

owners and managers to voluntarily conserve or enhance grazing land resources to meet ecological, economic, and social demands.

(b) The term "private grazing land" means private, State-owned, tribally owned, and any other non-federally owned rangeland, pastureland, grazed forestland, hayland, and other lands used for grazing.

(c) The NRCS Chief may implement the CPGL Program in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. NRCS will provide assistance in cooperation with conservation districts, or directly to a landowner or operator.

§ 610.32 Technical assistance furnished.

(a) Provide technical assistance to grazing-land owners and managers to plan and implement resource conservation on grazing land. The objective of planning on grazing land is to assist landowners and managers in understanding the basic ecological principles associated with managing their land. This objective can be met by implementing a plan that meets the needs of the resources (soil, water, air, plants, and animals) and management objectives of the owner or manager. NRCS may provide assistance, at the request of the private grazing-land owner or manager to:

- (1) Maintain and improve private grazing land resources that provide multiple benefits;
- (2) Ensure the long-term sustainability of private grazing land resources;
- (3) Implement new grazing land management technologies;
- (4) Manage resources on private grazing land through conservation planning, including, but not limited to; grazing management, nutrient management, and weed and invasive species control;
- (5) Maintain and improve water quality and quantity, aquatic and wildlife habitat, recreational opportunities, and aesthetics on private grazing land;
- (6) Harvest, process, and market private grazing land resources; and
- (7) Identify opportunities to diversify private grazing land enterprises.

(b) Refer to 7 CFR 610.4 on other items relating to technical assistance.

(c) To receive technical assistance, a landowner or manager may contact NRCS or the local conservation district to seek assistance to solve identified natural resource problems or opportunities. Participation in this program is voluntary.

Signed in Washington, DC, on October 31, 2002.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 02-28691 Filed 11-8-02; 8:45 am]

BILLING CODE 3410-16-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

RIN 3245-AE91

New Markets Venture Capital Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration ("SBA") makes several amendments to the regulations for the New Markets Venture Capital ("NMVC") program. The majority of the amendments make technical changes to the regulations, to correct typographical errors or to clarify language. SBA also makes five substantive amendments to the regulations, which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted geographic areas. Generally, the five changes will:

Allow a New Markets Venture Capital company ("NMVC company") to include in its regulatory capital SBA-approved organizational and management expenses paid on behalf of the NMVC company before the company is finally approved;

Allow SBA, in selecting recipients for NMVC program assistance, to compare grant applications from specialized small business investment companies ("SSBICs") with NMVC company applications from the same or proximate low-income geographic areas ("LI areas");

Create rules governing fees an NMVC company or its associates may charge for management services provided to small businesses in which the NMVC company invests;

Revise the grant application process for SSBICs so as to make it more parallel with the application process for NMVC companies; and

Add a requirement that NMVC companies must use at least 80 percent of their grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises located in an LI area at the time the operational assistance commenced.

DATES: This rule is effective on December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Austin J. Belton, Director of New

Markets Venture Capital, (202) 205-7027.

SUPPLEMENTARY INFORMATION:

I. Background

The New Markets Venture Capital Program Act of 2000 ("the Act") was created by the Consolidated Appropriations Act of 2001, Public Law 106-554, enacted December 21, 2000. SBA published in the **Federal Register** a final rule implementing the Act on May 23, 2001 (66 FR 28602) and a technical correction on June 19, 2001 (66 FR 32894).

On May 20, 2002, SBA published in the **Federal Register** a proposed rule making amendments to the regulations implementing the Act (67 FR 35449). SBA received one comment on the proposed rule, which SBA discusses in the following section-by-section analysis. With the exception of a minor clarifying change to the lead-in phrase in section 108.2005(d), SBA has made no changes to the text of the amendments to the regulations as published in the proposed rule.

SBA has conducted a first application round for the NMVC program, and has selected seven companies as conditionally approved NMVC companies. The amendments in this rule would apply to those seven companies as well as to applicants for the NMVC program in future application round(s) and to entities SBA selects for participation in the NMVC program as a result of any future application round(s).

II. Section-by-Section Analysis

SBA amends three of the definitions in § 108.50. The definitions of "New Markets Venture Capital Company" and "Participation Agreement" are amended to correct typographical errors.

The definition of "Regulatory Capital" is amended to simplify it by consolidating into § 108.230, which addresses private capital, all the current restrictions on what may be included in regulatory capital. The definition states that regulatory capital is private capital, excluding any portion of private capital that the NMVC company designates as grant matching resources.

SBA amends paragraphs (b), (c), and (d) of § 108.230. In paragraph (b), SBA makes a technical change. The word "contributed" is changed to read "paid-in," to indicate more clearly that only capital contributions actually made are considered "contributed capital" for purposes of § 108.230.

