Proposed Rules

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE98

Small Business Size Standards; Tour Operators

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to modify the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System (NAICS) 561520). This would exclude funds received in trust for unaffiliated third parties from the calculation of a tour operator's receipts. SBA would retain the size standard figure of $6.0 million.

DATES: Comments must be received on or before November 1, 2002.

ADDRESSES: Comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via email to *SIZESTANDARDS@sba.gov.* Upon request, SBA will make all public comments available.

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

SUPPLEMENTARY INFORMATION: SBA has received requests from tour operators and an industry association to review the size standard for the Tour Operators industry (NAICS 561520). These organizations request that SBA exclude from the calculation of a tour operator's average annual receipts monies passed through to suppliers of travel components (*i.e.*, meals; ground, air, and rail transportation; lodging; and sightseeing and entertainment). These monies typically account for a majority of a tour operator's receipts.

Under SBA's Small Business Size Regulations (13 CFR 121.104), the receipts of a firm are based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts from the sale of goods and services. The petitioners, however, believe that receipts collected for payment to the actual transportation and lodging providers that are reimbursed by a tour operator should not be included in the calculation of average annual receipts for purposes of determining the size of a tour operator.

SBA has evaluated this issue and agrees that certain types of receipts should be excluded from the calculation of size for firms in this industry. Related to this issue is whether the current size standard is appropriate if a significant proportion of receipts is excluded from a firm's gross receipts. Based on a review of industry data discussed below, SBA believes the current size standard is appropriate if size is measured on an adjusted basis rather than by gross receipts.

Accordingly, SBA proposes a revision to the size standard for the Tour Operators industry by excluding funds received in trust for unaffiliated third parties while retaining the size standard of $6 million in average annual receipts.

Calculation of Average Annual Receipts

SBA reviews requests to exclude receipts of certain business activities on a case-by-case basis. The structure of this review is consistent with past proposed rules on this issue (*e.g.*, freight forwarders, 65 FR 48601, dated August 9, 2000, and conference management planners, 60 FR 57982, dated January 31, 1996). These reviews identify and evaluate five industry characteristics under which it might be appropriate to exclude certain funds received and later transmitted to an unaffiliated third party as follows:

1. A broker or agent-like relationship exists between a firm and a third party provider which is a dominant or crucial activity of firms in the industry;
2. The pass-through funds associated with the broker or agent-like relationship are a significant proportion of the firm's total receipts;
3. Consistent with the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee;
4. Firms in this industry do not normally consider billings that are reimbursed to other firms as their own income, preferring instead to count only receipts that are retained for their own use; and,
5. Federal Government agencies which engage in the collection of statistics and other industry analysts typically represent receipts of the industry's firms on an adjusted receipts basis.

SBA's review of information obtained on the Tour Operators industry finds that these characteristics exist in the industry. The prevalence of these characteristics supports the proposal to exclude funds received in trust for unaffiliated third parties from the calculation of a tour operator's receipts for size standard purposes. The following discussion summarizes these findings:

1. Agent-Like Relationship

The North American Industry Classification System Manual (1997) states that this industry encompasses establishments primarily engaged in arranging and assembling tours. The tours are sold through travel agencies or tour operators. These firms act as agents, ensuring that transportation, accommodation and facility providers, and lecturers (for whom the funds are collected) are paid. Therefore, the dominant activity in this industry involves a broker or agent-like relationship with the tour operator passing through funds from customers to providers.

2. Pass-Through Funds Are a Significant Proportion of Total Receipts

It is a normal practice in this industry for the client's bill to include charges of the various providers of services and facilities which are temporarily held in trust by the tour operator for remittance to the third party providers. The charges by the other providers are incorporated in the bill to the customer or client. Moreover, these remitted funds are typically much larger in size than the tour operator's own earnings for arranging the tour. Estimates of these pass-through funds range from 80 percent to 95 percent of total revenues received by tour operators.

3. Remaining Income Is Derived From a Standard Commission or Fee

The tour operator earns income as the balance after compensating service providers. This arrangement effectively involves a commission or fee for putting together the tour.

