3. Section 104.7 is amended by revising the introductory text of paragraph (b), paragraph (b)(1) and the first sentence of paragraph (b)(2) to read as follows:

§ 104.7 Best efforts (2 U.S.C. 432(i)).

* * * * *

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the political committee and its affiliated political committees aggregate in excess of $200 in a calendar year (or in an election cycle in the case of an authorized committee) (pursuant to 11 CFR 104.3(a)(4)), the treasurer and the political committee will only be deemed to have exercised best efforts to obtain, maintain and report the required information if:

(1)(i) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications.

(A) The following are examples of acceptable statements for unauthorized committees, but are not the only allowable statements: ''Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year;'' and ''To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year.''

(B) The following are examples of acceptable statements for authorized committees, but are not the only allowable statements: ''Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in an election cycle;'' and ''To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per election cycle.''

(ii) The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type in comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

(2) For each contribution received aggregating in excess of $200 per calendar year (or per election cycle, in the case of an authorized committee) which lacks required contributor information, such as the contributor's full name, mailing address, occupation or name of employer, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. * * *

* * * * *

4. Section 104.8 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 104.8 Uniform reporting of receipts.

(a) A reporting political committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the political committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year (or during the election cycle, in the case of an authorized committee), the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

(b) In each case where a contribution received from an individual in a reporting period is added to previously unitemized contributions from the same individual and the aggregate exceeds $200 in a calendar year (or in an election cycle, in the case of an authorized committee) the reporting political committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. * * *

* * * * *

5. Section 104.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee) is made from the reporting political committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the expenditure. *See* 11 CFR 104.3(b)(3)(i)(A).

(b) In each case when an expenditure made to a recipient in a reporting period is added to previously unitemized expenditures to the same recipient and the total exceeds $200 for the calendar year (or for the election cycle, in the case of an authorized committee), the reporting political committee shall disclose the recipient's full name and mailing address on the prescribed reporting forms, together with the date, amount and purpose of such expenditure. As used in this section, *purpose* means a brief statement or description as to the reason for the disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).

* * * * *

Dated: July 6, 2000.

Danny L. McDonald,

Vice-Chairman, Federal Election Commission.

[FR Doc. 00–17486 Filed 7–10–00; 8:45 am]

BILLING CODE 6715–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: In this Final Rule a Certified Development Company (CDC) will be permitted to apply to have an area of operations that goes beyond its state of incorporation, and beyond a local economic area in an adjacent state, into a contiguous state to its state of incorporation. This amendment includes specific additional membership, loan committee, and board requirements. Also in the Final Rule, for counties with a population of 100,000 or more that have an existing CDC that is adequately serving the county, an application from a new or expanding CDC will be permitted for that same county if the existing CDC has no objection. In addition, the Final Rule allows a CDC to contract out management and staff under specified circumstances. The changes implemented by this Final Rule seek to enhance competition and improve the effectiveness of the CDC program.

DATES: Effective: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, 202–205–6490.

SUPPLEMENTARY INFORMATION:

1. CDC Area of Operations

The proposed amendments to § 120.802, § 120.810, § 120.822(b), § 120.823(b), § 120.835, and § 120.837 in the Proposed Rule relate to the issue of where a CDC may operate. Public Law 85–699 published August 21, 1958 enacted Title V of the Small Business Investment Act of 1958 (''Act'')—Loans to State and Local Development Companies (''Pub. L. 85–699''). In the Proposed Rule, SBA set forth its understanding that Pub. L. 85–699 authorized SBA to assist development companies that are (1) principally composed of and controlled by persons residing or doing business in that community and (2) formed for the purpose of furthering economic development in the community. The Proposed Rule also noted that when the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations ''formed by local citizens whose primary purpose is to improve *their* community's economy.'' (Emphasis added. Legislative History, Pub. L. 100–590, p. 22.) Aware that this concept of local citizens working to develop and improve their local economy is a fundamental aspect of SBA's Development Company Loan Program (''504 Program''), SBA attempted in the Proposed Rule to balance this fundamental principle of local economic development with SBA's goal of increasing the availability of 504 lending to small businesses across the country. The Small Business Investment Act, section 504, authorized the private sale of CDC debentures to fund CDC loans. The program is now traditionally referred to as the 504 program.

a. Adequately Served Counties

In the Proposed Rule, SBA proposed to allow an applicant CDC (§ 120.810) or existing CDC (§ 120.835) to apply to operate in a county within its State of incorporation even if that county is currently being ''adequately served'' (as defined by SBA) by another CDC, if that county has a population of 100,000 or more and only one CDC incorporated in that State includes that county in its Area of Operations. SBA stated in the Proposed Rule that, ''this will give small businesses more choices.'' In this Final Rule, SBA retains the conditions set forth in the Proposed Rule and, for the reasons set forth below, adds the condition that the CDC that includes the county in its Area of Operations submit a statement of no objection.

Several commentors supported competition among CDCs. A typical supporting comment read: ''Because we are focused on the end customer (*i.e.*, the citizens of our member communities) we believe he will only be aided by a higher level of competition—whether because it makes us sharper and more innovative, or because there is greater exposure for the 504 program, resulting in more loans made to more borrowers.'' A few commentors noted that competition in overlapping Areas of Operations has already been successful in their areas: ''Competition is good for the 504 Loan Program * * * competition stimulated activity, service to the community and enhancement of the 504 Loan Program.''

On the other hand, more than three-quarters of the commentors were opposed to the Proposed Rule for several reasons. Many commentors were concerned that competition in the more densely populated counties of a CDC's Area of Operations would affect the CDC's ability to do projects in more rural counties. One commentor stated: ''I am concerned that this proposed regulation would have the opposite effect of that intended. Allowing CDCs to form in counties that are already being adequately serviced would encourage participation in those areas that offer a high probability of success, while leaving the 'Rural,' 'Less-Growth' areas unattended. In fact, an existing CDC may be potentially forced to reduce its focus from the rural areas of its territory, to those areas attractive to a start-up CDC * * *. The National Association of Development Companies (NADCO), the CDC industry trade association, commented that ''we are deeply concerned that the Proposed Rule will foster a high level of CDC competition in areas of high small business density, to the detriment of rural areas where it might be difficult to make and service 504 loans.''