SBA amends paragraph (c) by adding a new subparagraph (5) to move to this section language concerning

questionable commitments that currently is in the definition of regulatory capital in § 108.50. This is a non-substantive change.

SBA revises paragraph (d) to allow NMVC companies to include in private capital SBA-approved organizational and management expenses paid on behalf of an NMVC company prior to SBA's final approval of the NMVC company. SBA intends to provide guidance on the limitations by percentage and/or dollar amounts on such expenses that SBA will approve for inclusion in private capital. Other non-cash assets, such as "pre-licensing investments," would continue to not be allowed for inclusion in private capital. SBA previously determined that such other non-cash assets would not be acceptable for inclusion in regulatory capital. (See discussion on this subject in the preamble to the proposed rule implementing the Act, 66 FR 20536, April 23, 2001, and the preamble to the final rule implementing the Act, 66 FR 28603, May 23, 2001.)

SBA makes technical changes to § 108.310 to more clearly articulate what an NMVC company applicant must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The amendment requires an applicant to state specific amounts of regulatory capital and grant matching resources, both of which must comply with the statutory minimums established by the Act. SBA also makes a minor technical change to § 108.320.

SBA amends § 108.360(k) to allow SBA, when making selections as to which applicants will receive conditional approval, to compare the applications submitted by NMVC company applicants to the applications submitted by SSBICs that intend to invest in the same or proximate LI areas. This change will allow SBA to more effectively utilize limited NMVC program appropriations. This change also will increase the potential for achieving the nationwide distribution of the NMVC program's benefits that the Act directs.

SBA makes three technical changes to § 108.380. As amended, subsections (a)(1)(i)(A) and (a)(1)(i)(B) more clearly state that the amounts of regulatory capital and grant match that applicants must raise before they can be finally approved are the exact same amounts that they said they would raise in their applications. SBA amends subsection (b)(3) to correct a typographical error.

SBA adds new § 108.900, based in part on § 107.900 for the small business investment company (SBIC) program, governing fees for management services

and similar services (for example, negotiating bank debt, sale of the company, or a lease, or structuring an employee stock ownership plan) charged by an NMVC company or its associates to small businesses that the NMVC company finances. The regulation requires SBA's prior written approval of all such fees charged. The regulation states that it does not apply to operational assistance that an NMVC company or its associate provides to a business that the NMVC company has financed or in which it expects to make a financing, and that the NMVC company may not charge the business a fee for such operational assistance. SBA expects an NMVC company to use its grant funds (both SBA funds and grant matching resources) to cover the costs of providing such operational assistance.

This regulation also requires that at least 50 percent of all such fees paid to an associate (as defined in 13 CFR 108.50) of an NMVC company by a small business must be allocated back to the NMVC company for its benefit. SBA understands that an NMVC company or its associate (for example, its management company) may want to provide management and other services to the NMVC company's portfolio companies and charge a fee for such services. It may be in the best interests of the small business that the NMVC company or its associate provide such services rather than an outside third party. However, SBA believes that the NMVC company's manager should share equally with the NMVC company the financial benefit (*i.e.*, fees) of providing those services, since that relationship (of the manager to the NMVC company) is what brought about the opportunity for the manager to obtain that financial benefit. In addition, SBA believes that neither the NMVC company itself nor the NMVC program in general is well served if the focus of the NMVC company's manager is on fee generation rather than managing the NMVC company. SBA believes that a 50–50 allocation of such fees between the NMVC company manager and the NMVC company itself strikes an appropriate balance between these objectives and reflects what knowledgeable private investors often require in commercial equity venture capital funds.

The commenter disagreed with the approach SBA takes in this section 108.900. The commenter stated that a prior approval requirement would place an excessive burden on the NMVC company's management of small businesses in which it invests and that the 50–50 allocation of the fees would not appreciably change the economics

or incentives of the NMVC program. The commenter suggests that NMVC companies are likely to want to charge their portfolio companies two types of management services fees, (1) regular fees of up to \$2,000 per quarter per portfolio company, to be paid to the managers of the NMVC company for managing the portfolio company, and (2) more substantial fees that will arise "in the ordinary course of business." SBA notes that while the commenter characterizes the amount of the first type of fee as "modest," an NMVC company could earn up to \$80,000 per year from such fees, if one assumes the company has 10 portfolio companies paying \$2,000 per quarter. This would allow the NMVC company to receive more than a third again as much as the typical annual management fee earned by an NMVC company (assuming it is a \$5 million regulatory capital fund).