4. Firms in This Industry Only Count Receipts Retained for Their Own Use

Firms in this industry do not consider funds collected for third parties as their own funds. As discussed above, the role of tour operator is to set up the tour, linking customers with the necessary services for a successful tour including facilitating the bill, fees, and services associated with transportation, accommodation, food servicing, and guide information that are paid on behalf of the customer. Furthermore, some states, such as California, place restrictions on a tour operator's use of funds collected and owed to providers. This information indicates that charges for a tour are mostly not those of the tour operator.

5. Federal Agencies and Industry Analysts Typically Represent Receipts of These Firms on an Adjusted Receipts Basis

Data from the U.S. Bureau of the Census (Census Bureau) addressing how to count receipts in this industry show firm receipts as the ''DIFFERENCE between the selling price of their tours and the amount paid to suppliers' (see Census Form SV–7305). This adjusted receipts basis is equivalent to reporting receipts on a commission or fee basis. Thus, the Census Bureau recognizes that the normal arrangement in this industry is to handle money for others, retaining a fraction on an adjusted receipts basis equivalent to a commission or fee. Similarly, the credit reporting firm of Dun and Bradstreet also reports receipts for firms in this industry by using adjusted income, not gross billings.

Based on these findings, SBA believes that it is appropriate to exclude amounts collected on behalf of third parties when calculating receipts of businesses in the Tour Operators industry, as SBA presently does for real estate agencies, travel agencies, freight forwarders, conference management planners, and advertising agencies. More specifically, any charges for transportation, food servicing, lodging and other direct fees associated with tours for which the tour operator holds money in trust for an unaffiliated third party, and to which the tour operator does not have a claim of right, would be excluded from gross receipts. Only the difference between the selling price of the tour and the amount paid the suppliers would be attributable to the tour operator. All other sources of income, such as selling merchandise, must also be included in the calculation of a tour operator's receipts.

Size Standard for the Tour Operators Industry

The changed definition of receipts would effectively increase the current $6.0 million size standard. A firm with receipts exclusive of pass-throughs to third parties of $6.0 million would be equivalent to a firm with gross billings of $30 million (assuming 80 percent of billings were paid to third parties). Accordingly, SBA believes it is necessary to review the size standard along with its proposal to allow exclusions for pass-through funds. The following discussion describes SBA's size standards methodology and the evaluation of data on the Tour Operators industry, as well as other industries for comparison purposes.

Size Standards Methodology

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 with an anchor size standard.

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 average characteristics of the comparison group, a size standard higher or, in rare cases, a size standard 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 specific 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—average firm size, distribution of firms by size, start-up costs, and industry concentration. The analysis also often examines a fifth factor—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 is 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 adoption of 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 receipts are generated by firms smaller than a particular size firm. For example, for tour operators, 50 percent of total industry receipts are generated by firms of $4.4 million in adjusted receipts and less. This contrasts with the comparison group (composed of industries having a $6 million size standard) in which firms of $5.8 million or less in receipts on average generated 50 percent of total industry receipts. Viewed in isolation, this somewhat (but not significantly) lower figure for tour operators suggests that a nonmanufacturer anchor size standard of $6.0 million may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent and 70 percent, as well as the 50 percent 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 in other industries, the SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, 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 the average receipts of an establishment (a business entity operating at a single location) to arrive at nonpayroll costs per establishment. An industry with a significantly higher level of nonpayroll costs per establishment than that of the average 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 the same, or somewhat lower nonpayroll costs per establishment when compared to the comparison group of anchor size standard industries, 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 rule, the 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 of 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 higher than the anchor size standard to assist firms in a broader size range to 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 percent 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 question. 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 is 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 loans in its financial assistance programs is sometimes 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

Industry Structure Considerations: The two tables below show the characteristics for the Tour Operators industry and for the comparison group. (The data for the Tour Operators Industry is based on Census data using adjusted receipts in which pass-through receipts are excluded.) The comparison group is comprised of all industries with a $6 million receipts-based size standards (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the tour operators size standard should be higher than the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. The data on this comparison group provide an additional perspective on the size of firms in related industries and their industry structure. SBA examined economic data on these industries from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the Census, SBA internal loan data bases, and Federal contract award data for fiscal years 1999–2000 from the Federal Procurement Data Center.