Another concern expressed by several commentors was that increased competition might burden or reduce a small CDC's cash flow thus hurting its ability to cover its expenses related to 504 loans. One commentor stated: ''It takes a population base of several hundred thousand to produce sufficient revenue for a CDC to be self-sustaining. What is being proposed will ultimately weaken existing CDCs and result in cutting services and assistance to (small businesses) as CDCs try to cut expenses due to less revenue.'' Several commenters stated that many CDCs depend on the cashflow of the 504 loan program to subsidize other local economic activities, such as participation in the microloan program or the provision of a revolving line of credit program. These commentors indicated their beliefs that a CDC approved to expand into an adequately served county would not reinvest in the local community. ''Our concern is that another CDC operating in our community would not be reinvesting in our community, but taking the fee income generated and spending it on marketing and salaries instead of the businesses that are in [the county].''

Many commentors used the term ''cherry-picking'' to describe the effect of allowing other CDCs to compete in the more lucrative markets: ''Market forces will lead the larger, more urban CDCs to 'cherry pick' the more lucrative projects from larger companies who require a lower level of service and assistance. Organizations such as ours use the returns from the occasional large debentures to subsidize the higher costs of providing service to small, needier borrowers * * * It would be extremely damaging to the cause of competition in the 504 loan program if the large CDCs were ever able to invade the territory of performing small CDCs. Many of the small rural performing CDCs just barely bring in enough revenue to support our small staffs, and a 'cherry picking' statewide [CDC] would eventually be able to rob many of us of the ability to operate. The result would be to decrease competition rather than an increase.''

The comments made it clear to SBA that concerns that competition will hurt a CDC's ability to promote economic development in less densely populated counties should be further considered. The comments indicated that many CDCs subsidize their rural economic development efforts with the servicing fees generated by 504 loans made in the more densely populated counties. The comments also indicated that this subsidization would be frustrated by the loss of revenue caused by increased competition in the more densely populated counties. In addition, CDCs would be inspired to ''cherry pick'' or seek counties with high small business density to gain more fee income. The result would likely be a general shift of CDC resources and focus on high-density counties at the expense of more rural counties.

SBA remains committed to the concept of expanding local economic development through increased competition in the 504 program. The commentors raised legitimate concerns but did not provide enough evidence or other support for SBA to totally accept their assessment of the negative impact competition would have on CDC operations. However, the negative predictions by the commentors raised

additional issues that require further consideration as SBA seeks to increase competition in the 504 program. For example, it is a reasonable assertion that the drain in resources and possible loss of loan volume caused by competition in counties with high small business density could hinder a CDC's efforts to serve rural counties. The question is whether, and to what degree, this really will happen. SBA believes the best way to respect the concerns of the commentors while remaining committed to increasing competition is to approach increasing competition in two phases. The first phase will be implemented by this Final Rule. By this Rule, SBA will adopt a policy allowing an applicant or expanding CDC to apply to serve a county with a population of 100,000 or more if:

- The county is part of the Area of Operations of only one CDC;
- The county has not become part of another CDC's Area of Operations within the past 24 months;
- The applicant CDC is incorporated in the State where the county is located; and
- The CDC that includes the county in its Area of Operations submits a statement of no objection.

SBA added in this Final Rule the requirement that the CDC already serving the county submit a statement of no objection so that such CDC could oppose competition in the area if such competition would cause a negative impact on the original CDC's economic development efforts. SBA added this requirement because we believe there is merit to the concerns that competition may, in some circumstances, hinder the original CDC's economic development efforts. So, at this time, SBA will give CDCs the opportunity to draw on their knowledge of their markets and operations to assess whether competition will hurt their economic development efforts. It has been SBA's experience that a CDC will not object to the introduction of competition when it will help serve the local community in ways that the existing CDC is not able to do and will not be counterproductive to the CDC's ability to meet its local economic objectives.

The second step that SBA will take to increase competition in the 504 program will be its publication of an Advanced Notice of Proposed Rulemaking (''ANPR'') specifically soliciting comments on some of the concerns regarding competition raised in response to the Proposed Rule. This ANPR will be published shortly and will give SBA the opportunity to further consider the issue of competition as well as other 504 program issues.

b. Multi-State Expansions

When Title V of the Small Business Investment Act of 1958—Loans to State and Local Development Companies—was enacted by Public Law 85–699 on August 21, 1958, it defined a Development Company as ''an enterprise * * * formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations * * * A local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State * * * A local development company shall be principally composed of and controlled by persons residing or doing business in the locality * * *'' (13 CFR part 108, section 2, as of January 1, 1967).

When the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations ''formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area.'' (Legislative History, Pub. L. 100–590, p. 22) It continues, ''to qualify for this program, a development company must be chartered in the State where it intends to operate * * *'' (*Id.* at 23)).

Since the inception of the 504 Program, no CDC has been certified to operate permanently in more than one State, except for a relatively few circumstances when the CDC's operations crossed state lines, but only to the extent that the area was determined to be a Local Economic Area. Regulations published on August 10, 1982, permitted a CDC to operate within two States if ''(i) a State line bisects a city, in which case the 503 company may operate city-wide or (ii) the 503 company has obtained prior written approval to operate within a contiguous economic area, as determined by SBA, which crosses a State line.'' Since this regulation was published, of the approximately 270 active CDCs, only nine have applied for and been approved by SBA to have their permanent Areas of Operations cross State lines to include a contiguous bi-sected local economic area. Currently, the permanent Area of Operations of all the other CDCs are within their State of incorporation.

There still remain substantial numbers of under-served counties. And, a few CDCs proposed to expand their Areas of Operations beyond their States of incorporation and beyond contiguous bi-sected local economic areas to include some of these under-served counties. To address these issues, and to achieve the goal of stimulating 504 lending activity in underserved areas, SBA proposed to permit out-of-state CDCs (Multi-State CDCs) to apply to cover such underserved areas. At the same time, SBA designed the Proposed Rule to ensure that Multi-State CDCs continue the 504 Program's statutory intent that local citizens responsible for assuring that the program contribute to the local economic development in their communities.

The many comments on this part of the Proposed Rule generally fall into three categories: (1) Those opposed to Multi-State CDCs under any circumstances; (2) those favoring Multi-State CDCs, but critical of the proposed organizational requirements; and (3) those supporting the strict controls SBA proposed on Multi-State CDCs which are designed to continue the emphasis on local involvement and influence in the economic development of each State. Approximately one-quarter of the comments were in the second category with the large majority of the comments closely divided between the first and third categories.

