

cattle herds in the State. The elevation of an area from modified accredited advanced to accredited free status eliminates all remaining interstate movement restrictions for cattle and bison originating from this zone.

The reclassified modified accredited advanced zone will include 267 cattle herds, 17 of which are dairy herds. The elevation to modified accredited advanced status from modified accredited status removes both individual animal and whole herd testing requirements for producers within this zone. Tuberculosis testing, including veterinary fees, costs about \$10 to \$15 per head. Based on state-wide estimates of interstate movement, annual cost savings associated with reduced testing of feeder cattle moving out of State from this zone could total between \$10,000 and \$15,000. Annual cost savings associated with the removal of whole herd testing for non-accredited beef herds engaged in interstate movement of breeding cattle and for all dairy herds in this zone could be between about \$120,000 and \$180,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.7, a new paragraph (b)(3) is added to read as follows:

§ 77.7 Accredited-free States or zones.

* * * * *

(b) * * *

(3) All of the State of Minnesota except for the zones that comprise those counties or portions of counties in Minnesota described in § 77.9(b)(2).

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■ 3. In § 77.9, paragraph (b)(2) is revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

* * * * *

(b) * * *

(2) Those portions of the Minnesota counties of Lake of the Woods, Roseau, Marshall, and Beltrami bounded by a line as follows: Beginning in Lake of the Woods County at the intersection of the U.S./Canadian border and the western shoreline of Lake of the Woods; then west along the U.S./Canadian border (crossing into Roseau County) to Roseau County Road 115; then south along Roseau County Road 115 to State Highway 11; then southwest along State Highway 11 to State Highway 32; then south along State Highway 32 (crossing into Marshall County) to Marshall County Road 47/124; then east along Marshall County Road 47/124 to 210th Avenue Northeast; then south along 210th Avenue Northeast and southwest to where the name changes to 200th Avenue Northeast; then south along 200th Avenue Northeast to County Road 121; then south along the western boundary of Agassiz National Wildlife Reserve and along the western boundary of the Elm Lake State Wildlife Management Area to the southwest corner of sec. 21 in T. 155 N., R. 42 W. of the Fifth Prime Meridian; then east along the southern boundary of secs. 21, 22, 23, and 24 in T. 155 N., R. 42 W. and secs. 19 and 20 in T. 155 N., R. 41 W.; then south along the western boundary of secs. 28 and 33 in T. 155 N., R. 41 W.; then continuing south along Marshall County Road 52 to the southern boundary of Marshall County; then east along the southern boundary of Marshall County to the western boundary of Beltrami County (also the boundary of the Red Lake Indian Reservation); then north along the Beltrami County boundary (also the boundary of the Red Lake Indian Reservation) to the northern boundary

of the Red Lake Indian Reservation; then east along the northern boundary of the Red Lake Indian Reservation to the southeast corner of sec. 36 in T. 155 N., R. 34 W.; then north along the eastern boundary of Townships 155, 156, 157 (crossing into Lake of the Woods County), 158, 159, 160, and 161 N., R. 34 W., to State Highway 11; then northwest and north along State Highway 11 to County Road 74; then east along County Road 74 to Main Avenue Northeast; then north along Main Avenue Northeast to the northern city limits of Warroad; then east along the Warroad city limits to the shore of Lake of the Woods; then along the shore of Lake of the Woods to the point of beginning.

* * * * *

§ 77.11 [Amended]

■ 4. Section 77.11 is amended by removing and reserving paragraph (b)(2).

Done in Washington, DC, this 27th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010-24667 Filed 9-30-10; 8:45 am]

BILLING CODE 3410-34-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

[SBA-2010-0010]

RIN 3245-AG00

Immediate Disaster Assistance Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements the provision in the Food, Conservation and Energy Act of 2008 (the Farm Act) which requires SBA to establish a guaranteed disaster loan program to provide interim loans to businesses affected by a disaster. Under that authority, this rule establishes the Immediate Disaster Assistance Program (IDAP), including the requirements for carrying out the program. SBA will provide an 85 percent guarantee on IDAP loans made by participating lenders for up to \$25,000. These loans are intended to provide immediate relief to a small business that meets the basic eligibility standards for a disaster loan authorized under section 7(b) of the Small Business Act while the business'

application for a direct disaster loan is pending with SBA.

DATES: *Effective Date:* October 1, 2010.

Applicability Date: This rule is applicable for disasters declared on or after October 1, 2010.

Comment Date: Comments must be received on or before November 30, 2010.

ADDRESSES: You may submit comments, identified by docket number [SBA–2010–0010] by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

• *Hand Delivery/Courier:* Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

All comments will be posted on <http://www.Regulations.gov>. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at <http://www.Regulations.gov> and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will be published or not.

FOR FURTHER INFORMATION CONTACT: Grady Hedgespeth, Director of Financial Assistance, at (202) 205–7562 or Grady.Hedgespeth@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Farm Act, Public Law 110–246, enacted June 18, 2008, amended the Small Business Act (the Act) and authorized changes to make SBA's disaster assistance program more accessible to disaster victims. One provision included in the Farm Act requires SBA to implement an Immediate Disaster Assistance Program (IDAP) to provide interim loans to businesses affected by a disaster that meet the basic eligibility standards for a disaster loan authorized under section

7(b) of the Act. The provision authorizes SBA to provide an 85 percent guarantee on loans made by participating lenders for up to \$25,000. The intent of the IDAP loan program is to provide bridge financing as quickly and as prudently as possible following a declared disaster while the business is awaiting approval for permanent financing through a direct disaster loan from SBA.

The IDAP loan program is a guaranteed loan program. Prior to implementation of the IDAP loan program, SBA disaster assistance consisted of direct loans to disaster victims. Although SBA has experience in making guaranteed small business loans, called 7(a) loans because they are authorized under section 7(a) of the Act, SBA's disaster loan programs have always been direct lending programs. Therefore, SBA decided to implement the IDAP loan program first on a smaller scale in order to test the program. Using a modest amount of appropriated funds, SBA plans to fund approximately 934 IDAP loans. In this introductory phase of the program, IDAP loans will only be made available for specific disasters. SBA plans to focus this introductory phase of the IDAP loan program in the Gulf Coast region and is actively recruiting lenders in that region to participate in the program so that IDAP loans will be available as quickly as possible following an IDAP-Eligible Disaster Declaration. SBA will notify the public when a disaster declaration is an IDAP-Eligible Disaster Declaration.

SBA anticipates that it may revise this Interim Final Rule based on its experience in administering the introductory phase of the program. In addition, SBA welcomes comments from all interested parties regarding the parameters of the IDAP loan program as outlined in this rule, as well as suggested changes applicable to further expansion of the program beyond specific identified disasters.

In order to implement the introductory phase of this new loan program, SBA is revising certain existing disaster assistance regulations in subpart A of 13 CFR part 123 and adding a new subpart H to describe the requirements of the new IDAP loan program.

II. Section by Section Analysis

Section 123.1—What do these rules cover?

SBA is updating the citations to the Act to reflect the most current authority for the disaster assistance programs.

Section 123.2—What are disaster loans and disaster declarations?

SBA is revising section 123.2 to add a sentence that describes IDAP loans.

Section 123.4—What is a disaster area and why is it important?

Section 123.4 describes disaster areas and the different types of disaster assistance available depending on the type of disaster declaration and the location of the disaster victim. SBA is revising section 123.4 to add references to IDAP loans. In major disasters, IDAP loans may be made for victims in contiguous counties or other political subdivisions, but for major disasters which authorize public assistance only, IDAP loans are not available in counties contiguous to the disaster area. IDAP loans may also be available in contiguous counties for disaster declarations issued by the Administrator of SBA. Additional information regarding the types of disaster declarations for which IDAP loans are available is set forth in new Subpart H.

Section 123.5—What kinds of loans are available?

SBA is revising section 123.5 to distinguish between the disaster loans authorized under Section 7(b) of the Act and IDAP loans, which are authorized under Section 42 of the Act. As described in paragraph (a), loans authorized under Section 7(b) include physical disaster home loans, physical disaster business loans, economic injury disaster business loans, and Military Reservist EIDL loans. SBA also has authority under Section 7(b) to make disaster loans in participation with financial institutions, although SBA does not currently have funding for this purpose. In such cases, the existing language of section 123.5 provides that SBA's share in the disaster loan may not exceed 90 percent. For clarity, SBA added paragraph (b) to describe IDAP loans. Section 123.5(b) states that IDAP loans are authorized by Section 42 of the Act, made only in participation with financial institutions, and that SBA's share in an IDAP loan is equal to 85 percent.

Section 123.8—Does SBA charge any fees for obtaining a disaster loan?

SBA is revising section 123.8 to clarify which provisions are applicable only to disaster loans authorized under Section 7(b). SBA also added a sentence to provide that SBA will not charge lenders a guarantee fee for IDAP loans.

Section 123.9—What happens if I don't use loan proceeds for the intended purpose?

SBA is revising section 123.9 to clarify that the statutory penalty equal to one and one-half times the disbursed amount for any wrongful misapplication of loan proceeds contained in this provision is applicable only to loans made under Section 7(b) of the Act. This statutory penalty does not apply to IDAP loans which are made under Section 42 of the Act. SBA is also adding paragraph (c) to clarify that borrowers who misapply loan proceeds of any disaster loan under Part 123, including loans made under Section 7(b) of the Act and IDAP loans, may face criminal prosecution or other civil or administrative action.

