

SMALL BUSINESS ADMINISTRATION**13 CFR Part 121**

RIN 3245-AE81

Small Business Size Standards; Surety Bond Guarantee Program**AGENCY:** Small Business Administration.**ACTION:** Interim final rule with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending the size eligibility criteria for its Surety Bond Guarantee (SBG) Program for construction (general or special trades) or service concerns performing contracts in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. This rule amends the SBG size standard for some concerns by requiring them to meet either the size standard for the primary industry in which it, together with its affiliates, is engaged, or the current \$6 million standard for the SBG Program, whichever is higher. The amended size standard applies only to construction and service concerns seeking SBA-guaranteed surety bonds for contracts or subcontracts, public or private, that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 will be responsible for determining eligibility in compliance with this regulation. SBA surety bond personnel will be responsible for determining eligibility in compliance with this regulation for those surety guarantees that require SBA's prior approval. SBA prepared this rule as an interim final rule because its immediate implementation will make available needed SBG Program assistance to otherwise eligible small businesses and facilitate reconstruction and recovery of the Gulf Coast and Florida.

DATES: *Effective Date:* This regulation becomes effective on November 14, 2005.

Comment Period: Comments must be received by SBA on or before December 14, 2005.

ADDRESSES: You may submit comments identified by RIN 3245-AE81 through one of the following methods: (1) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments; (2) Fax: (202) 205-6390; or (3) Mail/Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:**SBA's Surety Bond Guarantee Program and Current Size Standards**

SBA, through its Surety Bond Guarantee (SBG) Program, can guarantee bid, performance and payment bonds for contracts up to \$2 million for small contractors who otherwise cannot obtain surety bonds without SBA's guarantee. SBA's guarantee gives sureties an incentive to provide bonding for eligible contractors, and thereby strengthens a contractor's ability to obtain bonding and provides greater access to contracting opportunities. A contractor applying for an SBA bond guarantee must qualify as a small business concern, in addition to meeting the surety company's bonding qualifications. Generally, under SBA's current Small Business Size Regulations, businesses in construction and service industries can qualify as small for the SBG Program if their average annual receipts, including those of their affiliates, for the last three fiscal years do not exceed \$6 million (13 CFR 121.301(d)(1) and 13 CFR 121.104(c)). For all other types of business concerns, the concern must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged (*see* 13 CFR 121.201 and § 121.301(d)(2)).

What This Interim Final Rule Accomplishes

This interim final rule amends the size standard applicable to a construction or service concern seeking an SBA-guaranteed surety bond by requiring the concern to meet either the size standard for the industry in which it, combined with its affiliates, is primarily engaged, or the \$6 million standard, whichever is higher. The amended size standard applies only to businesses with contracts that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

The small business size standards for industries in North American Industry Classification System (NAICS) Sector 23, Construction, are the following: (1) \$28.5 million in average annual receipts for building, heavy, and civil engineering construction; (2) \$17 million in average annual receipts for dredging; and (3) \$12 million in average annual receipts for special trade contractors. Also, the existing small business size standards for service industries range from \$3 million to \$30 million in average annual receipts,

depending on the industry. This rule would expand the pool of businesses eligible for the SBG Program to include those that are currently excluded because they exceed the \$6 million SBG size standard but are considered small under existing size standards for other purposes, such as the examples in this paragraph.

The amended size standards under this interim final rule are applicable until SBA determines that it is no longer necessary to expand the availability of SBG Program assistance for reconstruction and recovery of the Presidentially-declared disaster areas resulting from Hurricanes Katrina, Rita, and Wilma. This interim final rule is a specific response to those natural disasters. SBA is soliciting comments on how long the amended size standards under this interim final rule should apply to construction and service concerns performing contracts or subcontracts in the specified disaster areas. In particular, SBA is soliciting public comments on factors that would indicate that the amended size standards are no longer necessary and the appropriate Agency action after SBA determines that the amended size standards have served the intended purpose.

SBA continues to believe that its current size standards for other small business assistance programs appropriately define small business concerns. As described above, the amended size standard for the SBG Program is being applied to a limited number of business concerns performing construction or certain service contracts in limited geographical areas—the Presidentially-declared disaster areas. This interim rule does not change the size standards applicable to other small business programs, including size standards for Federal contracting. Therefore, this interim final rule will have no effect on existing Federal contracts, the pool of small businesses competing for Federal contracts, or the ability of Federal agencies to attain their small business contracting goals.

