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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

RIN 3245-AE82

#### Disaster Loan Program

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the attendant economic repercussions from those disasters, the SBA is revising its disaster loan regulations. This Interim Final Rule allows SBA to make economic injury disaster loans to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center, New York, New York, or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001. Because these affected small business concerns need economic injury disaster assistance quickly, SBA is issuing this regulation as an interim final rule.

**DATES:** *Effective Date:* This rule is effective on October 22, 2001.

*Comment Date:* Comments must be received on or before November 21, 2001.

**ADDRESSES:** Address all comments concerning the interim rule to Herbert Mitchell, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** James Rivera, Deputy Associate Administrator, Office of Disaster Assistance, 202-205-6734.

**SUPPLEMENTARY INFORMATION:**

### I. General Description of New Program

The President made major disaster declarations for the terrorist attacks on the World Trade Center, New York, New York and the Pentagon that took place on September 11, 2001. Notices, 66 FR 48682-48638, Sept. 21, 2001, amended 66 FR 49674, Sept. 28, 2001, and 66 FR 51435, Oct. 9, 2001, (NY) and 66 FR 51535, Oct. 9, 2001 (VA). Pursuant to SBA's current regulations, SBA has issued disaster declarations which provide economic injury disaster loans (EIDL) to eligible small business concerns in geographic areas contiguous to the declared disaster areas. Notices, 66 FR 48154, Sept. 18, 2001 (NY), amended 66 FR 50702-50703, Oct. 4, 2001 (NY), and 66 FR 49736, Sept. 28, 2001 (VA), corrected 66 FR 50703, Oct. 4, 2001; and Military Reservist Economic Injury Disaster Loan (EIDL) Notices, 66 FR 50241-50242, Oct. 2, 2001.

Under section 4(d) of the Small Business Act the SBA has a statutory obligation to act in the public interest when determining eligibility for assistance under the Small Business Act. 15 U.S.C. 633(d). In addition, the SBA is specifically authorized to provide economic injury disaster assistance to small businesses suffering substantial economic injury in areas affected by disasters. 15 U.S.C. 636(b)(2). Further, there is nothing in the Small Business Act that precludes SBA from expanding EIDL assistance to businesses located beyond the areas contiguous to the declared disaster areas. Accordingly, SBA is adding a new subpart G, with respect to the terrorist attacks on September 11, 2001, to authorize it to provide EIDL assistance to eligible small businesses located beyond such contiguous areas.

This action is being taken in recognition of the widespread economic dislocation caused by the terrorist attacks and the related Federal actions taken directly thereafter. Many small business concerns have suffered economic injury directly attributable to the terrorist attacks on September 11, 2001 or to certain necessary Federal actions taken in response to those attacks. These economic injuries have ranged from interruptions of normal business activities for brief periods of time to significant changes to normal business practices and procedures.

Under section 123.601 of the new subpart, SBA EIDL assistance will be available to such businesses if they can show that they suffered substantial economic injury as a direct result of the destruction of the World Trade Center, New York, New York, or the damage to the Pentagon on September 11, 2001, or any related Federal action occurring between September 11, 2001 and the date of publication of this interim final rule such that they are unable to meet their obligations as they mature or are unable to pay their ordinary and necessary operating expenses. The proceeds of an EIDL loan can be used by a business for working capital necessary to carry the business until resumption of normal operations and for expenditures necessary to alleviate the economic injury attributable to the terrorist attacks. EIDL assistance is not available for economic losses attributable to an economic downturn, and it may not exceed the amount attributable to the September 11, 2001 attacks or the specified Federal action. A loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

Under section 123.601 of the new subpart, in order to obtain SBA EIDL assistance the business must show that it was a small business, as defined in part 121 of SBA's regulations (13 CFR part 121), on September 11, 2001. It must also demonstrate that the principal owners of the business have used all reasonably available funds, and that the business is unable to obtain credit elsewhere.

Under section 123.602 of the new subpart, not all small businesses are legally eligible for EIDL assistance. For example, SBA cannot provide EIDL assistance to a nonprofit or charitable entity or a business that derives more than one-third of its gross annual revenue from legal gambling activities. It is also unable to provide EIDL assistance to a business principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting. Further, EIDL assistance cannot be used to refinance indebtedness that the business incurred prior to the terrorist attacks on September 11, 2001. Nor can such assistance be used to pay dividends or other disbursements to owners, partners, officers or stockholders, except

for reasonable remuneration directly related to their performance of services for the business.

The window to apply for assistance under this subpart will expire ninety days from the date of publication of this rule. Therefore, all applications must be postmarked on or before that date. The SBA may extend this deadline in its discretion for good cause. Any request for an increase in EIDL assistance must be made not later than one year after the date SBA approves the initial loan request.

