

Appendix 1 to Part 20—Commodities Subject to Reports, Units of Measure to Be Used in Reporting, and Beginning and Ending Dates of Marketing Years

Commodity to be reported	Units of measure to be used in reporting	Beginning of marketing year	End of marketing year
* * Beef, fresh, chilled or frozen: muscle cuts of beef	* * Metric tons	* Jan. 1	Dec. 31.

Signed at Washington, D.C. on July 18, 2001.

Mattie R. Sharpless,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 01-18548 Filed 7-24-01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AF94

Changes, Tests, and Experiments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a rulemaking appearing in the **Federal Register** on February 26, 2001 (66 FR 11527). This document is necessary to correct an erroneous **Federal Register** citation.

FOR FURTHER INFORMATION CONTACT:

Jayne McCausland, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, telephone 301-415-6219, e-mail: jmm@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 11527, in the first column, in the Background paragraph, in the fifth line of the paragraph, "65" is corrected to read "64".

Dated at Rockville, Maryland, this 19th day of July 2001.

For the Nuclear Regulatory Commission.

Alzonía W. Shepard,

Acting Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01-18519 Filed 7-24-01; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245-AE45

Military Reservist Economic Injury Disaster Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is finalizing its regulations implementing a new program authorized by the Veterans Entrepreneurship and Small Business Development Act of 1999. Under this new program, SBA will make a low interest, fixed rate loan available to a small business employing a military reservist if the reservist is called up to active military duty during a period of military conflict, and he or she is an essential employee critical to the success of the business' daily operation whose call-up has caused or will cause the business substantial economic injury.

DATES: This rule is effective August 24, 2001.

FOR FURTHER INFORMATION CONTACT:

Herbert Mitchell, Associate Administrator, Office of Disaster Assistance, 202-205-6734.

SUPPLEMENTARY INFORMATION: With this rule, SBA finalizes its proposed regulation implementing the Military Reservist Economic Injury Disaster Loan Program (program) by adding a new subpart F to our Disaster Loan Program regulations. The final rule will clarify the program's requirements, application and loan approval process.

The Military Reservist Economic Injury Disaster Loan Program was authorized by Public Law 106-50, enacted on August 17, 1999. The program will allow SBA to make economic injury disaster loans (EIDL) to small businesses employing military reservists if those employees are called up to active duty during a period of military conflict (call-up) and those employees are essential to the success of the small businesses' daily operations.

On July 13, 2000, SBA published a proposed rule in the **Federal Register** requesting public comments on our proposals for implementing the Military Reservist Economic Injury Disaster Loan Program (65 FR 43261). SBA received no comments on the proposed rule during the 30-day public comment period and therefore, is finalizing the proposed rule without substantive change. SBA did make a few minor textual and grammatical changes to clarify the meaning of several provisions.

Under the final rule, to qualify for the Military Reservist EIDL, a business will be required to show that the call-up of an essential employee has caused or will cause the business substantial economic injury. The interest rate for a Military Reservist EIDL will be the same as for other EIDL assistance. SBA calculates interest rates quarterly. At the present time the statutory interest rate may not exceed 4 percent. The interest rate in effect at the time the Military Reservist EIDL application is filed will be the fixed rate for the entire term of the loan.

Section 123.500 contains program definitions conforming with those in Public Law 106-50. SBA deleted "affiliate" from the definition of principal owner. SBA believes the interests of the Military Reservist EIDL program are sufficiently protected if SBA includes any person or entity owning 20 percent or more of the business in its eligibility determination.

Section 123.501 sets out the program eligibility requirements including a reference to an "eligible small business as defined in 13 CFR Part 121." While Public Law 106-50 describes an eligible or "qualified borrower" as a small business that "employs" an eligible reservist, Congress' intent was that this program also include assistance to a small business sole proprietor who is an essential employee. See S. Rep. No. 254, 106th Cong., 1st Sess. 4 (1999). Therefore, SBA will include such a category in the program eligibility requirements. In addition, this section includes the legislative requirement that the program apply only to military

conflicts occurring or ending on or after March 24, 1999.

