding SBA guarantees. The largest annualized fee for a Lender classified as small, which will cover the cost of the bi-annual on-site review plus annual off-site monitoring cost, is estimated at \$21,288. The estimated annualized fee of the on-site exam plus the annual off-site monitoring cost fee for the three SBLCs classified as small business concerns would range from \$28,160 to \$42,000.

Moreover, since SBA will calculate and bill for the fee, there will be virtually no recordkeeping or other compliance requirements of the rule. There are also no relevant Federal rules governing fees for the 7(a) program which may duplicate, overlap or conflict with the final rule. SBA certified this rulemaking at the proposed rule stage. SBA did not receive any comments on SBA's certification. However, SBA received comments from small lenders about the fee. In reviewing the comments SBA has determined that those lenders will not be affected by the fee implementation. Since, the SBA has decided to waive the off-site review fee for lenders with a total fee of less than \$200, in lieu of incurring the cost associated with collecting these smaller fees. Accordingly, the Administrator of SBA hereby certifies to the Chief Counsel of Advocacy that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons discussed in the preamble, SBA amends 13 CFR part 120 to read 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), 634(b)(7), 634(b)(14), 633(b)(3), 636(a) and (h), 650, and 696(3) and 697(a)(2).

■ 2. Revise § 120.454 to read as follows:

§ 120.454 PLP Performance Review.

SBA may review the performance of a PLP Lender.

■ 3. Add a new Subpart I to read as follows:

Subpart I—Lender Oversight**§ 120.1070 Lender oversight fees.**

Lenders are required to pay to SBA fees to cover costs of examinations and reviews and, if assessed by SBA, other Lender oversight activities.

(a) *Fee components:* The fees may cover the following:

(1) *On-Site Examinations.* The costs of conducting on-site safety and soundness examinations of an SBA-Supervised Lender, including any expenses that are incurred in relation to the examination. For the purposes of this paragraph, the term “SBA-Supervised Lender” means a Small Business Lending Company or a Non-Federally Regulated Lender.

(2) *On-Site Reviews.* The costs of conducting an on-site review of a Lender, including any expenses that are incurred in relation to the review.

(3) *Off-Site Reviews/Monitoring.* The costs of conducting off-site reviews/monitoring of a Lender, including any expenses that are incurred in relation to the review/monitoring activities. SBA will assess this charge based on each Lender’s portion of the total dollar amount of SBA guarantees in SBA’s portfolio. SBA may waive the assessment of this fee for all Lenders owing less than a threshold amount below which SBA determines that it is not cost effective to collect the fee.

(4) *Other Lender Oversight Activities.* The costs of additional expenses that SBA incurs in carrying out Lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out Lender oversight activities). This charge will be based on each Lender’s portion of the total dollar amount of SBA guarantees in SBA’s portfolio.

(b) *Billing Process.* For the on-site examinations or reviews conducted under (a)(1) and (a)(2) above, SBA will bill each Lender for the amount owed following completion of the examination or review. For the off-site reviews/monitoring conducted under (a)(3) above and the other Lender oversight expenses incurred under (a)(4) above, SBA will bill each Lender for the amount owed on an annual basis. SBA will state in the bill the date by which payment is due SBA and the approved payment method(s). The payment due date will be no less than 30 calendar days from the bill date.

(c) *Delinquent Payment and Late-Payment Charges.* Payments that are not received by the due date specified in the bill shall be considered delinquent. SBA will charge interest, and other applicable charges and penalties, on delinquent payments, as authorized by 31 U.S.C. 3717. SBA may waive or abate the collection of interest, charges and/or penalties if circumstances warrant. In addition, a Lender’s failure to pay any of the fee components described in this section, or to pay interest, charges and penalties that have been charged, may result in a decision to suspend or revoke a participant’s eligibility or to limit a participant’s delegated authority.

Dated: March 23, 2007.

Steven C. Preston,
Administrator.

[FR Doc. E7–8516 Filed 5–3–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

15 CFR Parts 705, 730, 736, 744, 747, 754, 756, 760, 766, 768, 770, and 772

[Docket No. 070411085–7088–01]

RIN 0694–AE01

Updated Office Names, Office Addresses, Statements of Legal Authority and Statute Name and Citation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises office names and addresses to reflect a recent Bureau of Industry and Security (BIS) reorganization, updates the statements of legal authority for ten parts of the Export Administration Regulations (EAR), and replaces an outdated statute name and citation with the current name of that statute in one section of the EAR.

DATES: This rule is effective May 4, 2007.

ADDRESSES: Comments concerning this rule should be sent to publiccomments@bis.doc.gov, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE01 in all comments, and in the subject line of email comments.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION**Background**

This rule updates outdated office names, office addresses, legal authority citations and a reference to a statute as described below.

Revision of Addresses in Accordance With Reassignment of Responsibilities Within BIS

BIS recently created an Office of Technology Evaluation and assigned to it the responsibility for conducting investigations into the effect of imported articles on the national security pursuant to part 705 of the National Security Industrial Base Regulations (15 CFR Part 705) and for conducting foreign availability assessments pursuant to part 768 of the EAR (15 CFR Part 768). Accordingly, this rule revises both of those parts to include the mailing address of that office.

Updating Statements of Legal Authority

The legal authorities for the EAR (15 CFR 730–799) change from time to time. The expiration of the Export Administration Act on August 20, 2001, the issuance of Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002) and the annual notices declaring the continuation of the international emergency noted in that Executive Order mean that the legal authority for each part of the EAR has, in recent years, changed at least annually. In addition, the authority citations for some parts change more often due to periodic updates and amendments to the relevant statutes. This rule revises the citations of authority for parts 730, 736, 747, 754, 756, 760, 766, 768, 770, and 772 to reflect the legal authorities in currently in effect.

Updating Statement of BIS Organization

Section 730.9 of the EAR describes how the Bureau of Industry and