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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245-AF41

Small Business Size Standards, Inflation Adjustment to Size Standards; Business Loan Program; Disaster Assistance Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: SBA is adjusting its monetary-based size standards (e.g., receipts, net income, net worth, and financial assets), for the effect of inflation that has occurred since the last inflation adjustment in February 2002. Since the last inflation adjustment, the general level of prices has increased 8.7%. This action would restore small business eligibility to businesses that have lost that status due to inflation. In addition, this rule changes the process for determining the size of small business concerns applying for SBA Business Loans and Economic Injury Disaster Loans (EIDL) from a test considering only the primary industry of the applicant, to a two-part test considering both the primary industry of the applicant and the primary industry of the applicant with affiliates. This rule also changes the date on which SBA determines size status for purpose of EIDL applications for businesses located in disaster areas declared as a result of Hurricanes Katrina, Rita, and Wilma.

DATES: *Effective Date:* December 6, 2005.

Applicability Dates: For purposes of Federal procurements, this rule applies to solicitations, except for noncompetitive section 8(a) contracts, issued on or after January 5, 2006. For purposes of noncompetitive section 8(a) contracting actions, the new size standards are applicable to offers of

requirements that are accepted by SBA on or after January 5, 2006.

Comment Period: Comments must be received by SBA on or before January 5, 2006.

ADDRESSES: You may submit comments identified by RIN 3245-AF41 by any 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 or Diane Heal, Office of Size Standards, at (202) 205-6618 or at sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

Inflationary Adjustment

SBA is adjusting certain monetary-based size standards (e.g., receipts, net income, net worth, and financial assets) for the effect of inflation that has occurred since the last inflation adjustment that was effectuated on February 22, 2002 (67 FR 3041, January 23, 2002). From the third quarter of 2001 (the ending period for the last inflation adjustment) to the second quarter of 2005, the general level of prices in the United States increased approximately 8.7 percent as measured by the chain-type price index for Gross Domestic Product (GDP). The purpose of this action is to maintain the value of size standards in inflation-adjusted terms and to restore eligibility to businesses that may have lost their small business status due solely to price level increases rather than from increased business activity.

While inflationary adjustments are not made on a fixed schedule, prior adjustments occurred in 2002, 1994 (59 FR 16513, April 7, 1994), 1984 (49 FR 5024, February 9, 1984) and 1975 (40 FR 32824 as corrected by 40 FR 36310, August 5, 1975). This interim final rule also satisfies 13 CFR 121.102(c) requiring SBA to assess the impact of inflation on its monetary-based size standards at least once every five years. This provision provides assurances to the public that SBA is monitoring inflation and is making a decision whether or not to adjust size standards

within a reasonable period of time since its last inflation adjustment.

In this rule, SBA is modifying its size standards after three-and-one-half years in recognition that enough inflation has occurred to allow for an increase to SBA's "anchor" size standard of \$6 million by a half-million dollar increment. SBA believes that this level of adjustment to its anchor size standard, while small, is nonetheless a meaningful increase which affects the small business eligibility of a relatively significant number of businesses. This rule also increases higher monetary size standards by \$1 million to \$2.5 million, depending on the current size standard. For example, the \$21 million size standard for Computer Systems Design Services increases to \$23 million since an 8.7 percent increase to that level of the size standard supports a \$2 million increase (as explained in next section). As discussed in the regulatory flexibility analysis, SBA estimates that approximately 12,000 businesses would regain small business status as a result of this rule.

Inflation has no impact on industry size standards based on number of employees, refining capacity, or electric generation. Thus, this rule makes no adjustment to these non-monetary size standards. Any change to a non-monetary size standard will be as a result of a specific review of industry characteristics.

How Does SBA Adjust Size Standards for Inflation?

The methodology for adjusting the size standards for inflation is as follows:

1. *Selection of inflation measure:* SBA used the chain-type price index for GDP as published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), which is a broad measure of inflation for the economy as a whole, and is available on a quarterly basis.

2. *Selection of a base period:* SBA selected the third quarter of 2001 as the base period since this was the ending period of the last broad-based inflation adjustment in 2002. The chain-type price index for GDP stood at 102.690 at that time.

3. *Selection of an end period:* We selected the second quarter of 2005 as the end period for this inflation adjustment since it is the latest available quarterly data published by the BEA.

The chain type price index for GDP stood at 111.612 at that time.

4. *Calculation of inflation:* Based on these price indexes, inflation increased 8.7% between the base and ending periods $((111.612/102.690) - 1.00) \times 100 = 8.7\%$.

5. *Application of the inflation adjustment to the monetary-based size standards:* The current size standards were multiplied by 1.087 and rounded to the closest \$0.5 million.

Special Situations Regarding Inflation Adjustment

Small Business Investment Company (SBIC) Program

Certain monetary-based size standards are not changed in this rule. The size standards for agricultural industries and for “smaller enterprises” under the SBIC Program are set by statute and, therefore, cannot be changed through rulemaking. SBA has elected not to change the alternate net worth and net income size standard for the Small Business Investment Companies (SBIC) Program. In 1994, the average net worth

and net income criteria were increased threefold. Therefore, the current size standards remain in place for the SBIC Program and no further increase is deemed necessary at this time.

Size Standards Adjusted Since 2002

SBA has changed several receipts-based size standards since the last inflation adjustment in 2002. SBA is applying the full inflation adjustment of 8.7 percent to those receipts-based size standards as well. When SBA establishes or revises a size standard, it does so in relation to other existing size standards to ensure that industries with similar characteristics have similar size standards. To provide a smaller adjustment, while technically precise, would be inconsistent with the size standards decision-making process.

Size Standards of \$2 Million or Less

At the time of the 2002 adjustment, prices had not increased by an amount sufficient to support increasing size standards of \$2 million or less. The cumulative effects of inflation from the

2002 adjustment of 15.8 percent and the current adjustment of 8.7 percent is sufficient to increase those size standards by a half-million dollar increment. Therefore, this interim final rule increases size standards of \$2 million or less by \$0.5 million. Affected industries include real-estate agents and cattle feedlots.

Program-Based Size Standards

Most SBA programs apply size standards established for industries defined by the North American Industry Classification System (NAICS). This rule lists the size standard for each NAICS industry with a monetary-based size standard (except for the \$750,000 statutorily established agricultural size standard). SBA has also established size standard(s) on a program basis rather than an industry basis, which are adjusted in the same manner as the industry-based size standards (except for the SBIC program as discussed above). The following table lists the program-based size standards and the changes adopted by this rule.

Program	CFR citation	Size standard		
		Current size standard (in millions)	Measurement	New size standard (in millions)
504 Program	13 CFR 121.301(b)	\$7.0	Net Worth	\$7.5
		\$2.5	Net Income	*\$2.5 (retained)
Surety Bond Guarantee Assistance	13 CFR 121.301(d)	\$6.0	Average Annual Receipts	\$6.5
Sales of Government Property Other Than Manufacturing (which uses employee-based size standards).	13 CFR 121.502	\$6.0	Average Annual Receipts	\$6.5
Stockpile Purchases	13 CFR 121.512	\$48.5	Average Annual Receipts	\$51.5

* The \$2.5 million size standard is not being adjusted at this time since the inflation rate supports a change significantly less than \$0.5 million.

Determining Size Eligibility for SBA Business Loans and Economic Injury Disaster Loans

In 2004, SBA adopted a policy to determine size eligibility for its Business Loan and EIDL programs based on the primary industry of the applicant (69 FR 29192, May 21, 2004). Prior to that time, SBA utilized a two-step process that determined size eligibility for these programs based on the primary industry of the applicant and the primary industry of the applicant including its affiliates. SBA subsequently concluded that the two-step process was not only unnecessary but also the wording was unclear, causing confusion in its proper application (67 FR 70342, November 22, 2002). Since the implementation of the 2004 provision, SBA has come to the realization that a two-step size eligibility process is necessary to ensure

that its financial loan programs equitably assist small businesses that have affiliates. Several loans that would have been approved under the previous two-step process have been denied under the existing regulation. However, SBA believes that those businesses should have been considered eligible for its small business financial assistance programs because the size of the applicant’s affiliates are within the size standard for the industries in which they operate. Therefore, SBA is establishing a new two-step size eligibility provision for its financial assistance programs.