Under § 123.502 of this rule, a small business will not be eligible to apply for a Military Reservist EIDL if it is an enterprise included in any of the categories described in §§ 123.101, 123.201, and 123.301. These sections include general ineligibility categories applying to all EIDL assistance. For example, a business will not be eligible if a principal owner of the business had been convicted, during the year preceding its application for a Military Reservist EIDL, of a felony during and in connection with a riot or civil disorder. For another example, a business will not be eligible if it is an agricultural enterprise as defined in § 123.201 of this part. SBA revised the text of § 123.502(n) to make it consistent with the text in § 123.301(g), under which a business is ineligible for assistance if teaching, instructing, counseling, or indoctrinating religion or religious beliefs is its principal activity, not merely one of several business activities.

Under § 123.503 of this rule, a business cannot apply for a Military Reservist EIDL in anticipation of a call-up to active duty. It can only apply during a period beginning on the date the essential employee receives a call-up order and ending 90 days after the date the employee is discharged or released from active duty. The call-up of the essential employee will be the event that triggers SBA's assistance under this program.

Under § 123.504, the business must submit a copy of the reservist's call-up orders to show compliance with the statutory requirements described above. Also under this section, as a part of the application, the business owner must certify that the reservist is an essential employee, and must detail the employee's duties and responsibilities. In addition, the employee must indicate in writing whether he or she concurs with such assessment. The application must also support a determination by SBA that the essential employee's absence will result in substantial economic injury to the business.

SBA recognizes that the owner of a small business may be an essential employee of that business and may be called up and start active duty before applying for a Military Reservist EIDL. Accordingly, SBA will accept a program application from a representative of the reservist if that representative has power of attorney to act on the behalf of the reservist for such matters.

SBA offers this program, in part, to support individuals who choose to serve the United States as military reservists.

These individuals should not be put in a position where a call to military service jeopardizes their employment situation. Therefore, under this rule, SBA will require that the business offer the essential employee the same or similar job upon return from active duty.

SBA changed the text of § 123.506 from the proposed rule to clarify that the amount an eligible small business may borrow from SBA is equal to the economic injury suffered or likely to be suffered by the applicant until normal operations resume because of the absence of the essential employee. The maximum amount an applicant may borrow is \$1,500,000, regardless of the number of essential employees called to active duty. The measure of economic injury is the amount necessary to meet the business's obligations as they mature, pay its ordinary and necessary expenses, and enable it to market, produce or provide products or services ordinarily marketed, produced, or provided by the business, which cannot be done as a result of the essential employee's active military service. It may not include amounts the business, together with its affiliates and principal owners, could provide without undue hardship. SBA may consider waiving this loan limit if it determines that the conditions identified in § 123.507 are satisfied.

Under § 123.509, this rule sets forth prohibitions on the use of loan proceeds. For example, EIDL funds could not be used to:

- (1) Refinance debt which the business incurred before the call up of the essential employee;
- (2) Make payments on loans owned by SBA or another federal agency or a Small Business Investment Company licensed under the Small Business Investment Act;
- (3) Pay any obligations resulting from a tax penalty or any non-tax criminal 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.

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

The Office of Management and Budget (OMB) reviewed this rule as a

“significant” regulatory action under Executive Order 12866.

SBA has determined that the final 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. From October 1997 to October 1999, only 19,592 military reservists were called up for active duty. This figure averages just under 10,000 call-ups per year. Further, 52 percent of the non-farm workforce of this country is employed by businesses that employ 500 or fewer persons. Applying this percentage to the average number of call-ups for the past years indicates that 5,200 of the call-ups affected non-farm businesses with less than 500 employees. Of this figure, SBA estimates that 30 percent of these individuals may be essential employees. This results in an estimate of approximately 1,590 businesses that could be affected by this proposed rule. SBA does not believe that this is a substantial number of small businesses. Furthermore, SBA has taken steps to simplify the loan documentation process for small business owners and permits small business owners to self-certify the designation of essential employees. These steps will substantially reduce any economic impact on small business owners applying for assistance.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA has submitted the Military Reservist Economic Injury Disaster Loan Program Loan Application (application) to OMB for review. SBA received no comments from the public regarding the proposed application. The application will allow small businesses to apply for Military Reservist EIDLs and will provide SBA with the information necessary to evaluate applicants. The application will request such information as name, address, type of business, management information, organization type, name of essential employee who is a military reservist employed by the small business, explanation of the designation of the employee as “essential” and financial information to permit SBA to determine repayment ability.