The first type of fee presumes that the manager of an NMVC company also will be managing the day-to-day operations of the companies in which an NMVC company invests. SBA does not believe that this would be an appropriate role for an NMVC company's managers to play in most cases. First of all, the fact that such managers have the expertise to manage a venture capital fund does not mean that such managers have the necessary skills and ability to manage an operating business concern. In any event, the appropriate role of an NMVC company's managers is to actively oversee the affairs of the portfolio concerns, which implies a degree of counseling and advising as a board member or otherwise, usually delivered in the form of a close, informal working relationship. Those activities usually are compensated by an NMVC company's annual management fee and any profit participation received from its investment in the business. In addition, an NMVC company has the opportunity to provide management expertise, at no cost to the business or to the NMVC company's investors, through the expenditure of operational assistance grant resources. For these reasons, SBA believes that the first type of fees will require scrutiny and, therefore, it is critical that SBA have the opportunity to review in advance any such fees that an NMVC company proposes to charge.

The commenter characterizes the second type of fee as for management services that are occasional and opportunistic, and states that requiring SBA's advance approval might result in an NMVC company losing significant opportunities to provide such services and earn such fees. SBA intends to require NMVC companies to complete one form (SBA Form 2217) requesting

prior approval of such fees, which SBA does not believe constitutes "extensive reporting." SBA believes that it will be sensitive to any time constraints on a potential deal or on an NMVC company, and be able to provide a timely response to such requests.

SBA removes § 108.2000 and replaces it with several smaller, more easily readable sections, §§ 108.2000–108.2007. Section 108.2000 (currently § 108.2000(a)) provides a more comprehensive list of the regulations applicable to operational assistance grants to NMVC companies and to SSBICs. Section 108.2001 (currently § 108.2000(b)(1) and (b)(3)(i)) is unchanged in content.

Section 108.2002 (currently § 108.2000(b)(2)) includes several technical corrections. First, the term "Developmental Venture Capital Investments" is replaced with "Low-Income Investments" in new subsections (a) and (c). The term "Low-Income Investments" already is defined in § 108.50, and more accurately reflects the statutory requirement that an SSBIC must use all of its new capital raised for the NMVC program, to make equity capital investments in smaller enterprises located in LI areas. Second, the phrase "after December 21, 2000" is added to the end of new subsection (c), to incorporate the NMVC program statutory effective date and make more clear that an SSBIC may use operational assistance grant funds only in connection with investments it makes after such date.

Section 108.2003 (currently § 108.2000(b)(3)(ii)) is unchanged in content. Section 108.2004 (currently § 108.2000(b)(4)(i) and (ii)) makes technical changes to more clearly articulate what an SSBIC must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The regulation requires that an SSBIC state specific amounts of regulatory capital and grant matching resources, and that the amount of grant matching resources comply with the statutory minimum established by the Act.

Section 108.2005 (currently § 108.2000(b)(4)(ii)(A) through (G)) replaces the term "Developmental Venture Capital Investments" with "Low-Income Investments" in new subsections (a), (c), (d) and (f), for the reasons described above. Subsections (a) and (d) adds new requirements that an SSBIC identify specific LI areas in which it intends to make investments and provide operational assistance, and specify how much of its investments it will make in each of the specified LI areas. These requirements parallel the

information required from NMVC company applicants, and will allow SBA to better determine the potential impact on specific LI areas, when making selections as to recipients of NMVC program benefits.

Section 108.2006 (currently § 108.2000(b)(5)) would replace the term "Developmental Venture Capital Investments" with "Low-Income Investments" in new subsection (d), for the reasons described above. The regulation also allows SBA to add an interview component to its selection process, paralleling SBA's current authority to require an interview with NMVC company applicants (see 13 CFR 108.340). SBA is considering interviewing applicants in future application rounds. New subsection (h), as amended, allows SBA, when making selections as to which SSBICs conditionally will receive an operational assistance grant, to compare the applications submitted by SSBICs to the applications submitted by NMVC company applicants that intend to invest in the same or proximate LI areas. This change allows SBA to more effectively utilize limited NMVC program appropriations. This change also increases the potential for achieving the nationwide distribution of the NMVC program's benefits contemplated by the Act.

Section 108.2007 (currently § 108.2000(b)(6)) is unchanged in content.

Section 108.2010 adds a new paragraph (b) (and redesignates paragraph (b) as paragraph (c)) requiring that an NMVC company must use at least 80 percent of its grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises whose principal office is located in an LI area at the time the operational assistance commences.

The Act explicitly requires that all operational assistance funded by the NMVC program go only to smaller enterprises. The regulation imposes an additional requirement that a specific percentage, 80 percent, of such operational assistance provided by NMVC companies go to businesses located in LI areas. This requirement serves to maximize the impact of the operational assistance funded by SBA on the LI areas targeted for assistance through the NMVC program. This 80 percent requirement also parallels the existing regulatory requirement (see 13 CFR 108.710(a)) that NMVC companies must use at least 80 percent of its capital (both funds from SBA and private capital) to make equity capital investments in smaller enterprises

located in an LI area at the time the investment is made.