The provision contained in this rule is very similar to SBA’s previous regulation, but with additional language explaining how to determine size eligibility. The first step is to determine the primary industry and size of the applicant alone (i.e., without affiliates). If the applicant’s size exceeds the

applicable size standard, it is deemed ineligible. If the applicant’s size does not exceed the applicable size standard, and has affiliates, the second step is triggered. The second step of the analysis is to determine the primary industry and size of the applicant including its affiliates. The applicant is eligible if the combined size of the applicant and its affiliates does not exceed either the size standard for the applicant’s primary industry or the size standard for the primary industry of the applicant and its affiliates, whichever is higher.

The selection of the higher of the two size standards under the two-part test avoids a number of problems that existed when SBA only considered the size standard for the primary industry of the applicant (as it had done before 2004). For example, two businesses operating in the same group of industries with a different distribution

of receipts or employees could result in a larger business qualifying for SBA assistance while a smaller business is denied. Under this rule's two-step process, the applicant must be small within its primary industry, but will not be found ineligible in cases where the size standard for the primary industry of the applicant and its affiliates is lower than the size standard of the applicant's primary industry.

In some cases, the primary industry of the applicant alone and the primary industry of the applicant combined with its affiliates may have size standards based on a different measure of size. For example, a retail store applicant whose primary industry including its affiliates is wholesale trade will have the primary industry of a retail store based on average annual receipts while the primary industry of the applicant with affiliates is wholesale trade which is based on number of employees. In applying the two-step process, the size of the applicant combined with its affiliates must be compared against the same measure of size (receipts or employment) for the applicable size standard. Thus, in this scenario, if a retail store applicant (with a size standard based on receipts) whose primary industry including its affiliates is wholesale trade (with a size standard based on employees) is eligible under the receipts-based size standard, but ineligible under the employee-based

size standard, the size standard which gives the benefit of the doubt to the applicant should be used.

The above criteria for determining size eligibility for SBA's financial assistance programs depend on designating the primary industry of the applicant with and without affiliates. SBA's regulations at 13 CFR 121.107 provide the following guidance in making this designation:

In determining the primary industry (kind of work) in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

Under this guidance, a determination must first be made of the kind of work a business performs and which among those activities represents the largest activity. Consideration of the percentage distribution of receipts and other factors among the various business activities may be relied upon in identifying the business's main activity. The industry this activity falls into is based on the industry definitions established by the NAICS. These definitions are listed in the NAICS United States, 2002 manual and may also be found in the U.S. Bureau of the Census Web site at <http://www.census.gov/epcd/naics02/>.

For example, a business generating 70 percent of receipts from selling carpets and vinyl tiles to the general public and 30 percent of receipts from window treatments is primarily a floor covering retail store since that represents both a majority of its work and is its largest single business activity. NAICS classifies this activity under the industry of "Floor Covering Stores", NAICS code 442210. SBA's size standard for this industry is \$6.5 million in average annual receipts.

The determination of primary industry for applicants with affiliates involves a more detailed analysis, but is essentially the same process as above. For the applicant and each affiliate, identify the types of business activities performed and the level of revenues, employees or other appropriate factors. The business activity that accounts for the largest single activity represents the primary industry of the applicant and its affiliates. The examination of receipts should be the first consideration in determining primary industry. In some cases, however, receipts may not provide a clear picture, and it will be necessary to examine number of employees (emphasis should be placed on full-time employees) or other factors. In every case, the decision should be reasonable and justified.

For example, there is an applicant that has two affiliates engaged in five business activities as follows:

Business activity	NAICS code	Size		Company
		Sales	Employees	
Carpet sales	442210	\$1,000,000	10	Applicant.
Wall covering sales	442291	400,000	4	Applicant.
Blind manufacturing	337920	10,000,000	25	Affiliate 1.
Draperies manufacturing	314121	500,000	5	Affiliate 1.
Interior design	541410	500,000	8	Affiliate 2.

The total size of the business is 52 employees and \$12.4 million in sales. Blind manufacturing represents its largest activity, measured in terms of either sales or employees, and therefore, is the primary industry of the applicant and its affiliates. With a total of 52 employees, the applicant and its affiliates do not exceed the 500 employee size standard for NAICS 337920, Blind and Shade Manufacturing.

Justification for Determining the Size Status of Businesses Affected by the Hurricanes on the Date SBA Accepts EIDL Applications From Those Businesses

SBA is also changing the date as of which size status is determined for

purposes of Economic Injury Disaster Loan (EIDL) applications submitted by businesses located in disaster areas declared as a result of Hurricanes Katrina, Rita, and Wilma. Existing regulations at 13 CFR 123.300(b) require an applicant for an EIDL loan to be small as of the date the disaster commenced, as set forth in the disaster declaration. SBA is changing the date on which SBA determines size status of those businesses to "the date SBA accepts the application for processing."

This amendment would provide immediate access to SBA's EIDL program to those businesses that would have been ineligible prior to Hurricanes Katrina, Rita, and Wilma based solely as a result of inflation that has occurred since the SBA last adjusted its

monetary-based size standards in 2002. Thousands of small businesses suffered substantial economic injury as a direct result of the hurricanes. EIDLs would provide funds to eligible small businesses to meet their ordinary and necessary operating expenses that they are unable to meet as a direct result of Hurricanes Katrina, Rita, or Wilma. This amendment to the date as of which businesses in the declared disaster areas are deemed small for purposes of the EIDL program would support the continuing operation of small businesses in the Gulf Coast region and in Florida, create jobs, and facilitate economic recovery of those communities.

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 this standard rulemaking process, however, in situations where an agency finds good cause to adopt a rule without prior public participation. (See 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 applying the good cause exception to standard rulemaking procedures, Congress recognized that emergencies (such as a response to a natural disaster) might arise justifying issuance of 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 made the same declarations with respect to Louisiana and Texas as Hurricane Rita destroyed even more of the Gulf Coast region. On October 24, 2005, the President issued a disaster declaration pertaining to the areas in the state of Florida struck by Hurricane Wilma. These natural disasters have affected U.S. businesses in the declared disaster areas and across the Nation. Some of the affected businesses qualify as "small" under SBA size standards and are eligible for SBA assistance. However, some of the affected businesses have lost eligibility solely as a result of the inflation that has occurred since the SBA last adjusted its monetary-based size standards in 2002. This rule is necessary to make available SBA assistance to those businesses. In particular, this rule would make the EIDL program available to those businesses located in the disaster areas declared as a result of Hurricanes Katrina, Rita, and Wilma. Any delay in the adoption of these inflationary adjustments could cause serious harm to these businesses. In addition, small businesses would benefit from the changes to SBA's method of determining size eligibility for SBA's Business Loan and EIDL programs because it would expand availability of SBA assistance. Immediate implementation of this rule would facilitate economic recovery of the Gulf Coast region and is therefore in the best interest of the public.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule because of the urgent need to make disaster loans and other SBA assistance available to businesses that should be considered small, but no longer qualify under SBA's existing size standards due to inflation. Furthermore, advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of four to six months. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

SBA's rationale for preparing this action as an interim final rule is consistent with the Agency's statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act, 15 U.S.C. 633(d). It is also consistent with 13 CFR 123.1, under which SBA reserves the right to amend the Disaster Loan Program regulations without advance notice in response to disasters. Pursuant to those authorities, SBA has determined that it is in the public interest to give immediate effect to this rule. The failure to adopt this rule could work to the detriment of many small businesses.