An applicant will complete an application each time it applies for a Military Reservist Economic Injury Disaster Loan. SBA estimates that the time necessary to complete an application for the Military Reservist Economic Injury Disaster Loan Program will average 2 hours.

In addition, SBA will collect ordinary and usual financial statements before making subsequent loan disbursements under the Military Reservist EIDL

Program (see § 123.511). This information will allow SBA to assess the continued need for disbursements under this program.

For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications.

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

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 is revised 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; and Pub. L. 103–75, 107 Stat. 739, Pub. L. 106–50, 113 Stat. 245.

2. In part 123 designate the existing centerheadings as subpart A through subpart E, respectively, and add new subpart F to read as follows:

Subpart F—Military Reservist Economic Injury Disaster Loans

* * * * *

Sec.

123.500 Definitions.

123.501 When is your business eligible to apply for a Military Reservist Economic Injury Disaster Loan (EIDL)?

123.502 When is your business ineligible to apply for a Military Reservist EIDL?

123.503 When can you apply for a Military Reservist EIDL?

123.504 How do you apply for a Military Reservist EIDL?

123.505 What if you are both an essential employee and the owner of the small business and you started active duty before applying for a Military Reservist EIDL?

123.506 How much can you borrow under the Military Reservist EIDL Program?

123.507 Under what circumstances will SBA consider waiving the \$1.5 million loan limit?

123.508 How can you use Military Reservist EIDL funds?

123.509 What can't you use Military Reservist EIDL funds for?

123.510 What if you don't use your Military Reservist EIDL funds as authorized?

123.511 How will SBA disburse Military Reservist EIDL funds?

123.512 What is the interest rate on a Military Reservist EIDL?

Subpart F—Military Reservist Economic Injury Disaster Loans

§ 123.500 Definitions.

The following terms have the same meaning wherever they are used in this subpart:

(a) *Essential employee* is an individual (whether or not an owner of a small business) whose managerial or technical expertise is critical to the successful day-to-day operations of a small business.

(b) *Military reservist* is a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(c) *Period of military conflict* means:

(1) A period of war declared by the Congress,

(2) A period of national emergency declared by the Congress or by the President, or

(3) A period of contingency operation, as defined in 10 U.S.C. 101(a).

(d) *Principal owner* is a person or entity which owns 20 percent or more of the small business.

(e) *Substantial economic injury* means an economic harm to the small business such that it cannot:

(1) Meet its obligations as they mature,

(2) Pay its ordinary and necessary operating expenses, or

(3) Market, produce or provide a product or service ordinarily marketed, produced or provided by the business. Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

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

Your business is eligible to apply for a Military Reservist EIDL if:

(a) It is a small business as defined in 13 CFR part 121,

(b) The owner of the business is a military reservist and an essential employee or the business employs a military reservist who is an essential employee,

(c) The essential employee has been called-up to active military duty during a period of military conflict existing on or after March 24, 1999, and

(d) The business has suffered or is likely to suffer substantial economic injury as a result of the absence of the essential employee.

§ 123.502 When is your business ineligible to apply for a Military Reservist EIDL?

Your business is ineligible for a Military Reservist EIDL if, together with its affiliates, is subject to any of the following conditions:

(a) Any of your business' principal owners has been convicted, during the past year, of a felony during and in connection with a riot or civil disorder;

(b) You have assumed the risk associated with employing the military reservist, as determined by SBA (for example, hiring the "essential employee" after the employee has received call-up orders or been notified that they are imminent);

(c) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. (See 13 CFR 121.107, "How does SBA determine a concern's primary industry?") Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of the business is not an agricultural enterprise, it may apply for a Military Reservist EIDL, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural enterprises;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than an insignificant gross revenue through the sale of products or services, or through the presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business is engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business is not a small business concern;

(l) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(m) Your business is a loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(n) Your business' principal activity is teaching, instructing, counseling, or indoctrinating religion or religious

beliefs, whether in a religious or secular setting; or

(o) Your business' principal activity is political or lobbying activities.

§ 123.503 When can you apply for a Military Reservist EIDL?

Your small business can apply for a Military Reservist EIDL any time beginning on the date your essential employee receives official call-up orders and ending 90 days after the date the essential employee is discharged or released from active duty.

§ 123.504 How do you apply for a Military Reservist EIDL?