SBA has designed this rule so it will not adversely affect any small businesses. Under this rule, a construction or service concern must meet either the size standard for its primary industry (when combined with its affiliates) or the current SBA \$6 million standard, whichever is higher. This guarantees that concerns in service industries with size standards below \$6 million retain their eligibility for the SBG Program. Most service industries have a \$6 million size standard, although some are higher, as stated

above. There are a small number of other service industries, however, such as NAICS 541330, Engineering Services, with size standards below \$6 million. Concerns operating in industries with size standards below \$6 million could suffer adverse affects if the rule required them only to meet the size standard for their primary industries, lower than the size standard they now must meet for the SBG Program. That would be contrary to the rule's intent and SBA's mission and goals. Under this rule, those concerns operating in industries with size standards below \$6 million remain eligible so long as their average annual receipts do not exceed the current SBG \$6 million standard.

Under the Small Business Act, 15 U.S.C. 633(d) (Act), SBA has a statutory obligation to act in the public interest by establishing small business size standards to determine eligibility as a small business concern for Federal assistance. Pursuant to the Act, SBA has determined that immediate implementation of this rule is in the public interest and delaying its application would be impracticable. Failure to adopt this rule could work to the detriment of many small businesses.

Compliance With This Regulation

Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 will be responsible for determining eligibility in compliance with this regulation. They must determine that the construction or service contracts will be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma and sufficiently document that bonded contracts meet this eligibility requirement (A list of parishes and counties declared disaster areas by the President as a result of the hurricanes is located at: http://www.sba.gov/disaster_recov/katrinafactsheets.html.) They must also determine that the concern seeking this SBA-guaranteed bonding assistance meets the applicable size standard for its primary industry (when combined with its affiliates), or has average annual receipts that do not exceed \$6 million, whichever size standard is higher. SBA surety bond personnel will be responsible for determining eligibility in compliance with this regulation for those surety guarantees that require SBA's prior approval and document their findings accordingly. Small businesses seeking such SBA assistance do not need to be located in the disaster areas, provided they perform the contracts in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes

Katrina, Rita, or Wilma. This rule enables these small businesses all over the country to assist other businesses and individuals that need their services.

Reasons for Limiting the Application of This Amended SBG Size Standard to Only Contracts and Subcontracts Performed in Certain Areas

In the wake of Hurricanes Katrina, Rita, and Wilma, public and private entities will spend significant amounts on recovery efforts for many years. Much of this work will be for construction and services. The Federal Government is committed to facilitating small business participation in the reconstruction and recovery efforts in the Gulf Coast region and Florida.

SBA recognizes that some construction or service contracts and subcontracts may be performed outside the Presidentially-declared disaster areas that are connected (by varying degrees) to reconstruction and recovery activities in the Gulf Coast and Florida. However, SBA limited the application of this amended SBG size standard to only contracts and subcontracts performed in Presidentially-declared disaster areas because the limit is an objective standard that sureties and SBA can apply in a consistent and fair manner. Furthermore, those contracts and subcontracts will have a direct impact on communities in the Gulf Coast and Florida because the reconstruction activities will restore the infrastructure and the service activities will serve residents of affected areas. SBA believes that amending the SBG Program's \$6 million size standard for construction and service concerns seeking SBA-guarantees will expand procurement opportunities for small businesses in the construction and service industries, including local small businesses within the Presidentially-declared disaster areas, while facilitating the reconstruction of the affected areas and serving victims of Hurricanes Katrina, Rita, and Wilma.

Reasons for Using the Size Standard for the Primary Industry of the Construction or Service Concern as an Alternate Size Standard for the SBG Program

This interim final rule makes the size eligibility criteria for the SBG Program more consistent with other SBA financial assistance programs. Both SBA's 7(a) Business Loan Program and its Disaster Assistance EIDL Program determine size eligibility based on the primary industry in which the applicant, together with its affiliates, is engaged. Many small businesses affected by Hurricanes Katrina, Rita, or

Wilma are seeking and will be seeking assistance through SBA's programs and obtaining Federal and non-Federal contracts. Applying similar size eligibility criteria to the SBG Program will complement the assistance these other SBA programs and Federal contracting provide.