Commentors in the first category did not support the concept of Multi-State CDCs contained in the Proposed Rule. These commentors strongly disagreed with allowing CDCs to cross state lines to serve underserved counties. Representative comments include: ''I cannot see how permanent expansion beyond State borders * * * can conceivably result in increased local involvement * * * It seems contra-intuitive to me * * * '' and ''Creating multi-state CDCs and removing the territorial boundaries may in the short-run bolster the program's production numbers, but ultimately the overall quality and integrity of the program will suffer.'' Many of these commentors believed that the local citizens helping their local economy principle would be violated. One commentor stated, ''* * * the 504 program is grounded in federal legislation which mandates a strong role for local community involvement in the loan making process * * * If non-local and out of state CDCs have the ability to make and process loans, I believe you will lose the closeness and community involvement and you eventually will end up with a production line lending program, which, I believe, is contrary to the program's intent.'' Other commentors believe that large CDCs would develop and drive many small

CDCs out of business: ''* * * the growth of large CDCs will ultimately prove the death knell of smaller CDCs that know their local areas well but do not have skills or capacity to overcome the relationships large CDCs can build with lenders.'' (Emphasis in the original.) SBA understands the concerns but, at this time, believes that the increased program access for small businesses, that would result from allowing out-of-state CDCs justifies allowing such expansions. However, SBA will closely monitor the effect this rule has on smaller CDCs and will propose additional appropriate regulatory changes, if necessary.

The second group of commentors favored allowing CDCs to cover under-served counties outside of their States of incorporation but believed the proposed conditions were too restrictive. One commentor stated: ''Your proposal to restrict the use of funds earned by a CDC to the area in which they were realized is impractical and will only make expansions impossible * * * The funds of a company are budgeted where they are needed to produce the most product and generate income.'' Most of these comments were centered on the proposed membership and Board requirements. A representative comment is the following: ''We suggest * * * the membership requirement be modified to reflect a total membership proportional with the CDC's population served in each of its areas of operations.'' Another commentor stated that it opposed the requirement for a ''CDC to expand its Board of Directors substantially if the CDC is authorized to expand into a limited number of counties in a neighboring state.''

SBA seriously considered requiring proportional representation for both CDC membership and Board membership but ultimately reasoned that a Multi-State CDC should meet the same minimum local presence requirements in each State as any other CDC incorporated in that State. The current Board and membership requirements in each State are *minimum* requirements for all CDCs in the State irrespective of the size of their Area of Operations. Thus, adopting a ''proportional'' standard for Multi-State CDCs would mean that a Multi-State CDC with the minimum number of members would need fewer members in the State to satisfy SBA requirements than a new CDC applying to cover the same area in that same State. To avoid these kinds of outcomes, SBA concluded that a Multi-State CDC should be required to meet the same membership and Board requirements a new CDC would need to meet if it applied to cover the under-served county or counties in the State.

In considering these comments, though, SBA has reconsidered the requirement for equal representation on the Board for each state in which the CDC is approved to operate by SBA. A Multi-State CDC must meet the minimum requirement of having a Board of Directors comprised of at least three of the four membership groups (government organizations responsible for economic development in the Area of Operations and acceptable to SBA; financial institutions that provide commercial long-term fixed asset financing in the Area of Operations; community organizations dedicated to economic development in the Area of Operations; and businesses in the Area of Operations) for each State in which it operates. However, the Final Rule will not require that the Board composition also be equally divided by the number of States in which the Multi-State CDC operates. SBA was persuaded that maintaining equal representation on the Board for each state could be impractical and overly burdensome as Directors' vacancies were created as a result of resignations or other reasons.

Commentors in this group also criticized other restrictions on Multi-State CDCs found in the Proposed Rule. A representative comment was the following: ''(The commentor) disagrees with the proposed regulation of not counting Multi-State CDC loan production when SBA is considering either a new CDC certification or an expansion by an existing CDC [incorporated in the state]. In order to prepare for production in a new market, a Multi-State CDC would be required to make a substantial commitment of personnel and capital. Allowing another CDC to be approved while a Multi-State CDC is developing a new territory would serve as a deterrent for expansion of services in under-served areas across state lines.'' SBA considered these comments and was persuaded that if SBA required the same membership, Board membership, and financial investment that it requires of a CDC incorporated in the state, then the Multi-State CDC should receive the same protection of its area as any CDC incorporated in the State. In the final rule SBA has modified the Proposed Rule to treat Multi-State CDCs the same as other CDCs in regards to counting loans to determine whether an area is adequately served and also to protect the area from expansion by another applicant CDC for a period of twenty-four months.

Commentors in the last category were generally opposed conceptually to Multi-State expansions but also recognized the failure of CDCs incorporated in the States where the under-served counties were located to provide adequate access to the 504 Program in these under-served areas. One commentor stated: ''There are a few cases where entire States are substantially under-served by 504. It is my opinion that in these States local, regional and statewide initiatives have failed to invest sufficient resources needed to insure the operation of a successful program. This is not the responsibility of SBA nor is it SBA's fault.'' While reluctant to accept the concept of Multi-State CDCs, they support the organizational restrictions in the Proposed Rule. A commentor stated that ''Overall, I believe the Agency has done an excellent job on the proposed rules for multi-state CDCs, and if anything, did not go far enough.'' Another commented: ''If it's determined that a multi-state CDC is a necessity * * * the safeguards in the Proposed Rule are carefully drawn and we would support them.'' Another commentor agreed with SBA's requirement that a Multi-State CDC ''must abide by the same organizational rules, membership requirements, Board of Directors makeup, and uses of income. A CDC cannot truly serve an area of operations remote from the territory without local representation.'' Another expressed his concerns as follows: ''Our experience regarding multi-state CDCs demonstrates a need for better accountability, which could occur through local memberships, directors and loan review committees.''

Another set of comments in this category suggested a modification to the Proposed Regulations by recommending that the under-served counties that the Multi-State CDC could apply for had to be in a state that was contiguous to the Multi-State CDC's State of incorporation. The following are examples of comments that favored the addition of the concept of ''contiguous'' to the Area of Operations covered by Multi-State CDCs. One stated, ''I would strongly encourage you to add 'contiguous' to any application being considered for expansion * * * I think to remove contiguous totally takes our economic development identity, that is unique to the 504 program, and throws it in the trash. Any CDC that applies to cross state lines * * * in a non-contiguous basis, in almost every instance, is not concerned with economic development, they are concerned with money.'' Another stated, ''CDCs need to operate in a contiguous area * * * Each market area

requires a CDC to develop an understanding of the types of businesses, commercial lenders, etc. in that area. If a CDC's area is not contiguous then the CDC will try to standardize their lending process for all loans in all types of lending environments.''