The commenter recommended that SBA determine whether the operational assistance provided by an NMVC company falls within the 80 percent basket of assistance to smaller enterprises located in LI areas or the 20 percent basket of assistance to businesses outside those areas, based on the ultimate location of the business, not its location when the assistance commenced. In other words, consider OA provided by a NMVC company to a business not located in an LI area to fall within the 80 percent basket as long as the business moved into the LI area "within a reasonable period of time" after the start of the assistance.

SBA declines to implement this suggestion. As in the context of 13 CFR 108.710(a) concerning the required percentage of capital that must be invested in businesses located in LI areas, SBA intends that NMVC companies will determine the status of the business's location at the time the operational assistance commences, not at some later date. SBA intends that NMVC companies make an assessment of the business at the time operational assistance commences (or at the time of its initial financing to the business, in the case of financial assistance) and determine whether its principal office is located in an LI area at that moment in time. The assessment of the business is set at that point in time, and becomes the basis to determine whether the NMVC company may count the assistance given to that business toward the 80 percent requirement. SBA considered and rejected alternative approaches when it developed the requirements in 13 CFR 108.710. SBA believes that this "snapshot" approach is the most efficient and workable means of tracking both investments and operational assistance, as well as achieving the statutory mission of directing the majority of the program's resources to smaller enterprises located in LI areas. SBA believes that an NMVC company will have some flexibility in the way it structures its financial and operational assistance. For example, an NMVC company might provide a small amount of operational assistance to a business located outside an LI area (which would fall within the 20 percent basket of assistance) and advise the business that more assistance will be forthcoming once the business relocates into an LI area.

SBA revises redesignated paragraph (c) to correct the title of the part of the Federal Acquisition Regulations containing the definition of G&A expense.

Technical amendments are made to §§ 108.2020(b), 108.2030(c)(2)(iii), 108.2030(c)(2)(iv), 108.2030(d)(2), and 108.2040(a) to correct cross-references to other sections in this part and to clarify requirements. The changes to § 108.2030(c) allow grant matching resources to be payable over a multiyear period not to exceed the term of the grant from SBA, and in no event more than 10 years. This change provides support for SBA to allow an applicant to request a specific grant term within a range acceptable to SBA and as long as it did not exceed the 10 year limit set forth in the Act, rather than having SBA establish one allowable grant term for all applicants. This gives each NMVC company and selected SSBIC greater flexibility to determine how best to use operational assistance funds from SBA to accomplish its mission. This change is made possible by a change in the law governing SBA's appropriation for the NMVC program. On July 24, 2001, Congress passed a supplemental appropriations bill (Pub. L. 107-20) that extended the availability of the funds appropriated to SBA for the NMVC program.

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

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a "significant regulatory action" under Executive Order 12866. A regulatory assessment of the potential costs and benefits of the regulatory action follows. Because this is a new program and only one NMVC Company is operational as yet, SBA does not have relevant data to estimate actual dollar values for these amendments.

The NMVC program is an equity venture capital program designed to promote the economic development of, and address the unmet equity capital needs of smaller enterprises located in, LI areas. The program has a one-time no-year appropriation of \$52 million to fund newly formed NMVC companies. To date, SBA has selected seven applicants as conditionally approved NMVC companies, and has finally approved one of those conditionally approved NMVC companies as an NMVC company. SBA anticipates a second application round, and the amendments concerning the application process will affect applicants in the second round. The amendments that

concern participation in the program apply to all NMVC companies selected through both application rounds and SSBICs applying under the second application round.

This rule makes several amendments to the existing regulations implementing the program. Most of the amendments are technical changes that have no impact on the costs associated with the program to the Government or to the program beneficiaries. After SBA's first year of experience in creating and administering this new program, SBA also makes a few substantive changes which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted LI areas and businesses. SBA believes that these changes will result in reduced operational costs for the program to both the government, the NMVC companies, and to the beneficiary small businesses financed by the NMVC companies with SBA leverage.

The most significant change SBA makes is to add a requirement that NMVC companies must use at least 80 percent of the SBA grant funds (and the required match funding from non-SBA sources) to assist smaller enterprises whose principal office is in an LI area. This is consistent with the existing requirement on the use of an NMVC company's capital. This change ensures that the primary impact of the grant will be on the LI areas targeted by the NMVC program. It also will have the effect of enabling smaller enterprises in LI areas to qualify for equity investment, or otherwise assisting such enterprises to grow at no cost to such businesses.

