

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:** Final rule.

SUMMARY: SBA is finalizing the size standard promulgated in the interim final rule published on March 15, 2002 that increased the size standard for Travel Agencies, North American Industry Classification System (NAICS) code 561510, from \$1 million to \$3 million for economic injury disaster loan (EIDL) assistance attributed to the September 11, 2001 terrorist attacks on the World Trade Center, New York, NY and the Pentagon, Arlington, VA. This rule also changes the time at which size status is determined for EIDL assistance in connection with the September 11, 2001 attacks. This final rule is published in conjunction with SBA's final rule that increases the size standard for travel agencies for all Federal small business assistance programs. This action better defines the size of businesses in this industry that SBA believes should be eligible for Federal EIDL assistance.

DATES: This rule is effective May 31, 2002.**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205-6618.**SUPPLEMENTARY INFORMATION:** SBA is publishing elsewhere in this issue of the *Federal Register* a separate final rule addressing the travel agencies size standard for all small business programs.**EIDL Assistance**

On March 15, 2002, SBA issued an interim final rule that increased the size standard for the Travel Agencies industry, NAICS code 561510, from \$1 million to \$3 million for EIDL assistance. 67 FR 11874. We believe that this action better defines the size of businesses in this industry that should be eligible for EIDL loans as a result of the September 11, 2001 Terrorist Attacks, 13 CFR Subpart G, and for EIDL assistance to businesses in the declared disaster areas under 13 CFR Subpart D (September 11 EIDL assistance), especially after the September 11, 2001 terrorist attacks. The events of September 11, 2001 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 Consequently, airlines rescinded travel agencies' commissions on flights cancelled or rescheduled due to the attacks. Thus, many small travel agencies saw their business decline by 20 to 50 percent. On January 23, 2002, SBA issued an inflation adjustment as an interim final rule which increased revenue based size standards by 15.8 percent and which had an applicability date of September 11, 2001, for the purpose of eligibility for September 11 EDIL assistance resulting from the terrorist attacks. 67 FR 3041. The travel agencies' \$1 million size standard was not increased because SBA decided to handle this industry by separate rulemaking.

At the time of the attacks, SBA was preparing a proposed adjustment to the travel agencies size standard. The proposed rule, which was issued simultaneously with the interim final rule, resulted from recent changes in the Travel Agencies industry and SBA's analysis of the latest industry data from the U.S. Bureau of the Census, Federal contract award data, and information provided by travel agencies trade associations.

SBA found that there was an urgent need to make disaster loans available to travel agencies that should be considered small, but that did not qualify under SBA's existing size standard of \$1 million. For more information on the reasons for establishing a \$3 million size standard, see the March 15, 2002 interim final rule and the proposed rule.

Change in the Date of Determination of Size Status

SBA changed the date of determination of the small business size status for purposes of EIDL assistance attributable to the September 11, 2001 attacks, in order to be able to assist small businesses before the deadlines for application of September 11, 2001 EIDL assistance under 13 CFR Subpart G expired.

Discussion of Comments on the Interim Final Rule

SBA received no comments in response to the interim final rule. However, in support of the proposed rule to increase the travel agencies' size standard for all small business programs, one commenter endorsed SBA's actions on EIDL assistance. This commenter stated that the need to increase the standard became apparent after the September 11, 2001 terrorist attacks when many travel agencies were disqualified for EIDL assistance due to

their revenue size. SBA recognized that serious harm would result to the Travel Agencies industry by not publishing, as an interim final rule, the increase to the travel agencies' size standard for EIDL assistance resulting from September 11, 2001 terrorist attacks. As pointed out by the commenter, because of the \$1 million size standard, travel agencies were being harmed by being disqualified for EIDL assistance because of their revenue size. For more information, see "Justification for Publication as an Interim Final Rule" in SBA's Interim Final Rule of March 15, 2002. 67 FR 11874 at 11878-79.

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

This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch.35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those already required of SBA. For purposes of Executive Order 13132, SBA had determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. 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 that Order. The Office of Management and Budget (OMB) reviewed this rule as a "significant regulatory action" for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. Below is a regulatory impact analysis of this size standard change. SBA received no comments on the analysis presented in the interim final rule.

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 the interim final rule explained 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 September 11 EIDL assistance.

In addition, the interim final rule explained SBA's reasons for changing the date size status is determined for September 11, 2001 EIDL assistance. SBA believes that 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 are 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 to reflect the effect of inflation. SBA did not increase the size standard for this industry at that time since SBA was already in the process of re-evaluating the travel agencies size standard to reflect changing industry conditions. The combination of these unique circumstances necessitate changing the date of determination of size status for purposes of September 11, 2001 EIDL assistance only. SBA does not foresee the need to apply this approach in the future.

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, 732 additional firms 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.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the reasons and objective of the rule; SBA's description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objectives of This Rule?

The revision to the travel agencies size standard more appropriately defines the size of businesses in this industry that SBA believes should be eligible for EIDL assistance. The change in date status for the sole purpose of September 11, 2001 EIDL assistance is necessary to assist travel agencies and other small businesses that should have been considered small for the purposes of this assistance.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)?

