

# Rules and Regulations

Federal Register

Vol. 67, No. 203

Monday, October 21, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

RIN 3245-AE97

#### Disaster Loan Program—Disaster Mitigation Act of 2000

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

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

**SUMMARY:** Under the Disaster Mitigation Act of 2000, enacted on October 30, 2000, ("Act") the Individual and Family Grant Assistance Program is replaced by the Assistance to Individuals and Household Program ("IHP"). Under this interim final rule, SBA will implement its disaster loan program when the President declares a major disaster, or declares an emergency, and activates the IHP in an emergency disaster declaration. Under the Act, if the President declares a major disaster that includes, or is limited to, public assistance, a private nonprofit facility which provides non-critical services must first apply for disaster loan assistance from SBA before it could seek grant assistance for permanent repairs and/or replacements from the Federal Emergency Management Agency ("FEMA"). SBA is also implementing this legislative change, and is making certain technical changes.

**DATES:** *Effective Date:* This rule is effective on October 15, 2002.

*Applicability Date:* This rule is applicable for major disasters declared on or after October 15, 2002.

*Comment Date:* Comments must be received on or before December 20, 2002.

**ADDRESSES:** Address all comments concerning the interim rule to Herbert L. Mitchell, Associate Administrator, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416

**FOR FURTHER INFORMATION CONTACT:** Becky Brantley, Loan Specialist, Office of Disaster Assistance, 202-205-6734.

**SUPPLEMENTARY INFORMATION:** Section 206 of the Disaster Mitigation Act of 2000 (Public Law 106-390) ("Act") replaces the Individual and Family Grant Assistance Program ("IFG") with the Assistance to Individuals and Household Program ("IHP"). Under this interim final rule, SBA will implement its disaster loan program when the President declares a major disaster, or declares an emergency, and activates the IHP. SBA is revising § 123.3(a)(1) of its regulations to reflect the statutory changes.

Section 205 of the Act amends section 5172 of Title 42, United States Code. Under the Act, if the President declares a major disaster that includes, or is limited to public assistance, a private nonprofit facility ("PNP") which provides non-critical services (of a governmental nature) must first apply to SBA for a disaster loan for permanent repairs and/or replacement work, before it can seek grant assistance from the Federal Emergency Management Agency ("FEMA") with respect to such non-critical services. If SBA determines that the PNP non-critical facility is ineligible for a disaster loan or the PNP has obtained the maximum amount for which the SBA determines the facility is eligible, the PNP may then apply to FEMA for grant assistance for permanent repairs for its unmet disaster-related needs. Such PNPs may apply directly to FEMA for emergency repairs.

Owners of facilities that provide critical services (of a governmental nature) may apply directly to FEMA for grant assistance for both emergency and permanent repairs. Section 205 of the Act defines "critical services" to include power, water, sewer, wastewater treatment, communications, and emergency medical care. It is the responsibility of FEMA to provide guidelines with respect to these services.

PNPs which operate both critical and non-critical facilities (that provide essential services of a governmental nature) will have to make separate applications to FEMA and SBA. Currently, SBA rules allow only for the activation of its disaster loan program in the event of a major disaster declaration by the President that includes

individual assistance (the Individuals and Family Grant Program). In such case, all PNP facilities are eligible to apply for SBA disaster loan assistance.

Under this interim final rule, SBA is amending § 123.3 of its regulations to provide that SBA would activate its disaster loan program for PNPs that provide essential services of a governmental nature when the President declares a major disaster that does not include individual assistance but is limited to, or includes, public assistance. SBA would use FEMA's guidelines to ascertain if a PNP was seeking assistance for its delivery of such services.

In this interim final rule, SBA is amending § 123.4 of its regulations to preclude businesses in contiguous counties from being eligible for SBA economic injury disaster loans in circumstances described above. Thus, if the President makes a major disaster declaration that does not include individual assistance but includes, or is limited to, public assistance, and PNPs are eligible for disaster loan assistance from SBA, the interim final rule would not allow small businesses in counties contiguous to the declared disaster area to be eligible for SBA economic injury loans. This is because the authorized public assistance is limited to the counties identified in the declaration.

SBA is amending § 123.101(c) of its regulations by inserting the new "Individuals and Household Program" in lieu of the old "Individual and Family Grant Program."

SBA is making technical corrections in § 123.501 of its regulations, relating to the eligibility of a business for a military reservist economic injury disaster loan (EIDL). The purpose of the regulatory change is to clarify that the business must be small at the time the essential employee is called to active duty. A business that was not small at that time would fall outside the parameters of SBA regulations, and this regulatory change would make that clear. SBA is adding the same criteria to military reservist EIDL as now applies to regular EIDL: the business, its affiliates and 20% or more owners have used all reasonably available funds and that it is unable to obtain credit elsewhere. These are the same requirements prescribed in § 123.300(b) with respect to regular EIDL assistance.

### Justification for Publication as an Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations, 5 U.S.C. 553 and 13 CFR 101.108. The APA provides for an exception to this standard rule-making process, however, where an Agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 555(b)(3)(B). The good cause requirement is satisfied when prior public participation is impractical, 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 might arise where an Agency must issue a rule without written public participation. On January 23, 2002, FEMA published proposed rules to implement the Act for Federal disaster assistance to individuals and households (67 FR 3411). FEMA anticipates issuing an interim final rule about the same time that SBA publishes its interim final rule. Under FEMA's regulation, three important changes will occur:

(1) The "Individual and Family Grant Program" ("IFG") will not be in existence for disasters declared on or after October 15, 2002.