Although this rule is being published as an interim final rule, comments are hereby being solicited from interested parties. These comments must be received on or before January 5, 2006. 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 effective 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 or SBA to make significant changes to their current procedures for applying for SBA assistance, or determining the status of businesses seeking SBA assistance,

including Business Loans or EIDLs. SBA would begin applying the new size standards to businesses and the two-part size eligibility test upon publication of this interim final rule. For purposes of Federal procurements, however, the applicability dates are delayed for 30 days after the date of publication in this rule as described in the Dates section of the preamble for this rule. SBA believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule. This action is in the public interest and does not tend to adversely affect any interested parties. SBA expects little if any adverse comments on the inflation-adjusted size standards. Past inflation adjustments by SBA have received widespread support.

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 constitutes a "significant regulatory action" under Executive Order 12866. A general discussion of the need for this regulatory action and its potential costs and benefits follows.

Regulatory Impact Analysis

i. 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 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. The supplementary information to this interim final rule explains the approach SBA follows when adjusting size standards for inflation. Based on the rise in the general level of prices, SBA believes that an inflation adjustment to size standards is needed to better reflect small businesses in industries with monetary-based size standards.

ii. What are the potential benefits and costs of this regulatory action?

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 standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that 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.

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, approximately 11,600 additional firms generating 0.6 percent of sales in the adjusted industries will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs, economic injury disaster loans, Federal procurement preference programs for small businesses (including 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, and Federal contracts 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.

SBA estimates that up to \$400 million in Federal contracts could be awarded to firms becoming newly-designated as small businesses under this rule. In fiscal year 2004, small businesses obtained \$39.2 billion out of \$170.5 billion in Federal contracts in industries with a monetary-based size standard. This estimate assumes that about half of the newly-defined small businesses participate in Federal contracting and they could obtain the same proportion of their industry share (one-half of 0.6 percent) of the remaining large business awards ($(\$170.5 \text{ billion} - \$39.2 \text{ billion} - \$131.3 \text{ billion}) \times 0.003 = \0.393 billion).

SBA views the additional amount of projected contract activity as the potential amount of transfer from non-small to newly-designated small firms. This does not represent the creation of new contracting activity by the Federal government, merely a possible transfer or reallocation to different sized firms.

Under the SBA's 7(a) Guaranteed Loan Program, SBA estimates that approximately \$86.5 million in new Federal loan guarantees could be made

to these newly-defined small businesses. In fiscal year 2004, small businesses received \$12.5 billion in loan guarantees under the 7(a) loan program in industries with a monetary-based size standard. Most of the newly-defined small businesses have 50 or more employees. SBA guaranteed 2,404 loans worth \$1.1 billion to small businesses with 50 or more employees. Based on an analysis of the Advocacy-Census Bureau data, only about 1.6 percent of businesses within the size range of the newly-defined small businesses participate in the 7(a) program. Assuming this level of participation, 186 additional loans could be guaranteed to the 11,600 newly defined businesses ($11,600 \times 0.016 = 186$). The value of these loans is estimated by applying the average size loan to small businesses with 50 or more employees of \$465,000 to the number of additional loans ($\$465,000 \times 186 = \$86,490$).

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 for future disasters.

To the extent that up to 11,600 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 Central Contractor Registration's Dynamic Small Business Search database. 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. SBA believes, however, that there will be only minor distributional effects among large and small businesses relating to Federal procurement.

The increase in the number of newly eligible small businesses is not enough to significantly affect current small businesses. Moreover, with a small amount of estimated lending to the newly defined small businesses as discussed above, it is unlikely that

currently-defined small businesses would be denied SBA financial assistance due to a larger pool of eligible small businesses. These additional loan guarantees totaling \$86.5 million or less will have virtually no impact on the overall availability of loans for SBA's financial assistance programs, which guaranteed about 88,000 loans totaling more than \$17 billion in fiscal year 2004.

The revision to the current monetary-based size standard 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 where appropriate, including periodic inflation adjustments, 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.

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 section 3 of that Order.

This regulation would 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 under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

Under the Regulatory Flexibility Act (RFA), an inflation adjustment to monetary-based size standards as a result of this rule may have a significant economic impact on a substantial number of small entities. SBA does not expect that the implementation of a two-step process to determine small business eligibility for its financial assistance program will have a significant economic impact of a

substantial number of small businesses. As discussed in the Regulatory Impact Analysis, the vast majority of 7(a) loans are made to small businesses well below the size standard, and they usually do not have complicated organizational structures. However, the provision is important to equitably evaluate the small business status of some applicants that do have affiliates that operate in various industries. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of the inflation adjustment to size standards addressing the reasons for promulgating the rule and its objectives of the rule; SBA's descriptions and estimate of the number of small entities to which the rule will apply; the projected reporting recordkeeping 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 supplemental information, the purpose of this rule is to restore the small business eligibility of businesses that have grown above the size standard due to inflation rather than due to increased business activity. A review of the latest inflation indexes indicates that inflation has increased a sufficient amount to warrant an increase to the current monetary-based size standards.

(2) What are the objectives and legal basis for the rule?

The revision to the monetary-based size standards for inflation more appropriately defines the size of businesses. This rule merely restores small business eligibility in real terms. Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least every five years (13 CFR 121.102(c)) and make any changes as appropriate.

(3) What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that there will be approximately 11,600 newly designated small businesses, distributed as follows by NAICS Sector:

Sector	Name of sector	Number of firms
11	Agriculture	59
21	Mining	672
23	Construction	285
44-45	Retail Trade	2,159

Sector	Name of sector	Number of firms
48-49	Transportation	211
51	Information	89
52	Finance and Insurance	520
53	Real Estate	1,846
54	Professional Services	2,674
56	Administration and Support	472
61	Educational Services	201
62	Health Care	1,171
71	Arts, Entertainment and Recreation	184
72	Accommodation and Food Services	420
81	Other Services	635
	Total	11,598

Source: U.S. Small Business Administration, Office of Advocacy, 2002 data provided by the Statistics of U.S. Business Division of the U.S. Census Bureau.

The percentage increase in the number of small businesses that will result from this rule, compared to the existing base of small businesses, is estimated to be about two-tenths of one percent. The special tabulation for the SBA's Office of Advocacy obtained from the Bureau of the Census reports 5,043,335 firms in the industries with monetary-based size standards. Within these industries, 96.0 percent of businesses are currently defined as small under the existing size standards. Under this rule, that percentage will increase to 96.2%. The percentage increase of annual sales attributed to these newly defined small businesses is likely to approximate 0.6 percent. Currently-defined small businesses under monetary-based size standards generate 25.7 percent of sales. Under this rule, the percentage of sales attributable to small businesses will increase to 26.4%.

(4) What are the potential benefits of the rule?

The most significant benefit to small businesses obtaining small business status is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small business, 8(a) firms, small disadvantaged businesses, and small businesses located in historically underutilized business zones (HUBZone).

(5) Will this rule impose any additional reporting or recordkeeping requirements on small businesses?

This rule does not impose any new information collection requirements

from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. A new size standard does not impose any additional reporting, record keeping 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.

(6) What are the relevant Federal rules which may duplicate, overlap or conflict with this rule?

This rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under § 3(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, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where a 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.

(7) What alternatives did SBA consider?

SBA considered two alternatives to this rule. First, SBA considered waiting until price levels increased by a greater amount before proposing an adjustment to its receipt-based size standards. Previous inflation adjustments ranged between 16 percent and 100 percent, whereas this increase is 8.7 percent. However, SBA now believes that more frequent adjustments are necessary since smaller amounts of inflation can change the eligibility of significant number of businesses.