The SBA's current Small Business Size Regulations do permit, under certain circumstances, a small construction or service contractor with annual receipts greater than \$6 million to qualify as eligible for its SBG Program. This occurs only when a construction or service concern meets the size standard for the NAICS code that best describes the principal purpose of the procurement (*see* 13 CFR 121.402(a)) and when it is the prime contractor for the Federal procurement. Section 121.305 provides "A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement." However, this provision only applies when the concern is a prime contractor with the Federal Government. A surety bond running to another obligee, other than the Federal Government, such as a private owner, another contractor, a not-for-profit entity, or non-Federal political subdivision, is not eligible for SBA's guarantee under existing regulations unless the contractor meets the SBG \$6 million size standard.

However, most SBA-guaranteed surety bonds are for contractors who are not prime contractors with the Federal Government. Applying the industry size standards to non-Federal contracts enables small construction and service concerns above \$6 million in size to be equally as competitive for Federal contracts as non-Federal contracts. To limit access to the SGB Program to only concerns with average annual receipts that do not exceed \$6 million, or to consider a size standard different from the industry size standards, would likely limit small business opportunities at a time when potential assistance is most needed.

Justification for Publication as an Interim Final Rule

In general, SBA publishes a proposed rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations. (5 U.S.C. 553 and 13 CFR 101.108). The APA provides an exception to the standard rulemaking process, however, when 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 those conditions, an agency may publish an interim final rule without first soliciting public comment.

In the good cause exception to standard rulemaking procedures, Congress recognized that emergencies (such as the need for disaster assistance) might arise when an agency must issue a rule without prior public participation. On August 29, 2005, the President declared major disaster areas in Louisiana, Mississippi, and Alabama in the aftermath of Hurricane Katrina. The President also declared major disaster areas in Louisiana and Texas after Hurricane Rita destroyed more of the Gulf Coast region and in Florida after Hurricane Wilma. These natural disasters have affected U.S. businesses in the declared disaster areas and across the Nation. Implementing this rule immediately will support the economic recovery of the Gulf Coast region and Florida and is in the best interest of the public. Construction and service concerns affected by the disaster will be more able to assist in the rebuilding and clean-up efforts, and in delivering much needed services to disaster victims. This rule will also assist small construction and service concerns not affected by the disaster to provide disaster assistance in their industries.

The Federal Government and other public and private entities are, and will be, contracting for clean-up activities, substantial reconstruction and other services in the disaster areas. However, some small construction and service concerns that had been able to obtain standard surety bonding before the disasters may now need SBA's guarantee because of their deteriorating financial conditions. This rule will permit more businesses to qualify for SBA-guaranteed surety bonds and perform contracts to help rebuild and revitalize the Gulf Coast region and Florida. Strong small business participation, in turn, will promote economic recovery in the area. In the public interest, this interim final rule would increase the number of small business participants in these efforts.

Accordingly, SBA finds good cause to publish this rule as an interim final rule because of the urgent need to speed delivery of disaster assistance to the affected area. Furthermore, advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest because it would delay delivery of critical assistance to these businesses by at least

four to six months. Such delay could have serious adverse effects on small businesses and the public in the disaster area. Immediate access to SBA-guaranteed surety bonds can help protect some small businesses that might otherwise have to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Although SBA is publishing this rule as an interim final rule, the Agency requests interested parties to submit their comments to the amended size standard. In particular, SBA welcomes comments on how long the amended size standards under this interim final rule should apply to construction and service concerns performing contracts or subcontracts in the specified disaster areas, factors SBA should consider before determining that the size standards are no longer necessary, and the appropriate Agency action after SBA makes that determination. SBA must receive the comments on or before December 14, 2005. SBA may then consider these comments in making any necessary revisions to these regulations.

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 become effective on the same day it is published in the **Federal Register**.

