

(LDPE, LLDPE, MDPE, HDPE) compound meeting the requirements of ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97) and ASTM D 1248-05 (incorporated by reference in § 1728.97) for Type I, Class C, Category 4 or 5, Grade J3 before application to the cable. Polyvinyl chloride (PVC) and chlorinated polyethylene (CPE) jackets are not acceptable.

(4) Semi-conducting jackets shall have a maximum radial resistivity of 100 ohm-meter and a maximum moisture vapor transmission rate of 1.5 g/m<sup>2</sup>/24 hours at 38° C (100° F) and 90 percent relative humidity in accordance with ASTM E 96/E96M-05 (incorporated by reference in § 1728.97).

(5) The minimum thickness of the jacket over metallic neutral wires or straps shall comply with the thickness specified in ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97).

(i) *Tests.* (1) As part of a request for Agency consideration for acceptance and listing, the manufacturer shall submit certified test data results to the Agency that detail full compliance with ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97) for each cable design.

(i) Test results shall confirm compliance with each of the material tests, production sampling tests, tests on completed cable, and qualification tests included in ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97).

(ii) The testing procedure and frequency of each test shall be in accordance with ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97).

(iii) Certified test data results shall be submitted to the Agency for any test, which is designated by ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97) as being "for Engineering Information Only," or any similar designation.

(2) *Partial discharge tests.* Manufacturers shall demonstrate that their cable is not adversely affected by excessive partial discharge. This demonstration shall be made by completing the procedures described in paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(i) Each shipping length of completed cable shall be tested and have certified test data results available indicating compliance with the partial discharge test requirements in ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97).

(ii) Manufacturers shall test production samples and have available certified test data results indicating compliance with ASTM D 2275-01

(incorporated by reference in § 1728.97) for discharge resistance as specified in the ANSI/ICEA S-94-649-2004

(incorporated by reference in § 1728.97). Samples of insulated cable shall be prepared by either removing the overlying extruded insulation shield material, or using insulated cable before the extruded insulation shield material is applied. The sample shall be mounted as described in ASTM D 2275-01 and shall be subjected to a voltage stress of 250 volts per mil of nominal insulation thickness. The sample shall support this voltage stress, and not show evidence of degradation on the surface of the insulation for a minimum of 100 hours. The test shall be performed at least once on each 50,000 feet (15,240 m) of cable produced, or major fractions thereof, or at least once per insulation extruder run.

(3) *Jacket tests.* Tests described in paragraph (i)(3)(i) of this section shall be performed on cable jackets from the same production sample as in paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(i) A Spark Test shall be performed on nonconducting jacketed cable in accordance with ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97) on 100 percent of the completed cable prior to its being wound on shipping reels. The test voltage shall be 4.5 kV AC for cable diameters <1.5 inches and 7.0 kV for cable diameters >1.5 inches, and shall be applied between an electrode at the outer surface of the nonconducting (insulating) jacket and the concentric neutral for not less than 0.15 second.

(ii) [Reserved]

(4) Frequency of sample tests shall be in accordance with ANSI/ICEA S-94-649-2004 (incorporated by reference in § 1728.97).

(5) If requested by the borrower, a certified copy of the results of all tests performed in accordance with this section shall be furnished by the manufacturer on all orders.

(j) *Miscellaneous.* (1) All cable provided under this specification shall have suitable markings on the outer surface of the jacket at sequential intervals not exceeding 2 feet (0.61 m). The label shall indicate the name of the manufacturer, conductor size, type and thickness of insulation, center conductor material, voltage rating, year of manufacture, and jacket type. There shall be no more than 6 inches (0.15 m) of unmarked spacing between texts label sequence. The jacket shall be marked with the symbol required by Rule 350G of the National Electrical Safety Code and the borrower shall specify any markings required by local safety codes.

This is in addition to extruded red stripes required in this section.

(2) Watertight seals shall be applied to all cable ends to prevent the entrance of moisture during transit or storage. Each end of the cable shall be firmly and properly secured to the reel.

(3) Cable shall be placed on shipping reels suitable for protecting it from damage during shipment and handling. Reels shall be covered with a suitable covering to help provide physical protection to the cable.

(4) A durable label shall be securely attached to each reel of cable. The label shall indicate the purchaser's name and address, purchase order number, cable description, reel number, feet of cable on the reel, tare and gross weight of the reel, and beginning and ending sequential footage numbers.

Dated: March 8, 2012.

