

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

#### Disaster—Physical Disaster and Economic Injury Loans

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) is proposing to amend its regulations governing both physical and economic injury disaster assistance to make clear that businesses primarily engaged in agriculture are not eligible for such assistance and that such assistance may not be used to further the alleviation of physical or economic injury to property associated with agricultural enterprise caused by a disaster.

**DATES:** SBA will accept public comments on this proposal through July 13, 1995.

**ADDRESSES:** Comments should be submitted to Bernard Kulik, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Office of Disaster Assistance, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** In 1986 section 7(b) of the Small Business Act (Act) (15 U.S.C. 636(b)) was amended to provide that physical and economic injury disaster loan assistance provided by the Small Business Administration (SBA) under that section should not be available to agricultural enterprises. The term agricultural enterprise is defined elsewhere in the Act to mean a business engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries. See section 18(b)(1) of the Act, 15 U.S.C. 647(b)(1). SBA has historically interpreted this provision in a manner that contemplates that this definition is intended to cover small businesses primarily engaged in the prescribed

activities. This position is consistent with SBA's size standards related definition of a small business for purpose of eligibility for disaster assistance. (See 13 CFR 121.802). However, the word "primarily" is absent from the present regulatory definition of agricultural enterprise in the SBA regulations governing disaster assistance. (See 13 CFR 123.17). This proposed rule, if adopted, would conform the definition of agricultural enterprise with existing policy and with regulations governing size standards by requiring that a concern be primarily engaged in the prescribed activities in order to be construed as an agricultural enterprise.

The effect of this change would be to make clear that a small business which is engaged in multiple activities, including those relevant to agricultural enterprise would be ineligible for disaster assistance under section 7(b) of the Act if its primary activity as judged under the criteria imposed by 13 CFR 123, *et seq.*, is agricultural enterprise. If its primary activity as judged under this standard is an eligible activity and is not agricultural activity, a business would be eligible for disaster assistance.

This proposed regulation, if adopted, would also amend 13 CFR §§ 123.3 and 123.41 to make clear that it is SBA's position that the proceeds of disaster assistance made to eligible small businesses may not be used in conjunction with repair or replacement or alleviation of economic injury relevant to real or personal property used in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agricultural related industries. This change would literally prohibit proceeds of SBA disaster assistance made to otherwise eligible businesses from being used for purposes associated with agricultural enterprise with which it might be secondarily engaged. Thus a business eligible for disaster assistance which is primarily engaged in eligible activity and secondarily engaged in agricultural enterprise would be prohibited under this regulation, if adopted, from using the proceeds of such assistance for purposes relevant to the agricultural enterprise.

#### Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of \$100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major or significant rule.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement. (Catalogue of Federal Domestic Assistance Programs, Nos. 59.002, 59.008)

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

Disaster assistance, Loan programs—business, Small businesses.

For the reasons set out above, pursuant to sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, Title 13, Part 123 of the Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 123 would continue to read as follows:

**Authority:** Sections 5(b)(6), 7(b), (c), (f) of the Small Business Act; Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739 (15 U.S.C. 634(b)(6), 636(b), (c), (f)).

2. Section 123.17 would be amended by inserting the term "primarily" before the term "engaged" in the first sentence.

3. Section 123.3 would be amended by adding a new paragraph (b)(8) in the definition of "eligible physical loss" to read as follows:

#### § 123.3 Definitions.

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