Second, SBA considered waiting until its review of issues that were raised in the Agency's Advance Notice of Proposed Rulemaking of December 3, 2004 (69 FR 70197) was completed. Ultimately, SBA rejected this approach as it could not predict with precision

the time for completion of its full review, the degree of inflation that could occur while the review was underway, or the final disposition of the issues that were raised in the December 3, 2004 notice. SBA did not want to unnecessarily penalize firms during these deliberations.

List of Subjects

13 CFR Part 121

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

13 CFR Part 123

Disaster assistance, Loan programs—business, Small business.

■ For the reasons set forth in the preamble, amend parts 121 and 123 of title 13 Code of Federal Regulations 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. Amend § 121.201 by revising the size standards to the referenced NAICS Codes in the table “SIZE STANDARDS BY NAICS INDUSTRY” under sections 11, 21 through 23, 44–45, 48–49, 51 through 56, 61, 62, 71, 72 and 81 and footnotes 9 and 15 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 U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Sector 11—Agriculture, Forestry, Fishing and Hunting			
Subsector 112—Animal Production			
112112	Cattle Feedlots	\$2.00	
112310	Chicken Egg Production	\$11.5	
Subsector 113—Forestry and Logging			
113110	Timber Tract Operations	\$6.5	
113210	Forest Nurseries and Gathering of Forest Products	\$6.5	
Subsector 114—Fishing, Hunting and Trapping			
114111	Finfish Fishing	\$4.0	
114112	Shellfish Fishing	\$4.0	
114119	Other Marine Fishing	\$4.0	
114210	Hunting and Trapping	\$4.0	
Subsector 115—Support Activities for Agriculture and Forestry			
115111	Cotton Ginning	\$6.5	
115112	Soil Preparation, Planting, and Cultivating	\$6.5	
115113	Crop Harvesting, Primarily by Machine	\$6.5	
115114	Postharvest Crop Activities (except Cotton Ginning)	\$6.5	
115115	Farm Labor Contractors and Crew Leaders	\$6.5	
115116	Farm Management Services	\$6.5	
115210	Support Activities for Animal Production	\$6.5	
115310	Support Activities for Forestry	\$6.5	
Except,	Forest Fire Suppression ¹⁷	¹⁷ \$16.5	
Except,	Fuels Management Services ¹⁷	¹⁷ \$16.5	
Sector 21—Mining			
Subsector 212—Mining (except Oil and Gas)			
Subsector 213—Support Activities for Mining			

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
213112	Support Activities for Oil and Gas Operations	\$6.5	
213113	Support Activities for Coal Mining	\$6.5	
213114	Support Activities for Metal Mining	\$6.5	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	\$6.5	

Sector 22—Utilities

Subsector 221—Utilities

221310	Water Supply and Irrigation Systems	\$6.5	
221320	Sewage Treatment Facilities	\$6.5	
221330	Steam and Air-Conditioning Supply	\$11.5	

Sector 23—Construction

Subsector 236—Construction of Buildings

236115	New Single-Family Housing Construction (except Operative Builders)	\$31.0	
236116	New Multifamily Housing Construction (except Operative Builders)	\$31.0	
236117	New Housing Operative Builders	\$31.0	
236118	Residential Remodelers	\$31.0	
236210	Industrial Building Construction	\$31.0	
236220	Commercial and Institutional Building Construction	\$31.0	

Subsector 237—Heavy and Civil Engineering Construction

237110	Water and Sewer Line and Related Structures Construction	\$31.0	
237120	Oil and Gas Pipeline and Related Structures Construction	\$31.0	
237130	Power and Communication Line and Related Structures Construction	\$31.0	
237210	Land Subdivision	\$6.5	
237310	Highway, Street, and Bridge Construction	\$31.0	
237990	Other Heavy and Civil Engineering Construction	\$31.0	
<i>Except,</i>	Dredging and Surface Cleanup Activities ²	² \$18.5	

Subsector 238—Specialty Trade Contractors

238110	Poured Concrete Foundation and Structure Contractors	\$13.0	
238120	Structural Steel and Precast Concrete Contractors	\$13.0	
238130	Framing Contractors	\$13.0	
238140	Masonry Contractors	\$13.0	
238150	Glass and Glazing Contractors	\$13.0	
238160	Roofing Contractors	\$13.0	
238170	Siding Contractors	\$13.0	
238190	Other Foundation, Structure, and Building Exterior Contractors	\$13.0	
238210	Electrical Contractors	\$13.0	
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$13.0	
238290	Other Building Equipment Contractors	\$13.0	
238310	Drywall and Insulation Contractors	\$13.0	
238320	Painting and Wall Covering Contractors	\$13.0	
238330	Flooring Contractors	\$13.0	
238340	Tile and Terrazzo Contractors	\$13.0	
238350	Finish Carpentry Contractors	\$13.0	
238390	Other Building Finishing Contractors	\$13.0	
238910	Site Preparation Contractors	\$13.0	
238990	All Other Specialty Trade Contractors ¹³	¹³ \$13.0	
238990	Building and Property Specialty Trade Services ¹³	¹³ \$13.0	