**Jonathan Adelstein,**  
*Administrator, Rural Utilities Service.*

[FR Doc. 2012-7610 Filed 3-30-12; 8:45 am]

**BILLING CODE P**

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

RIN 3245-AG48

#### 7(a) Loan Program; Eligible Passive Companies

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends SBA's existing regulations to clarify the eligible uses of loan proceeds by an Operating Company in connection with an SBA-guaranteed loan to an Eligible Passive Company.

**DATES:** This rule is effective on May 17, 2012 without further action, unless significant adverse comment is received by May 2, 2012. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AG48, by one of the following methods: (1) Federal eRulemaking Portal:

[www.regulations.gov](http://www.regulations.gov); following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC 20416.

SBA will post all comments to this rule on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business

information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC 20416, or send an email to [grady.hedgespeth@sba.gov](mailto:grady.hedgespeth@sba.gov). You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

**FOR FURTHER INFORMATION CONTACT:** Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC 20416; (202) 205-7562; [grady.hedgespeth@sba.gov](mailto:grady.hedgespeth@sba.gov).

**SUPPLEMENTARY INFORMATION:** SBA generally makes business loans only to small businesses engaged in regular business activities, and prohibits such assistance to entities engaged in passive investment or real estate development, or which do not engage in regular and continuous activity as an operating business. SBA regulations at 13 CFR 120.111 currently provide an exception to this prohibition on providing financial assistance to passive entities if the passive entity is an Eligible Passive Company that leases real or personal property to an Operating Company for use in the Operating Company's business and complies with the conditions set forth in the regulation. SBA defines an "Eligible Passive Company" or "EPC" as an entity that does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business. An "Operating Company" or "OC" is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations personal property owned by an Eligible Passive Company.

Section 120.111 requires the Eligible Passive Company to "use loan proceeds to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing)." The regulation does not specifically state the eligible uses of loan proceeds for use by the Operating Company, but does require the Operating Company to be a guarantor or a co-borrower (with the Eligible Passive Company) on the loan. In a 7(a) loan including working capital

for use by the Operating Company, the regulation requires the Operating Company to be a co-borrower.

When SBA promulgated the current regulations as described above, it offered the following explanation for allowing the Operating Company to be allocated a portion of the loan proceeds in a loan to an Eligible Passive Company:

[I]t is common for an Operating Company to need working capital when the Eligible Passive Company applies for a loan primarily to finance the acquisition of real or personal property. In the past, SBA has required the Eligible Passive Company to use the loan proceeds solely to acquire and improve property for lease to an Operating Company. Thus, two separate SBA loans would be needed—one to the Eligible Passive Company for the real estate and the other to the Operating Company for working capital.

(Notice of Proposed Rulemaking published in the **Federal Register** on December 15, 1995 (60 FR 64356) and Final Rule published on January 31, 1996 (61 FR 3226).) At that time, SBA proposed and finalized a regulatory change to allow a single loan to the EPC to be used, in part, for working capital by the OC, provided the OC is a co-borrower. The loan proceeds for working capital would be allocated to the OC, while the loan proceeds for the acquisition and improvements of the property for lease to the OC would be allocated to the EPC.

The practice of structuring a loan with the real estate held by an EPC that leases the real estate to the OC for operation of its business has become increasingly common. Further, it has come to SBA's attention that many participating lenders have interpreted this rule to allow EPCs and OCs to borrow funds for the OC's purchase of other assets for its use, including the purchase of stock or intangible assets (such as trademarks, copyrights, intellectual property, or goodwill), as long as the OC was a co-borrower with the EPC. SBA recognizes the need for this type of financing. Thus, in order to allow it to continue, SBA is amending 120.111(a)(5) to clarify that if the OC is a co-borrower with the EPC, part of the loan proceeds of a 7(a) loan may be used for working capital or the purchase of other assets for use by the OC, including the purchase of stock or intangible assets (such as trademarks, copyrights, intellectual property, or goodwill). SBA is also amending 120.120(b)(4) to conform with this change.

Because this is a clarifying amendment that is consistent with industry practice, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed

with a direct final rule giving the public 30 days to comment. If SBA receives any significant adverse comment during the comment period, SBA will withdraw the rule and publish it as a proposed rule.

**Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This direct final rule is also not a major rule under the Congressional Review Act.

*Executive Order 12988*

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

For the purposes of Executive Order 13132, SBA has determined that this direct 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 purpose of Executive Order 13132, SBA has determined that this direct final rule has no federalism implications warranting the preparation of a federalism assessment.

*Executive Order 13563*

For the purposes of Executive Order 13563, SBA has received meaningful feedback from the industry over the past several months and has held discussions with various participating lenders that have requested this clarification. All of the input SBA has received has been supportive of this clarification.

