

SMALL BUSINESS ADMINISTRATION**13 CFR Parts 121 and 123**

RIN 3245-AE93

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program**AGENCY:** Small Business Administration (SBA).**ACTION:** Interim final rule with request for comments.

SUMMARY: For purposes of eligibility for economic injury disaster loan assistance attributed to the September 11, 2001 terrorist attacks on the World Trade Center, New York, New York and the Pentagon, Arlington, VA, the SBA is increasing the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to \$3 million from \$1 million. This action applies to small business Travel Agencies located in and outside of the declared areas for that disaster. This interim final rule is published in conjunction with SBA's proposed rule elsewhere in this issue of the **Federal Register** that recommends increasing the size standard for Travel Agencies from \$1 million to \$3 million for all Federal small business assistance programs. SBA believes that this action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This rule also changes the time at which size status is determined for economic injury disaster loan assistance in connection with the September 11, 2001 attacks.

DATES: Effective Date: This rule becomes effective March 15, 2002.*Comment Date:* Comments must be received on or before April 15, 2002.**ADDRESSES:** Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via e-mail to SIZESTANDARDS@sba.gov. Upon request, SBA will make all public comments available.**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205-6618.**SUPPLEMENTARY INFORMATION:****I. Justification for Increasing the Size Standard**

SBA has received requests from firms and trade associations in the travel industry to increase the \$1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized

equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the declining pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to \$3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at <http://www.sba.gov/library/soproom.html>) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two "base or anchor size

standards" that apply to most industries—500 employees for manufacturing industries and \$6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a \$1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is \$6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the "typical industry."

The current size standard for Travel Agencies under NAICS code 561510 is \$1 million, which is lower than the \$6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt

a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry's average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firms at that size and smaller. For example, for Travel Agencies, firms of \$2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of \$6 million) in which firms of \$5.8 million or less in

receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the \$6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this interim final rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the “four-firm concentration ratio”—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to

assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a \$6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts

(40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts. For example, Travel Agencies with \$900 thousand or less in receipts

obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of \$3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES
[Data in Millions of Dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel agencies	\$0.9	\$2.2	\$5.8	\$27.1
Nonmanufacturing anchor group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those

in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the \$6 million anchor size standard is appropriate. Also, that a size standard between \$2 million to \$3 million would represent a reasonable size standard for the Travel Agencies industry since these

businesses capture approximately half of industry activity. Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million \$)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel agencies	\$0.44	8.1	\$0.188	16.3
Nonmanufacturing anchor group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of \$2.5 to \$3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start-up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms involved in leisure travel services. Corporate clients and the Federal

government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to \$160,000 to \$200,000 on an average contract of approximately \$8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs

associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This

interim final rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for \$4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than \$545,000 in receipts. It's unlikely that an increase to the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately \$7 billion on official travel per year. In addition, the

Department of Defense awards contracts for leisure travel services, which are worth \$5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agencies in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies services. For Fiscal Year 2000, \$206,000 out of \$25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through General

Services Administration (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of tickets	Sales (\$)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	\$518,966,320	\$24,423,055	\$12,630,279	\$33,647,038
Percentage of Total to Small Business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms to provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be \$200,000 on an average contract of \$8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than \$1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a \$3 million size standard. Four out of

the five factors support an increase to the current \$1 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current \$1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA

Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below an amended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the amended size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm \$3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the amended size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from \$1 million to \$2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with \$1 million and less in revenues have declined by more than one-third while Travel Agencies with more than \$2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel

Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than \$2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least \$2 million and as high as \$3 million to \$3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than \$2 million should be considered.

SBA also contemplated as an alternative size standard adopting the \$6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the \$6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the \$1 million but lower than the anchor nonmanufacturing size standard.

II. Justification for Changing Date of Determination of Size Status

SBA is also changing the date as of which size status is determined for purposes of Economic Injury Disaster Loan (EIDL) applications related to the September 11, 2001, terrorist attacks. Existing sections 121.302(c), 123.300(b), and 123.601(b) require an applicant for an EIDL loan to be small as of the date the disaster commenced, as set forth in the disaster declaration. SBA is changing the date size status is determined for September 11 EIDL assistance to "the date SBA accepts the application for processing."

SBA believes that this change will have only a minimal impact on eligibility. Under the size regulations, the receipts size of a business is calculated as an average for the business' last three completed fiscal years.

For purposes of September 11 EIDL assistance, receipts after September 11

to the end of the business' fiscal year would influence its three-year average if it filed an application after the end of that fiscal year. Most businesses use the calendar year as their fiscal year. The short period of time between September 11 and December 31 would have a relatively minor impact on the number of new firms that could qualify as small as a result of changing the date of size status to the date of application. A worst case example using the proposed \$3 million Travel Agencies size standard demonstrates why this would affect few businesses.

Example: A business that averages \$3.33 million per year could become an eligible small business if it had no receipts for the period September 11 to December 31. For Year 3, \$2.34 million represents \$3.3 million in annualized receipts.

Year 1	\$3.33 million
Year 2	\$3.33 million
Year 3 +	\$2.34 million
Sum =	\$9.00 million
Average =	\$3.00 million

Based on SBA's analysis of the Travel Agencies' industry and discussions with members of the industry, SBA has concluded that this scenario is highly unlikely.

SBA also believes this change is necessary to assist Travel Agencies and other small businesses that should have been considered small for purposes of September 11, 2001 EIDL assistance.