SBA's experience over the past year indicates that some NMVC companies may charge management services fees to smaller enterprises in connection with investments made by the NMVC company, but SBA's existing regulations are silent in this area. SBA believes that adding a regulation governing such fees will give SBA the necessary tools to ensure that smaller enterprises are not being charged too much for such services and that an NMVC company's management is not motivated solely by fee generation. SBA adds section 108.900 which places limits on such fees, requires SBA's advance approval, and requires that at least 50 percent of any fees charged by the fund manager be for the benefit of the NMVC company.

SBA also makes several changes to clarify the application requirements for SSBICs to participate in the NMVC program and to do so on a parallel basis as NMVC companies. For example, one change requires SSBICs to identify specific LI areas they intend to target, thereby allowing comparison with any

NMVC applicant for the same LI area and avoiding duplicative coverage of a LI area. The overall results of these changes are to ensure even-handed treatment of SSBICs and NMVC companies, maximize the nationwide impact of the NMVC program, and achieve greater administrative efficiency in program administration.

SBA also clarifies that SBA will permit SBA-approved organizational and management expenses incurred prior to SBA's final approval of the NMVC company to be credited in whole or part against the regulatory capital the NMVC company is required to raise. This credit is in lieu of an NMVC company being required to pay out cash at its outset for the same pre-approved costs. This change will improve the efficiency of an NMVC company's operations and prevent unnecessary paperwork on the part of the NMVC company, which will streamline the program. This change also will bring the NMVC program in line with the SBIC program and with best practices of the private venture fund industry in this area.

In sum, the changes will result in more NMVC program funds going to smaller enterprises in LI areas, in line with the legislative intent, and greater cost-effectiveness and efficiency in SBA's administration of the NMVC program to execute the congressional mandate.

Compliance with Executive Order 12988

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

Compliance With Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications because the legislation authorizing it addresses private, for-profit concerns (NMVC companies) working directly with entrepreneurs. The regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Compliance With Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule imposes new information collection

requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The rule includes two new collections of information: (1) A request for prior SBA approval of management services fees and other fees and (2) concerning the application process for SSBICs, an additional component to the plan for use of the operational assistance grant, and an interview component. These information collections were described in more detail in the preamble to the proposed rule SBA published in the **Federal Register** on May 20, 2002 (67 FR 35449).

SBA already has provided the public with a 60-day comment period on this collection (67 FR 35449). SBA received no comments on the collection. On July 29, 2002, OMB approved, without change, the collection under OMB number 3245–0338.

You may request a copy of the collections by calling Louis Cupp at (202) 619–0511 or writing to him at Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–602

Under the Regulatory Flexibility Act (RFA), SBA has determined that this rule does not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA, for the following reasons.

The NMVC program is expected to result in the creation of fewer than 20 NMVC companies. The program's impact will be felt to a greater extent on the small businesses that the NMVC companies invest in and assist through this program. The Act authorizes \$150 million to guarantee debentures to NMVC companies, which will result in a discounted amount of approximately \$100 million with which NMVC companies can make investments, and \$30 million for operational assistance grants to NMVC companies and SSBICs. In addition, NMVC companies must raise capital totaling \$100 million, and NMVC companies and SSBICs must raise grant matching resources totaling \$30 million. Thus, the total net funding for the NMVC program, including matching funds raised by NMVC companies and SSBICs, is \$260 million. Based upon industry practices, it is likely that the funds will be disbursed over a five to seven year period. A NMVC company's minimum life is 10 years and NMVC companies' investments are typically made during

their first five to seven years of existence. Generally, a NMVC company will fund three or at most four businesses in one year out of the 20 to 30 businesses it will fund over its life. Therefore, NMVC program funds will flow out to businesses at a rate of approximately \$50 million per year.

The average size of an investment by a community development company is approximately \$300,000. Based upon total funding of \$260 million and an average investment in a small business of \$300,000, approximately 867 small businesses will be affected by this program during the lives of the NMVC companies authorized by the Act. SBA estimates that there are approximately 22.4 million small businesses in the United States and 867 constitutes less than 1/10 percent of those businesses.

Further, NMVC companies must invest in "smaller enterprises" which are defined as businesses with a net worth not greater than \$6 million and average net income of not greater than \$2 million. Based upon an average investment of \$300,000, an investment in a business with a net worth of \$6 million would equate to 5 percent of the business's net worth. Additionally, industry practices indicate that while the average investment in a particular business is \$300,000, this amount may not be disbursed all at once. The average investment per round in the industry is approximately \$185,000, which is only 3 percent of the business's net worth.

List of Subjects in 13 CFR Part 108

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 108 as follows.

PART 108—NEW MARKETS VENTURE CAPITAL PROGRAM

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

Authority: 15 U.S.C. 689–689q.