Section 123.11—Does SBA require collateral for any of its disaster loans?

SBA is adding paragraph (c) to this section, which states that the collateral policies for IDAP loans will be set forth in the new Subpart H.

Section 123.13—What happens if my loan application is denied?

This provision outlines the notification, reconsideration, and appeal procedures for applicants whose request for a disaster loan is declined. SBA is adding a new paragraph (g) at the end of the provision to clarify that it does not apply to IDAP loans. Notification procedures for applicants whose request for an IDAP loan is declined are located in section 123.701. SBA has decided not to provide reconsideration or appeal procedures for the IDAP loan program due to the delay this would add to the IDAP loan approval process. Applicants whose request for an IDAP loan is declined are still eligible to apply directly to SBA for a disaster loan authorized under Section 7(b).

Section 123.14—How does the Federal Debt Collection Procedures Act of 1990 apply?

Section 123.14 provides that debtors who own property which is subject to outstanding judgment liens for debts owed to the United States are generally not eligible to receive disaster loans. The regulation provides that in certain circumstances, however, SBA may waive this restriction. SBA has revised this waiver provision to state that it does not apply to IDAP loans due to the delay this would add to the IDAP loan approval process. A business that is ineligible for an IDAP loan under section 123.14 may still apply directly to SBA for a disaster loan authorized under Section 7(b).

Section 123.15—What if I change my mind?

Because the IDAP loan program is only available for businesses, SBA is adding a sentence at the end of this provision to clarify that it does not apply to IDAP loans.

Section 123.16—How are loans administered and serviced?

SBA is revising the last sentence to paragraph (a) to add that the rules on servicing are found in new Subpart H as well as part 120 of this chapter.

Section 123.700—What is the Immediate Disaster Assistance Program?

Sections 123.700(a) and (b) set forth the purpose of the Immediate Disaster Assistance Program (IDAP) and define the terms used in the regulation applicable to IDAP loans. IDAP loans are intended to provide immediate relief to small businesses that have suffered physical damage or economic injury due to a disaster, provided that those small businesses meet the basic eligibility standards for disaster loans authorized by Section 7(b). IDAP loans are interim loans of no more than \$25,000 made by participating lenders and guaranteed by SBA. Paragraph (b) provides definitions of terms used in the new Subpart H. These terms include: Contiguous Counties, Credit Elsewhere, Declared Disaster, Declared Disaster Area, Disaster Loan, IDAP Borrower, IDAP Lender, IDAP Loan Program Requirements, IDAP-Eligible Disaster Declaration, Initial Period, Major Disaster Declaration, Other Recoveries, Primary Counties, SBA Administrative Disaster Declaration, SBA EIDL-Only Disaster Declaration, Substantial Economic Injury, and Term Period. There is significant overlap between the requirements of the IDAP loan program and those of SBA's existing direct disaster loan programs; therefore some of the terms defined in this section may be found in other provisions outside of Subpart H. SBA has included these definitions in section 123.700(b) so that IDAP loan program participants can easily access both those terms that are specific to the IDAP loan program and common terms as they apply to the IDAP loan program.

Section 123.701—What is the application procedure for an IDAP loan?

Section 123.701 provides that a prospective IDAP Borrower must apply to an IDAP Lender for an IDAP loan within the application period established by SBA in the IDAP-Eligible Disaster Declaration. As described in section 123.3, SBA publishes a notice of

disaster declaration in the **Federal Register** for every disaster for which SBA disaster assistance is available. SBA has decided to limit the availability of IDAP loans to three types of disaster declarations: Major Disaster Declarations under section 123.3(a)(1), SBA Administrative Disaster Declarations under section 123.3(a)(3), and SBA EIDL-Only Disaster Declarations under section 123.3(a)(5). Thus, an IDAP-Eligible Disaster Declaration is defined as one of these three types of disaster declarations. Additionally, in the introductory phase of the IDAP loan program, SBA is limiting the availability of IDAP loans to disasters occurring in the specific geographic regions. Thus, SBA has also limited the definition of IDAP-Eligible Disaster Declaration to those in which SBA has stated that IDAP loans are available.

IDAP loans are not available for the following types of disaster declarations: Major disasters limited to public assistance (section 123.3(a)(2)); economic injury disaster declarations made in response to a disaster declaration by the Secretary of Agriculture (section 123.3(a)(4)); fishery resource disasters under section 308(b) of the Interjurisdictional Fisheries Act of 1986 ("Fisheries Act"); and Military Reservist economic injury disasters (§ 123.500 *et seq.*). Disaster declarations under section 123.3(a)(2) make SBA disaster assistance available only to private nonprofit organizations (PNPs). By statute, PNPs are not eligible for IDAP loans; therefore IDAP loans cannot be made pursuant to such declarations. Historically, SBA has received relatively few disaster loan applications in response to disaster declarations under section 123.3(a)(4) and disaster declarations under the Fisheries Act. Making IDAP loans available for these types of disaster declarations would further complicate the IDAP loan program while providing relief to a very small number of disaster victims. Therefore, SBA has decided not to include disaster declarations under section 123.3(a)(4) and the Fisheries Act as IDAP-Eligible Disaster Declarations. The Military Reservist economic injury disaster loan (MREIDL) program is a specialized disaster loan program for businesses that employ military reservists who are called-up to active military duty. SBA has decided not to allow IDAP loans for Military Reservist economic injury disasters declarations due to the additional eligibility requirements and specialized nature of the MREIDL program.

The IDAP-Eligible Disaster Declaration will include the deadline by

which a prospective IDAP Borrower must submit an application to an IDAP Lender. SBA will publish a list of IDAP Lenders on SBA's Web site. If the IDAP Lender declines the application, the IDAP Lender will provide the applicant with the reasons for the decline. If the IDAP Lender approves the application, it will submit a request for IDAP loan approval to SBA. The IDAP-Eligible Disaster Declaration will also include the deadline by which the IDAP Lender must submit the IDAP loan approval request to SBA. As required by statute, SBA will issue an approval or decline of the IDAP Lender's request within 36 hours of receipt by SBA. The IDAP Lender will then notify the prospective IDAP Borrower whether the application was approved. If SBA declines the IDAP loan approval request, the IDAP Lender will provide the applicant with the reasons given by SBA for decline. If the application is approved, the IDAP Lender will issue a loan authorization.

Section 123.702—What are the eligibility requirements for an IDAP loan?

Section 123.702(a) provides the requirements an IDAP Borrower must meet to be eligible for an IDAP loan; section 123.702(b) lists types of businesses that are ineligible for IDAP loans; and section 123.702(c) describes the character requirements for IDAP Borrowers. By statute, an IDAP Borrower must meet the basic eligibility standards for a Disaster Loan in order to be eligible for an IDAP loan. SBA has incorporated the basic Disaster Loan eligibility standards into this section. In certain instances, where basic Disaster Loan eligibility standards require an analysis with a level of complexity that would delay processing of an interim loan, SBA has determined that such loans should be processed as direct Disaster Loans and are ineligible for IDAP loan processing.

Sections 123.702(a)(1) and (2) provide that IDAP Borrowers must be located within a Declared Disaster Area and have sustained eligible disaster losses. The regulation further details the type of disaster losses required depending on the specific disaster declaration. As described above, IDAP loans will be available for victims of a disaster event for which an IDAP-Eligible Disaster Declaration is issued. The eligible disaster losses described in section 123.702(a)(2) are derived from the existing statutory and regulatory provisions governing each IDAP-Eligible Disaster Declaration.

Sections 123.702(a)(3) and (4) provide that IDAP Borrowers must be small businesses that do not have Credit

Elsewhere. In order to carry out the statutory intent of the IDAP loan program and to encourage lender participation, SBA has confined the eligibility for IDAP loans to small businesses that do not have Credit Elsewhere. An IDAP-Eligible Disaster Declaration authorizes SBA to make the following types of Disaster Loans to businesses harmed in the disaster event: Physical disaster business loans under section 123.200, economic injury disaster loans under section 123.300, or a combination of both types of loans. Under the physical disaster business loan program, SBA makes loans to both small and large businesses and to businesses that have Credit Elsewhere. In contrast, the Act limits the economic injury disaster loan program to small businesses that do not have Credit Elsewhere. In order to simplify the IDAP loan program for lenders, SBA is limiting the IDAP loan program to small businesses that do not have Credit Elsewhere (as defined in section 123.700(b)(2)). Since IDAP Lenders are 7(a) Lenders (*see* section 123.706(a)), they are familiar with these concepts because these are the basic eligibility requirements for the 7(a) loan program. Although large businesses and businesses that have Credit Elsewhere are not eligible for interim financing under the IDAP loan program, they may still apply directly to SBA for a physical disaster business loan. SBA believes that limiting the IDAP loan program to small businesses that do not have Credit Elsewhere will simplify the IDAP loan program and encourage lender participation, thereby increasing the availability of IDAP loans to disaster victims.

Since IDAP loans are interim loans, section 123.702(a)(5) provides that an IDAP Borrower also must apply to SBA for a Disaster Loan for permanent financing within the applicable deadline and before disbursement of the IDAP loan. As described above, IDAP Borrowers must apply to SBA for an economic injury disaster loan, a physical disaster business loan, or a combination of both types of loans. SBA will publish the application deadlines for each type of loan in the IDAP-Eligible Disaster Declaration.

