

a result of this rule. With the 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 have an effect on another business.

The revision to the current size standard for tour operators is consistent with the SBA's statutory mandate to assist small business. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator'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 the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop 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 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 EIDL loans, but it is unlikely to affect SBA's procurement preference programs because of the absence of Federal contracting in this industry. Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that three additional loans totaling approximately \$0.6 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 \$2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs in fiscal years 1999–2001. 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 size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the 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 indicate 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 a final regulatory flexibility analysis (RFA) of this rule on the Tour Operators industry addressing the reasons and objectives of the rule; the 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 the SBA that minimize the impact on small businesses.

(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. The SBA has developed five criteria to assess whether businesses in an industry should be allowed to exclude funds held in trust for third parties. These five criteria were discussed in detail in the October 2, 2002, proposed rule. Tour Operators met the test for each criterion. The SBA found that tour operators consistently 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 considered a better measure of a tour operator's size than gross receipts.

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

All of the commentators suggested that the SBA should extend the application period for its EIDL program for 60 days after this size standard is revised. The SBA is considering this suggestion. However, this decision is not related to this rule which focuses on the measure of size and the appropriate size standard for the Tour Operators industry. All of the commentators also recommended that the SBA clarify that "trust receipts" do not require the creation of a formal legal trust. However, there is no reference in the SBA's regulations requiring a formal legal trust, and the SBA follows the law of agency in determining whether receipts are excluded. Thus, the current provision does not require that excludable funds be passed through a legal trust.

(3) 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) have been defined as small using unadjusted annual receipts. The 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 7.4 percent of the total number of tour operators. Only a small proportion of these newly eligible businesses are likely to utilize SBA programs, however, almost exclusively in the area of financial assistance. For fiscal years 1999–2001, only 63 loans totaling \$8.7 million were made under SBA's 7(a) program. As a result of the terrorist attacks of September 11, 2001, the SBA made 121 EIDL loans totaling \$12.3 million.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping, or Other Compliance Requirements on Small Business?

A new size standard does not impose any additional reporting, record keeping