children, Maternal and child health, Public assistance programs, nutrition, women, aged.

■ Accordingly, 7 CFR part 247 is amended as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 1. The authority citation for part 247 is revised to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c *note*); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c *note*); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c *note*); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c *note*); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c *note*); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L 101–624, 101 Stat. 3806 (7 U.S.C. 612c *note*); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c *note*), Sec. 4201(b), Pub. L. 107–171.

■ 2. In § 247.10, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 247.10 Caseload assignment and administrative funding.

* * * * *

(b) Administrative Funding. * * *

(1) FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot is equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

* * * * *

Dated: August 21, 2003.

Eric M. Bost,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 03–22021 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–30–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE68

Business Loans and Development Company Loans

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: Statutory amendments to the Small Business Act require changes to SBA rules concerning maximum loan guaranty and gross loan amounts, percentages of financing which can be guaranteed by SBA, guarantee fees paid by lenders, real estate occupancy rules, and borrower subsidy recoupment fees. This direct final rule implements the statutory provisions.

DATES: This rule is effective October 14, 2003 without further action, unless adverse comment is received by September 29, 2003. If an adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments should be sent to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416. Comments also may be sent by e-mail to *leann.oliver@sba.gov* or submitted electronically at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, *charles.thomas@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Reauthorization Act of 2000, Pub. L. 106–554, Appendix I—H.R. 3667, Titles II–III, 114 Stat. 2763A–681 to 689 (2000 Act) became effective on December 21, 2000. The Veterans Entrepreneurship and Small Business Development Act of 1999, Public Law 106–50, 113 Stat. 236, became effective August 17, 1999 (Veterans' Act). This direct final rule is necessary to amend SBA regulations to incorporate certain legislative changes made by the 2000 Act and the Veterans' Act.

Previously, SBA was authorized to guarantee no more than 80 percent of a loan if the gross amount of the loan was $100,000 or less, and no more than 75 percent of a loan over that amount. Section 202 of the 2000 Act amends the 7(a) business loan program by authorizing SBA to guarantee up to 85 percent of a loan if the gross amount of the loan is no more than $150,000. Under the 2000 Act, the maximum SBA guaranty on a loan greater than $150,000 is 75 percent except as otherwise authorized by law. To reflect these changes, SBA is amending § 120.210 of the regulations.

Section 203 of the 2000 Act increases the maximum amount that SBA may guarantee to a single borrower from $750,000 to $1 million. Section 203 provides that the gross amount of any one SBA guaranteed loan cannot exceed $2 million. Previously, there was no limit on the maximum gross loan amount. SBA is amending § 120.151 of its regulations to implement these changes.

Section 205 of the 2000 Act imposes a subsidy recoupment fee on some borrowers with respect to certain SBA 7(a) guaranteed loans. A subsidy recoupment fee applies if a prepaid loan has a maturity of 15 years or more, the prepayment is voluntary, the amount of prepayment in the aggregate in any 12 month period is more than 25 percent of the outstanding balance of the loan in that period, and the prepayment is made within the first three years of the initial disbursement of the loan proceeds. The subsidy recoupment fee is paid to SBA and applies to the full amount of the prepayment, not just to the guaranteed portion of the prepayment, as follows: if a borrower prepays during the first year after initial disbursement, the prepayment charge is 5 percent of the amount of the prepayment; if a borrower prepays during the second year after initial disbursement, the prepayment charge is 3 percent of the amount of the prepayment; and if a borrower prepays during the third year after initial disbursement, the prepayment charge is 1 percent of the amount of the prepayment. SBA is adding a new § 120.223 to its regulations to reflect this statutory amendment.

Section 206 of the 2000 Act simplifies the calculation of the guaranty fee payable to SBA by a participating lender. This provision continues to allow a lender to pass this fee on to the borrower. Under the new simplified calculation for all loans with a maturity of over 12 months, if the total loan amount is $150,000 or less, a lender must pay a guaranty fee equal to 2 percent of the SBA guaranteed portion, however, the lender may retain 25 percent of the fee. In addition, for all loans with a maturity of over 12 months, if the total loan amount is more than $150,000, but not more than $700,000, a lender must pay a guaranty fee of 3 percent of the SBA guaranteed portion, and if the total amount is more than $700,000, a lender must pay a guaranty

fee equal to 3.5 percent of the SBA guaranteed portion. (This rule does not change guaranty fees payable or timing of fee payment for loans with maturities for 12 months or less.) SBA is revising § 120.220 to implement these provisions, and will replace the chart currently in the regulations with text. (SBA notes that legislation enacted after the 2000 Act lowered the guarantee fees for some 7(a) loans for the two-year period beginning October 1, 2002. This temporary reduction in the guarantee fee will be reflected in regulations to be published at a later date.)