Table 1 below examines the size distribution of firms. For this factor, SBA is evaluating the size of firm that accounts for predetermined percentages of total industry receipts (40 percent, 50 percent, 60 percent and 70 percent). (The size of firm in the Tour Operators Industry using Census data derived for the SBA, is based on adjusted receipts in which pass-through revenues are excluded.) The table shows firms up to a specific size that, along with smaller firms, accounts for a specific percentage of total industry receipts. For example, tour operators of $2.7 million or less in receipts obtained 40 percent of total industry receipts. This contrasts with the nonmanufacturing anchor group in which firms of $3.2 million or less in receipts obtained 40 percent of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS IN THE TOUR OPERATORS INDUSTRY AND THE NONMANUFACTURING ANCHOR GROUP

[Data in millions of dollars]

Category	Size of firm at 40 percent	Size of firm at 50 percent	Size of firm at 60 percent	Size of firm at 70 percent
Tour Operators	$2.7	$4.4	$8.2	$17.2
Nonmanufacturing Anchor Group	$3.2	$5.8	$11.8	$28.0

These data indicate that $6.0 million (exclusive of pass-through receipts) is an appropriate size standard for the industry of tour operators. At a given coverage level, using pass-through excluded receipts for tour operators, the size of firm for the Tour Operators industry is moderately lower than the comparison group. Generally, the tour operator's figures are about 75 percent to 85 percent of the averages for the nonmanufacturer anchor group of industries. These relatively small differences between the characteristics of the Tour Operators industry and nonmanufacturer anchor group are not sufficient, however, to warrant a size standard lower than $6 million.

Table 2 lists three other evaluation factors for the Tour Operators industry and the comparison group. These include comparisons of average firm size, start-up costs (as measured by nonpayroll receipts per establishment), and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF THE TOUR OPERATORS INDUSTRY AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size		Non-payroll receipts per establishment (million)	Four-firm concentration ratio
	Receipts (millions)	Employees		
Tour Operators	$0.86	12.0	$0.49	7.2%
Nonmanufacturing Anchor Group	$0.95	10.6	$0.56	14.4%

For tour operators, average firm size in receipts (exclusion of pass through receipts) is only slightly lower than the nonmanufacturing anchor group while its average firm size in employees is slightly higher. These differences with the comparison group are insignificant and support a size standard at the nonmanufacturer anchor level of $6.0 million. Its nonpayroll receipts per establishment indicator is only slightly smaller than the comparison group while its four-firm concentration ratio is low, indicating that the industry is not dominated by large businesses, similar to the general pattern of the nonmanufacturing anchor group. The latter two factors support the other factors in indicating that the nonmanufacturer anchor size standard is appropriate for tour operators. Overall, all of the industry factors reviewed support an anchor size standard of $6 million.

SBA Program Considerations: SBA also reviews its size standards from the relationship with its programs. Tour operators have received SBA financial assistance in two programs. Under SBA's 7(a) loan program, tour operators obtained 18 loans for $3 million in fiscal year (FY) 1999, 25 loans for $4.3 million in FY 2000, and 17 loans for $1.3 million in FY 2001. All but three of these loans were to Tour Operators with fewer than 20 employees, a size that SBA estimates is less than $1 million in receipts using adjusted receipts as a measure. As a result of the terrorist attacks of September 11, 95 tour operators obtained Economic Injury Disaster Assistance loans (EIDL) amounting to $8.6 million. SBA declined, however, 11 EIDL applications from tour operators due to their exceeding the current size standard based on average annual receipts, but without the exclusion for pass-through revenues proposed in this rule. In the case of Federal procurements to tour operators, there were no Federal procurements in either FY 1999 or FY 2000. Given the low incidence of lending activity in these two programs and the absence of Federal procurement for tour services, no special consideration beyond the industry analysis is needed on the tour operators size standard.

Overview: Based on a review of the evaluation factors, SBA is proposing a $6 million adjusted receipts size standard. All of the five industry evaluation factors support a size standard at the size of the nonmanufacturing anchor size standard.

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. The SBA considers as part of its evaluation of a size standard whether a business concern at or below a 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.

SBA has determined that no firm at or below this size standard for the Tour Operators industry would be of a sufficient size to dominate its field of operation. The largest firm at the size standard level generates less than 0.2 percent of total industry receipts. This level of market share effectively precludes any ability for a firm at or below the size standard from exerting a controlling effect on this industry.