2. Amend § 108.50 by:

a. Revising the citation in paragraph (1) of the definition of *New Markets Venture Capital Company* or *NMVC Company* from “§ 108.390” to “§ 108.380”;

b. Revising the citation in the first sentence of the definition of *Participation Agreement* from “§ 108.390” to “§ 108.380”; and

c. Revising the definition of *Regulatory Capital*; to read as follows:

§ 108.50 Definition of terms.

* * * * *

Regulatory Capital means Private Capital, excluding any portion of Private Capital that is designated as matching resources in accordance with § 108.2030(b)(3).

* * * * *

3. Amend § 108.230 by:
a. Revising paragraph (b);
b. Adding paragraph (c)(5); and
c. Revising paragraph (d); to read as follows:

§ 108.230 Private Capital for NMVC Companies.

* * * * *

(b) *Contributed capital*. For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members' paid-in capital of a LLC NMVC Company, or the partners' paid-in capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) * * *

(5) A commitment from an investor if SBA determines that the collectability of the commitment is questionable.

(d) *Limitations on including non-cash capital contributions in Private Capital*. Private Capital does not include capital contributions in a form other than cash, except as provided in this paragraph (d). Subject to SBA's prior approval, Private Capital may include payments made on behalf of an Applicant or Conditionally Approved NMVC Company before the Applicant or Conditionally Approved NMVC Company becomes a NMVC Company for organizational expenses and Management Expenses incurred by the Applicant or the Conditionally Approved NMVC Company prior to its becoming a NMVC Company.

* * * * *

4. Revise § 108.310(a) to read as follows:

§ 108.310 Contents of application.

* * * * *

(a) *Amounts*. The Applicant must indicate—

(1) The specific amount of Regulatory Capital it proposes to raise (which amount must be at least \$5,000,000); and

(2) The specific amount of binding commitments for contributions in cash or in-kind it proposes to raise, and/or an annuity it proposes to purchase, in accordance with the requirements of § 108.2030, as its matching resources for its Operational Assistance grant award (the aggregate of which must be not less than \$1,500,000 or 30 percent of the

Regulatory Capital it proposes to raise under paragraph (a)(1) of this section, whichever is greater).

* * * * *

5. Revise the second sentence of § 108.320(g) to read as follows:

§ 108.320 Contents of comprehensive business plan.

* * * * *

(g) * * * If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). * * *

* * * * *

6. Revise § 108.360(k) to read as follows:

§ 108.360 Evaluation criteria.

* * * * *

(k) The strength of the Applicant's application compared to applications submitted by other Applicants and by SSBICs intending to invest in the same or proximate LI Areas.

7. Revise § 108.380(a)(1)(i)(A), (a)(1)(i)(B), and the second sentence in (b)(3) to read as follows:

§ 108.380 Final approval as a NMVC Company.

(a) * * *

(1) * * *

(i) * * *

(A) The amount of Regulatory Capital set forth in its application, pursuant to § 108.310(a)(1); and

(B) The amount of matching resources for its Operational Assistance grant award set forth in its application, pursuant to § 108.310(a)(2); and

* * * * *

(b) * * *

(3) * * * Under no circumstances will SBA designate a Conditionally Approved NMVC Company as a NMVC Company if such Conditionally Approved NMVC Company does not raise the required amount of Regulatory Capital within the time period SBA gave it to do so.

8. Add an undesignated centerhead and a new § 108.900 to read as follows:

Management Services and Fees

§ 108.900 Fees for management services provided to a Small Business by a NMVC Company or its Associate.

(a) *General.* This section applies to management services that you or your Associate provide to a Small Business during the term of a Financing or prior to a Financing. It does not apply to management services that your Associate provides to a Small Business

that you do not finance. It also does not apply to Operational Assistance that you or your Associate provide to a Smaller Enterprise that you have Financed or in which you expect to make a Financing, for which neither you nor your Associate may charge the Smaller Enterprise.

(b) *SBA approval.* You must obtain SBA's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management services fees.* You or your Associate may provide management services to a Small Business financed by you if:

(1) You or your Associate have entered into a written contract with the Small Business;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to SBA, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Small Business; and

(5) At least 50 percent of any management services fees paid to your Associate by a Small Business for management services provided by the Associate is allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may charge a Small Business Financed by you for services provided as members of the Small Business' board of directors. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. Fees may be in the form of cash, warrants, or other payments. At least 50 percent of any such fees paid to your Associate by a Small Business for service by the Associate as a board member must be allocated back to you for your benefit.

(e) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed such as preparing a Small Business for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Fees may be in the form of cash, notes, stock, and/or options. At least 50 percent of any such fees paid to your Associate by a Small Business for transactions work done by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Small

Business on that portion of a Financing that you do not provide.