Section 123.702(a)(6) provides that an IDAP Borrower must be creditworthy and demonstrate reasonable assurance of repayment of the IDAP loan. This requirement is consistent with the prudent lending standards SBA requires for all of its loan programs. SBA will provide further guidance on creditworthiness and what is required to demonstrate repayment ability in the procedural guidance developed to

administer the introductory phase of the IDAP loan program.

Section 123.702(b) lists the types of businesses that are not eligible for IDAP loans. SBA has restricted these types of businesses from participating in the IDAP loan program because such businesses would not be eligible for a Disaster Loan from SBA or because an application for these types of businesses involves a complex analysis which is not appropriate for an interim delegated-authority guaranteed loan program. The types of businesses ineligible for IDAP loans listed in sections 123.702(b)(1) through (14) and in section 123.702(b)(20) are also ineligible for 7(a) loans. Therefore, SBA anticipates that most IDAP Lenders will be familiar with these restrictions through their experiences with the 7(a) loan program.

Sections 123.702(b)(15) and (16) describe restrictions on businesses eligible for IDAP loans that are similar to restrictions in the 7(a) program. Section 123.702(b)(15) provides that a business engaged in lending, multi-level sales distribution, speculation, or investment is ineligible for an IDAP loan; however, businesses engaged in real estate investment that hold rental property, *i.e.*, landlords, are eligible for IDAP loans. Although the general prohibition on loans to businesses engaged in lending, multi-level sales distribution, speculation, or investment applies to both the IDAP and 7(a) loan programs, the exception for businesses that hold rental property does not exist in the 7(a) loan program. Owners of commercial or residential rental property are eligible for SBA Disaster Loans; therefore they are eligible for interim financing under the IDAP loan program.

Section 123.702(b)(16) provides that a business that is delinquent on any Federal obligation, including Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property is not eligible for an IDAP loan. A similar but slightly less restrictive provision in the 7(a) program provides that businesses that have previously defaulted on a Federal obligation and caused the Federal government to sustain a loss are not eligible for SBA assistance. Because SBA will generally not approve a Disaster Loan to applicants who are delinquent on any Federal debt or have a judgment lien against their property, except under certain specific circumstances, the complex analysis of whether such an applicant is eligible is not appropriate for expedited IDAP loan processing. These applicants may instead apply for a direct Disaster Loan.

The majority of the remaining ineligible types of businesses described in sections 123.702(b)(17) through (25) are restrictions that do not exist in the 7(a) loan program, and instead are restrictions specific to the Disaster Loan program. Sections 123.702(b)(17) and (18) provide that a business located in a Special Flood Hazard Area (SFHA) that has not maintained required flood insurance on its business property or a business located in a SFHA within a non-participating community or a community under sanction is not eligible for an IDAP loan. SBA is prohibited by statute from providing disaster assistance, including SBA guaranteed IDAP loans, to these types of businesses. Similarly, SBA is prohibited from providing disaster assistance to a business located in a building that was newly constructed or substantially improved on or after February 9, 1989, and is currently located seaward of mean high tide or entirely in or over water, as described in section 123.702(b)(19).

Sections 123.702(b)(21) and (22) provide that a business that had a substantial change of ownership after the Declared Disaster or a business that was established after the Declared Disaster is not eligible for an IDAP loan. In addition, section 123.702(b)(23) provides that a business relocating out of the Declared Disaster Area is not eligible for an IDAP loan. SBA's disaster assistance programs are intended to help a business harmed in a disaster event return to the same physical and economic state it was in prior to the disaster event. Therefore, SBA only allows an IDAP loan to be made to a business that existed prior to the Declared Disaster and will continue to operate in the same location and under the same ownership, unless a contract of sale existed prior to the Declared Disaster. Under special circumstances, a business that must relocate due to uncontrollable or compelling reasons may be eligible for a Disaster Loan from SBA. In order to simplify the IDAP loan program for IDAP Lenders, SBA has decided not to allow IDAP Lenders to make an IDAP loan to a business that relocates out of the Declared Disaster Area. However, such businesses may still apply directly to SBA for a Disaster Loan.

SBA is prohibited by statute from providing disaster assistance, including SBA guaranteed IDAP loans, to the types of businesses described in sections 123.702(b)(24) and (25). Section 123.702(b)(24) describes the prohibition on IDAP loans to agricultural entities, which includes businesses primarily engaged in the production of food and

fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. The regulation provides exceptions for a nursery that derives less than 50 percent of annual receipts from the production and sale of nursery products and for a small agricultural or producer cooperative. This exception is consistent with existing SBA Disaster Loan policy. Section 123.702(b)(25) describes the statutory prohibition under 18 U.S.C. 431 on certain types of disaster assistance, including IDAP loans, to certain types of businesses in which a Member of Congress has an ownership interest. These ineligible businesses include sole proprietorships, unincorporated associations, partnerships and limited liability companies in which a Member of Congress (or a household member) has an ownership interest.

The Associates (as defined in section 120.10) of a prospective IDAP Borrower must also meet the character requirements provided in section 123.702(c). These requirements track the basic eligibility standards for Disaster Loan. Under sections 123.702(c)(1) and (2), an applicant business is not eligible for an IDAP loan if any Associate is presently under indictment, on parole or probation, or has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted). It is not in the public interest for SBA to extend financial assistance to individuals who are not of good character. In certain circumstances, however, some such applicants may be eligible for a Disaster Loan directly from SBA following the submission of additional information and a character evaluation by SBA. SBA has decided not to provide a similar in-depth character evaluation for IDAP loan applicants due to the delay this would add to the IDAP loan approval process. The IDAP loan program is intended to provide emergency financing to businesses as quickly and as prudently as possible following a Declared Disaster; therefore SBA is attempting to streamline the IDAP loan application process as much as possible. A business that is ineligible for an IDAP loan under section 123.702(c)(1) or (2) may still apply directly to SBA for a Disaster Loan.

Section 123.702(c)(3) provides that an applicant business is not eligible for an IDAP loan if any Associate owning 50

percent or more of the applicant business is more than 60 days delinquent on any obligation to pay child support arising under an administrative order, court order, repayment agreement between the holder and a custodial parent, or repayment agreement between the holder and a state agency providing child support enforcement services. SBA is prohibited by statute from providing any financial assistance, including IDAP loans, to such applicants.

Section 123.702(c)(4) provides that an applicant business is not eligible for an IDAP loan if any of its Associates is an undocumented (illegal) alien. SBA is prohibited by statute from providing any financial assistance, including IDAP loans, to such applicants.

Section 123.702(c)(5) provides that an applicant business is not eligible for an IDAP loan if any Associate of the applicant business is delinquent on any Federal obligation, including Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property. This restriction on the Associates of a business applying for an IDAP loan is identical to the restriction in section 123.702(b)(16), which applies to an applicant business itself. In certain circumstances, however, some such applicants may be eligible for a Disaster Loan directly from SBA following the submission of additional information and further evaluation by SBA. SBA has decided not to provide a similar waiver provision for IDAP loan applicants due to the delay this would add to the IDAP loan approval process. Instead, the business is ineligible for an IDAP loan. A business that is ineligible for an IDAP loan under section 123.702(b)(16) or section 123.703(c)(5) may still apply directly to SBA for a Disaster Loan and go through the waiver process.

Section 123.703—What are the terms of an IDAP loan?

Section 123.703 establishes basic loan terms for IDAP loans. Paragraph (a) provides that SBA will guarantee 85 percent of each IDAP loan. Paragraph (b) establishes the maximum size of an IDAP loan. If the amount of an IDAP Borrower's disaster losses is \$25,000 or less, the principal amount of an IDAP loan must not exceed the amount of disaster losses minus Other Recoveries received by the IDAP Borrower. If the amount of an IDAP Borrower's disaster losses is more than \$25,000, the principal amount of an IDAP loan must not exceed \$25,000 minus Other Recoveries received by the IDAP Borrower. SBA cannot provide disaster

assistance, including SBA guaranteed loans under the IDAP loan program, for disaster losses that have already been compensated. Thus, if an IDAP Borrower's disaster losses have been compensated by Other Recoveries, the amount of the IDAP loan must be reduced.

Section 123.703(c) provides that the disbursement period for an IDAP loan is up to 30 days from the date of SBA approval of the IDAP loan. SBA determined that a disbursement period longer than 30 days would be inconsistent with the statutory intent to provide immediate disaster relief. If the IDAP Lender is notified before disbursement of the IDAP loan that the IDAP Borrower has received Other Recoveries, the IDAP Lender must decrease the approved amount of the IDAP loan by the amount of the Other Recoveries. Because there is a possibility that the IDAP Borrower's direct Disaster Loan could be approved and disbursed before full disbursement of the interim IDAP loan, this subsection provides that SBA will contact the IDAP Lender when SBA is ready to disburse the IDAP Borrower's approved Disaster Loan. Upon receipt of such notification by SBA, the IDAP Lender must cancel any remaining undisbursed amount of the IDAP loan. The IDAP Borrower's uncompensated disaster losses will instead be covered by the permanent financing provided by the Disaster Loan.