Section 207 of the 2000 Act added section 7(a)(28) to the Small Business Act with respect to the ability of a borrower in the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of a guaranteed loan. Borrowers under the 7(a) business loan program will now be treated the same as borrowers under SBA's 504 program, established under Title V of the Small Business Investment Act (SBI Act). Specifically, when the use of proceeds is for new construction, section 7(a)(28) allows a 7(a) borrower to permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a 7(a) guaranteed loan, if the borrower permanently occupies and uses not less than 60 percent of the total space at the outset. This provision is substantially similar to section 502(5) of the SBI Act, which is applicable to the 504 program.

To reflect this statutory change, SBA is revising § 120.131 of its regulations to cover the leasing of space in new and existing buildings in both the 7(a) and 504 programs, under the terms permitted by sections 7(a)(28) and 502(5). All the leasing options permitted by the current § 120.131(a) (which reflects leasing options under sections 502(4) and 502(5) of the SBI Act) would be permitted under revised § 120.131(a) and will be available in both the 7(a) and 504 programs.

Section 120.131(a) is being revised to cover the construction of a new building financed with 7(a) or 504 financing. A borrower would be authorized to permanently lease up to 20 percent of the space to one or more tenants if it permanently occupies and uses no less than 60 percent of the rentable property. It would have to plan to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and to plan to permanently use and occupy within ten years all of the remaining space not permanently leased. All the leasing options permitted by the current § 120.131(a), which now reflects section 502(4) of the SBI Act, will continue to be available under the revised § 120.131(a). Therefore, the language in the current regulations for § 120.131(a) is being replaced by language that describes sections 7(a)(28) and 502(5) only.

Section 120.131(b) is revised to emphasize that this regulation applies to both the 7(a) and 504 loan programs and it deletes the cross reference to section 120.870(c).

Section 209 of the 2000 Act allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market. The provision accomplishes this by eliminating, for export working capital program (EWCP) loans only, the requirement that a loan be fully disbursed before it can be sold in the secondary market. Any other SBA guaranteed loan made under the 7(a) business loan program still must be fully disbursed before a lender can sell the guaranteed portion in the secondary market. SBA is amending § 120.613(b) to reflect this statutory change. Other provisions concerning EWCP loans remain the same.

Section 306 of the 2000 Act amends Section 508 of the SBI Act (15 U.S.C. 697e), which relates to Premier Certified Lenders Program (PCLP). Section 306 requires that, if upon default in repayment, SBA acquires a loan guaranteed under this section (a PCLP loan) and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice to any CDC which has a contingent liability under this section. Currently, only a Premier CDC under the PCLP has a contingent liability with respect to a 504 loan even if SBA's loss is not caused by the Premier CDC's negligence, fraud, or misrepresentation. Thus, SBA is adding a new § 120.540(f) to make clear that SBA is required to give notice only to a Premier CDC which has a contingent liability with respect to a PCLP loan SBA intends to include in a bulk asset sale.

Section 306 requires that SBA give notice to the Premier CDC as soon as possible after the financing is identified for sale, but not less than 90 days before the date SBA first makes any records on such financing available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale. SBA is adding this requirement in new § 120.540(f).

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

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

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for that certification is provided below.

Section 202 of the Act raises SBA's guaranty from 75 percent for loans of $100,000 or less to 85 percent for loans of $150,000 or less, which is intended to reduce lender risk and reduce lender cost for providing small business loans and thus increase the availability of

financing to the small business community. SBA estimates that for FY 2000, it approved approximately 6,300 loans between $100,000 and $150,000. For FY 2002, SBA estimates that it approved approximately 7,600 loans between $100,000 and $150,000. This represents an increase of approximately 1,300 additional SBA loans between $100,000 and $150,000 in FY 2002 compared to FY 2000. This compares to a total of about 52,000 loans SBA approved in FY 2002. (The SBA estimates that annually about 3 percent of its 7(a) loans go to an existing SBA borrower—For example, SBA may approve a term loan and a separate working capital loan to the same borrower—Thus, the actual number of small businesses receiving an SBA loan in a given year will be about 50,000 businesses.)