To apply for a Military Reservist EIDL you must complete a SBA Military Reservist EIDL application package (SBA Form 5R and supporting documentation *can be obtained through SBA's Disaster Area Office*) including:

(a) A copy of the essential employee's official call-up orders for active duty showing the date of call up, and if known, the date of release from active duty;

(b) A statement from the business owner that the reservist is essential to the successful day-to-day operations of the business (detailing the employee's duties and responsibilities and explaining why these duties and responsibilities can't be completed in the essential employee's absence);

(c) A certification by the essential employee supporting that he or she concurs with the business owner's statement as described in paragraph (b) of this section;

(d) A written explanation and financial estimate of how the call-up of the essential employee has or will result in economic injury to your business;

(e) The steps your business is taking to alleviate the economic injury; and

(f) The business owners' certification that the essential employee will be offered the same or a similar job upon the employee's return from active duty.

§ 123.505 What if you are both an essential employee and the owner of the small business and you started active duty before applying for a Military Reservist EIDL?

If you are both an essential employee and the owner of the small business and you started active duty before applying for an Military Reservist EIDL, a person who has a power of attorney with the authority to borrow and make other related commitments on your behalf, may complete and submit the EIDL loan application package for you.

§ 123.506 How much can you borrow under the Military Reservist EIDL Program?

You can borrow an amount equal to the substantial economic injury you

have suffered or are likely to suffer until normal operations resume as a result of the absence of one or more essential employees called to active duty, up to a maximum of \$1.5 million

§ 123.507 Under what circumstances will SBA consider waiving the \$1.5 million loan limit?

SBA will consider waiving the \$1.5 million dollar limit if you can certify to the following conditions and SBA approves of such certification based on the information supplied in your application:

(a) Your small business is a major source of employment. A major source of employment:

(1) Employs 10 percent or more of the work force within the commuting area of the geographically identifiable community (no larger than a county) in which the business employing the essential employee is located, provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employs 5 percent of the work force in an industry within such commuting area and, if the small business is a non-manufacturing small business, employs no less than 50 employees in the same commuting area, or if the small business is a manufacturing small business, employs no less than 150 employees in the commuting area; or

(3) Employs no less than 250 employees within such commuting area;

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active duty during a period of military conflict, and a loan in excess of \$1.5 million is necessary to reopen or keep open the small business; and

(c) Your small business has used all reasonably available funds from the small business, its affiliates, its principal owners and all available credit elsewhere to alleviate the small business' economic injury. Credit elsewhere means financing from non-Federal sources on reasonable terms given your available cash flow and disposable assets which SBA believes your small business, its affiliates and principal owners could obtain.

§ 123.508 How can you use Military Reservist EIDL funds?

Your small business can use Military Reservist EIDL to:

(a) Meet obligations as they mature,
(b) Pay ordinary and necessary operating expenses, or
(c) Enable the business to market, produce or provide products or services

ordinarily marketed, produced, or provided by the business, which cannot be done as a result of the essential employee's military call-up.

§ 123.509 What can't you use Military Reservist EIDL funds for?

Your small business can not use Military Reservist EIDL funds for purposes described in § 123.303(b) (See § 123.303, "How can my business spend my economic injury disaster loan?").

§ 123.510 What if you don't use your Military Reservist EIDL funds as authorized?

If your small business does not use Military Reservist EIDL funds as authorized by § 123.508, then § 123.9 applies (See § 123.9, "What happens if I don't use loan proceeds for the intended purpose?").

§ 123.511 How will SBA disburse Military Reservist EIDL funds?

SBA will disburse your funds in quarterly installments (unless otherwise specified in your loan authorization agreement) based on a continued need as demonstrated by comparative financial information. On or about 30 days before your scheduled fund disbursement, SBA will request ordinary and usual financial statements (including balance sheets and profit and loss statements). Based on this information, SBA will assess your continued need for disbursements under this program. Upon making such assessment, SBA will notify you of the status of future disbursements.

§ 123.512 What is the interest rate on a Military Reservist EIDL?

The interest rate on a Military Reservist EIDL will be 4 percent per annum or less. SBA will publish the interest rate quarterly in the **Federal Register**.

Dated: April 17, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01-18365 Filed 7-24-01; 8:45 am]

BILLING CODE 8025-01-U