(f) *Recordkeeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

9.–10. Revise § 108.2000 and add §§ 108.2001 through 108.2007 as follows:

§ 108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

(a) *NMVC Companies.* Regulations governing Operational Assistance grants to NMVC Companies may be found in subparts D and E of this part 108, and in §§ 108.2010 through 108.2040.

(b) *SSBICs.* Regulations governing Operational Assistance grants to SSBICs may be found in §§ 108.2001 through 108.2040.

§ 108.2001 When and how SSBICs may apply for Operational Assistance grants.

(a) *Notice of Funds Availability ("NOFA").* SBA will publish a NOFA in the **Federal Register**, advising SSBICs of the availability of funds for Operational Assistance grants to SSBICs. This NOFA will be the same NOFA described in § 108.300(a), or will be published simultaneously with that NOFA. An SSBIC may submit an application for an Operational Assistance grant only during the time period specified for such purpose in the NOFA.

(b) *Application form.* An SSBIC must apply for an Operational Assistance grant using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

§ 108.2002 Eligibility of SSBICs to apply for Operational Assistance grants.

An SSBIC is eligible to apply for an Operational Assistance grant if:

(a) It intends to increase its Regulatory Capital, as in effect on December 21, 2000, and to make Low-Income Investments in the amount of such increase;

(b) It intends to raise binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, in an amount not less than 30 percent of the intended increase in its Regulatory Capital described in paragraph (a) of this section; and

(c) It has a plan describing how it intends to use the requested grant funds to provide Operational Assistance to Smaller Enterprises in which it has made or expects to make Low-Income Investments after December 21, 2000.

§ 108.2003 Grant issuance fee for SSBICs.

An SSBIC must pay to SBA a grant issuance fee of \$5,000. An SSBIC must submit this fee in advance, at the time of application submission. If SBA does not award a grant to the SSBIC, SBA will refund this fee to the SSBIC.

§ 108.2004 Contents of application submitted by SSBICs.

Each application submitted by an SSBIC for an Operational Assistance grant must contain the information specified in the application packet provided by SBA, including the following information:

(a) *Amounts.* An SSBIC must specify the amount of Regulatory Capital it intends to raise after December 21, 2000, and the amount of Operational Assistance grant funds it seeks from SBA, which must be at least 30 percent of its intended increase in its Regulatory Capital since December 21, 2000.

(b) *Plan.* An SSBIC must submit a plan addressing the specific items described in § 108.2005.

§ 108.2005 Contents of plan submitted by SSBICs.

(a) *Plan for providing Operational Assistance.* The SSBIC must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Low-Income Investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(b) *Matching resources for Operational Assistance grant.* The SSBIC must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the SSBIC's Operational Assistance grant. If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). The SSBIC must discuss its potential sources of matching resources, the estimated timing on raising such match, and the extent of the expressions of interest to commit such match to the SSBIC.

(c) *Identification of LI Areas.* The SSBIC must identify the specific LI Areas in which it intends to make Low-Income Investments and provide Operational Assistance under the NMVC program.

(d) *Projected allocation of investments among identified LI Areas.* The SSBIC must describe the amount of Low-Income Investments it intends to make in each of the identified LI Areas.

(e) *Track record of management team in obtaining public policy results through investments.* The SSBIC must provide information concerning the past track record of the SSBIC in making investments that have had a demonstrable impact on the socially or economically disadvantaged businesses targeted by the SSBIC program (for example, new businesses created, jobs created, or wealth created). Such information might include case studies or examples of the SSBIC's successful Financings.

(f) *Market analysis.* The SSBIC must provide an analysis of the LI Areas in which it intends to make its Low-Income Investments and provide its Operational Assistance to Smaller Enterprises, demonstrating that the SSBIC understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Low-Income Investments and have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. The SSBIC also must analyze the extent of the demand in such areas for Low-Income Investments and any factors or trends that may affect the SSBIC's ability to make effective Low-Income Investments.

(g) *Regulatory Capital.* The SSBIC must include a detailed description of how it plans to raise its Regulatory Capital. The SSBIC must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the SSBIC.

(h) *Projected impact.* The SSBIC must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(1) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(2) A description of the criteria to be used to measure the benefits created as a result of its activities; and

(3) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

§ 108.2006 Evaluation and selection of SSBICs.