The purpose of the APA provision delaying the effective date of a rule for 30 days after publication is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In this case, however, the 30-day delay is unnecessary because this interim final rule would not require businesses, sureties, or SBA to make significant changes to their current procedures when applying for, issuing, or guaranteeing surety bonds. Sureties and SBA would begin applying the new size eligibility criteria to businesses upon publication of this interim final rule. Furthermore, SBA does not expect to receive any comments from those stakeholders in the SBG Program or others opposing the immediate effective date of this interim final rule. SBA included a proposal similar to this interim final rule in a proposed rule published on March 19, 2004 (69 FR 13129), and the Agency did not receive any comments opposing it. Moreover, SBA believes, based on its discussions

with interested members of the public and the need to quickly assist hurricane victims, that there is a strong interest in immediate implementation of this rule. SBA is aware of many entities that will be assisted by the immediate adoption of this rule, many of those are small businesses directly affected by the natural disasters.

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

The Office of Management and Budget (OMB) has determined that this rule is a "significant regulatory action" under section 3(f) under Executive Order 12866. A general discussion of the need for this regulatory action and its potential costs and benefits follows.

1. Is There a Need for the Regulatory Action?

SBA's statutory mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist the 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)) (Act) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences, as necessary.

As discussed in the above supplemental information section, this interim final rule is needed to expand eligibility for SBA's SBG Program to construction and service contractors participating in the reconstruction and recovery efforts of the Gulf Coast and Florida. The amended size standard for the SBG Program only applies to contracts that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. This action will assist construction and service concerns located in the disaster areas and across the Nation by providing access to the SBG Program and expanding procurement opportunities for them. Disaster victims will also benefit as small businesses help to rebuild their communities.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

At this time, SBA cannot estimate the number or value of contracts, Federal or non-Federal, that small construction and service concerns will undertake to rebuild the Gulf Coast and Florida

following Hurricanes Katrina, Rita, or Wilma. SBA cannot estimate the number or value of contracts that will require surety bonds or the number or value of surety bonds that SBA will guarantee. Nor can it estimate the number of small businesses affected and not affected by the natural disasters that will participate in the SBG Program after the publication of this rule. SBA does believe, however, that expanding eligibility for its SBG Program will provide the disaster victims with significant and timely benefits when and where the greatest needs exist. For example, disaster-affected small business concerns can receive SBG Program assistance to restart their businesses. Other small business concerns may qualify to contract for more and larger surety bonds with SBA's guarantee.

SBA expects that this rule will lead to an increase in the number of SBA-guaranteed bonds. Although SBA does not anticipate loss rates changing significantly after this interim final rule becomes effective, the Government may incur additional costs to honor its guarantee on a greater volume of (but stable percentage of) defaulted bonds. SBA must honor its guarantees to the sureties on defaulted bonds for the percentage of loss that it guaranteed. Guaranteed amounts vary as follows: (1) Under the PSB Program, 70 percent (this does not change); (2) under the prior approval program, contracts valued at \$100,000 or less, or on behalf of a concern owned by a socially and economically disadvantaged individual, 90 percent; and (3) for contracts in excess of \$100,000 there is a gradually decreasing percentage, but the percentage does not fall below 80 percent (13 CFR 115.31). For fiscal years 2003, 2004 and 2005, SBA's loss rates were 1.8 percent, 1.3 percent and 1.6 percent, respectively. SBA expects these rates to remain stable even though the volume of SBA-guaranteed surety bonds is expected to increase.

Among businesses seeking SBA's assistance through the SBG Program, there could be additional costs for professional time required to complete applications for the surety and the SBA guarantee. Businesses also incur costs through payment of fees to participate in the SBG Program. Contractors pay a fee of \$6 per \$1,000 of the contract value, which the surety companies remit to SBA. (13 CFR 115.32). Although there have been no protests of a SBG Program participant's small business status in the last five years, at least, businesses could also incur legal costs associated with defending themselves against size protests.

Businesses may also incur legal costs associated with compliance.

Both surety companies and SBA could incur additional administrative costs as a result of processing the increased volume of surety bond applications and applications for the SBA-guarantee. There may be additional administrative costs for PSB surety bond companies because they must document the contractors' eligibility for the SBA-guaranteed surety bond under the amended size standard. SBA anticipates, however, that these additional administrative costs will be minimal because surety companies and SBA already perform these administrative functions in the ordinary course of business.