There were no comments received in response to the IRFA in the Interim Final Rule.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Travel Agencies industry, 21,505 out of 22,687 businesses are small under the \$1 million size standard

for travel agencies. Thus, with the increase in the size standard to \$3 million, the likely impact of this rule would be limited to the 732 small businesses that gain small business status as a result of this rule. This is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards, using size distribution of firms' tables. Businesses becoming eligible for SBA EIDL assistance as a result of this rule cumulatively generate approximately \$1.0 billion out of a total of \$10 billion in revenues. The small business coverage for EIDL assistance for travel agencies will increase by 10 percent of total receipts.

Only a small proportion of businesses utilize SBA's EIDL assistance program. It is difficult to estimate the number of small businesses that will apply for EIDL assistance, as this program focuses solely on disasters that occur within the United States and its territories. Thus, loan assistance depends on the number of disasters, the severity of the disaster, geographic condition, and the type of industries affected by the disaster. However, in fiscal year 2001, 917 travel agencies applied for EIDL assistance, of which half were declined because of credit and other eligibility requirements, and 28 were declined due to size requirements. In addition, prior to the publication of the interim final rule on March 15, 2002, 144 travel agencies applied for September 11 EIDL assistance. As a result of the interim final rule 36 additional travel agencies have applied for September 11 EIDL assistance as of May 10, 2002.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. A new size standard or change in date status does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards and changing the status date expands access to SBA programs that assist small businesses, but these actions do not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Steps SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefit to businesses that will obtain small business status as a

result of this final rule is the September 11 EIDL assistance. SBA estimates that \$1.3 to \$2.8 million in September 11 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 September 11 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 small increase in EIDL business loans that may result from the size standard increase will not crowd out other small travel agencies or small businesses from obtaining assistance as a result of the September 11 terrorist attacks since funding continues to be available for this program.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act 15 U.S.C. 631 and 13 CFR 121, SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of the annual average gross receipts of a business concern over a period of three years. For certain industries, including the Travel Agencies industry, receipts are 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. The changing structure of the industry, Census Bureau data, Federal contracting data, travel agencies trade association data, and SBA EIDL assistance data support increasing the size standard to \$3 million.

(b) What Alternatives Did SBA Reject?

At the time of the September 11, 2001 Terrorist Attacks, SBA was preparing a proposed adjustment to the travel agencies size standard. SBA found that under the \$1 million size standard for travel agencies, small travel agencies were no longer competitive in the corporate and government travel markets. Because of technology advances and demands by corporate and government clients, most firms must adapt to deal with higher costs to maintain their businesses, making greater investments in technology to meet the needs of their customers, and switching to a fee-based compensation

system from a commission-based system. Data from the GSA Travel Management Center's Program Office also showed that small travel agencies obtained only 3.5 percent of total revenues to travel agencies, even though small travel agencies account half of total industries revenues. In addition, many travel agencies were declared ineligible because of size reasons for EIDL assistance as a result of the September 11, 2001 terrorist attacks.

SBA considered two additional alternatives to this rule. First, adopting the \$6 million anchor size standard to the Travel Agencies industry. As discussed in the interim final rule SBA applies the \$6 million anchor size standard to the nonmanufacturing industries unless an industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors show that the characteristics of travel agencies are significantly below those of the nonmanufacturing anchor group industries. To establish a \$6 million size standard would increase the size standard six fold and assist successful travel agencies that tend to operate at several locations and potentially take away assistance from small travel agencies this rule is intended to assist. Thus, a size standard below the anchor size standard is appropriate for this industry.

Second, SBA considered relevant to this rule comments received in response to our March 15, 2002 proposed rule to increase the size standard for travel agencies for all small business programs. For the proposed rule, SBA considered the commenters' recommendation to not increase the travel agencies size standard beyond the amount of inflation since 1994 (15.8 percent). These commenters raised three significant issues pertaining to the percentage of travel agencies defined as small, the overall decline of the industry, and the competitiveness of currently defined small businesses. SBA rejected these comments because it had also received comments supporting the \$3 million size standard that used, in part, similar facts to show the proposed size standard was needed. Also, SBA's analysis of the changing structure of the industry, Census Bureau data, Federal contracting data, and EIDL assistance data support the need and basis to support increasing the size standard above \$1 million.

List of Subjects

13 CFR Part 121

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

13 CFR Part 123

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

PART 123—DISASTER LOAN PROGRAM

Accordingly, for the reasons set forth in the preamble, the interim rule amending parts 121 and 123 of title 13 of the Code of Federal Regulations which was published at 67 FR 11874 on March 15, 2002, is adopted as a final rule without change.

Dated: May 15, 2002.

Hector V. Barreto,
Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE95

Small Business Size Standards; Travel Agencies

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting the proposed increase to the size standard for Travel Agencies, North American Industry Classification System (NAICS) code 561510, from \$1 million to \$3 million. 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.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: This final rule applies to all SBA small business programs. SBA is publishing elsewhere in this issue of the **Federal Register** a separate final rule addressing the Travel Agencies size standard for purposes of