Sectors 44–45—Retail Trade

(Not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

Subsector 441—Motor Vehicle and Parts Dealers

441110	New Car Dealers	\$26.5	
441120	Used Car Dealers	\$21.0	
441210	Recreational Vehicle Dealers	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
441221	Motorcycle Dealers	\$6.5	
441222	Boat Dealers	\$6.5	
441229	All Other Motor Vehicle Dealers	\$6.5	
<i>Except,</i>	Aircraft Dealers, Retail	\$9.0	
441310	Automotive Parts and Accessories Stores	\$6.5	
441320	Tire Dealers	\$6.5	
Subsector 442—Furniture and Home Furnishings Stores			
442110	Furniture Stores	\$6.5	
442210	Floor Covering Stores	\$6.5	
442291	Window Treatment Stores	\$6.5	
442299	All Other Home Furnishings Stores	\$6.5	
Subsector 443—Electronics and Appliance Stores			
443111	Household Appliance Stores	\$8.0	
443112	Radio, Television and Other Electronics Stores	\$8.0	
443120	Computer and Software Stores	\$8.0	
443130	Camera and Photographic Supplies Stores	\$6.5	
Subsector 444—Building Material and Garden Equipment and Supplies Dealers			
444110	Home Centers	\$6.5	
444120	Paint and Wallpaper Stores	\$6.5	
444130	Hardware Stores	\$6.5	
444190	Other Building Material Dealers	\$6.5	
444210	Outdoor Power Equipment Stores	\$6.5	
444220	Nursery and Garden Centers	\$6.5	
Subsector 445—Food and Beverage Stores			
445110	Supermarkets and Other Grocery (except Convenience) Stores	\$25.0	
445120	Convenience Stores	\$25.0	
445210	Meat Markets	\$6.5	
445220	Fish and Seafood Markets	\$6.5	
445230	Fruit and Vegetable Markets	\$6.5	
445291	Baked Goods Stores	\$6.5	
445292	Confectionery and Nut Stores	\$6.5	
445299	All Other Specialty Food Stores	\$6.5	
445310	Beer, Wine and Liquor Stores	\$6.5	
Subsector 446—Health and Personal Care Stores			
446110	Pharmacies and Drug Stores	\$6.5	
446120	Cosmetics, Beauty Supplies and Perfume Stores	\$6.5	
446130	Optical Goods Stores	\$6.5	
446191	Food (Health) Supplement Stores	\$6.5	
446199	All Other Health and Personal Care Stores	\$6.5	
Subsector 447—Gasoline Stations			
447110	Gasoline Stations with Convenience Stores	\$25.0	
447190	Other Gasoline Stations	\$8.0	
Subsector 448—Clothing and Clothing Accessories Stores			
448110	Men's Clothing Stores	\$8.0	
448120	Women's Clothing Stores	\$8.0	
448130	Children's and Infants' Clothing Stores	\$6.5	
448140	Family Clothing Stores	\$8.0	
448150	Clothing Accessories Stores	\$6.5	
448190	Other Clothing Stores	\$6.5	
448210	Shoe Stores	\$8.0	
448310	Jewelry Stores	\$6.5	
448320	Luggage and Leather Goods Stores	\$6.5	
Subsector 451—Sporting Good, Hobby, Book and Music Stores			
451110	Sporting Goods Stores	\$6.5	
451120	Hobby, Toy and Game Stores	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
451130	Sewing, Needlework and Piece Goods Stores	\$6.5	
451140	Musical Instrument and Supplies Stores	\$6.5	
451211	Book Stores	\$6.5	
451212	News Dealers and Newsstands	\$6.5	
451220	Prerecorded Tape, Compact Disc and Record Stores	\$6.5	
Subsector 452—General Merchandise Stores			
452111	Department Stores (except Discount Department Stores)	\$25.0	
452112	Discount Department Stores	\$25.0	
452910	Warehouse Clubs and Superstores	\$25.0	
452990	All Other General Merchandise Stores	\$10.5	
Subsector 453—Miscellaneous Store Retailers			
453110	Florists	\$6.5	
453210	Office Supplies and Stationery Stores	\$6.5	
453220	Gift, Novelty and Souvenir Stores	\$6.5	
453310	Used Merchandise Stores	\$6.5	
453910	Pet and Pet Supplies Stores	\$6.5	
453920	Art Dealers	\$6.5	
453930	Manufactured (Mobile) Home Dealers	\$12.0	
453991	Tobacco Stores	\$6.5	
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$6.5	
Subsector 454—Nonstore Retailers			
454111	Electronic Shopping	\$23.0	
454112	Electronic Auctions	\$23.0	
454113	Mail-Order Houses	\$23.0	
454210	Vending Machine Operators	\$6.5	
454311	Heating Oil Dealers	\$11.5	
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	\$6.5	
454319	Other Fuel Dealers	\$6.5	
454390	Other Direct Selling Establishments	\$6.5	
Sectors 48–49—Transportation			
Subsector 481—Air Transportation			
* 481211	* Nonscheduled Chartered Passenger Air Transportation	*	* 1,500
Except,	Offshore Marine Air Transportation Services	\$25.5	
* 481212	* Nonscheduled Chartered Freight Air Transportation	*	* 1,500
Except,	Offshore Marine Air Transportation Services	\$25.5	
* 481219	* Other Nonscheduled Air Transportation	\$6.5	*
Subsector 484—Truck Transportation			
484110	General Freight Trucking, Local	\$23.5	
484121	General Freight Trucking, Long-Distance, Truckload	\$23.5	
484122	General Freight Trucking, Long-Distance, Less Than Truckload	\$23.5	
484210	Used Household and Office Goods Moving	\$23.5	
484220	Specialized Freight (except Used Goods) Trucking, Local	\$23.5	
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	\$23.5	
Subsector 485—Transit and Ground Passenger Transportation			
485111	Mixed Mode Transit Systems	\$6.5	
485112	Commuter Rail Systems	\$6.5	
485113	Bus and Motor Vehicle Transit Systems	\$6.5	
485119	Other Urban Transit Systems	\$6.5	
485210	Interurban and Rural Bus Transportation	\$6.5	
485310	Taxi Service	\$6.5	
485320	Limousine Service	\$6.5	
485410	School and Employee Bus Transportation	\$6.5	
485510	Charter Bus Industry	\$6.5	
485991	Special Needs Transportation	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
485999	All Other Transit and Ground Passenger Transportation	\$6.5	
Subsector 486—Pipeline Transportation			
*	*	*	*
486210	Pipeline Transportation of Natural Gas	\$6.5	
*	*	*	*
486990	All Other Pipeline Transportation	\$31.5	
Subsector 487—Scenic and Sightseeing Transportation			
487110	Scenic and Sightseeing Transportation, Land	\$6.5	
487210	Scenic and Sightseeing Transportation, Water	\$6.5	
487990	Scenic and Sightseeing Transportation, Other	\$6.5	
Subsector 488—Support Activities for Transportation			
488111	Air Traffic Control	\$6.5	
488119	Other Airport Operations	\$6.5	
488190	Other Support Activities for Air Transportation	\$6.5	
488210	Support Activities for Rail Transportation	\$6.5	
488310	Port and Harbor Operations	\$23.5	
488320	Marine Cargo Handling	\$23.5	
488330	Navigational Services to Shipping	\$6.5	
488390	Other Support Activities for Water Transportation	\$6.5	
488410	Motor Vehicle Towing	\$6.5	
488490	Other Support Activities for Road Transportation	\$6.5	
488510	Freight Transportation Arrangement ¹⁰	\$6.5	
<i>Except,</i>	Non-Vessel Owning Common Carriers and Household Goods Forwarders	\$23.5	
488991	Packing and Crating	\$23.5	
488999	All Other Support Activities for Transportation	\$6.5	
Subsector 491—Postal Service			
491110	Postal Service	\$6.5	
Subsector 492—Couriers and Messengers			
*	*	*	*
492210	Local Messengers and Local Delivery	\$23.5	
Subsector 493—Warehousing and Storage			
493110	General Warehousing and Storage	\$23.5	
493120	Refrigerated Warehousing and Storage	\$23.5	
493130	Farm Product Warehousing and Storage	\$23.5	
493190	Other Warehousing and Storage	\$23.5	
Sector 51—Information			
Subsector 511—Publishing Industries (except Internet)			
*	*	*	*
511210	Software Publishers	\$23.0	
Subsector 512—Motion Picture and Sound Recording Industries			
512110	Motion Picture and Video Production	\$27.0	
512120	Motion Picture and Video Distribution	\$27.0	
512131	Motion Picture Theaters (except Drive-Ins)	\$6.5	
512132	Drive-In Motion Picture Theaters	\$6.5	
512191	Teleproduction and Other Postproduction Services	\$27.0	
512199	Other Motion Picture and Video Industries	\$6.5	
512210	Record Production	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
512240	Sound Recording Studios	\$6.5 .....	.....
512290	Other Sound Recording Industries	\$6.5 .....	.....
Subsector 515—Broadcasting (except Internet)			
515111	Radio Networks	\$6.5 .....	.....
515112	Radio Stations	\$6.5 .....	.....
515120	Television Broadcasting	\$13.0 .....	.....
515210	Cable and Other Subscription Programming	\$13.5 .....	.....
Subsector 517—Telecommunications			
517410	Satellite Telecommunications	\$13.5 .....	.....
517510	Cable and Other Program Distribution	\$13.5 .....	.....
517910	Other Telecommunications	\$13.5 .....	.....
Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services			
518111	Internet Service Providers	\$23.0 .....	.....
518112	Web Search Portals	\$6.5 .....	.....
518210	Data Processing, Hosting, and Related Services	\$23.0 .....	.....
Subsector 519—Other Information Services			
519110	News Syndicates	\$6.5 .....	.....
519120	Libraries and Archives	\$6.5 .....	.....
519190	All Other Information Services	\$6.5 .....	.....
Sector 52—Finance and Insurance			
Subsector 522—Credit Intermediation and Related Activities			
522110	Commercial Banking [§]	[§] \$165 million in assets .....	.....
522120	Savings Institutions [§]	[§] \$165 million in assets .....	.....
522130	Credit Unions [§]	[§] \$165 million in assets .....	.....
522190	Other Depository Credit Intermediation [§]	[§] \$165 million in assets .....	.....
522210	Credit Card Issuing [§]	[§] \$165 million in assets .....	.....
522220	Sales Financing	\$6.5 .....	.....
522291	Consumer Lending	\$6.5 .....	.....
522292	Real Estate Credit	\$6.5 .....	.....
522293	International Trade Financing [§]	[§] \$165 million in assets .....	.....
522294	Secondary Market Financing	\$6.5 .....	.....
522298	All Other Non-Depository Credit Intermediation	\$6.5 .....	.....
522310	Mortgage and Nonmortgage Loan Brokers	\$6.5 .....	.....
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	\$6.5 .....	.....
522390	Other Activities Related to Credit Intermediation	\$6.5 .....	.....
Subsector 523—Financial Investments and Related Activities			
523110	Investment Banking and Securities Dealing	\$6.5 .....	.....
523120	Securities Brokerage	\$6.5 .....	.....
523130	Commodity Contracts Dealing	\$6.5 .....	.....
523140	Commodity Contracts Brokerage	\$6.5 .....	.....
523210	Securities and Commodity Exchanges	\$6.5 .....	.....
523910	Miscellaneous Intermediation	\$6.5 .....	.....
523920	Portfolio Management	\$6.5 .....	.....
523930	Investment Advice	\$6.5 .....	.....