*Paperwork Reduction Act, 44 U.S.C., Ch. 35*

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

*Regulatory Flexibility Act, 5 U.S.C. 601-612*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires

administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, 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 impact on a substantial number of small entities. This rule amends existing Agency regulations to clarify the eligible uses of loan proceeds for an Operating Company when it is a co-borrower with an Eligible Passive Company and does not create new requirements. These amendments will affect small entities; however, SBA has determined that these amendments will not have a significant economic impact on a substantial number of such entities.

#### List of Subjects in 13 CFR Part 120

Community development, Exports, Loan programs—business, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

#### PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115, Pub. L. 111–240, 124 Stat. 2504.

■ 2. Amend § 120.111 by revising paragraph (a)(5) to read as follows:

##### § 120.111 What conditions must an Eligible Passive Company satisfy?

\* \* \* \* \*

(a) \* \* \*

(5) The Operating Company must be a guarantor or co-borrower with the Eligible Passive Company. In a 7(a) loan that includes working capital and/or the purchase of other assets, including intangible assets, for the Operating Company's use, the Operating Company must be a co-borrower.

\* \* \* \* \*

■ 3. Amend § 120.120 by revising paragraph (b)(4) to read as follows:

##### § 120.120 What are eligible uses of proceeds?

\* \* \* \* \*

(b) \* \* \*

(4) Working capital (if the Operating Company is a co-borrower with the Eligible Passive Company, part of the loan proceeds may be applied for

working capital and/or the purchase of other assets, including intangible assets, for use by the Operating Company).

\* \* \* \* \*

Dated: March 26, 2012.

**Karen G. Mills,**  
*Administrator.*

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Parts 171 and 172

[CBP Dec. 12–07]

#### Changes in the Statutory Authority for Petitions for Relief

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical corrections.

**SUMMARY:** This document amends U.S. Customs and Border Protection (CBP) regulations by making technical corrections to reflect the repeal of one of the underlying statutory authorities regarding petitions for relief from a fine, penalty, forfeiture, or liquidated damages under a law administered by CBP. Administrative petitioning rights are not affected by removal of this authority because CBP has other existing statutory authority for these provisions. This document also amends regulations to reflect changes in delegation authority as effected by the transfer of CBP to the Department of Homeland Security (DHS), and makes non-substantive editorial and nomenclature changes.

**DATES:** The final rule is effective on April 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** Todd Schneider, Penalties Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, Tel. (202) 325–0261.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to 19 CFR parts 171 and 172, specifically, sections 171.11, 171.12, 172.11, and 172.12.

These regulations delegate to the Fines, Penalties, and Forfeitures Officer or the Chief, Penalties Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection (CBP) Headquarters

the authority to remit or mitigate fines, penalties, or forfeitures, or cancel claims for liquidated damages.

The purpose of the technical corrections is to conform the statutory authority sections listed for 19 CFR parts 171 and 172 and the text of the relevant regulatory provisions to reflect the repeal of title 46, United States Code (U.S.C.) Appendix section 320 (24 Stat. 81), enacted June 19, 1886, which is currently cited as one of the underlying statutory authorities. Title 46 U.S.C. Appendix section 320 was repealed as part of the recodification of the appendix to title 46 of the United States Code, by Public Law 109–304, section 19 (120 Stat. 1711), which was enacted October 6, 2006, and this document removes the repealed statutory citation from the CBP regulations.

Please note that CBP has existing statutory authority to continue accepting administrative petitions under 19 U.S.C. 1618, 1623, and 31 U.S.C. 5321, as appropriate. Therefore, this rule does not alter the rights of a person alleged to have committed a violation, or a breach of a bond condition, to petition for relief.

This document also amends 19 CFR 171.12 to reflect the transfer of authority from the Treasury Department to the U.S. Department of Homeland Security (DHS) and the delegation of authority from DHS to the Commissioner of CBP.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. Accordingly, as of March 1, 2003, the former U.S. Customs Service of the Department of the Treasury was transferred to DHS and reorganized to become CBP.

On May 15, 2003, the Treasury Department issued Treasury Department Order Number No. 100–16 delegating to DHS its authority related to the customs revenue functions, with certain delineated exceptions in which the Treasury Department retained its authority. See Appendix to 19 CFR part 0. The Treasury Department transferred to DHS its authority over fines, penalties, and forfeitures and the Secretary of DHS further delegated this authority to the Commissioner of CBP. Accordingly, this document amends 19 CFR 171.12 to reflect these changes.

#### Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document are necessary to conform 19 CFR parts 171 and 172 to reflect the repeal of 46 U.S.C. Appendix section 320, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and