Section 123.703(d) describes the repayment of an IDAP loan. During the Initial Period, an IDAP Borrower will pay interest only on the disbursed principal balance of the IDAP loan. Additionally, during the Initial Period, in accordance with section 123.703(h), the IDAP Borrower must remit the proceeds of Other Recoveries to the IDAP Lender and the IDAP Lender must then apply the Other Recoveries to the IDAP loan balance. The Initial Period ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed. If SBA approves an IDAP Borrower's Disaster Loan application, SBA will require, in accordance with the statute, that the Disaster Loan proceeds be applied first to repay the IDAP loan. An IDAP loan is intended to be an interim loan and the statute requires the IDAP Borrower

to apply for a Disaster Loan from SBA and to repay the IDAP loan with Disaster Loan proceeds. Thus, if an IDAP Borrower withdraws an application for a Disaster Loan, fails to close on an approved Disaster Loan, or if the approved Disaster Loan is cancelled, the IDAP loan is immediately due and payable by the IDAP Borrower.

Although SBA anticipates that most IDAP loans will be repaid with the proceeds of Disaster Loans, it is likely that some IDAP Borrowers will not be approved for a Disaster Loan or that the amount of the Disaster Loan will be insufficient to repay the entire IDAP loan. In those cases, the IDAP loan enters the Term Period. During the Term Period, the IDAP Borrower must pay principal and interest on the IDAP loan, with the IDAP loan balance to be fully amortized over a period that is at least 10 years from the date of final disbursement of the IDAP loan, but no more than 25 years from the date of final disbursement. The Term Period begins in the first month following SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application, receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan, or final disbursement of the IDAP loan, whichever is later. Balloon payments are not permitted, and the IDAP Borrower may prepay any portion of the principal without penalty. Additionally, during the Term Period, in accordance with section 123.703(h), the IDAP Borrower must remit the proceeds of Other Recoveries to the IDAP Lender and the IDAP Lender must then apply the Other Recoveries to the IDAP loan balance.

Section 123.703(e) describes the interest rate on IDAP loans. During the Initial Period, the maximum interest rate will be a fixed rate. If an IDAP loan enters the Term Period, the IDAP Lender may charge either a fixed or a variable interest rate on the balance of the IDAP loan after all proceeds from any approved Disaster Loan have been applied. SBA will publish the maximum allowable interest rates for the Initial and Term Periods in the **Federal Register** from time to time.

Section 123.703(f) provides that no small business, including affiliates, may obtain more than one IDAP loan per Declared Disaster. This provision is intended to prevent IDAP Borrowers from receiving more than \$25,000 in interim loan assistance under the IDAP loan program per Declared Disaster. The regulation also clarifies that the provisions of section 120.151 of this chapter, which provide the maximum aggregate amount of 7(a) loans allowed

per borrower, do not apply to the IDAP loan program. The IDAP loan program is authorized under section 42 of the Act; therefore it is not subject to the same lending limits applicable to programs authorized under section 7(a).

Section 123.703(g) provides that holders of at least a 20 percent ownership interest in the IDAP Borrower must guarantee the IDAP loan. This requirement is consistent with SBA's personal guaranty requirements in its existing lending programs.

Finally, section 123.703(h) establishes what an IDAP Lender should do if an IDAP Borrower receives Other Recoveries. As provided in section 123.700(b), Other Recoveries are other compensation for disaster losses, including proceeds of policies of insurance or other indemnifications; grants or other reimbursement (including loans) from government agencies or private organizations; claims for civil liability against other individuals or organizations or governmental entities; gifts; condemnation awards; and salvage (including any sale or re-use) of items of disaster-damaged property. Additionally, if an IDAP Borrower has voluntarily repaid insurance recoveries to a recorded lienholder, the amount paid is considered to be Other Recoveries. Because an IDAP Borrower's eligibility for a Disaster Loan will be reduced to the extent that the IDAP Borrower is compensated for the disaster losses by Other Recoveries, the IDAP Borrower must promptly notify the IDAP Lender of any receipt of Other Recoveries and must remit the proceeds of Other Recoveries to the IDAP Lender. The IDAP Lender must then apply the Other Recoveries to the IDAP loan balance. No additional collateral is required for IDAP loans.

Section 123.704—Are there restrictions on how IDAP loan funds may be used?

Section 123.704 describes the purposes for which an IDAP Borrower may use IDAP loan proceeds. As provided in section 123.704(a), the allowable uses of IDAP loan proceeds vary depending upon the type of Declared Disaster (Major Disaster Declaration, SBA Administrative Disaster Declaration, or SBA EIDL-Only Disaster Declaration) and the IDAP Borrower's location (Primary County or Contiguous County). In general, IDAP loan proceeds may only be used to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred, and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations

and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred. Section 123.704(b) details specific ineligible uses of IDAP loan proceeds. These restrictions on uses of IDAP loan proceeds are consistent with the use of proceeds requirements for Disaster Loans or are prohibited because they involve an additional level of complexity that would delay processing of the IDAP loan. For example, section 123.704(b)(6) prohibits the use of IDAP loan proceeds for making repairs to a condominium unit owned by the IDAP Borrower. Although Disaster Loan proceeds may be used to repair condominium units, SBA requires additional analysis due to the potential overlap of the individual unit owner's damage with that of the association owned portions of the property. SBA has determined that such complex analysis will delay processing of an IDAP loan and should be reserved for direct Disaster Loan processing.

Section 123.705—Are there any fees associated with IDAP loans?

Section 123.705(a) provides that an IDAP Lender may not charge an IDAP Borrower any fees or direct costs except for the reasonable direct costs of liquidation, a late payment fee not to exceed 5 percent of the scheduled IDAP loan payment, and an application fee not to exceed \$250. SBA decided to allow an optional application fee of no more than \$250 so that an IDAP Lender may recoup some of its loan processing costs. The application fee is optional; therefore an IDAP Lender may choose not to collect an application fee from an IDAP Borrower. The provisions on late payment fees and reasonable direct costs of liquidation are consistent with permissible fees in SBA's 7(a) guaranteed loan program. If an undisbursed IDAP loan is cancelled pursuant to § 123.703(c), the IDAP Lender may retain the application fee.

An IDAP Lender is not required to execute a compensation agreement for collecting an application fee. Under 13 CFR 103.5, SBA typically requires lenders, Agents, and loan packagers to execute and submit to SBA a compensation agreement that governs the compensation charged for services rendered or to be rendered to an applicant or lender in any matter involving SBA assistance. This requirement is intended to prevent lenders, Agents, and loan packagers from charging inappropriate or unreasonable fees to applicants or lenders. This type of risk does not apply to the IDAP loan program, because the

only allowable fee is an application fee with a defined maximum amount. Therefore, SBA has decided not to require a compensation agreement for the IDAP loan program. However, consistent with the requirements of Section 13 of the Act, both the IDAP Borrower and the IDAP Lender must disclose in the IDAP loan application materials whether an application fee was paid and the amount of the application fee.

Section 123.705(b) provides that SBA will not impose any guarantee fees on an IDAP Lender making an IDAP loan.

Section 123.705(c) prohibits the use of paid loan packagers, referral agents or brokers in the IDAP loan program. Other than the application fee set forth in Section 123.705(a)(3), no IDAP Lender or third party may charge an IDAP Borrower a fee to assist in the preparation of an IDAP loan application or application materials, nor may a third party charge an IDAP Borrower or an IDAP Lender a referral fee or broker's fee in connection with an IDAP loan. SBA believes that the costs of the program should be kept as low as possible to aid the disaster victim.

Section 123.706—What are the requirements for IDAP lenders?

Section 123.706 details the requirements for lenders participating in the IDAP loan program. Section 123.706(a) provides that an IDAP Lender must be a 7(a) Lender (as defined in section 120.10 of this chapter). Section 120.10 defines a 7(a) Lender as an institution that has executed a participation agreement with SBA under the guaranteed loan program. Notwithstanding the provisions of section 120.470(a), a Small Business Lending Company (SBLC) that is a 7(a) Lender may make IDAP loans.

The regulation also provides that IDAP Lenders are subject to IDAP Loan Program Requirements, which include requirements imposed upon IDAP Lenders by statute, SBA regulations, any agreement the IDAP Lender has executed with SBA, SBA Standard Operating Procedures, SBA procedural guidance, official SBA notices and forms applicable to the IDAP loan program, and loan authorizations, as such requirements are issued and revised by SBA from time to time.

In addition, IDAP Lenders are subject to certain provisions in Part 120 that are applicable to all lenders that participate in SBA guaranteed loan programs. Section 120.140, *What ethical requirements apply to participants?*, describes the ethical requirements of lenders participating in SBA programs and any associates of such lenders.

Section 120.197, *Notifying SBA's Office of Inspector General of suspected fraud*, requires lenders to notify the SBA Office of Inspector General of any information which indicates that fraud may have occurred in connection with an IDAP loan. Sections 120.400, 120.410, 120.411, 120.412, and 120.413 provide the participation criteria for lenders participating in SBA programs. Section 120.400, *Loan Guarantee Agreements*, provides that the existence of a loan guarantee agreement does not obligate SBA to participate in any specific proposed loan that a lender may submit, and does not limit SBA's rights to deny a specific loan or establish general policies. Section 120.410, *Requirements for all participating Lenders*, includes requirements relating to a lender's continuing ability to make, service, and liquidate SBA guaranteed loans. Section 120.411, *Preferences*, provides that a participation agreement between SBA and a lender does not establish any preferences in favor of the lender, for example, a preferred position compared to SBA relating to the making, servicing, or liquidation of a loan. Section 120.412, *Other services Lenders may provide Borrowers*, provides that lenders and associates of lenders may provide services to and contract for goods with a borrower only after full disbursement of the SBA-guaranteed loan. Section 120.413, *Advertisement of relationship with SBA*, describes how a lender may refer to SBA in its advertising.