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
523991	Trust, Fiduciary and Custody Activities	\$6.5	.....
523999	Miscellaneous Financial Investment Activities	\$6.5	.....
Subsector 524—Insurance Carriers and Related Activities			
524113	Direct Life Insurance Carriers	\$6.5	.....
524114	Direct Health and Medical Insurance Carriers	\$6.5	.....
*	*	*	*
524127	Direct Title Insurance Carriers	\$6.5	.....
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	\$6.5	.....
524130	Reinsurance Carriers	\$6.5	.....
524210	Insurance Agencies and Brokerages	\$6.5	.....
524291	Claims Adjusting	\$6.5	.....
524292	Third Party Administration of Insurance and Pension Funds	\$6.5	.....
524298	All Other Insurance Related Activities	\$6.5	.....
Subsector 525—Funds, Trusts and Other Financial Vehicles			
525110	Pension Funds	\$6.5	.....
525120	Health and Welfare Funds	\$6.5	.....
525190	Other Insurance Funds	\$6.5	.....
525910	Open-End Investment Funds	\$6.5	.....
525920	Trusts, Estates, and Agency Accounts	\$6.5	.....
525930	Real Estate Investment Trusts	\$6.5	.....
525990	Other Financial Vehicles	\$6.5	.....
Sector 53—Real Estate and Rental and Leasing			
Subsector 531—Real Estate			
531110	Lessors of Residential Buildings and Dwellings	\$6.5	.....
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	\$6.5	.....
531130	Lessors of Miniwarehouses and Self Storage Units	\$23.5	.....
531190	Lessors of Other Real Estate Property	\$6.5	.....
<i>Except,</i>	Leasing of Building Space to Federal Government by Owners ⁹	⁹ \$19.0	.....
531210	Offices of Real Estate Agents and Brokers ¹⁰	¹⁰ \$2.0	.....
531311	Residential Property Managers	\$2.0	.....
531312	Nonresidential Property Managers	\$2.0	.....
531320	Offices of Real Estate Appraisers	\$2.0	.....
531390	Other Activities Related to Real Estate	\$2.0	.....
Subsector 532—Rental and Leasing Services			
532111	Passenger Car Rental	\$23.5	.....
532112	Passenger Car Leasing	\$23.5	.....
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	\$23.5	.....
532210	Consumer Electronics and Appliances Rental	\$6.5	.....
532220	Formal Wear and Costume Rental	\$6.5	.....
532230	Video Tape and Disc Rental	\$6.5	.....
532291	Home Health Equipment Rental	\$6.5	.....
532292	Recreational Goods Rental	\$6.5	.....
532299	All Other Consumer Goods Rental	\$6.5	.....
532310	General Rental Centers	\$6.5	.....
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	\$6.5	.....
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	\$6.5	.....
532420	Office Machinery and Equipment Rental and Leasing	\$23.0	.....
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$6.5	.....
Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)			
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	\$6.5	.....
Sector 54—Professional, Scientific and Technical Services			
Subsector 541—Professional, Scientific and Technical Services			
541110	Offices of Lawyers	\$6.5	.....
541191	Title Abstract and Settlement Offices	\$6.5	.....
541199	All Other Legal Services	\$6.5	.....
541211	Offices of Certified Public Accountants	\$7.5	.....