Section 203 of the Act raises the maximum amount the SBA may guarantee to a single borrower from $750,000 to $1 million, which will allow SBA and its lending partners to provide additional small business financing, particularly to growing small businesses and to businesses located in more costly, higher growth areas of the country. In FY 2002, the first full year during which SBA could guaranty loans up to $1 million, about 2,000 small businesses benefited from SBA's expanded guaranty authority. Section 203 also limits the maximum size of an SBA loan to $2 million, where formerly there was no maximum. However, historically the Agency has approved very few loans over $2 million, generally less than 20 per year. But, with continuing limitations to SBA 7(a) loan authority due to budget constraints, the 7(a) authority that would have been used by these 20 or so larger SBA borrowers can now be channeled to smaller borrowers. Thus, while annually about 20 or so larger borrowers will no longer have access to SBA financing due to this limitation, the Agency estimates that with an average SBA loan size of approximately $163,000, about 370 other small business borrowers will receive SBA financing that would not otherwise be available.

Section 205 imposes a subsidy recoupment fee on SBA borrowers that pre-pay longer term loans. This recoupment fee was instituted to ensure SBA loan subsidy costs are not distorted and effectively increased due to the pre-payment of longer term loans by SBA borrowers, which could reduce the overall availability of SBA financing to the small business community as a whole. SBA's analysis of management information data indicates that approximately 80 SBA loans were pre-paid in FY 2002 and subject to the subsidy recoupment fee. This compares to a total of approximately 52,000 SBA loans approved during FY 2002.

Section 206 modifies, simplifies and, in many cases, reduces the fees that the SBA charges lenders for SBA's guaranty, which the lenders usually pass on to the borrowers. It also establishes a guaranty fee of 3.5 percent for loans over $700,000, the majority of which are loans made under SBA's new authority (under section 203 above) to approve guaranties up to $1 million. The simplification and modification of the fee structure was intended to reduce the administrative complexity of SBA loan programs and reduce the administrative costs associated with an SBA loan, thereby encouraging lenders to make more SBA loans. Section 206 also revised and reduced the cost of SBA's guaranty for some SBA loans. In FY 2002, under the revised fee structure about 17,000 SBA borrowers paid lower guaranty fees (from several hundred to over $1,000 less), about 33,000 borrowers paid the same, and about 3,000 borrowers paid slight guaranty fees. As a result of these and other program changes, SBA approved about 8,000 additional loans in FY 2002 compared to FY 2000. The SBA also estimates that in FY 2002 about 2,500 small businesses were approved for an SBA guaranty between $700,000 and $1 million and were thus impacted by the 3.5 percent guaranty that applies to these loans. However, these loans were approved for small businesses that, without the SBA guaranty, would not have had access to financing. As a result, they benefited economically from the availability of these loans, which was in part made possible by the 3.5 percent guaranty fee.

Section 207 allows borrowers under the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of an SBA guaranteed loan, which provides additional flexibility to some borrowers and enhances their longer term prospects for success. SBA's analysis indicates that of the approximately 52,000 loans approved during FY 2002, only about 100 small businesses took advantage of this increased flexibility.

Section 209 allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market, which is expected to improve lender liquidity and encourage lenders to provide additional financing to small business exporters. From an analysis of its management information data, the Agency estimates that about 370 small businesses benefited from SBA guaranteed export working capital loans in FY 2002, which is about the same number of small businesses that received export working capital loans in FY 2000. The SBA estimates about 60 of those loans were sold on the secondary market.

Section 306 requires that SBA provide no less than 90 days notice to Premier Certified Lenders (PCL) of its intent to include PCL loans in a bulk sale of SBA loans. About 30 CDCs currently participate in the PCL program, through which about 780 loans were approved in FY 2002. However, SBA has not as yet included any PCL loans in bulk asset sales and currently has no plans to do so.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons set forth in the preamble, amend part 120 of title 13 of Code of Federal Regulations as follows:

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

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

■ 2. Revise § 120.131 to read as follows:

§ 120.131 Leasing part of new construction or existing building to another business.

(a) If the SBA financing (whether 7(a) or 504) is for the construction of a new building, a Borrower may permanently lease up to 20 percent of the Rentable Property to one or more tenants if the Borrower permanently occupies and uses no less than 60 percent of the Rentable Property, and plans to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and plans to permanently occupy and use within ten years all of the remaining space not permanently leased. If the Borrower is an Eligible Passive Company which leases 100 percent of the new building's space to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

(b) If the SBA financing (whether 7(a) or 504) is for the acquisition, renovation, or reconstruction of an existing building, the Borrower may permanently lease up to 49 percent of the Rentable Property if the Borrower permanently occupies and uses no less than 51 percent of the Rentable Property. If the Borrower is an Eligible Passive Company which leases 100 percent of the space of the existing building to one or more Operating Companies, the Operating Company, or

Operating Companies together, must follow the same rules set forth in this paragraph.