SBA was persuaded by the rationale expressed in these comments and has decided to add to the Final Rule the requirement that any Multi-State expansion be into a ''contiguous'' state in order to further ensure the local focus. The change is also based, in part, on SBA's decision not to require Multi-State CDCs to have an equal number of Board Members in each state in which it operates. As a result of this change, it will now be possible for a Multi-State CDC to have a majority of Board Members from its State of incorporation control the out-of-state activities of the CDC. SBA believes this change makes it more important for SBA to monitor carefully how Multi-State CDC local activities are shaped by local members. Given this concern, SBA reasons that limiting Multi-State CDC expansions to states contiguous to its State of incorporation will serve several goals. First, the temporary CDC expansions discussed in the Proposed Rule that engendered the Multi-State CDC concept were all into contiguous states to the expanding CDC's State of incorporation. Second, it will limit the number of expansions, thus making it more likely that SBA will be able to carefully monitor all Multi-State CDC expansions. Third, the closer physical proximity of the home office to the out-of-state operations will make it more likely that members will have some familiarity with the markets in each state covered by the CDC and will participate in scheduled meetings, thus facilitating the development of local strategies appropriate for each community the CDC covers. This will help ensure that corporate policy does not favor the CDC's Area of Operations in its State of incorporation over the Multi-State areas in the contiguous states. Thus, when the Executive Director or full Board vote on matters, their understanding of all markets the CDC covers will be stronger as a result.

However, in order to give more specialized consideration to the issue of whether CDCs should be allowed to expand into non-contiguous states, SBA will include questions related to this topic in the ANPR that it intends to publish shortly. SBA also intends to use the ANPR process to solicit opinions regarding whether CDCs that are approved to operate across state lines as Multi-State CDCs should then also be eligible to expand into contiguous local economic development areas under the regulations regarding those expansions.

c. Other

SBA initially proposed to limit the eligibility of counties to be included in an applicant CDC's or expanding CDC's Area of Operations to counties that had not become part of an Area of Operations of another CDC within the last 24 months. This proposed regulation was designed by SBA to permit a CDC to benefit from the upfront costs of establishing itself in a county. All comments were in favor of the new restriction. However, a few of the comments suggested that the timeframe of the restriction should be increased to 36 months. A representative comment states: ''After a new or expanding CDC is allowed to enter a county, the proposed regulation provides that another application will not be approved for 2 years. In our opinion, a CDC given a new county should be allowed 3 years before another CDC is allowed to operate in the county. The proposed 2 year period is insufficient. Generally, it takes 18 to 24 months just to establish the 504 program in a new market.'' SBA considered these comments but was not persuaded that the 24-month timeframe, which did not exist as a regulation previously, is not adequate.

SBA received several comments on SBA's Proposed Regulation that deleted the timeframe for the AA/FA to make his or her final decision on applications for a new CDC or an existing CDC to expand its Area of Operations requesting that the 504 Program retain a specific for such decisions. SBA understands the desire to have an identified timeframe and intends to use reasonable efforts to issue timely decisions. However, SBA anticipates that the Final Rule will significantly increase the volume and complexity of the applications and may involve many new policy considerations. Given these factors and SBA's limited staff, SBA believes that establishing a specific timeframe would not be feasible or desirable.

2. CDC Organization and Operational Requirements

The proposed amendments to § 120.820, § 120.822, § 120.823, § 120.824, and § 120.825 in the Proposed Rule relate to CDC organization and operational requirements. SBA received many comments and suggestions on the proposed changes covering CDC membership, Boards of Directors, and professional management and staff.

In this Final Rule SBA adopts the policies concerning a CDC's Board of Directors as set forth in the Proposed Rule, with one modification. In light of the comments received on the Proposed Rule and several other factors, as discussed below, SBA has decided to amend the Proposed Rule to allow a CDC Manager to serve on its Board of Directors.

In the Proposed Rule, SBA prohibited all CDC staff, including the CDC Manager, from serving on the CDC's Board. SBA proposed this because we were concerned about the apparent possible loss of Board objectivity and independence if a Board were comprised of a number of CDC employees. SBA was concerned that a Board comprised of such members would lack the detached objectivity necessary to evaluate properly the performance of the CDC. However, as addressed below, SBA has amended the Final Rule to allow the CDC Manager, as the only CDC staff member, to participate as a Board Member. SBA believes that this approach will allow us to account for the concerns expressed by commentors while not impacting a Board's ability to operate independently.

In response to the Proposed Rule, SBA received several comments supporting the prohibition against CDC staff and management serving on its Board. However, more than two-thirds of the comments indicated that requiring CDCs to remove CDC Managers from their Boards would disrupt unnecessarily CDC operations. Commenters stated that CDC Managers typically manage the delivery of many small business assistance programs, including the 504 loan program, making it impractical, and therefore disruptive, to prohibit a CDC Manager from serving on a Board which oversees the full compliment of a CDC's economic development programs. SBA is persuaded by these comments and now better understands how disruptive it could be to prohibit a CDC Manager from serving on the CDC's Board.

In addition, the comments suggested that allowing only one individual employed by the CDC, the CDC Manager, to serve on the Board would not affect a Board's objectivity and independence. SBA now agrees with this position. Currently, for each Board vote, SBA regulations require a quorum of 5 Directors. If only one of those Directors is an employee of the CDC, then it is unlikely that a Board's objectivity and independence would be compromised. The authority of all the other Directors to vote on, and their responsibility to monitor, CDC

operations will help assure that each Board decision is independent and objective.

SBA also notes that there are other protections in place that will help assure independent action by the Board even when a CDC Manager serves on it. First, each Board Member has a general fiduciary duty of care and good faith to the CDC. This duty applies to the CDC Manager if the Manager sits on the Board. Secondly, with the Final Rule SBA requires that each Board have a member, other than the CDC Manager, who has commercial loan experience. This will assure that the Directors who are not employees of the CDC will have the requisite expertise to objectively and independently evaluate loan decisions. Thirdly, with this Final Rule SBA prohibits a Board Member from being a contractor with the CDC. SBA has encountered situations where CDC Managers who serve as Directors have recommended that the CDC contract with them for certain services. SBA believes that such a recommendation could impact a Board's objectivity and independence. Therefore, when the CDC Manager is a contractor, the manager will not be permitted to serve on the CDC's Board.

In light of all of the above, in this Final Rule, SBA has decided to uphold the prohibition against CDC staff serving as Board Members, but has decided to permit the CDC Manager to serve on the Board, provided that the CDC Manager is not a contractor, or an associate of a contractor, of the CDC. SBA believes that this approach will allow CDCs to operate most efficiently and appropriately to manage the delivery of all of the CDC's economic assistance programs. In addition, SBA believes that having only one member of the Board employed by the CDC will not adversely impact the Board's objectivity and independence. Moreover, the other protections contained in the Final Rule (*e.g.*, the prohibition against contractors serving as Board Members) and the general fiduciary duties of Board Members will further protect the objectivity and independence of the Board.