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
541213	Tax Preparation Services	\$6.5	
541214	Payroll Services	\$7.5	
541219	Other Accounting Services	\$7.5	
541310	Architectural Services	\$4.5	
541320	Landscape Architectural Services	\$6.5	
541330	Engineering Services	\$4.5	
<i>Except,</i>	Military and Aerospace Equipment and Military Weapons	\$25.0	
<i>Except,</i>	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	\$25.0	
<i>Except,</i>	Marine Engineering and Naval Architecture	\$17.0	
541340	Drafting Services	\$6.5	
<i>Except,</i>	Map Drafting	\$4.5	
541350	Building Inspection Services	\$6.5	
541360	Geophysical Surveying and Mapping Services	\$4.5	
541370	Surveying and Mapping (except Geophysical) Services	\$4.5	
541380	Testing Laboratories	\$11.0	
541410	Interior Design Services	\$6.5	
541420	Industrial Design Services	\$6.5	
541430	Graphic Design Services	\$6.5	
541490	Other Specialized Design Services	\$6.5	
541511	Custom Computer Programming Services	\$23.0	
541512	Computer Systems Design Services	\$23.0	
541513	Computer Facilities Management Services	\$23.0	
541519	Other Computer Related Services	\$23.0	
<i>Except,</i>	Information Technology Value Added Resellers ¹⁸		¹⁸ 150
541611	Administrative Management and General Management Consulting Services	\$6.5	
541612	Human Resources and Executive Search Consulting Services	\$6.5	
541613	Marketing Consulting Services	\$6.5	
541614	Process, Physical Distribution and Logistics Consulting Services	\$6.5	
541618	Other Management Consulting Services	\$6.5	
541620	Environmental Consulting Services	\$6.5	
541690	Other Scientific and Technical Consulting Services	\$6.5	
	* * * * *		
541720	Research and Development in the Social Sciences and Humanities	\$6.5	
541810	Advertising Agencies ¹⁰	¹⁰ \$6.5	
541820	Public Relations Agencies	\$6.5	
541830	Media Buying Agencies	\$6.5	
541840	Media Representatives	\$6.5	
541850	Display Advertising	\$6.5	
541860	Direct Mail Advertising	\$6.5	
541870	Advertising Material Distribution Services	\$6.5	
541890	Other Services Related to Advertising	\$6.5	
541910	Marketing Research and Public Opinion Polling	\$6.5	
541921	Photography Studios, Portrait	\$6.5	
541922	Commercial Photography	\$6.5	
541930	Translation and Interpretation Services	\$6.5	
541940	Veterinary Services	\$6.5	
541990	All Other Professional, Scientific and Technical Services	\$6.5	
Sector 55—Management of Companies and Enterprises			
Subsector 551—Management of Companies and Enterprises			
551111	Offices of Bank Holding Companies	\$6.5	
551112	Offices of Other Holding Companies	\$6.5	
Sector 56—Administrative and Support, Waste Management and Remediation Services			
Subsector 561—Administrative and Support Services			
561110	Office Administrative Services	\$6.5	
561210	Facilities Support Services ¹²	¹² \$32.5	
561310	Employment Placement Agencies	\$6.5	
561320	Temporary Help Services	\$12.5	
561330	Employee Leasing Services	\$12.5	
561410	Document Preparation Services	\$6.5	
561421	Telephone Answering Services	\$6.5	
561422	Telemarketing Bureaus	\$6.5	
561431	Private Mail Centers	\$6.5	
561439	Other Business Service Centers (including Copy Shops)	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
561440	Collection Agencies	\$6.5	
561450	Credit Bureaus	\$6.5	
561491	Repossession Services	\$6.5	
561492	Court Reporting and Stenotype Services	\$6.5	
561499	All Other Business Support Services	\$6.5	
561510	Travel Agencies ¹⁰	¹⁰ \$3.510	
561520	Tour Operators ¹⁰	¹⁰ \$6.5	
561591	Convention and Visitors Bureaus	\$6.5	
561599	All Other Travel Arrangement and Reservation Services	\$6.5	
561611	Investigation Services	\$11.5	
561612	Security Guards and Patrol Services	\$11.5	
561613	Armored Car Services	\$11.5	
561621	Security Systems Services (except Locksmiths)	\$11.5	
561622	Locksmiths	\$6.5	
561710	Exterminating and Pest Control Services	\$6.5	
561720	Janitorial Services	\$15.0	
561730	Landscaping Services	\$6.5	
561740	Carpet and Upholstery Cleaning Services	\$4.5	
561790	Other Services to Buildings and Dwellings	\$6.5	
561910	Packaging and Labeling Services	\$6.5	
561920	Convention and Trade Show Organizers ¹⁰	¹⁰ \$6.5	
561990	All Other Support Services	\$6.5	
Subsector 562—Waste Management and Remediation Services			
562111	Solid Waste Collection	\$11.5	
562112	Hazardous Waste Collection	\$11.5	
562119	Other Waste Collection	\$11.5	
562211	Hazardous Waste Treatment and Disposal	\$11.5	
562212	Solid Waste Landfill	\$11.5	
562213	Solid Waste Combustors and Incinerators	\$11.5	
562219	Other Nonhazardous Waste Treatment and Disposal	\$11.5	
562910	Remediation Services	\$13.0	
<i>Except,</i>	Environmental Remediation Services ¹⁴		¹⁴ 500
562920	Materials Recovery Facilities	\$11.5	
562991	Septic Tank and Related Services	\$6.5	
562998	All Other Miscellaneous Waste Management Services	\$6.5	
Sector 61—Educational Services			
Subsector 611—Educational Services			
611110	Elementary and Secondary Schools	\$6.5	
611210	Junior Colleges	\$6.5	
611310	Colleges, Universities and Professional Schools	\$6.5	
611410	Business and Secretarial Schools	\$6.5	
611420	Computer Training	\$6.5	
611430	Professional and Management Development Training	\$6.5	
611511	Cosmetology and Barber Schools	\$6.5	
611512	Flight Training	\$23.5	
611513	Apprenticeship Training	\$6.5	
611519	Other Technical and Trade Schools	\$6.5	
<i>Except,</i>	Job Corps Centers ¹⁶	¹⁶ \$32.5	
611610	Fine Arts Schools	\$6.5	
611620	Sports and Recreation Instruction	\$6.5	
611630	Language Schools	\$6.5	
611691	Exam Preparation and Tutoring	\$6.5	
611692	Automobile Driving Schools	\$6.5	
611699	All Other Miscellaneous Schools and Instruction	\$6.5	
611710	Educational Support Services	\$6.5	
Sector 62—Health Care and Social Assistance			
Subsector 621—Ambulatory Health Care Services			
621111	Offices of Physicians (except Mental Health Specialists)	\$9.0	
621112	Offices of Physicians, Mental Health Specialists	\$9.0	
621210	Offices of Dentists	\$6.5	
621310	Offices of Chiropractors	\$6.5	
621320	Offices of Optometrists	\$6.5	
621330	Offices of Mental Health Practitioners (except Physicians)	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	\$6.5	
621391	Offices of Podiatrists	\$6.5	
621399	Offices of All Other Miscellaneous Health Practitioners	\$6.5	
621410	Family Planning Centers	\$9.0	
621420	Outpatient Mental Health and Substance Abuse Centers	\$9.0	
621491	HMO Medical Centers	\$9.0	
621492	Kidney Dialysis Centers	\$31.5	
621493	Freestanding Ambulatory Surgical and Emergency Centers	\$9.0	
621498	All Other Outpatient Care Centers	\$9.0	
621511	Medical Laboratories	\$12.5	
621512	Diagnostic Imaging Centers	\$12.5	
621610	Home Health Care Services	\$12.5	
621910	Ambulance Services	\$6.5	
621991	Blood and Organ Banks	\$9.0	
621999	All Other Miscellaneous Ambulatory Health Care Services	\$9.0	
Subsector 622—Hospitals			
622110	General Medical and Surgical Hospitals	\$31.5	
622210	Psychiatric and Substance Abuse Hospitals	\$31.5	
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	\$31.5	
Subsector 623—Nursing and Residential Care Facilities			
623110	Nursing Care Facilities	\$12.5	
623210	Residential Mental Retardation Facilities	\$9.0	
623220	Residential Mental Health and Substance Abuse Facilities	\$6.5	
623311	Continuing Care Retirement Communities	\$12.5	
623312	Homes for the Elderly	\$6.5	
623990	Other Residential Care Facilities	\$6.5	
Subsector 624—Social Assistance			
624110	Child and Youth Services	\$6.5	
624120	Services for the Elderly and Persons with Disabilities	\$6.5	
624190	Other Individual and Family Services	\$6.5	
624210	Community Food Services	\$6.5	
624221	Temporary Shelters	\$6.5	
624229	Other Community Housing Services	\$6.5	
624230	Emergency and Other Relief Services	\$6.5	
624310	Vocational Rehabilitation Services	\$6.5	
624410	Child Day Care Services	\$6.5	
Sector 71—Arts, Entertainment and Recreation			
Subsector 711—Performing Arts, Spectator Sports and Related Industries			
711110	Theater Companies and Dinner Theaters	\$6.5	
711120	Dance Companies	\$6.5	
711130	Musical Groups and Artists	\$6.5	
711190	Other Performing Arts Companies	\$6.5	
711211	Sports Teams and Clubs	\$6.5	
711212	Race Tracks	\$6.5	
711219	Other Spectator Sports	\$6.5	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	\$6.5	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	\$6.5	
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	\$6.5	
711510	Independent Artists, Writers, and Performers	\$6.5	
Subsector 712—Museums, Historical Sites and Similar Institutions			
712110	Museums	\$6.5	
712120	Historical Sites	\$6.5	
712130	Zoos and Botanical Gardens	\$6.5	
712190	Nature Parks and Other Similar Institutions	\$6.5	
Subsector 713—Amusement, Gambling and Recreation Industries			
713110	Amusement and Theme Parks	\$6.5	
713120	Amusement Arcades	\$6.5	
713210	Casinos (except Casino Hotels)	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
713290	Other Gambling Industries	\$6.5	
713910	Golf Courses and Country Clubs	\$6.5	
713920	Skiing Facilities	\$6.5	
713930	Marinas	\$6.5	
713940	Fitness and Recreational Sports Centers	\$6.5	
713950	Bowling Centers	\$6.5	
713990	All Other Amusement and Recreation Industries	\$6.5	
Sector 72—Accommodation and Food Services			
Subsector 721—Accommodation			
721110	Hotels (except Casino Hotels) and Motels	\$6.5	
721120	Casino Hotels	\$6.5	
721191	Bed and Breakfast Inns	\$6.5	
721199	All Other Traveler Accommodation	\$6.5	
721211	RV (Recreational Vehicle) Parks and Campgrounds	\$6.5	
721214	Recreational and Vacation Camps (except Campgrounds)	\$6.5	
721310	Rooming and Boarding Houses	\$6.5	
Subsector 722—Food Services and Drinking Places			
722110	Full-Service Restaurants	\$6.5	
722211	Limited-Service Restaurants	\$6.5	
722212	Cafeterias	\$6.5	
722213	Snack and Nonalcoholic Beverage Bars	\$6.5	
722310	Food Service Contractors	\$19.0	
722320	Caterers	\$6.5	
722330	Mobile Food Services	\$6.5	
722410	Drinking Places (Alcoholic Beverages)	\$6.5	
Sector 81—Other Services			
Subsector 811—Repair and Maintenance			
811111	General Automotive Repair	\$6.5	
811112	Automotive Exhaust System Repair	\$6.5	
811113	Automotive Transmission Repair	\$6.5	
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	\$6.5	
811121	Automotive Body, Paint and Interior Repair and Maintenance	\$6.5	
811122	Automotive Glass Replacement Shops	\$6.5	
811191	Automotive Oil Change and Lubrication Shops	\$6.5	
811192	Car Washes	\$6.5	
811198	All Other Automotive Repair and Maintenance	\$6.5	
811211	Consumer Electronics Repair and Maintenance	\$6.5	
811212	Computer and Office Machine Repair and Maintenance	\$23.0	
811213	Communication Equipment Repair and Maintenance	\$6.5	
811219	Other Electronic and Precision Equipment Repair and Maintenance	\$6.5	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$6.5	
811411	Home and Garden Equipment Repair and Maintenance	\$6.5	
811412	Appliance Repair and Maintenance	\$6.5	
811420	Reupholstery and Furniture Repair	\$6.5	
811430	Footwear and Leather Goods Repair	\$6.5	
811490	Other Personal and Household Goods Repair and Maintenance	\$6.5	
Subsector 812—Personal and Laundry Services			
812111	Barber Shops	\$6.5	
812112	Beauty Salons	\$6.5	
812113	Nail Salons	\$6.5	
812191	Diet and Weight Reducing Centers	\$6.5	
812199	Other Personal Care Services	\$6.5	
812210	Funeral Homes and Funeral Services	\$6.5	
812220	Cemeteries and Crematories	\$6.5	
812310	Coin-Operated Laundries and Drycleaners	\$6.5	
812320	Drycleaning and Laundry Services (except Coin-Operated)	\$4.5	
812331	Linen Supply	\$13.0	
812332	Industrial Launderers	\$13.0	
812910	Pet Care (except Veterinary) Services	\$6.5	
812921	Photo Finishing Laboratories (except One-Hour)	\$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
812922	One-Hour Photo Finishing	\$6.5	
812930	Parking Lots and Garages	\$6.5	
812990	All Other Personal Services	\$6.5	
Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations			
813110	Religious Organizations	\$6.5	
813211	Grantmaking Foundations	\$6.5	
813212	Voluntary Health Organizations	\$6.5	
813219	Other Grantmaking and Giving Services	\$6.5	
813311	Human Rights Organizations	\$6.5	
813312	Environment, Conservation and Wildlife Organizations	\$6.5	
813319	Other Social Advocacy Organizations	\$6.5	
813410	Civic and Social Organizations	\$6.5	
813910	Business Associations	\$6.5	
813920	Professional Organizations	\$6.5	
813930	Labor Unions and Similar Labor Organizations	\$6.5	
813940	Political Organizations	\$6.5	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	\$6.5	