Section 123.706(b) provides that the IDAP loan program is an entirely delegated loan program. SBA determined that a fully delegated program is the most effective way to provide immediate interim financing to disaster damaged businesses. The regulation requires an IDAP Lender to process, service and liquidate its IDAP loans under its delegated authority provided by the supplemental Loan Guarantee Agreement for the IDAP loan program, and states that the IDAP Lender is responsible for confirming that all loan decisions are in accordance with IDAP Loan Program Requirements. The regulation also requires that an IDAP Lender use its existing practices and procedures for its non-SBA guaranteed commercial loans of a similar size in determining creditworthiness for IDAP loans. These practices must be appropriate, generally accepted, proven and prudent credit evaluation processes and procedures and may include credit scoring. In disbursing the IDAP loan, the IDAP Lender must use the same disbursement procedures and documentation as it

uses for its similarly sized non-SBA guaranteed commercial loans.

Section 123.706(c) provides that an IDAP Lender must report on its IDAP loans in accordance with requirements established by SBA from time to time. SBA will provide further guidance on IDAP loan reporting in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Sections 123.706(d) and (e) provide that an IDAP Lender must service and liquidate its IDAP loans in accordance with the practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. The practices must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. SBA will provide additional guidance on how IDAP Lenders must service and liquidate IDAP loans in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Section 123.706(f) provides that an IDAP Lender may request SBA to purchase the guaranteed portion of an IDAP loan when there has been an uncured payment default exceeding 60 days or when the IDAP Borrower has declared bankruptcy. The regulation also provides that IDAP loans are subject to the 7(a) loan program requirements of sections 120.520 through 120.524 and sections 120.542 and 120.546. SBA will provide further guidance on how IDAP Lenders must request purchase of an IDAP loan in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Section 123.706(g) provides that an IDAP Lender may not sell the guaranteed portion of an IDAP loan in the secondary market, securitize the unguaranteed portion of an IDAP loan, participate any portion of an IDAP loan with another lender, or sell all of its interest in an IDAP loan. SBA is imposing these restrictions because it is implementing the IDAP loan program on an introductory basis.

Section 123.706(h) provides that an IDAP Lender may pledge an IDAP loan subject to the 7(a) loan program requirements of sections 120.434 and 120.435 of this chapter.

Section 123.706(i) provides that an IDAP Lender is subject to the supervision and enforcement provisions in Sections 120.1000 through 120.1600. These provisions detail SBA's risk-based lender oversight program, including off-site reviews and monitoring, on-site reviews, and potential enforcement actions. The

subsection also provides that an IDAP Lender that is an SBA Supervised Lender (as defined in section 120.10) is subject to the requirements of section 120.460 through 120.490, as applicable. SBA will provide further guidance on its oversight of IDAP Lenders in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

III. Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553 and SBA regulations at 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. As detailed above, SBA plans to limit the introductory phase of the IDAP loan program to disasters occurring in the Gulf Coast region. According to the Climate Prediction Center at the National Oceanic and Atmospheric Administration (NOAA), an active to extremely active hurricane season is expected for the Atlantic Basin this year, which includes the Gulf Coast region. Furthermore, many areas of the Gulf Coast region are still recovering from the devastating effects of hurricanes Katrina, Rita, and Wilma and, most recently, the Deepwater BP Oil Spill. SBA finds that good cause exists to publish this rule as an interim final rule due to the potential for an increased number of disasters this hurricane season that would cause harm to businesses in areas that are still economically fragile. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of the IDAP loan program until after the 2010 hurricane season. Any such delay could be extremely prejudicial to businesses and their communities as they struggle to recover from a disaster.

SBA invites comments from all interested members of the public. These comments must be received on or before

the close of the comment period noted in the DATES section of this interim final rule. SBA may then consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as * * * otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

The IDAP loan program is designed to provide immediate relief to small businesses that meet the basic eligibility requirements for a disaster loan authorized under section 7(b) of the Act while the businesses are awaiting approval of a direct disaster loan by SBA. During the introductory phase, SBA intends to limit the IDAP loan program to disasters occurring in the Gulf Coast region. The Gulf Coast is expected to experience a particularly active hurricane season this year, and as we enter the peak of the hurricane season, the need increases to have the IDAP loan program in place in the event of a disaster. This is especially important for a region that is still recovering from the devastating effects of hurricanes Katrina, Rita and Wilma and the Deepwater BP Oil Spill. Lenders making IDAP loans might need time to make system adjustments; however, delaying implementation would necessarily have an adverse impact on small business disaster victims in the Gulf Coast since they would not have access to the immediacy of the IDAP loans.

In light of the urgent need to assist small business disaster victims in the Gulf Coast, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. While this rule is effective immediately upon publication, the SBA is inviting public comment on the rule during a 60-day period and will consider comments in developing a final rule.

Compliance with Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 USC, Ch. 35) Executive Order 12866:

The Office of Management and Budget has determined that this rule constitutes a "significant regulatory action" under Executive Order 12866, thus requiring a

Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Proposal

Under the Immediate Disaster Assistance Program (IDAP), SBA will provide an 85 percent guarantee on loans made by participating lenders for up to \$25,000. An IDAP loan is intended to provide immediate relief to a business that meets the basic eligibility standards for a disaster loan authorized under section 7(b) of the Act while the application for a disaster loan is pending with SBA.

B. Benefits and Costs of the Rule

The direct benefits of the Immediate Disaster Assistance Program will accrue to the small business borrowers that receive these interim loans. In monetary terms, these direct benefits total \$18,687,469, based on the current subsidy appropriations available. However, these small firms also gain certain indirect benefits from being better equipped to continue their ongoing operations, thus avoiding revenue disruptions. These continued (or prevented disruption in) revenue streams will indirectly benefit the local economy. Recipient firms will be better able to maintain their pre-disaster employment level and payments. Hence, employees, lenders and suppliers of these small businesses will benefit from their continued operation. Local governments will also benefit from continued taxation of these firms.

The bulk of the costs accrue to the U.S. taxpayers primarily due to the \$352,357 in current subsidy appropriations. The SBA, and indirectly U.S. taxpayers, will incur certain costs associated with launching and operating the introductory phase of the program. Congress has currently appropriated \$1.31 million in administrative expenses for disaster guaranteed loan programs, a portion of which will be used to fund the system development and lender support aspects of the introductory phase of the IDAP loan program and to lay the groundwork for expansion of the program.

In monetary terms, the immediate costs of the introductory phase of the program are \$352,357, plus the IDAP program's share of the \$1.31 million in administrative expenses. The immediate benefit is the value to the IDAP loan recipients of receiving \$18,687,469 in disaster loans earlier than would be the case under the traditional disaster loan program. While SBA cannot quantify the exact value to IDAP recipients of getting their loans sooner, it believes that, given the economic uncertainties and shocks that generally accompany a

disaster, the additional benefits to the recipient (and its community) of quickly receiving assistance are greater than the costs of the program. Also, the program does incur certain indirect costs and produces certain indirect benefits not quantified in this analysis.

C. Alternatives

Given that the program is the result of a Congressional mandate, the Agency had little leeway in providing alternatives to the mandates. However, the SBA did consider methods for delivering these mandates to the American public. SBA considered allowing non-delegated processing of IDAP loans, but determined that such processing would be more expensive and result in unnecessary delays. SBA considered allowing large businesses and businesses with Credit Elsewhere to be eligible for the program, but determined that simpler eligibility requirements would increase lender participation and IDAP loan availability. SBA considered specific processing, closing, servicing and liquidation requirements, but determined that, to the extent possible, lenders should use their own forms and procedures in order to simplify the program requirements, lower the cost and encourage lender participation. Having considered these options, the Agency concluded that the program as set forth in this rule is the SBA's best available means of meeting the above-mentioned Congressional mandate. SBA will test this program as it is rolled out and will continue to consider alternatives which will make this program more effective in delivering financial assistance to disaster victims.

Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or pre-emptive effect.

Executive Order 13132

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) requires administrative agencies to consider the economic impact of their actions on small entities, which includes small

businesses, small non-profit businesses, and small local governments. The RFA requires agencies to prepare a regulatory flexibility analysis, which describes the economic impact that the rule will have on small entities, or certify that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. Rules are exempt from the APA notice and comment requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. As detailed above, SBA has determined that there is good cause to adopt this rule without prior public participation; therefore, the rule is also exempt from the RFA requirements. SBA invites comments on this determination.