As a result of some comments, SBA is clarifying the Proposed Rule regarding a CDC's Loan Committees. The Proposed Rule established requirements for CDC Loan Committees to ensure that those CDCs that operated with Loan Committees were also in compliance with the current regulations that require a vote by a quorum of the CDC's Board on every 504 loan approval or servicing action. Some comments indicated confusion as to what was meant by a Loan Committee. One commentor stated that ''We have a group of 30 Members of our Board of Directors that meet semi-annually. [Eleven] of those Board Members then meet as needed (once or twice a month) to approve loans and take servicing and collection actions, etc. These Loan Committee Members are elected by the full Board and are made up of the four required representative groups.'' What this commentor describes meets the current regulatory requirements for CDC Board loan approval and servicing actions. In the Proposed Rule, SBA intended to deal only with Loan Committees composed of non-Board Members whose actions must be ratified by a quorum of the CDC's Board in order to comply with the current regulations.

A few comments expressed concerns that the proposed required composition of the Loan Committee would be redundant to the requirements of the Board membership. One commentor stated that he did not ''understand the need for the Board to ratify the actions of the Loan Committee if the Loan Committee structure meets the make-up requirements of the 3 groups, has a quorum of at least 5, (and) has a lender at the meeting * * *'' SBA was persuaded by the comments of the need to clarify the definition of Loan Committee by adding ''non-Board Members'' to the definition in the Final Rule. Since the Board must ratify the decisions of the Loan Committee, SBA agrees that some of the requirements in the Proposed Rule may be eliminated. The final rule eliminates the requirement that the Loan Committee members represent three of the four membership groups. SBA believes that regulations governing Loan Committees are especially important for Multi-State CDCs because such regulations help ensure local involvement with CDC loan-making decisions. Since the requirements for the Board of Directors for Multi-State CDCs have been modified in the Final Rule, the role of Loan Committees in each State for a Multi-State CDC will have increased importance to assure the local influence over 504 loan decisions and to minimize concerns about the Multi-State CDC concept expressed.

In the Proposed Rule, SBA clarified under what circumstances a CDC may contract out its management and staffing functions. Some of the comments received indicated confusion regarding what was meant by contracts. The opening paragraph of the Proposed Rule states: ''CDCs may obtain, under written contract, marketing, packaging, processing, closing, or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations.'' This explanation was apparently not clear because a few commentors raised concerns about the requirement that SBA approve contracts entered into by a CDC for space, equipment, etc. One commentor stated: ''This type of micro-management is neither necessary nor within the spirit of SBA oversight.'' SBA agrees that this would indeed be micro-managing. The Final Rule adds language to clarify that contracts for other than staffing or management do not have to be reviewed and approved by SBA. In the Final Rule, SBA also is adding the word ''servicing'' since that was inadvertently omitted in the list of staff functions that may be contracted out. In the Preamble to the Proposed Rule, SBA stated that ''No contractor or Associate of a contractor may be a voting or non-voting member of the CDC's Board or Loan Committee.'' However, SBA also inadvertently omitted the phrase ''or non-voting'' from § 120.824(e) of the Proposed Rule. SBA has corrected this omission by adding the phrase ''or non-voting'' to § 120.824(f) of this Final Rule.

Many commentors were in favor of the Proposed Rule regarding a CDC's staff requirements. One commentor states, ''The proposed regulation gives further emphasis on full-time CDC management and on the manager being an employee, not a contractor. We heartily endorse this amendment and look forward to the enforcement of this regulation in the field.'' The following comment is representative of several CDCs' concerns about contracting: ''I believe it is very important that the CDC become independent of any affiliate * * * providing financial and management support as soon as deemed economically feasible by SBA upon its contract review as required every two years. This would avoid the possibility of the affiliate * * * rolling up its fee charges when the CDC starts to produce an income beyond the cost of the current contract. This could seriously inhibit the growth of the CDC and its services provided. I know this has happened in the past and is still (occurring).''

Several commentors were in support of the Proposed Rule with a modification. A typical comment follows: ''Our organization contracts with a local, one county, non-profit, economic development corporation. Because they have four employees, they can easily obtain health insurance, etc. for employees. We do not believe insurance companies will provide health insurance for a company with one employee. If they do, then the costs for the insurance will be higher.''

Another commentor is more specific: ''The staff [of the non-profit affiliate] is required to maintain individual daily logs, in hours, for each revenue center (SBA, EDA, USDA, and Indirect) that is being benefited to prevent overcharging any loan program. One of EDA's audit contentions was their funds supplemented the SBA 504 Loan Program. Subsequently, each program has its own balance sheet and operating statement and pays its fair share of the cost of the lending organization. Compliance is assured by an annual certified audit and agency review * * * We respond to the loan requests without regard for the specific loan program.''

SBA is persuaded by these comments and has modified the Final Rule to eliminate the requirement that the non-profit affiliate that is contributing staff to the CDC must be financially subsidizing the CDC's operations. SBA was originally concerned that the non-profit affiliate could overcharge the CDC for the contract staff. SBA is persuaded by the comments that SBA's review of such contracts will minimize such risk. SBA notes that, in its experience, non-profit affiliates have no history of overcharging CDCs for staff. SBA reasons that non-profit affiliates have less incentive to overcharge than profit-making entities which occasionally have been found by SBA to charge staff costs that may be inappropriate. Finally, SBA's current policy already requires SBA to pre-approve all CDC contracts for staff and management as well as review the contracts annually. At this time, SBA believes its continued review that its oversight responsibility make of staff and management contracts is appropriate to minimize the possibility of abuse. We intend, however, to further address this issue in the Agency's ANPR to be published soon.

Some of the comments were concerned with SBA's role in pre-approving and reviewing all management and staff contracts. SBA considered these comments but did not modify the Proposed Rule regarding SBA oversight responsibilities. SBA is the regulatory agency for CDCs and, as such, is responsible for overseeing and reviewing many aspects of a CDC's operations. When a CDC contracts out its staff and management requirements, SBA must review such contracts to satisfy its CDC oversight responsibilities. Otherwise, SBA would fail in its responsibility to review how a CDC is satisfying its most fundamental responsibilities to borrowers as required by SBA regulations.