Footnotes

9. NAICS code 531190—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of \$19.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

15. Subsector 483—Water Transportation—Offshore Marine Services: The applicable size standard shall be \$25.5 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

- 3. Amend § 121.301 as follows:
 - a. Revise paragraphs (a) and (d)(1);
 - b. Amend paragraph (b)(2) introductory text by removing the term “\$7 million” and inserting “\$7.5 million” in its place.

The revised paragraphs read as follows:

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

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:

(1) The size of the applicant alone (without affiliates) must not exceed the size standard designated for the industry in which the applicant is primarily engaged; and

(2) The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher. These size standards are set forth in § 121.201.

(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 does not exceed \$6.5 million.

* * * * *

- 4. Amend § 121.302 by revising paragraph (c) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration. For economic injury disaster loan assistance under disaster declarations for Hurricanes Katrina, Rita, and Wilma, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005. For pre-disaster mitigation loans, size status is determined as of the date SBA accepts a complete Pre-Disaster Mitigation Small Business Loan Application for processing. Refer to § 123.408 of this chapter to find out what SBA considers to be a complete Pre-Disaster Mitigation Small Business Loan Application.

* * * * *

- 5. Amend § 121.502 by revising paragraph (a)(2) to read as follows:

§ 121.502 What size standards are applicable to programs for sales and lease of Government property?

(a) * * *

(1) * * *

(2) A concern not primarily engaged in manufacturing is small for sales or leases of Government property if it has annual receipts not exceeding \$6.5 million.

* * * * *

- 6. Amend § 121.512 by revising paragraph (b) to read as follows:

§ 121.512 What is the size standard for stockpile purchases?

(a) * * *

(b) Its annual receipts, together with its affiliates, do not exceed \$51.5 million.

PART 123—DISASTER LOAN PROGRAM

- 7. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Public Law 102–395, 106 Stat. 1828, 1864; Public Law 103–75, 107 Stat. 739; and Public Law 106–50, 113 Stat. 245.

■ 8. Amend § 123.300 by revising paragraph (b) to read as follow:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced (except disaster declarations for Hurricanes Katrina, Rita, and Wilma, for which size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005), you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

Dated: November 4, 2005.

Hector V. Barreto,
Administrator.

[FR Doc. 05-23435 Filed 12-5-05; 8:45 am]
BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-23176; Directorate Identifier 2005-NM-220-AD; Amendment 39-14396; AD 2005-25-03]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-600, -700, -700C, and -800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737-600, -700, -700C, and -800 series airplanes. This AD requires replacing the point "D" splice fitting between windows number 1 and 2 with a new splice fitting, performing an eddy current inspection for cracking of the holes in the structure common to the new splice fitting, including doing any related investigative actions; and corrective actions if necessary. This AD results from full-scale fuselage fatigue testing on the splice fitting that failed prior to the design objective on Boeing

Model 737-800 series airplanes, and a report of a cracked splice fitting on an operational airplane. We are issuing this AD to prevent cracking of the existing fitting that may result in cracking through the skin and consequent decompression of the flight cabin.

DATES: This AD becomes effective December 21, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 21, 2005.

We must receive comments on this AD by February 6, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6438; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that during the Model 737-800 series airplanes full-scale fuselage fatigue test, the splice fitting failed prior to the design service objective. Additionally, we have received a report indicating that a cracked splice fitting was found on an airplane with less than 13,500 total flight cycles. This condition, if not corrected, could result in cracking of the existing fitting that may cause cracking through the skin and consequent decompression of the flight cabin.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin (ASB) 737-53A1222, Revision 2, dated October 20, 2005. The

ASB describes procedures for replacing the splice fitting between windows number 1 and 2, at point "D" on the windowsill with a new splice fitting, and performing related investigative actions. Those investigative actions include performing an open hole eddy current inspection for cracking of the fastener holes, and a special detailed inspection for cracking of 12 fasteners in the adjacent structure. The ASB also describes procedures for repetitive external detailed inspections of the skin near the six skin fasteners below the splice fitting. The ASB specifies that if cracking is detected, to contact Boeing for further instructions. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent cracking of the existing fitting that may result in cracking through the skin and consequent decompression of the flight cabin. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the ASB."

Differences Between the AD and the ASB

Where the ASB specifies contacting Boeing if any cracking is detected, this AD requires that, repair of any cracking be accomplished before further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO).

Although the ASB specifies performing repetitive external detailed inspections of the skin near the six skin fasteners below the splice fitting, this AD does not require those inspections. These differences have been coordinated with the manufacturer.

Interim Action

We consider this AD to be an interim action. We are currently considering requiring repetitive external detailed inspections for cracking of the skin near the six skin fasteners below the splice fitting. However the planned compliance time for accomplishing those inspections would necessitate allowing enough time to provide notice and opportunity for prior public comment on the merits of requiring those inspections.