On January 23, 2002, SBA increased its size standards to reflect the effects of inflation since 1994. Businesses recognized as small under that rule will be able to file applications for September 11, 2001 EIDL assistance. Moreover, of all the industries severely impacted by the September 11 attacks, the Travel Agencies industry is the only one that did not have its size standard adjusted on January 23, 2002, to reflect the effect of inflation. SBA did not increase the size standard for Travel Agencies at that time since SBA was already in the process of re-evaluating the Travel Agencies size standard to reflect changing industry conditions, as further described under "Justification for Increasing the Size Standard" in this preamble.

The combination of these unique circumstances necessitate changing the date of determination of size status for purposes of September 11 EIDL assistance only. SBA does not foresee the need to apply this approach in the future.

In addition, to avoid the burden of re-submitting an application, any previously submitted application which was pending or denied because of size

status will be deemed to have been resubmitted on the effective date of this rule.

III. Justification for Publication as an Interim Final Rule

This interim final rule is specifically for EIDL assistance attributable to the September 11, 2001 terrorist attacks on the World Trade Center in New York, New York and the Pentagon in Arlington, Virginia. SBA is also publishing a separate proposed rule elsewhere in this issue of the **Federal Register** that addresses the Travel Agencies size standard for all other small business purposes.

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 might arise where an agency must issue a rule without public participation. On September 16, 2001, the President declared a national emergency as a result of the events of September 11, 2001. The events of that day have directly impacted Travel Agencies. The traveling public cancelled and rescheduled existing travel arrangements and many postponed further travel. Consequently, airlines rescinded travel agencies' commissions on flights cancelled or rescheduled due to the terrorist attacks. Thus, many small travel agencies have seen their business decline precipitously by 20% to 50% due the events of September 11, 2001. On January 23, 2002, SBA issued an inflation adjustment as an interim final rule which increased revenue based size standards by 15.8%. The interim final rule had an applicability date of September 11, 2001, for this adjustment for the purposes of eligibility for economic injury disaster loans assistance as a result of the terrorist attacks on small businesses located in the declared disaster areas. The Travel Agencies \$1 million size standard was not increased because the SBA decided

to handle this industry by this separate rulemaking. A proposed adjustment to the Travel Agencies size standard under NAICS Code 561510 was already under development at SBA when the tragic events of September 11, 2001 occurred. SBA now believes that any delay in the adoption of this size standard adjustment could cause serious harm to those Travel Agencies.

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 businesses that should be considered small, but that do not qualify under SBA's existing size standards. 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 USC 633(d). Pursuant to that authority, SBA has determined that it is in the public interest to give immediate effect to SBA's current determination of small size status and that it would be impracticable to delay such implementation. SBA also notes the failure to adopt this rule immediately would work to the detriment of many small Travel Agencies.

By changing the date of determination of the small business size status for purposes of EIDL assistance attributable to the September 11, 2001 attacks, SBA will be able to assist these small businesses before the deadlines for application of September 11, 2001 EIDL assistance. The application deadline for expanded EIDL assistance (under 13 CFR Part 123, subpart G, §§ 123.600-.606) is April 22, 2002. The application deadline for EIDL assistance (under 13 CFR part 123, subpart D, §§ 123.300-.303) to the declared disaster areas of New York and Virginia is June 11, 2002.

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 April 15, 2002. SBA will consider these comments in making any necessary revisions to these regulations.

IV. 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 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 believes that this action is both in the public interest and does not tend to adversely affect any interested parties. SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule.

Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that the interim final rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is there a need for the regulatory action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel

Agencies is needed to better define small businesses in this industry for purposes of EIDL resulting from the September 11, 2001 terrorist attacks.

ii. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for EIDL assistance resulting from the September 11, 2001 attacks. Under this rule, 723 additional Travel Agencies may obtain small business status and become eligible for this assistance. SBA estimates that \$1.3 to \$2.8 million in additional EIDL assistance may result from increasing the size standard for Travel Agencies. SBA also estimates an additional \$2.3 million to \$2.7 million in EIDL assistance to businesses that became eligible small businesses as a result of the recent inflation adjustment to monetary size standards. These estimates are based on participation rates and EIDL loan amounts of Travel Agencies and small businesses in the industries covered by the size standard inflation adjustment.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 123

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

Accordingly, for the reasons set forth in the preamble, amend parts 121 and 123 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. In § 121.201, the table “Small Business Size Standards by NAICS Industry”, under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

Table with 7 columns: NAICS Code, Description (N.E.C.=Not Elsewhere Classified), and Size standards in number of employees or million of dollars. Subsector 561—Administrative and Support Services. Includes entry for 561510 Travel Agencies with size standards of 10 \$1 and 10 \$3.

¹⁰NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

3. In § 121.302(c), add a new sentence at the end of the paragraph to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For economic injury disaster loan assistance under disaster declarations for the September 11, 2001 terrorist attacks or under subpart G of part 123 of this chapter, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before March 15, 2002, whether denied because of size status or pending, such applications shall be deemed resubmitted on March 15, 2002.

* * * * *

PART 123—DISASTER LOAN PROGRAM

4. The authority citation of part 123 continues to read as follows:

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

5. Revise § 123.300(b) to read as follow:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced (except disaster declarations for the September 11, 2001 terrorist attacks, for which size status is determined as of the date SBA accepts the application for processing and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002), 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).

* * * * *

6. Revise paragraph § 123.601(b) to read as follows:

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

* * * * *

(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 the date SBA accepts your application for processing (and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonable available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

Dated: March 8, 2002.

Hector V. Barreto, Administrator.

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