Paperwork Reduction Act

SBA has determined that this rule imposes new reporting and recordkeeping requirements on certain disaster victims under the Paperwork Reduction Act, 44 U.S.C. chapter 35. This new information collection requires IDAP applicants and lender to submit three forms described below, which are necessary to process applications for assistance under the IDAP loan program. In addition to the application information, IDAP lenders will be required to report loan status information to SBA on a monthly basis. SBA is submitting these two sets of information collections as described below to OMB for review together with the interim final rule. As stated above, IDAP applicants must also submit an application for an SBA direct disaster business loan. The burden associated with the direct loan application is currently part of the reported burden for that application. However, we are also including that burden here to fully inform the IDAP applicants. Therefore, in addition to the burden listed below specifically for the IDAP loan application, applicants for such loans will also be required to spend an additional 3.5 hours to complete the SBA Form 5, Disaster Business Loan Application (OMB Control #3245-0017) and SBA Form 413 (OMB Control #3245-0188). There will be no additional burden on IDAP lenders because they are not part of the direct loan process.

A. Title and Description of Information Collection

SBA Form 2410: Immediate Disaster Assistance Program (IDAP) Borrower Information Form.

Purpose: The information collected on this form is modeled on two currently approved information collections: OMB Control number 3245-0016, SBA's 7(a) loan application, and OMB Control number 3245-0178, Statement of Personal History, which is used to collect personal information on the individuals associated with the small business loan applicant. Those two collections of information will not be discontinued; they will continue to be used for their approved purposes. The information requested includes identifying information regarding the applicant and its Associates, including indebtedness; current or previous government financing; suspension or debarment history; and certain other disclosures regarding Associates' criminal history.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: This information will be collected from the small business concerns that are applying for financial assistance under the IDAP loan program. SBA estimates 934 small businesses will submit applications over the course of a year.

Estimated Number of Responses: Each small business concern can submit only one application under the IDAP loan program per disaster; therefore the estimated number of responses is 934.

Estimated Response Time: 10 minutes.

B. Title and Description

SBA Form 2411: Immediate Disaster Assistance Program (IDAP) Lender's Application (Part I).

Purpose: This information collection is submitted by delegated lenders seeking SBA's guarantee on an IDAP loan.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: 50 delegated lenders submitting this information electronically through e-tran (SBA's electronic loan application submission system).

Estimated Number of Responses: 934.

Estimated Response Time: 15 minutes per response.

Estimated Annual Hour Burden: 233 hours.

C. Title and Description

SBA Form 2412: Immediate Disaster Assistance Program (IDAP) Lender's Application (Part II)—Eligibility Information.

Purpose: The information will be used to determine whether the loan

application meets the eligibility criteria for an IDAP loan, as stated in this regulation.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: This form is to be completed by all lenders participating in the SBA's IDAP loan program. We estimate that a total of 50 lenders will submit this information collection.

Estimated Number of Responses: 934.

Estimated Response Time: 10 minutes.

D. Title and Description

Immediate Disaster Assistance Program (IDAP) Payment Reporting

Purpose: The information collected will allow SBA to monitor loan payment information on IDAP loan portfolios. SBA requires its lender participants to provide monthly updates on the payment status of disbursed loans. This monthly reporting process mirrors the payment cycle of the underlying loans, allowing SBA to readily determine the financial risk borne by the Agency from its participants.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: We expect that approximately 467 of the 934 projected loans will be subject to monthly reporting at any one time. Annually, we estimate IDAP Lenders will file 12 reports.

Estimated Number of Responses: 5604.

Estimated Response Time: 5 minutes.

Total Estimated Annual Hour Burden: 467 hours.

SBA invites comments on the IDAP information collections, particularly on: (1) Whether the proposed collection of information is necessary for the proper performance of the program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

and to Grady B. Hedgespeth, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(d), 657n; Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739; and Pub. L. 106-50, 113 Stat. 245.

■ 2. In § 123.1, revise the first sentence to read as follows:

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (d), and (f); and 15 U.S.C. 657n. * * *

■ 3. Amend § 123.2 by adding a new third sentence to read as follows:

§ 123.2 What are disaster loans and disaster declarations?

* * * SBA also offers interim guaranteed disaster loans, in participation with financial institutions, to affected small businesses ("IDAP loans").* * *

■ 4. Revise the fourth and fifth sentences of § 123.4 to read as follows:

§ 123.4 What is a disaster area and why is it important?

* * * In major disasters, economic injury disaster loans and IDAP loans may be made for victims in contiguous counties or other political subdivisions, provided, however that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster or IDAP loans in counties contiguous to the disaster area. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical, economic injury and, in some cases, IDAP assistance. * * *

■ 5. Revise § 123.5 to read as follows:

§ 123.5 What kinds of loans are available?

(a) *Disaster loans authorized under Section 7(b).* SBA offers four kinds of disaster loans as authorized by Section 7(b) of the Small Business Act: Physical disaster home loans, physical disaster business loans, economic injury disaster business loans, and Military Reservist EIDL loans. SBA makes these loans directly or in participation with a financial institution. If a disaster loan authorized under Section 7(b) is made in participation with a financial

institution, SBA's share in that loan may not exceed 90 percent.

(b) *IDAP loans.* SBA also offers IDAP loans as authorized by Section 42 of the Small Business Act. SBA makes these interim guaranteed disaster loans to small businesses only in participation with a financial institution. SBA's share in an IDAP loan is equal to 85 percent.

■ 6. Revise § 123.8 to read as follows:

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan authorized under Section 7(b). You will be responsible for payment of any closing costs owed to third parties on these loans, such as recording fees and title insurance premiums. If your loan is made under Section 7(b) in participation with a financial institution, SBA will charge a guarantee fee to the financial institution, which then may recover the guarantee fee from you. SBA does not charge a guarantee fee for an IDAP loan made under Section 42.

■ 7. In § 123.9, revise the first and second sentences of paragraph (a), paragraph (b), and adding paragraph (c) to read as follows:

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) For disaster loans authorized under Section 7(b), when SBA approves each application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply the proceeds of a disaster loan authorized under Section 7(b), you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication.

(b) If SBA learns that you may have misapplied your loan proceeds from a disaster loan authorized under Section 7(b), SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undischursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty.

(c) If you misapply loan proceeds of any disaster loan under this Part,

including an IDAP loan, you may face criminal prosecution or civil or administrative action.

■ 8. Amend § 123.11 by adding a new paragraph (c) to read as follows:

§ 123.11 Does SBA require collateral for any of its disaster loans?

(c) Collateral requirements for IDAP loans are set forth in Subpart H of this part.

■ 9. Amend § 123.13 by adding a new paragraph (g) to read as follows:

§ 123.13 What happens if my loan application is denied?

(g) This section does not apply to IDAP loans.

■ 10. Amend § 123.14 by revising the first and second sentences of paragraph (a) introductory text to read as follows:

§ 123.14 How does the Federal Debt Collection Procedures Act of 1990 apply?

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States generally is not eligible to receive a disaster loan. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction as to disaster loans (except IDAP loans) upon a demonstration of good cause.

■ 11. In § 123.15, add a sentence at the end of the paragraph to read as follows:

§ 123.15 What if I change my mind?

*** This provision does not apply to IDAP loans.

■ 12. Amend § 123.16 by revising the last sentence of paragraph (a) to read as follows:

§ 123.16 How are loans administered and serviced?

(a) *** The SBA rules on servicing are found in Subpart H of this part and part 120 of this chapter.

■ 13. Add subpart H to part 123 to read as follows:

Subpart H—Immediate Disaster Assistance Program

- Sec.
- 123.700 What is the Immediate Disaster Assistance Program?
- 123.701 What is the application procedure for an IDAP loan?
- 123.702 What are the eligibility requirements for an IDAP loan?
- 123.703 What are the terms of an IDAP loan?
- 123.704 Are there restrictions on how IDAP loan funds may be used?

- 123.705 Are there any fees associated with IDAP loans?
- 123.706 What are the requirements for IDAP lenders?

Subpart H—Immediate Disaster Assistance Program

§ 123.700 What is the Immediate Disaster Assistance Program?

(a) The Immediate Disaster Assistance Program (IDAP) is a guaranteed disaster loan program for small businesses that have suffered physical damage or economic injury due to a Declared Disaster. An IDAP loan is an interim loan in an amount not to exceed \$25,000 made by an IDAP Lender to meet the immediate business needs of an IDAP Borrower while approval of long-term financing from a Disaster Loan is pending with SBA.

(b) *Definitions.* As used in this subpart, the terms below are defined as follows:

Contiguous Counties means the counties or other political subdivisions identified in the IDAP-Eligible Disaster Declaration as abutting the Primary Counties.

Credit Elsewhere means that the IDAP Borrower is able to address disaster losses using available personal or business resources or access to nonfederal lending sources at reasonable rates and terms.

Declared Disaster is a disaster event for which an IDAP-Eligible Disaster Declaration has been issued.

Declared Disaster Area means the Primary Counties and the Contiguous Counties identified for a particular Declared Disaster.

Disaster Loan means a disaster loan authorized by Section 7(b) of the Small Business Act.

IDAP Borrower is the obligor of an IDAP loan.

IDAP Lender is a financial institution participating in the IDAP loan program, subject to the requirements of this subpart.

IDAP Loan Program Requirements are requirements imposed upon an IDAP Lender by statute, SBA regulations, any agreement the IDAP Lender has executed with SBA, SBA SOPs, SBA procedural guidance, official SBA notices and forms applicable to the IDAP loan program, and loan authorizations, as such requirements are issued and revised by SBA from time to time.

IDAP-Eligible Disaster Declaration means a Major Disaster Declaration, SBA Administrative Disaster Declaration or SBA EIDL-Only Disaster Declaration in which SBA has indicated that IDAP loans are available.