■ 3. Remove the first sentence of § 120.151 and add in its place two new sentences to read as follows:

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.103 of this chapter, must not exceed a guaranty amount of $1,000,000, except as otherwise authorized by statute for a specific program. The maximum loan amount for any one 7(a) loan is $2,000,000. * * *

■ 4. Revise the third and fourth sentences of § 120.210 to read as follows:

§ 120.210 What percentage of a loan may SBA guarantee?

* * * Effective December 21, 2000, loans of $150,000 or less may receive a maximum guaranty of 85 percent. Loans more than $150,000 may receive a maximum guaranty of 75 percent, except as otherwise authorized by law.

■ 5. Amend § 120.220 by adding introductory text, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 120.220 Fees that Lender pays SBA.

A Lender must pay a guaranty fee to SBA for each loan it makes. If the guarantee fee is not paid, SBA may terminate the guarantee. Acceptance of the guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement, or the loan authorization.

(a) *Amount of guaranty fee.* For a loan with a maturity of twelve (12) months or less, the guaranty fee which the Lender must pay to SBA is one-quarter (1/4) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guaranty fee is:

(i) 2 percent of the guaranteed portion of the loan if the total amount of the loan is not more than $150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than $150,000 but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total amount is more than $700,000.

(b) *When the guaranty fee is payable.* For a loan with a maturity of twelve (12) months or less, the Lender must pay the guaranty fee to SBA with its application for a guaranty. The Lender may charge the Borrower for the fee when the loan is approved by SBA. For a loan with a maturity in excess of twelve (12) months, the Lender must pay the guaranty fee to SBA within 90 days after SBA gives its loan approval. The Lender may charge the Borrower the fee after the Lender has made the first disbursement of the loan. The Borrower may use the loan proceeds to pay the guaranty fee. However, the first disbursement must not be made solely or primarily to pay the guaranty fee.

(c) *Refund of guaranty fee.* For a loan with a maturity of twelve (12) months or less, SBA will refund the guaranty fee if the loan application is withdrawn prior to approval by SBA; if SBA declines to guarantee the loan; or if SBA substantially changes the Lender's loan terms and then approves the loan, but SBA's modified terms are unacceptable to the Lender. In the latter case, the Lender must request a refund in writing within 30 calendar days of SBA's approval. For a loan with a maturity of more than twelve (12) months, SBA will refund the guaranty fee if the Lender has not made any disbursement and the lender requests in writing the refund and cancellation of the SBA guaranty.

(d) *Lender's retention of portion of guaranty fee.* With respect to a loan with a maturity of more than twelve (12) months, where the total loan amount is no more than $150,000 Lender may retain not more than 25 percent of the guaranty fee.

* * * * *

■ 6. Add new § 120.223 to read as follows:

§ 120.223 Subsidy recoupment fee payable to SBA by Borrower.

(a) The subsidy recoupment fee is payable to SBA when:

(1) Loan has a maturity of 15 years or more.

(2) Borrower makes a voluntary prepayment (or several prepayments in the aggregate) during any one of the first three successive 12 month periods following the first disbursement of the loan. Prepayment is defined as a payment of principal in excess of the amount due according to the amortization schedule.

(3) The prepayment (or several prepayments in the aggregate) is more than 25 percent of the highest outstanding principal balance of the loan in any one of the first three successive 12 month periods following the first disbursement.

(b) When all the conditions above exist, the following subsidy recoupment fees apply:

(1) If the prepayment is made during the first 12 month period after first disbursement, the charge is 5 percent of the total amount of all prepayments made during such period;

(2) If the prepayment is made during the second 12 month period after first disbursement, the charge is 3 percent of the total amount of all prepayments made during that period; and

(3) If the prepayment is made during the third 12 month period after first disbursement, the charge is 1 percent of the total amount of all prepayments made during that period.

■ 7. Add a new § 120.540(f) to read as follows:

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans and physical disaster assistance loans, physical disaster business loans and economic injury disaster loans?

* * * * *

(f) *Notice.* If upon default in repayment, SBA acquires a Premier Certified Lenders Program (PCLP) loan and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, SBA must give prior notice to any Premier Certified Lenders (''Premier CDC'') which has a contingent liability with respect to the PCLP loan. SBA must give the notice to the Premier CDC as soon as possible after the loan is identified for inclusion in such sale, but not less than 90 days before the date SBA first makes any records on such loan available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale.

■ 8. Revise § 120.613(b) to read as follows:

§ 120.613 Secondary Participation Guarantee Agreement.

* * * * *

(b) Except for export working capital loans, disburse to the Borrower the full amount of the loan; and

* * * * *

Dated: August 19, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22012 Filed 8–27–03; 8:45 am]

BILLING CODE 8025–01–P