(2) FEMA has renamed their program as "Assistance to Individuals and Households Program" ("IHP").

(3) FEMA's rule would include the flexibility for the President to activate IHP when the President issues an emergency declaration.

These changes have a direct effect on SBA since § 123.3(a)(1) of SBA's regulations presently states that SBA disaster operations are activated when "the President declares a Major Disaster and authorizes Federal assistance, including individual assistance (temporary housing and Individual and Family Grant Assistance)." Therefore, under current rules, SBA's disaster assistance can only be activated when IFG is being offered. Since, under FEMA's rule, IFG will no longer exist, SBA's IFG reference is no longer applicable.

If a Presidential major disaster declaration activates FEMA's IHP, SBA's programs must be amended to reflect the existence of IHP in its regulations. SBA's concern is that disasters can be declared at any time, and its regulations must be amended to incorporate the Act's changes so that

SBA's disaster programs can be appropriately activated when a major disaster occurs. Any delay in the adoption of these changes to SBA's regulations could cause serious harm to victims of disasters declared by the President since IFG assistance no longer exists.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans available to individuals and homeowners when the President declares a major, or emergency, disaster declaration that authorizes Federal assistance to Individuals and Households. SBA needs to coordinate its disaster rules with the revised FEMA program which should be effective at the same time that this rule is effective.

### 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 interim final rule effective for major disasters declared on or after October 15, 2002.

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 Justification for Publication as an Interim Final 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 has an obligation, under section 4(d) of the Small Business Act, to act in the public interest in offering disaster loan assistance to victims of declared disasters. Pursuant to that statutory authority, SBA has determined that it is in the public interest to give immediate effect to the changes in the activation of SBA's disaster loan program and that it would be impractical to delay such implementation. SBA also notes that the failure to adopt this rule immediately would work to the detriment of many disaster victims.

Although this rule is being published as an interim final rule, comments are hereby solicited from the public. These comments must be received by December 20, 2002. SBA will consider these comments in making any necessary revisions to these regulations.

### Compliance With Executive Orders 12866, 12988, 13132, the Regulatory Flexibility Act (15 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

OMB has determined that this rule does not constitute a significant rule within the meaning of Executive Order 12866. The rule conforms SBA rules to the requirements of the Act and FEMA's implementing regulations. The rule is not likely to have an annual effect on the economy of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

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

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

SBA has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

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 paragraph 3 of that Order.

### List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, 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); Pub. L. 102–395, 106 Stat. 1828, 1864; Pub. L. 103–75, 107 Stat. 739; Pub. L. 106–50, 113 Stat. 245.

2. Amend § 123.3 by revising paragraph (a)(1), redesignating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4), and (a)(5), respectively, and adding a new paragraph (a)(2) to read as follows:

#### § 123.3 How are disaster declarations made?

(a) \* \* \*

(1) The President declares a Major Disaster, or declares an emergency, and authorizes Federal Assistance, including

individual assistance (Assistance to Individuals and Households Program).

(2) If the President declares a Major Disaster limited to public assistance only, a private nonprofit facility which provides non-critical services under guidelines of the Federal Emergency Management Agency (FEMA) must first apply to SBA for disaster loan assistance for such non-critical services before it could seek grant assistance from FEMA.

\* \* \* \* \*

3. Amend § 123.4 by revising the fourth sentence to read as follows:

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

\* \* \* In major disasters, economic injury disaster 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 loans in counties contiguous to the disaster area.

\* \* \*

4. Amend § 123.101 by revising paragraph (c) to read as follows:

**§ 123.101 When am I not eligible for a home disaster loan?**

\* \* \* \* \*

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception), these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan. The one exception applies to amounts received under the Individuals and Household Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan;

\* \* \* \* \*

5. Amend § 123.501 by revising paragraph (a), removing “and” at the end of paragraph (c), removing the period at the end of paragraph (d) and adding “, and” in its place, and adding a new paragraph (e) to read as follows:

**§ 123.501 When is your business eligible to apply for a Military Reservist Economic Injury Disaster Loan?**

\* \* \* \* \*

(a) It is a small business as defined in 13 CFR part 121 when the essential employee was called to active duty,

\* \* \* \* \*

(e) 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).

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 02-26403 Filed 10-18-02; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-SW-59-AD; Amendment 39-12913; AD 2002-21-07]

**RIN 2120-AA64**

#### **Airworthiness Directives; Sikorsky Aircraft Corporation Model S-76A, S-76B and S-76C Helicopters**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters that requires removing and inspecting each main rotor spindle attachment bolt (bolt) to ensure that the correct bolts are installed. This amendment is prompted by the discovery of improper bolts installed on a helicopter during its production. The actions specified by this AD are intended to detect installation of incorrect bolts, which could result in reduced hub or bolt fatigue life, separation of the main rotor blade at the spindle attachment, and subsequent loss of control of the helicopter.

**DATES:** Effective November 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7190, fax (781) 238-7170.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 to include an AD for Sikorsky Model S-76A, S-76B and S-76C helicopters was published in the *Federal Register* on June 20, 2002 (67 FR 41875). That action proposed to require removing and

inspecting each bolt to ensure that the correct bolts are installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with one change. A “note” has been added following paragraph (b)(3) referencing the alert service bulletin that pertains to the subject of the AD. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 165 helicopters of U.S. registry will be affected by this proposed AD, that it will take approximately 6 work hours per helicopter to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$240 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$99,000, assuming all 40 bolts (per helicopter) are replaced.

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

#### **Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the