Alternative Size Standards: SBA considered as an alternative size standard the $3 million size standard presently proposed for the related Travel Agencies industry (see 67 FR 11881, date March 15, 2002). That size standard uses adjusted receipts to measure the size of a travel agency. As discussed above, all evaluation factors pointed to a size standard at the nonmanufacturer anchor size standard

of $6 million. SBA's policy is to adopt a size standard below $6 million for a nonmanufacturing industry in rare cases and only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry specific considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review. In comparison to a travel agency, tour operators generate most of their receipts from packaging tours, which have significantly higher receipts per transaction than ticketing travel accommodations by travel agencies. Tour packages for clients quite often are made for 40 to 60 individuals and involve a combination of travel, lodging, entertainment and other tourist activities. Thus, SBA considers a $3 million size standard too low for the Tour Operators industry.

The SBA welcomes public comments on its size standard for the Tour Operators industry. Comments on alternatives, including the option of retaining the size standard at $6 million measured in gross receipts as discussed above, should present the reasons that would make them preferable to the size standard.

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

The Office of Management and Budget (OMB) has determined that this proposed 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. For the purpose 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 required of SBA. For purposes of Executive Order 13132, 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, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

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 supplementary information to this proposed rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a change in the way receipts are measured for businesses in the Tour Operators industry is needed to better reflect their size and activities.

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 Federal small business assistance programs. Under this rule, 238 additional firms generating 21 percent of sales in the industry will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses, as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use SBA size standards for a variety of regulatory and program purposes. However, discussions with industry representatives identified no other uses of SBA' tour operators size standard. If such a case exists where SBA's size standard is not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status. Although there may be some procurements that are awarded tour operators, SBA's research for the last two completed fiscal years was unable to find any Federal contracting activity in this industry.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that three loans totaling approximately $0.6 million in new Federal loan guarantees would be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher ''real'' size standard) of the $2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs from FY 1999 to FY 2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

The newly defined small businesses would also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected from future disasters. However, for the terrorist attacks of September 11, SBA has declined 11 applicants based on size. Many of these companies would likely qualify if pass-through receipts were excluded from a firm's measure of size in this industry. In addition, out of the newly eligible tour operators, eight more loans would likely be approved. Based on an analysis of September 11 EIDL assistance, this rule may result in $1.4 million to $2.7 million in additional loans.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. However, the last two

fiscal years have seen no Federal contracting in the Tour Operators industry and there will be no procurement gains from a higher size standard in this industry for Federal agencies if this pattern continues.

To the extent that up to 238 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs since administrative mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. However, any analysis of costs is dependent on contracting in this industry and the last two fiscal years have had no federal contracting in this industry. SBA is assuming that this trend will continue and there will be no contracting activity in this industry in the near future.

SBA believes that there will be no distributional effects among large and small businesses, nor will there be any equity or uncertainty considerations as a result of this rule. With a small amount of lending to tour operators discussed above, it is unlikely that they would be denied SBA financial assistance due to a larger pool of eligible small businesses. Also, there is little or no Federal contracting in this industry to affect current businesses.

The revision to the current size standard for tour operators is consistent with SBA's statutory mandate to assist small business. 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 to develop their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities engaged in the Tour Operators industry. As described in the Regulatory Impact Analysis, this rule may impact small entities seeking SBA (7a) Guaranteed Loans or Economic Impact Disaster Loans, but it is unlikely to affect SBA's procurement preference programs because of the absence of Federal contracting. Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that three additional loans totaling approximately $0.7 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher ''real'' size standard) of the $3.7 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs in FY 1999 and FY 2000. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

The size standard may also affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, however, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. However, discussions with a major tour operators association indicated that there are no Federal laws or regulations using SBA's size standards for defining small tour operators. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs. (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this rule on the Tour Operators industry addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, recordkeeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

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

The revision to the size standard for tour operators to exclude third party reimbursements more accurately measures the magnitude of operations of a tour operator. SBA developed five criteria to assess whether businesses in an industry should be allowed to exclude funds held in trust for third parties. SBA found that tour operators act as agents for their clients by arranging travel and related activities provided by third parties. Well over a majority of a tour operator's receipts collected from clients are provided to third party providers. Therefore, a size standard allowing for the exclusion of third party reimbursements is a better measure of a tour operator's size than gross receipts.