Eligible small business concerns may apply for assistance under this subpart using existing SBA Forms for the existing EIDL Program. The forms needed are SBA Form #5 "Disaster Business Loan Application (OMB #3245-0017), SBA Form #1368 "Additional Filing Requirements EIDL" (OMB #3245-0017), SBA Form #413 "Personal Financial Statement" (OMB #3245-0188), and IRS Form #8821 "Tax Information Authorization" (OMB #1545-1165). Applications can be filed at the SBA disaster office servicing the applicant's state. Such offices are located in Niagara Falls, NY; Atlanta, GA; Ft. Worth, TX; and Sacramento, CA. Small business concerns may obtain additional information by contacting the Disaster Area Office responsible for their state: Niagara Falls Disaster Office (Area 1), Telephone: (800) 659-2955; Facsimile: (716) 282-1472; (Connecticut, Delaware, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands); Atlanta Disaster Office (Area 2), Telephone: (800) 359-2227; Facsimile: (404) 347-4183; (Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Wisconsin); Dallas/Ft. Worth Disaster Office (Area 3); Telephone: (800) 366-6303; Facsimile: (817) 885-7616; (Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Oklahoma, Texas, Utah, Wyoming); or Sacramento Disaster Office (Area 4); Telephone: (800) 488-5323; Facsimile: (916) 566-7280; (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington; The Islands of American Samoa, Marshall Islands, Micronesia, and Guam).

## II. Justification for Publication as Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final

rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 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. The President declared a national emergency as a result of the events of September 11, 2001. The events of that day have affected U.S. businesses both in the declared disaster areas and across the nation. Many of the affected businesses would qualify for SBA and other Federal assistance but for their location outside the contiguous counties.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make economic injury disaster loans available to businesses that have suffered economic injury, but that do not qualify under SBA's existing geographic restrictions. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 U.S.C. 633(d). In addition, SBA also has the specific statutory authority to provide economic injury assistance to small businesses in areas affected by disasters. 15 U.S.C. 636(b)(2). SBA also notes the failure to adopt this rule immediately would work to the detriment of many small businesses.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before November 21, 2001. SBA may then consider these

comments in making any necessary revisions to these regulations.

## III. Justification for Immediate Effective Date of Interim Final Rule

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). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in II, Justification of Publication of Interim Final Status Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date.

SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule. SBA is aware of many entities that will be assisted by the immediate adoption of this 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 U.S.C. Ch. 35)*

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

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule does not impose any new information collection requirements from SBA which require the approval of OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. The new rule increases access to SBA programs that assist small businesses, but uses existing SBA Forms with current OMB control numbers. Eligible small business concerns may apply for assistance under this subpart using existing SBA Forms for the existing EIDL Program. The forms needed are SBA Form #5 "Disaster Business Loan

Application (OMB #3245-0017), SBA Form #1368 "Additional Filing Requirements EIDL" (OMB #3245-0017), SBA Form #413 "Personal Financial Statement" (OMB #3245-0188), and IRS Form 8821 "Tax Information Authorization" (OMB #1545-1165). Applications can be filed at the SBA disaster office servicing the state where the business is located. Such offices are located in Niagara Falls, NY; Atlanta, GA; Ft. Worth, TX; and Sacramento, CA. Small business concerns may obtain additional information by contacting the Disaster Area Office responsible for their state: Niagara Falls Disaster Office (Area 1), Telephone: (800) 659-2955; Facsimile: (716) 282-1472; Atlanta Disaster Office (Area 2), Telephone: (800) 359-2227; Facsimile: (404) 347-4183; Dallas/Ft. Worth Disaster Office (Area 3), Telephone: (800) 366-6303; Facsimile: (817) 885-7616; or Sacramento Disaster Office (Area 4), Telephone: (800) 488-5323; Facsimile: (916) 566-7280.

Due to its publication as an interim final rule, SBA has determined that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612, do not apply.

The Office of Management and Budget (OMB) reviewed this rule as a "significant regulatory action" under section 3(f) under Executive Order 12866. SBA estimates that the final rule will have a significant economic impact of more than \$100 million.

Under section 4(d) of the Small Business Act, the SBA has a statutory responsibility to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 U.S.C. 633(d). In addition, the SBA is specifically authorized to provide disaster assistance to small business concerns suffering substantial economic injury in areas affected by disasters. 15 U.S.C. 636(b)(2). SBA believes this regulation is necessary to reduce the adverse economic impact of the terrorist attacks and provide assistance to small business concerns affected.

#### Description of Potential Benefits of the Rule

The most significant benefit to small businesses as a result of this rule is their eligibility for economic injury disaster assistance programs. As stated above, SBA estimates that approximately \$852 million will be loaned to small businesses as a result of this change. These small businesses will, as a result, be able to meet basic operational costs and payroll obligations. SBA believes that, while the subsidy cost of this lending will be approximately \$250,000,000, the economic benefit of

keeping these small businesses operating will be significant. The events of September 11, 2001 deepened the economic slowdown the country was experiencing, and in many instances it also raised unforeseen economic consequences for certain small businesses. In addition, many small businesses find themselves directly affected by certain necessary Federal regulatory action made necessary by the need for heightened security. As such, many small businesses that would have otherwise successfully weathered an ordinary economic downturn find themselves faced with extraordinary situations. The survival of these businesses presents a potential net increase to the economy. Furthermore, it will ameliorate the negative effects of the downturn and reduce or prevent additional costs to the government (through increased payments in entitlement programs, and reduced revenues) and the economy as a whole (through increased business failures and loss of capacity).