SBA anticipates little or no adverse effects on currently defined small businesses from the increase in the number of newly eligible small businesses. Potentially, a newly defined small business could obtain a contract that a currently defined small business may have received. SBA expects those cases to be few in number because the decision to award a contract is based on many considerations. This rule enhances the environment for small construction and service concerns to compete for opportunities and strengthens their competitiveness related to contracts performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

SBA has determined that this rule does not impose any new information collection requirements from SBA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35.

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 an initial regulatory flexibility analysis (IRFA) addressing the reasons for promulgating the rule; the objectives of this rule; SBA's descriptions and estimate of the number of small entities

to which the rule will apply; a description of potential benefits of the rule; 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 considered by SBA.

(1) What Is the Reason for This Action?

As discussed in the above supplemental information section, this rule provides immediate eligibility to construction and service contractors for SBA's SBG Program under the same small business size standards that apply to all other SBG applicants. However, SBA will only guarantee surety bonds for contracts to eligible small construction or service concerns that will be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 will be responsible for determining eligibility in compliance with this regulation. SBA surety bond personnel will be responsible for determining eligibility in compliance with this regulation for those surety guarantees that require SBA's prior approval.

(2) What Are the Objectives and Legal Basis for the Rule?

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA authority to establish and change size standards. SBA is using that discretionary authority to provide SBG Program assistance to those who need it and to those who can help with recovery and reconstruction.

SBA intends to provide immediate SBG Program assistance to construction and service contractors in the areas affected by Hurricanes Katrina, Rita, or Wilma. SBA intends also to provide SBG Program assistance to construction and service contractors not directly affected by the hurricanes, if their contracts or subcontracts are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

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

This rule applies to all construction (general and special trades) and service concerns that meet the amended size standard and perform contracts that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. SBA is issuing this interim final rule without

estimating the number of small entities affected by this interim final rule in the interest of assisting disaster victims and providing immediate opportunities for small businesses to participate in the recovery efforts. The scope of this amended size standard is limited to contracts performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. It is likely that most construction and service concerns that will benefit from this rule will also be located in the Gulf Coast states and Florida. SBA welcomes comments describing the types and number of small entities that this rule will affect.

(4) Description of Potential Benefits of the Rule

The most significant benefits of this rule will flow to small businesses and victims of Hurricanes Katrina, Rita, or Wilma in the Gulf Coast region of the United States and Florida. Many small construction and service contractors were not eligible for SBG assistance before this rule because their annual receipts exceeded \$6 million. Under this interim final rule, they are eligible if they (together with their affiliates) meet the small business size standards for their primary industries or the current SBG \$6 million standard, whichever is higher. Small construction and service contractors not directly affected by the hurricanes, but that can provide assistance, are similarly eligible now if they (together with their affiliates) meet the small business size standards for their primary industries or the current SBG \$6 million standard, whichever is higher. In the end, hurricane victims will benefit the most.

SBA cannot estimate of the number or value of contracts, whether Federal or non-Federal, that they will receive. Nor can we estimate the number of small businesses affected and not affected by the disaster that will benefit. SBA does believe, however, that the increase in eligibility for its SBG Program will provide the disaster victims with significant and timely benefits. Disaster-affected small business concerns can receive SBG Program assistance to restart their businesses. Other small business concerns may qualify for more and larger contracts and surety bonds with SBA's guarantee.

This rule does not affect other than small businesses. However, entities that are not small businesses, such as not-for-profit entities, cities, towns, and other political subdivisions, can be beneficiaries of the reconstruction and services that small businesses will provide.

This rule will not provide assistance under SBA's 7(a) Guaranteed Loan Program, or any other program. This rule does not amend or otherwise modify the small business size standard for any other SBA programs, including its 7(a) Guaranteed Loan and Disaster Assistance EIDL Programs. However, it will enable businesses to obtain SBA-guaranteed surety bonding that may work hand-in-hand with SBA's Business Loan and EIDL Programs, for those that apply for and receive financial assistance under one or both of them.

(5) Will This Rule Impose Any Additional Reporting or Recordkeeping Requirements on Small Businesses?

This rule does not impose any new information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35. 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 because small business size standards neither regulate nor control business behavior.