Although, as mentioned previously, several commentors, were strongly in favor of contracts having a limited term, other commentors were concerned that the proposed restrictions would increase the cost of contracted services as well as limit the choice of contractors. A representative comment was the following: ''The time constraint—2 years—being the maximum length of a contract is far too short of a period of time. It is frequently normal and customary business practice to negotiate contract for services that exceed two years. We would urge SBA to avoid needless contract length regulation that could lead to higher costs and lower quality contract services for CDCs.'' SBA considered these comments and has modified the Proposed Rule to remove the time constraint initially proposed. SBA believes that other requirements in the Final Rule, such as the requirement that SBA review the contracts annually and the requirement that the contract clearly identify procedures satisfactory to SBA which permit the CDC to terminate the contract prior to its expiration date, are sufficient to monitor contractual relationships. SBA will continue to review the matter and intends to re-address this issue in the ANPR.

A few commentors wanted to continue to contract with for-profit affiliates that receive income from the CDC that exceeds the fees for actual services performed. SBA considered these comments but was not persuaded that the benefit to a CDC from such arrangements outweigh concerns about shifting 504 income to other entities. As a commentor that was concerned about the possible impact of aggressive contracting out explained: ''There are very profound factors which drive generally for-profit packagers and similar service providers to attempt, if you will, to take control of CDCs * * * the income potential is enormous in such a takeover, and SBA very properly guards against that * * * I would suggest that on this issue, fees for * * * services be limited to fees for services actually performed, for example hourly services. And that no rights to * * * income be permitted beyond the contracting term * * * The purpose * * * is to provide self sufficiency, the ability of the CDC to stand on its two feet. It's very easy in these relationships for the financial strength of the CDC to be drained in such a way that would make it, for all purposes, perpetually dependent on our contracting relationship.'' These comments mirror SBA's concerns. SBA believes that its Final Rule strikes an appropriate balance by continuing to allow CDCs to contract out for some services, when such strategy is efficient and cost-effective while assuring that such contracting out is appropriately monitored by SBA. SBA wants to ensure that CDCs are given every opportunity to become independent and self-sufficient.

As indicated throughout this preamble, working with the CDC industry and its trade association, SBA intends to continue its consideration of a number of issues affecting CDC program operations. In addition to the issues already cited, in the ANPR that the Agency intends to publish shortly, SBA will seek comments regarding whether and under what circumstances CDCs should be required to engage in or support economic development activities other than the 504 program; whether and under what circumstances CDCs should be allowed to participate in profit-making activities; and whether SBA should amend the existing standard for determining that an area is adequately served by the 504 program, among others.

3. A Section by Section Description of the Changes to the Proposed Rule

Section 120.802 Definitions. The definition of Multi-State CDC was modified to limit the States into which a CDC can apply to operate in as a Multi-State CDC to those States contiguous to the applicant CDC's State of incorporation.

Section 120.810 Applications for Certification as a CDC. The Final Rule modifies subparagraph (a) to reflect SBA's decision, based on the comments received, to allow a CDC to expand its Area of Operations into a county with a population of 100,000 or more that is already adequately served by only one existing CDC only when that CDC does not oppose the application. Also, subparagraph (a) was modified to allow loans made by a Multi-State CDC to be used when determining if a county is adequately served. Finally, subparagraph (a) was modified to prohibit applications to cover a county if the county has become part of a Multi-State CDC's Area of Operations within the last 24 months. This gives any CDC 24 months to fully establish its operations in a new county before another CDC can apply to operate in it. This change was made so that a Multi-State CDC's out-of-state operations would not be treated differently from the local operations of any other CDC. In the Proposed Rule, the 24-month grace period only applied when the county was part of a CDC's Area of Operations within its State of incorporation.

Section 120.820 CDC non-profit status. No changes from the Proposed

Rule. The requirement that the non-profit corporation be in good standing refers to its being in good standing with the State in which it is incorporated.

Section 120.822 CDC Membership. No changes from Proposed Rule.

Section 120.823 CDC Board of Directors. The Final Rule modifies the Proposed Rule to permit the CDC Manager to be a member of the CDC's Board of Directors, but specifies that the requirement that ''one Board Member with commercial loan experience'' be satisfied by a Board Member other than the CDC manager. The Final Rule continues to prohibit other CDC staff members from being on the Board of Directors. The Proposed Rule also was reworded to require that a Multi-State CDC meet the Board representation requirements for each State, rather than requiring it to have separate Boards for each State or to have proportional Board representation as discussed above.

In addition, the Final Rule removes the requirement that Loan Committee members represent three of the four membership groups. This change was made because the Board already has representation from at least three of the four membership groups and a quorum of Board Members must approve, through a Board resolution (SBA Form 1528), its CDC's application for SBA's guarantee of each Debenture the CDC issues to fund one of its 504 loans prior to the sale of that Debenture. Requiring Loan Committee members to live or work in the State where the project they are voting on is located assures that local citizens will be part of the approval process for each loan made in their community. The Final Rule clarifies that this regulation only applies to a Loan Committee comprised of non-Board Members. The phrase ''* * * no appearance of a conflict of interest'' is changed to ''no actual or apparent conflict of interest'' throughout to emphasize the fact that actual conflicts of interest are prohibited and not just apparent conflicts. The Final Rule also clarifies that Multi-State CDCs are required to have Loan Committees in each State in which the Multi-State CDC operates. As stated above, this will assure local citizen participation in the loan approval process for each loan made in their community.

Section 120.824 Professional management and staff. The Final Rule corrects a technical error and adds ''servicing'' back into the list of services a CDC may obtain under contract. It also splits subparagraph (a) into two sections ((a)(1) and (a)(2)) for ease of reading. The Final Rule removes the phrase ''that is financially subsidizing the CDC's operations'' from 120.824(a) thus removing the condition that a non-profit affiliate of the CDC financially subsidize it before the CDC can apply for the waiver set forth in the section. Paragraphs (c) through (e) were expanded to (c) through (f) and were broken down into smaller paragraphs and subparagraphs for ease of reading. The phrase ''or non-voting'' was added to (f).

Section 120.825 Financial ability to operate. No change from the Proposed Rule.

Section 120.835 Application to expand an Area of Operations. The Final Rule reorders the section so that requests from CDCs to expand into counties within their State of incorporation or into a Local Economic Area are covered in section 120.835(a), requests from CDCs to expand into Multi-State Areas are covered in Section 120.835(b), and the general requirements for both are covered in 120.835(c).