Initial Period is the IDAP loan repayment period that begins upon the initial disbursement of an IDAP loan and ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed.

Major Disaster Declaration means a disaster declaration issued under § 123.3(a)(1) of this part.

Other Recoveries are other compensation for disaster losses and include, but are not limited to: Proceeds of policies of insurance or other indemnifications; grants or other reimbursement (including loans) from government agencies or private organizations; claims for civil liability against other individuals, organizations or governmental entities; gifts; condemnation awards; and salvage (including any sale or re-use) of items of disaster-damaged property. If an IDAP Borrower has voluntarily paid insurance recoveries to a recorded lienholder, the amount paid is considered to be Other Recoveries.

Primary Counties means the counties or other political subdivisions identified in the IDAP-Eligible Disaster Declaration as having been adversely affected by the disaster.

SBA Administrative Disaster Declaration means a disaster declaration issued under § 123.3(a)(3) of this part.

SBA EIDL-Only Disaster Declaration means a disaster declaration issued under § 123.3(a)(5) of this part.

Substantial Economic Injury exists when a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. Loss of anticipated profits or a drop in sales is not considered substantial economic injury.

Term Period is the repayment period that begins following:

(i) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application;

(ii) Receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; or

(iii) Final disbursement of the IDAP loan, whichever is later, and ends when the IDAP loan is repaid in full.

§ 123.701 What is the application procedure for an IDAP loan?

A prospective IDAP Borrower must apply to an IDAP Lender for an IDAP

loan by the application deadline for prospective IDAP Borrowers established by SBA in the IDAP-Eligible Disaster Declaration. If the IDAP Lender approves the application, it must submit a request for IDAP loan approval to SBA by the application deadline for IDAP Lenders established by SBA in the IDAP-Eligible Disaster Declaration. SBA will issue an approval or a decline of the IDAP Lender's request within 36 hours of receipt by SBA. A prospective IDAP Borrower will receive notice of approval or decline of its loan application from the IDAP Lender. Notice of decline will include the reasons. If an IDAP loan is approved, a loan authorization will be issued.

§ 123.702 What are the eligibility requirements for an IDAP loan?

(a) *Eligible IDAP applicants.* To be eligible for an IDAP loan, an applicant business must meet all of the requirements set forth below. The applicant business must:

(1) Be located within a Declared Disaster Area;

(2) Have eligible disaster losses as follows:

(i) For a Major Disaster Declaration, if located in a Primary County, have sustained damage to real or business personal property in the Declared Disaster or, if located in a Primary or Contiguous County, have sustained Substantial Economic Injury as a direct result of the Declared Disaster; or

(ii) For an SBA Administrative Disaster Declaration, have sustained damage to real or business personal property in the Declared Disaster or sustained Substantial Economic Injury as a direct result of the Declared Disaster; or

(iii) For an SBA EIDL-Only Disaster Declaration, have sustained Substantial Economic Injury as a direct result of the Declared Disaster;

(3) Have been a small business concern under the size requirements applicable to disaster loan assistance under part 121 of this chapter (including affiliates) when the Declared Disaster commenced;

(4) Together with affiliates and principal owners, not have Credit Elsewhere;

(5) Apply to SBA for a Disaster Loan within the applicable deadline and before any disbursement of the IDAP loan; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the IDAP loan.

(b) *Ineligible IDAP applicants.* An applicant business is not eligible for an IDAP loan if it is:

(1) A non-profit or charitable concern;

(2) A business that was not a small business concern under the size requirements of part 121 of this chapter (including affiliates) when the Declared Disaster commenced;

(3) A consumer or marketing cooperative;

(4) Deriving more than one-third of gross annual revenue from legal gambling activities or a business whose purpose for being is gambling regardless of its ability to meet the one-third criteria established for otherwise eligible concerns;

(5) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(6) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(7) Primarily engaged in political or lobbying activities;

(8) A private club or business that limits the number of memberships for reasons other than capacity;

(9) Presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(10) Engaged in the production or distribution of any product or service that has been determined to be obscene by a court;

(11) Engaged in any illegal activity;

(12) A government owned entity (except for a business owned or controlled by a Native American tribe);

(13) A business in which the IDAP Lender or any of its Associates (as defined in § 120.10) owns an equity interest;

(14) Primarily engaged in subdividing real property into lots and developing it for resale on its own account;

(15) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental when the Declared Disaster occurred);

(16) Delinquent on any Federal obligation, including but not limited to any Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property;

(17) Located in a Special Flood Hazard Area (SFHA), as designated by the Federal Emergency Management Agency, and has not maintained required flood insurance on its business property (regardless of the type of disaster);

(18) Located in a SFHA within a non-participating community or a community under sanction;

(19) Located in a building that was newly constructed or substantially improved on or after February 9, 1989, and is currently located seaward of mean high tide or entirely in or over water;

(20) Located in a Coastal Barrier Resource Area (COBRA);

(21) A business that had a substantial change of ownership (more than 50 percent) after the Declared Disaster and no contract of sale existed prior to that time;

(22) A business that was established after the Declared Disaster;

(23) Relocating out of the Declared Disaster Area;

(24) Primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries (except for a nursery deriving less than 50 percent of annual receipts from the production and sale of ornamental plants and other nursery products, a small agricultural cooperative or a small producer cooperative); or

(25) A sole proprietorship, unincorporated association, partnership or limited liability company in which a Member of Congress (or a household member) has an ownership interest.

(c) *Character requirements.* An applicant business is not eligible for an IDAP loan if any Associate (as defined in § 120.10) of the applicant business:

(1) Is presently under indictment, on parole or probation;

(2) Has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted);

(3) Is at least a 50 percent or more owner of applicant business, and is more than 60 days delinquent on any obligation to pay child support arising under an administrative order, court order, repayment agreement between the holder and a custodial parent, or repayment agreement between the holder and a state agency providing child support enforcement services;

(4) Is an undocumented (illegal) alien; or

(5) Is delinquent on any Federal obligation, including but not limited to any Federal loans, contracts, grants, student loans or taxes.

§ 123.703 What are the terms of an IDAP loan?

(a) *Guaranty percentage.* The SBA guaranteed share of an IDAP loan is 85%.

(b) *Maximum loan size.*

(1) If the amount of an IDAP Borrower's disaster losses is \$25,000 or less, the principal amount of an IDAP loan must not exceed the amount of disaster losses minus Other Recoveries.

(2) If the amount of an IDAP Borrower's disaster losses is more than \$25,000, the principal amount of an IDAP loan must not exceed \$25,000 minus Other Recoveries.

(c) *Disbursement.* The disbursement period for an IDAP loan is generally up to 30 days from the date of SBA approval of the IDAP loan. If the IDAP Lender is notified before disbursement of the IDAP loan that the IDAP Borrower has received Other Recoveries, the IDAP Lender must decrease the approved amount of the IDAP loan by the amount of the Other Recoveries. If the IDAP Borrower's Disaster Loan is approved, SBA will contact the IDAP Lender when SBA is ready to disburse the Disaster Loan. Upon receipt of such notification by SBA, the IDAP Lender must cancel any remaining undisbursed amount of the IDAP loan.

(d) *Repayment.*

(1) *Initial Period.* During the Initial Period, an IDAP Borrower will pay interest only on the disbursed principal balance of the IDAP loan. If SBA approves the IDAP Borrower's Disaster Loan application, SBA will require that the IDAP loan be repaid first from the proceeds of the Disaster Loan. If the IDAP Borrower receives Other Recoveries during the Initial Period, the IDAP Borrower must, in accordance with § 123.703(h), remit the Other Recoveries to the IDAP Lender, and the IDAP Lender will apply the Other Recoveries to the IDAP loan. If the IDAP Borrower's Disaster Loan application is declined or if the amount of the approved Disaster Loan is insufficient to repay the IDAP loan in full, the remaining balance of the IDAP loan will be repaid during the Term Period as described in paragraph (2). The Initial Period ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed. If an IDAP Borrower withdraws an application for

a Disaster Loan, fails to close on an approved Disaster Loan or if the approved Disaster Loan is cancelled, the IDAP loan is immediately due and payable by the IDAP Borrower.

(2) *Term Period.* If SBA declines the IDAP Borrower's Disaster Loan application or the approved amount of the Disaster Loan is insufficient to repay the IDAP loan in full, the IDAP Borrower must pay principal and interest on the IDAP loan, with the IDAP loan balance to be fully amortized over a period that is at least 10 years from the date of final disbursement of the IDAP loan, but no more than 25 years from the date of final disbursement. The Term Period begins in the first month following SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application, receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan, or final disbursement of the IDAP loan, whichever is later. Balloon payments are not permitted. The IDAP Borrower may prepay all or a portion of the principal during the life of the loan without penalty. If the IDAP Borrower receives Other Recoveries during the Term Period, the IDAP Borrower must, in accordance with § 123.703(h), remit the Other Recoveries to the IDAP Lender, and the IDAP Lender will apply the Other Recoveries to the IDAP loan.

(e) *Interest rate.*

(1) *Initial Period.* The maximum interest rate an IDAP Lender may charge an IDAP Borrower during the Initial Period will be published by SBA in the **Federal Register** from time to time. This rate must be a fixed rate.

