

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)

The Office of Management and Budget (OMB) has determined that this 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, however, 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. 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. Our Regulatory Impact Analysis follows.

### Regulatory Impact Analysis

#### 1. Is There a Need for the Regulatory Action?

The 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, the 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 proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry as well as the criteria used to determine whether to use adjusted receipts. Based on that analysis, the 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.

#### 2. 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 the SBA’s financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), 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 the SBA size standards for a variety of regulatory and program purposes. However, discussions with industry representatives identified no other uses of the SBA’s tour operators size standard. If such a case exists where the 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 121.902).

The benefits of a size standard change 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 to tour operators, the SBA’s research was unable to find any Federal contracting awards reported during the last 3 fiscal years.

Newly defined small businesses could benefit from the SBA’s 7(a) Guarantee Loan Program. The SBA estimates that three additional 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 fiscal years 1999 to 2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for the 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 the SBA’s 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, 2001, the 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, six more loans would likely be approved. Based on an analysis of the September 11, 2001, EIDL assistance, this rule may result in \$607,000 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, no Federal contracting has been reported for fiscal years 1999–2001 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 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 three fiscal years have had no Federal contracting in this industry. The SBA is assuming that this trend will continue and there will be no contracting activity in this industry in the near future.

The SBA believes that there will be no distributional effects among large and small businesses, nor will there be any equity or uncertainty considerations as