The Final Rule modifies the Proposed Rule to reflect SBA's decision, based on the comments it received, to accept a CDC's application for expansion into a county with a population of 100,000 or more that is already being adequately served by only one existing CDC only if the original CDC does not oppose the application. The Proposed Rule was modified to allow loans made by a Multi-State CDC to be used when determining if a county is adequately served. The Proposed Rule was modified to prohibit CDC applications for a county if the county has become part of a Multi-State's Area of Operations within the last 24 months. (See discussion of changes to the Proposed Rule pertaining to § 120.810 above.)

The Final Rule removes the requirement for equal representation of each State on the Boards of Multi-State CDCs because SBA believes meeting the minimum Board requirements for each State is enough to assure proper local participation.

Section 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations. The Final Rule removes the parentheses from around the list of SBA programs conferring some special status, and changes ''based solely on its activity'' to ''based solely on its activity and performance'' to clarify the concept. The Final Rule also clarifies that any special status that a CDC's has earned such as ALP or PCLP only applies in the State or States in which that status was earned.

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

The Office of Management and Budget reviewed this rule as a ''significant'' regulatory action under Executive Order 12866.

SBA has determined that this Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Currently, out of approximately 24 million small businesses in the United States, about 4,000 receive 504 loans annually. As described in the preamble, through this regulation, SBA hopes to increase the number of 504 loans made to small businesses. Even if SBA were to assume a generous result of a 20 percent increase in loans, it would only result in an annual increase of 800 loans per year. SBA does not consider this a significant impact on a substantial number of small entities. Other aspects of this rule clarify the management and structural requirements for CDCs. These aspects would have no economic impact on small entities, as they merely alter CDC requirements.

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

For purposes of Executive Order 12988, SBA certifies that this Final Rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this Final Rule has no federalism implications.

List of Subjects in 13 CFR Part 120

Loan Programs—business, small business.

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

PART 120—BUSINESS LOANS

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

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

2. Amend § 120.802 to revise the definition of Area of Operations and add definitions of Local Economic Area and Multi-State CDC in alphabetical order to read as follows:

§ 120.802 Definitions.

* * * * *

Area of Operations is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis.

* * * * *

Local Economic Area is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, shares a border with the CDC's existing Area of Operations (or applicant's proposed Area of Operations) in its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) within its State of incorporation. Examples of a local trade area would be a city that is bisected by a State line or a metropolitan statistical area that is bisected by a State line.

Multi-State CDC is a CDC that is incorporated in one State and is authorized by SBA to operate as a CDC in a State contiguous to its State of incorporation beyond any contiguous Local Economic Areas.

* * * * *

3. Revise § 120.810 to read as follows:

§ 120.810 Applications for certification as a CDC.

Applicants for certification as a CDC must apply to the SBA District Office serving the area in which the applicant has or proposes to locate its headquarters.

(a) An SBA District Office may accept an application for a county only if:

(1) There is no CDC that includes the county in its Area of Operations;

(2) Any CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the 24 months prior to SBA receiving a complete application from the applicant; and the county has not become part of another CDC's Area of Operations within the prior 24 months; or

(3) The county is part of the Area of Operations of only one CDC; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the prior 24 months of another CDC; the applicant is incorporated in the State where the county is located; and the CDC that includes the county in its Area of Operations submits a statement of no objection to the application.

(b) An applicant whose application has been accepted must then demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829 and the need for 504 services in the Area Of Operations (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap). Applications must also include an operating budget approved by the applicant's Board of Directors, and a plan to meet CDC operating requirements (without specializing in a particular industry). An applicant's proposed Area of Operations may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC. The AA/FA shall make the certification decision.

4. Revise § 120.820 to read as follows:

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

5. Revise § 120.822 to read as follows:

§ 120.822 CDC membership.

(a) A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(1) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(4) Businesses in the Area of Operations.

(b) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

6. Revise § 120.823 to read as follows:

§ 120.823 CDC Board of Directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. No person who is a member of a CDC's staff may be a voting member of the Board except for the CDC manager. The Board Members must be responsible officials of the organizations they represent and at least one member other than the CDC manager must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors authorized to vote. When the Board votes on SBA loan approval or servicing actions, at least one Board Member with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote. There must be no actual or apparent conflict of interest with respect to any actions of the Board.

(a) The Board may establish a Loan Committee of non-Board Members that reports to the Board. Loan Committee members must include at least one member with commercial lending experience acceptable to SBA. All members of the Loan Committee must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in Sec. 120.839, Case-by-case extensions. No CDC staff may serve on a Loan Committee. A quorum must have at least five committee members authorized to vote. The CDC's Board must ratify the actions of any Loan Committee. There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.

(b) If the CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must meet the Board requirements for each State and must have a Loan Committee for each State.

7. Revise § 120.824 to read as follows:

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service, and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations. CDCs may obtain, under written contract, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations under the following circumstances:

(a) The CDC has at least one salaried professional employee that is employed

directly (not contracted) full-time to manage the CDC. A CDC may petition SBA to waive the requirement of at least one full-time manager if:

(1) The CDC is rural and has insufficient loan volume to justify its own management, and another CDC located in the same general area will provide the management; or

(2) The management of a CDC is to be contributed by a non-profit affiliate of the CDC that has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours.

(b) SBA must pre-approve contracts the CDC makes for managing, marketing, packaging, processing, closing, servicing, or liquidation functions. (CDCs may contract for legal and accounting services without SBA approval, except for legal services in connection with loan liquidation or litigation.)

(c) Contracts must clearly identify terms and conditions satisfactory to SBA that permit the CDC to terminate the contract prior to its expiration date on a reasonable basis.

(d) The CDC must provide copies of these contracts to SBA for review annually.

(e) If a CDC's Board believes that it is in the best interest of the CDC to contract for a management, marketing, packaging, processing, closing, servicing or liquidation function, the CDC's Board must explain its reasoning to SBA. The CDC's Board must demonstrate to SBA that:

(1) The compensation under the contract is only from the CDC, reasonable and customary for similar services in the Area of Operations, and is only for actual services performed;

(2) The full term of the contract (including options) is reasonable; and

(3) The contract does not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the CDC's officers, management, and staff, including members of the Board and any Loan Committee.

(f) No contractor (under this section) or Associate of a contractor may be a voting or non-voting member of the CDC's Board.

8. Revise § 120.825 to read as follows:

§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors). Any funds generated from 503 and 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain a separate accounting for each State of all 504 fee income and expenses and provide, upon SBA's request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which they were generated.

9. Revise § 120.835 to read as follows:

§ 120.835 Application to expand an Area of Operations.