SBA will evaluate and select an SSBIC for an Operational Assistance grant award under the NMVC program solely at SBA's discretion, based on SBA's review of the SSBIC's application materials, interviews or site visits with the SSBIC (if any), and information in SBA's records relating to the SSBIC's regulatory compliance status and track record as an SSBIC. SBA's evaluation and selection process is intended to ensure that SSBIC requests are evaluated on a competitive basis and in a fair and consistent manner. SBA will evaluate and select SSBICs for an Operational Assistance grant award by considering the following criteria:

(a) The strength of the SSBIC's application, including the strength of its proposal to provide Operational Assistance to Smaller Enterprises in which it intends to invest;

(b) The SSBIC's regulatory compliance status and past track record in being able to accomplish program goals through its investment activity;

(c) The likelihood that and the time frame within which the SSBIC will be able to raise the Regulatory Capital it intends to raise and obtain the matching resources described in § 108.2005(b) and (g);

(d) The need for Low-Income Investments in the LI Areas in which the SSBIC intends to invest;

(e) The SSBIC's demonstrated understanding of the markets in the LI Areas in which it intends to invest;

(f) The extent to which the activities proposed by the SSBIC will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas;

(g) The likelihood that the SSBIC will fulfill the goals described in its application and meet the objectives of the NMVC program; and

(h) The strength of the SSBIC's application compared to applications submitted by other SSBICs and by Applicants intending to invest in the same or proximate LI Areas.

§ 108.2007 Grant award to SSBICs.

An SSBIC selected for an Operational Assistance grant award will receive a grant award only if, by a date established by SBA, it increases its Regulatory Capital in the specific amount set forth in its application, pursuant to § 108.2004(a), and raises matching resources for the grant in the amount required by § 108.2030(d)(2).

11. Amend § 108.2010 by redesignating paragraph (b) as paragraph

(c), adding a new paragraph (b), and revising redesignated paragraph (c), to read as follows:

§ 108.2010 Restrictions of use of Operational Assistance grant funds.

(b) *Restrictions applicable only to NMVC Companies.* A NMVC Company must use at least 80 percent of both grant funds awarded by SBA and its matching resources to provide Operational Assistance to Smaller Enterprises whose Principal Office at the time the Operational Assistance commences is located in an LI Area.

(c) *Restrictions applicable to NMVC Companies and SSBICs.* A NMVC Company or a SSBIC that receives an Operational Assistance grant must not use either grant funds awarded by SBA or its matching resources for "general and administrative expense," as defined in the Federal Acquisition Regulations, "Definitions of Words and Terms," 48 CFR 2.101.

12. Revise the citation in § 108.2020(b) from "§§ 108.2000 and 108.2030" to "§§ 108.2007 and 108.2030".

13. Revise § 108.2030(c)(2)(iii), (c)(2)(iv), and (d)(2) to read as follows:

§ 108.2030 Matching requirements.

(c) * * *

(2) * * *

(iii) Binding commitments for cash or in-kind contributions that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years); and/or

(iv) An annuity, purchased with funds other than Regulatory Capital, from an insurance company acceptable to SBA and that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years).

(d) * * *

(2) *SSBICs.* The amount of matching resources required of an SSBIC is equal to the amount of Operational Assistance grant funds requested by the SSBIC, as set forth in its application pursuant to § 108.2004(a).

14. Revise § 108.2040(a) to read as follows:

§ 108.2040 Reporting and recordkeeping requirements.

(a) *NMVC Companies.* Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part. NMVC

Companies also must comply with all reporting, record retention, and recordkeeping requirements set forth in Circular A-110 of the Office of Management and Budget (for availability, see 5 CFR 1310.3) and any grant award document executed between SBA and the NMVC Company.

* * * * *

Dated: September 3, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02-28204 Filed 11-8-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-SW-26-AD; Amendment 39-12942; AD 2002-22-15]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires inspecting and adjusting, if necessary, the position of the locking pins on each pilot, co-pilot, and passenger-hinged and sliding door (door) initially and each time a door is replaced. This amendment is prompted by two reports of inadvertent opening of the passenger-hinged doors in flight due to improper adjustment of the door-locking mechanism. The actions specified by this AD are intended to prevent loss of a door in flight, contact with the main rotor or tail rotor, and subsequent loss of helicopter control.

DATES: Effective December 17, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the *Office of the Federal Register*, 800 North

Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5116, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

A proposal to amend 14 CFR part 39 to include an AD for ECF Model EC 155B helicopters was published in the **Federal Register** on August 14, 2002 (67 FR 52898). That action proposed to require inspecting and adjusting, if necessary, the position of the locking pins on each pilot, co-pilot, and passenger-hinged and sliding door (door) initially and each time a door is replaced.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model EC 155B helicopters. The DGAC advises of two reports of the passenger-hinged doors opening in flight. The investigation revealed noncompliant installation and adjustment of the door-locking mechanism, which can result in the door unlocking and a risk of losing the door in flight.

ECF has issued Alert Telex 52-A008, dated March 11, 2002, which specifies checking and adjusting the position of each door's locking pins to prevent the door opening in flight. The DGAC classified this service bulletin as mandatory and issued AD No. 2002-186-005(A), dated April 3, 2002, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.