(2) *Term Period.* The maximum interest rate an IDAP Lender may charge an IDAP Borrower during the Term Period will be published in the **Federal Register** from time to time. The IDAP Lender may charge either a fixed or a variable rate during the Term Period.

(f) *Number of IDAP loans per small business.* No small business (including affiliates) may obtain more than one IDAP loan per Declared Disaster. The provisions of § 120.151 do not apply to IDAP loans.

(g) *Personal guarantees.* Holders of at least a 20 percent ownership interest in the IDAP Borrower must guarantee the IDAP loan.

(h) *Agreement to remit Other Recoveries.* IDAP Borrowers must promptly notify the IDAP Lender of the receipt of Other Recoveries, and must promptly remit the proceeds of Other Recoveries to the IDAP Lender. The IDAP Lender must apply the Other Recoveries to the IDAP loan balance.

SBA does not require any additional collateral for IDAP loans.

§ 123.704 Are there restrictions on how IDAP loan funds may be used?

(a) IDAP loan proceeds may only be used for the following purposes:

(1) For a Major Disaster Declaration:

(i) If the IDAP Borrower is located in a Primary County, to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred;

(ii) If the IDAP Borrower is located in a Contiguous County, for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(2) For an SBA Administrative Disaster Declaration, if the IDAP Borrower is located in either a Primary County or a Contiguous County, to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(3) For an SBA EIDL-Only Disaster Declaration, if the IDAP Borrower is located in either a Primary County or a Contiguous County, for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(b) IDAP loan proceeds may not be used to:

(1) Refinance or repay indebtedness incurred prior to the Declared Disaster (other than regularly due installments);

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax

criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Pay dividends, bonuses or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business;

(5) Make repairs on a building rented by the IDAP Borrower if the IDAP Borrower's lease does not require the IDAP Borrower to make such repairs;

(6) Make repairs to a condominium unit owned by the IDAP Borrower;

(7) Replace landscaping in excess of \$5,000 unless the disaster damaged landscaping fulfilled a functional need or contributed toward the generation of business;

(8) Repair or replace property not located within the Declared Disaster Area at the time of the Declared Disaster;

(9) Repay stockholder/Associate loans, except where the funds were injected on an interim basis as a result of the Declared Disaster and non-repayment would cause undue hardship to the stockholder/Associate;

(10) Expand facilities or acquire fixed assets, except for replacement of disaster-damaged fixed assets;

(11) Pay for contractor malfeasance;

(12) Replace damaged property that consists of cash or securities;

(13) Replace damaged property if the replacement value is extraordinarily high and not easily verified, such as the value of antiques, artworks or hobby collections; or

(14) Repair or replace damaged property where the IDAP Borrower's only interest is in the form of a security interest, mortgage or deed of trust.

§ 123.705 Are there any fees associated with IDAP loans?

(a) *IDAP Lender Fees.* An IDAP Lender must not impose any fees or direct costs on an IDAP Borrower, except for the following allowed fees or direct costs:

(1) The reasonable direct costs of liquidation;

(2) A late payment fee not to exceed 5 percent of the scheduled IDAP loan payment; and

(3) An application fee not to exceed \$250. Notwithstanding the provisions of 13 CFR 103.5, no compensation agreement is required for the application fee. If an undisbursed IDAP loan is cancelled pursuant to § 123.703(c), the IDAP Lender may retain the application fee.

(b) *SBA Fees.* SBA will not impose any guarantee fees on an IDAP Lender making an IDAP loan.

(c) *Prohibition on paid loan packagers, referral agents or brokers.* Other than the application fee set forth in (a)(3) of this section, no IDAP Lender or third party may charge an IDAP Borrower a fee to assist in the preparation of an IDAP loan application or application materials. No third party may charge an IDAP Borrower or an IDAP Lender a referral fee or broker's fee in connection with an IDAP loan.

§ 123.706 What are the requirements for IDAP Lenders?

(a) *IDAP Lenders.* An IDAP Lender must be a 7(a) Lender (as defined in § 120.10). Notwithstanding the provisions of § 120.470(a), a Small Business Lending Company (SBLC) that is a 7(a) Lender may make IDAP loans.

An IDAP Lender must sign a supplemental Loan Guarantee Agreement for the IDAP loan program. An IDAP Lender must comply and maintain familiarity with the IDAP Loan Program Requirements, as such requirements are revised from time to time. IDAP Loan Program Requirements in effect at the time that an IDAP Lender takes an action in connection with a particular IDAP loan govern that specific action. With respect to their activities in the IDAP loan program, IDAP Lenders are subject to the requirements of §§ 120.140 (What ethical requirements apply to participants?), 120.197 (Notifying SBA's Office of Inspector General of suspected fraud), 120.400 (Loan Guarantee Agreements), 120.410 (Requirements for all participating Lenders), 120.411 (Preferences), 120.412 (Other services Lenders may provide Borrowers), and 120.413 (Advertisement of relationship with SBA) of this chapter. An IDAP Lender and its contractor(s) are independent contractors that are responsible for their own actions with respect to an IDAP loan. SBA has no responsibility or liability for any claim by an IDAP Borrower, guarantor or other party alleging injury as a result of any allegedly wrongful action taken by an IDAP Lender or an employee, agent or contractor of an IDAP Lender.

(b) *Delegated authority.* An IDAP loan must be processed, serviced and liquidated under an IDAP Lender's delegated authority provided by the supplemental Loan Guarantee Agreement for the IDAP loan program. Non-delegated processing is not available for the IDAP loan program. An IDAP Lender is responsible for all IDAP loan decisions regarding eligibility (including size) and creditworthiness. In determining creditworthiness, an IDAP Lender must use the existing practices and procedures that the IDAP Lender

uses for its non-SBA guaranteed commercial loans of a similar size. The IDAP Lender's existing practices and procedures must be appropriate and generally accepted, proven and prudent credit evaluation processes and procedures, which may include credit scoring, and must ensure that there is reasonable assurance of repayment. In disbursing the IDAP loan, the IDAP Lender must use the same disbursement procedures and documentation as it uses for its similarly sized non-SBA guaranteed commercial loans. An IDAP Lender is also responsible for confirming that all IDAP loan processing, closing, servicing and liquidation decisions are correct and that all IDAP Loan Program Requirements have been followed.

(c) *IDAP Lender reporting.* An IDAP Lender must report on its IDAP loans in accordance with requirements established by SBA from time to time.

(d) *Servicing.* Each IDAP Lender must service all of its IDAP loans in accordance with the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. SBA's prior written consent is required for servicing actions that may have significant exposure implications for SBA. SBA may require written notice of other servicing actions it considers necessary for portfolio management purposes.

(e) *Liquidations.* Each IDAP Lender must be responsible for liquidating its defaulted IDAP loans. IDAP loans will be liquidated in accordance with the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. IDAP loans with *de minimis* value may, at the IDAP Lender's request and with SBA's approval, be liquidated by SBA or its agent(s). Significant liquidation actions taken on IDAP loans must be documented. The reimbursement of IDAP Lender liquidation expenses is limited to the amount of the recovery on the IDAP loan.

(f) *Purchase requests.* An IDAP Lender may request SBA to purchase the guaranteed portion of an IDAP loan when there has been an uncured payment default exceeding 60 days or when the IDAP Borrower has declared bankruptcy. IDAP loans are subject to

the 7(a) loan program requirements of §§ 120.520 (Purchase of 7(a) loan guarantees), 120.521 (What interest rate applies after SBA purchases its guaranteed portion?), 120.522 (Payment of accrued interest to the Lender or Registered Holder when SBA purchases the guaranteed portion), 120.523 (What is the "earliest uncured payment default?"), 120.524 (When is SBA released from liability on its guarantee?), 120.542 (Payment by SBA of legal fees and other expenses) and 120.546 (Loan asset sales) of this chapter.

(g) *Prohibition on secondary market sales, securitizations, loan participations and loan sales.* An IDAP Lender may not sell the guaranteed portion of an IDAP loan in the secondary market, securitize the unguaranteed portion of an IDAP loan, participate any portion of an IDAP loan with another lender, or sell all of its interest in an IDAP loan.

(h) *Loan pledges.* An IDAP Lender may pledge an IDAP loan subject to the 7(a) loan program requirements of §§ 120.434 and 120.435 of this chapter.

(i) *Oversight.* All IDAP Lenders are subject to the supervision and enforcement provisions applicable to 7(a) Lenders in part 120, subpart I of this chapter (§§ 120.1000 through 120.1600). In addition, an IDAP Lender that is an SBA Supervised Lender (as defined in § 120.10) is subject to the requirements of §§ 120.460 through 120.490, as applicable.

Dated: September 15, 2010.

Karen G. Mills,
Administrator.

[FR Doc. 2010-24189 Filed 9-29-10; 11:15 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0384; Directorate Identifier 2010-NM-003-AD; Amendment 39-16449; AD 2010-20-14]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes. This AD requires installing an in-line fuse in certain float level switches and sleeving the wires between the fuel tank and the in-line fuse. For certain airplanes, this AD also requires installing an in-line fuse in certain fuel pump pressure switches. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective November 5, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 5, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800-0019, Long Beach, California 90846-0001; telephone 206-544-5000, extension 2; fax 206-766-5683; e-mail dse.boecom@boeing.com; Internet <https://www.myboeingfleet.com>.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5263; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model DC-10-10, DC-10-10F,