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

This rule affects only SBA's SBG Program. This rule does not overlap with other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, 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, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with this rule.

This regulation will not impact other Federal programs that use its size standards. When a Federal agency believes that an SBA-established size standard is not appropriate for its programs, the Small Business Act and SBA's regulations allows that agency to develop different size standards, subject to the approval of the SBA Administrator. (13 CFR 121.902). For a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(7) What Alternatives Did SBA Consider?

One alternative to this rule would be to leave the SBG Program size standard unchanged. However, given the immediacy and anticipated extent of the need at hand, SBA believes this would not be in the best interests of disaster victims.

Another alternative is to issue a proposed rule. However, as stated above, that process could conceivably take at least four to six months before any final action would occur. This too, could be harmful to small businesses who may be forced to cease operations before the final rule could be published. Also, delayed reconstruction efforts would not be in the best interests of disaster victims. This interim final rule will provide immediate assistance where needed and at the same time provide opportunity for interested parties to comment on the rule.

List of Subjects in 13 CFR Part 121

Government procurement—business, Loan programs—business, Disaster assistance loans, Reporting and recordkeeping requirements, Small business.

■ For reasons set forth in the preamble, amend part 121 of title 13 Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105-135, sec. 401 *et seq.*, 111 Stat. 2592.

■ 2. Amend § 121.301 by revising paragraph (d)(1) and adding paragraph (d)(3) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(d) * * *

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts do not exceed \$6.0 million, except as provided in § 121.301(d)(3).

(2) * * *

(3) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma, the construction (general or special trade) concern or concern performing a contract for services is small if it meets the size standard for the primary industry in

which it, together with its affiliates, is engaged, or if it meets the size standard set forth in paragraph (d)(1), whichever is higher.

* * * * *

Dated: November 8, 2005.

Hector V. Barreto,
Administrator.

[FR Doc. 05-22570 Filed 11-10-05; 8:45 am]

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 301 and 304

[Docket No.: 0507-29210-5294-03]

RIN 0610-AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule; delay of effective date of certain provisions.

SUMMARY: On August 11, 2005, the Economic Development Administration (“EDA”) published an interim final rule in the **Federal Register**. On September 30, 2005, EDA published a final rule in the **Federal Register** delaying the effective date of certain provisions of the interim final rule from October 1, 2005 until November 14, 2005. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. This final rule further delays the effective date of certain provisions of the interim final rule from November 14, 2005 until January 31, 2006. This delay in effective date is necessary to provide additional time for EDA to consider comments received concerning certain provisions of the interim final rule, as well for EDA to address matters pertaining to the effective implementation of the interim final rule. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in the interim final rule.

DATES: The effective date of the following provisions of the interim final rule is delayed from November 14, 2005 until January 31, 2006: (i) Section 304.2(c)(2), pertaining to membership of a District Organization’s governing body; and (ii) Section 301.4, as the provisions of this section relate to

Investment Rates for EDA Planning Investments.

FOR FURTHER INFORMATION CONTACT:

Hina Shaikh, Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-4687.

SUPPLEMENTARY INFORMATION: EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA’s authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (“PWEDA”), by the Economic Development Reauthorization Act of 2004 (Pub. L. 108-373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA’s current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA’s former regulations. The interim final rule also provides for a public comment period.

On September 30, 2005, EDA published a final rule in the **Federal Register** (70 FR 57124) delaying the effective date of certain provisions in the interim final rule from October 1, 2005 until November 14, 2005. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. All other provisions of the interim final rule became effective on October 1, 2005.

This final rule delays the effective date of the provisions specified in the **DATES** section pertaining to EDA’s Planning Investment Rates and District Organizations from November 14, 2005 until January 31, 2006. This delay in effective date is necessary to provide additional time for EDA to consider comments received concerning certain provisions of the interim final rule, as well for EDA to address matters pertaining to the effective implementation of the interim final rule.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore,

a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this final rule is not significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not “major” under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” It has been determined that this final rule does not contain policies that have federalism implications.

Dated: November 7, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM335; Special Conditions No. 25-307-SC]

Special Conditions: Cessna Model 650 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of electronic flight display systems manufactured by Universal