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

Within the Tour Operators industry, 2,722 businesses out of 3,222 (84.5 percent) are currently defined as small. Only a small proportion of businesses in this industry utilizes SBA programs, almost exclusively in the area of financial assistance. For FY 1999 and 2000, only 43 loans totaling $7.2 million were made under SBA's 7(a) Program. As a result of the terrorist attacks of September 11, SBA made 95 Economic Injury Disaster Loans totaling $8.6 million.

SBA estimates 238 additional tour operators would be considered small as a result of this rule based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate $600 million in this industry out of a total of $2.8 billion in annual receipts. The small business

coverage in this industry would increase by 21 percent of total industry receipts and by 7.2 percent of the total number of tour operators.

(3) What Are the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, recordkeeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards. Furthermore, in discussions with a major tour operators association, it was not aware of any Federal laws or regulations using SBA's size standards for defining small tour operators.

(5) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

SBA considered two alternatives to the proposed rule. First, as discussed in the preamble, SBA considered as an alternative the $3 million size standard proposed for the Travel Agencies industry that SBA also measures on an adjusted receipts basis. However, an analysis of all of the size standards evaluation factors pointed to a size standard at the anchor size standard of $6 million. This analysis takes into consideration the characteristics of all tour operators and provides SBA with a range of sizes that identify the smaller segment of businesses in the industry. In light of the meager amount of financial assistance to currently defined small tour operators, a size standard higher than $3 million will not limit access to credit through SBA's financial programs for those tour operators.

Second, SBA considered retaining gross receipts to measure the size of a tour operator and adjusting the size standard to a higher level. While possible, SBA believed this action would harm small businesses. Under SBA's size regulations (13 CFR 121.104), gross receipts are taken from the Federal tax returns reported to the Internal Revenue Service (IRS). Many tour operators report gross receipts to the IRS. However, some report only commissions and fees. For this industry, two tour operators with the same amount of gross receipts could be treated differently for small business status due solely to how they report receipts on their Federal tax returns. To avoid this inequity, allowing exclusions for third party reimbursements will treat all tour operators in the same manner regardless of how they file their Federal tax returns.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to this proposed rule.

List of Subjects in 13 CFR Part 121

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

For the reasons set forth in the preamble, part 121 of title 13 of the Code of Federal Regulations is proposed to be amended as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 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, in the table under ''Small Business Size Standards by NAICS Industry,'' under the heading Subsector 561—Administrative and Support Services, revise the entry 561520 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

NAICS codes	NAICS industry descriptions	Size standards in number of employees or million of dollars
*	* * * * * *	
	Subsector 561—Administrative and Support Services	
*	* * * * * *	
561520	Tour Operators	[10] $6
*	* * * * * *	

* * * * *

3. In § 121.201, in the table under ''Small Business Size Standards by NAICS Industry,'' footnote 10 is revised to read as follows:

10. NAICS codes 488510 (part), 531210, 541810, 561510, 561520, 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 revenues.

Hector V. Barreto,

Administrator.

[FR Doc. 02–24919 Filed 10–1–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–13438; Notice No. 02–15]

RIN 2120–AH40

Trim Systems and Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning trim systems. For trim systems, the minimum design standard would be established. The FAA proposes to amend the airworthiness standards for transport category airplanes concerning protective breathing equipment (PBE). For PBE, the proposed standard would define design and installation requirements for portable and stationary protective breathing equipment. Adopting these proposals would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before December 2, 2002.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13438 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. ____.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov.*

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Frey, FAA, Systems and Equipment Branch, ANM–130S, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2673; facsimile 425–227–1320, e-mail *kenneth.frey@faa.gov,* or

Kathi Ishimaru, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2674; facsimile 425–227–1320, e-mail *kathi.ishimaru@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office's (GPO) electronic bulletin board service (telephone: 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's web page at *http://faa.gov/avr/arm/index.cfm* or the *GPO's* web page at *http://www.gpo.gov/su_docs/aces/aces140.html.*

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, ''Notice of Proposed Rulemaking Distribution System,'' which describes the application procedure.

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type