#### List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

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 continues to read as follows:

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

2. In part 123, add new subpart G to read as follows:

#### Subpart G—Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

Sec.

123.600 Are economic injury disaster loans under this subpart limited to the geographic areas contiguous to the declared disaster areas?

123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

123.602 When would my business not be eligible to apply for an economic injury disaster loan under this subpart?

123.603 What is the interest rate on an economic injury disaster loan under this subpart?

123.604 How can my business spend my economic injury disaster loan under this subpart?

123.605 How long do I have to apply for a loan under this subpart?

123.606 May I request an increase in the amount of an economic injury disaster loan under this subpart?

#### Subpart G—Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

##### § 123.600 Are economic injury disaster loans under this subpart limited to the geographic areas contiguous to the declared disaster areas?

No. Notwithstanding § 123.4, SBA may make economic injury disaster loans outside the declared disaster areas and the contiguous geographic areas to small business concerns that have suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related federal action taken between September 11, 2001 and October 22, 2001.

##### § 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

(a) If your business has suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related federal action taken between September 11, 2001 and October 22, 2001, you are eligible to apply for an economic injury disaster loan under this subpart.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available under this subpart only if you were a small business (as defined in part 121 of this chapter) on September 11, 2001, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include small agricultural cooperatives and producer cooperatives.

##### § 123.602 When would my business not be eligible to apply for an economic injury disaster loan under this subpart?

Your business is not eligible for an economic injury disaster loan under this subpart if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental on September 11, 2001);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative;

(d) Not a small business concern; or

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

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

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

(h) Primarily engaged in political or lobbying activities.

**§ 123.603 What is the interest rate on an economic injury disaster loan under this subpart?**

Your economic injury disaster loan under this subpart will have an interest rate of 4 percent per annum or less.

**§ 123.604 How can my business spend my economic injury disaster loan under this subpart?**

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to September 11, 2001;

(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) Repair physical damage; or

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

**§ 123.605 How long do I have to apply for a loan under this subpart?**

You have until January 22, 2002 to apply for a loan under this subpart.

Your application must be postmarked no later than this date. SBA has the discretion, for good cause, to extend the application deadline by publication of a notice in the **Federal Register**.

**§ 123.606 May I request an increase in the amount of an economic injury disaster loan under this subpart?**

Yes. Notwithstanding § 123.20, you may request an increase in the amount of an economic injury disaster loan under this subpart not later than one year after the date SBA approves your initial request.

Dated: October 16, 2001.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 01-26565 Filed 10-19-01; 8:45 am]

**BILLING CODE 8025-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 99-NE-62-AD; Amendment 39-12473; AD 2001-21-03]

**RIN 2120-AA64**

**Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines. That AD currently requires inspecting and purging the P3B and Ps3 lines and associated fittings and ports of moisture. This amendment will allow the installation of improved hardware as terminating action to requirements of the AD, and remove the GE90-92B engine model from the AD applicability. This amendment is prompted by the recent FAA approval of redesigned P3B and Ps3 sense lines, and the removal of the GE90-92B engine from the applicability. The actions specified in this AD are intended to prevent corruption of Ps3 signals, which could result in simultaneous loss of thrust control of both engines.

**DATES:** Effective date November 26, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained

from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone: (513) 672-8400, fax: (513) 672-8422. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7135; fax: (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99-27-15, Amendment 39-11496 (65 FR 692, January 6, 2000), which is applicable to General Electric Company (GE) models GE90-76B, -77B, -85B, and -90B turbofan engines was published in the **Federal Register** on June 12, 2001 (66 FR 31569). That action proposed to allow the installation of improved hardware in accordance with the Accomplishment Instructions, Section 3 of GE Alert Service Bulletin (ASB) No. GE90 73-A0060, Revision 3, dated September 14, 2000 as terminating action to requirements of the AD. That action also proposed to remove the GE90-92B engine model from the AD applicability. Also, that action proposed an installation deadline for the improved hardware of October 31, 2001. The deadline is changed for this final rule to December 31, 2001, to support the timing for when the final rule is published in the **Federal Register**. In doing this, no additional risk to the fleet will incur, based on information from GE that in response to the proposal, all remaining engines are now retrofitted with redesigned hardware.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Remove Reference to P3B Signal Blockage From Unsafe Condition Description**

One comment from the manufacturer requests that the unsafe condition statement in the AD be revised to remove P3B signal blockage and partial blockage as some of the causes of loss of engine thrust control. Blockage and