An existing, active CDC applying to expand its Area of Operations must be operating in conformance with all existing SBA regulations, policies, and performance benchmarks and be well qualified to serve the proposed area. A CDC seeking to expand its Area of Operations must apply in writing to the SBA District Office where the CDC is headquartered, unless it is applying to be a Multi-State CDC. In that case, the CDC must apply to the SBA District Office that services the area where the Multi-State CDC intends to locate its principal office for that State.

(a) An SBA District Office may accept a CDC's application to expand its Area of Operations into a county within its State of incorporation, or in a Local Economic Area only if:

(1) There is no CDC that includes the county in its Area of Operations; or

(2) Any CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the 24 months prior to SBA receiving a complete application from the applicant CDC; and the county has not become part of an Area of Operations of another CDC within the prior 24 months; or

(3) The county is part of the Area of Operations of only one CDC; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the prior 24 months of another CDC; the applicant is incorporated in the State where the county is located; and the CDC that includes the county in its Area of Operations submits a statement of no objection to the application.

(b) An SBA District Office may accept a CDC's application to expand and service an area as a Multi-State CDC only if:

(1) There is no CDC that includes the county in its Area of Operations, or the CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant CDC; and the county has not become part of an Area of Operations of another CDC within the last 24 months; and

(2) The State it seeks to expand into is contiguous to the State of the CDC's incorporation; and

(3) The requirements in Section 120.822, Membership, are separately met for the Area of Operations within the CDC's State of incorporation and for each State in which it operates or seeks to operate as a Multi-State CDC; and

(4) The requirements in Section 120.823, Board of Directors, are separately met for the State of incorporation and each additional State in which it operates or seeks to operate as a Multi-State CDC; and

(5) The CDC has a Loan committee meeting the requirements of § 120.823(b).

(c) An applicant whose application for expansion has been accepted must demonstrate to the satisfaction of SBA that it satisfies all of the certification and operating criteria in §§ 120.820 through 120.829. It must demonstrate that it has the ability to provide full service to small businesses in the requested area including processing, closing, servicing, and, if authorized, liquidating 504 loans. It must also demonstrate the need for 504 services in the Area of Operations and present a plan for servicing the area. If there is already one or more CDCs in the requested Area of Operations, the applicant must justify the need for another.

10. Revise § 120.837 to read as follows:

§ 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations.

The processing District Office must solicit the comments of any other District Office in which the CDC operates or proposes to operate. The processing District Office must determine that the CDC is in compliance with SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review by SBA of any management or staff contracts, and the timely submission of all annual reports. In making its recommendation on the application, the District Office

may consider any information presented to it regarding the requesting CDC, the existing CDC, or CDCs that may be affected by the application, and the proposed Area of Operations.

(a) The SBA District office will submit the application, recommendation, and supporting materials within 60 days of the receipt of a complete application from the CDC to the AA/FA, who will make the final decision. The AA/FA may consider any information submitted or available related to the applicant and the application.

(b) If a CDC is approved to operate as a Multi-State CDC, any unilateral authority that a CDC has in its State of incorporation under any SBA program, including Accredited Lender's Program (ALP), Premier Certified Lenders Program (PCLP), or Expedited Closing Process (Priority CDC), does not carry over into a State in which it is approved to operate as a Multi-State CDC. The CDC must earn the status in each State based solely on its activity and performance in that State.

Dated: June 28, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–16842 Filed 7–10–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 00–44]

Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This notice advises the public that Customs will no longer apply 19 CFR 12.130(c) for purposes of country of origin marking of textiles and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States (HTSUS), does not apply for country of origin marking purposes.

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

Background

In T.D. 85–38, 50 FR 8710 (March 5, 1985), Customs adopted as a final rule an interim amendment to the Customs Regulations, consisting of the addition of a new section 12.130 (19 CFR 12.130) to establish criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral and bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In T.D. 85–38, Customs stated that section 12.130 is applicable to merchandise for all purposes, including duty and marking. A similar statement was made in T.D. 90–17, 55 FR 7303 (March 1, 1990).

Paragraph (c)(1) of section 12.130 provides in part as follows:

> * * * In order to have * * * a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

Paragraph (c)(2) of section 12.130 accords essentially the same treatment to products of insular possessions.

Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, (Note 2(a)), provides in pertinent part as follows:

> * * * Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article.

Subsequently, in connection with the development of the final NAFTA Marking Rules, Customs concluded that Note 2(a) should not apply for general country of origin purposes, including marking. 60 FR 22312, 22318 (May 5, 1995). Accordingly, in order to clarify the applicability of this position for marking purposes, on June 15, 1998, Customs published a notice of proposed interpretation (hereinafter ''proposed interpretation'') in the **Federal Register** (63 FR 32697) to the effect that section 12.130(c) of the Customs Regulations should not control for purposes of determining the country of origin marking of textile and textile products, and that Note 2(a) does not apply for country of origin marking purposes. The notice solicited public comments on the proposal, and the public comment period was extended to December 18, 1998.

Discussion of Comments

A total of 7 entities submitted comments in response to the notice. Although all of the commenters were generally supportive of the proposed interpretation, two were opposed to the proposal as it pertains to textiles whose origin is determined by where the fabric is formed. The specific points made by the commenters are discussed below.

Comment: Several comments were received on particular operations that should or should not be allowed abroad in order for a U.S.-origin textile or textile product to remain of U.S. origin. One commenter strongly supports the proposed interpretation since minor operations performed on U.S. garments abroad should not force a change in origin solely because of 19 CFR 12.130(c). This commenter stated that imported articles that undergo a similar process in the United States do not undergo a change in origin in the United States. Another commenter supports the proposed interpretation as it would permit apparel produced in the United States that is exported for minor finishing operations such as silk screening, embroidery, stone washing, etc., to better compete against foreign competition.

Another commenter states that textiles and textile products made in the United States and sent abroad to be advanced in value or improved in condition should be considered products of the United States for marking purposes provided they: (a) ''Do not undergo a change of tariff heading (sic) at the eight digit level; (b) do not otherwise undergo a substantial transformation; and (c) undergo no assembly operation while abroad.'' The commenter states that if decorative components such as epaulets, patches, flaps, etc. are added to a U.S.-origin article while abroad, the article should still be able to be marked as a product of the United States. Other foreign operations that should be allowed without the U.S.-made article losing its origin are suggested to be washing, printing, painting, garment dyeing, and embroidery. The commenter also states that value-added criteria should not be considered in determining how articles shall be marked.

Customs Response: The textile rules of origin of section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. 3592), as implemented by section 102.21 of the Customs Regulations, are in most cases determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad. Therefore, the origin rules provided for