

§ 1219.38(k) of the Order require the Board to evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR). The Board routinely evaluates its programs to ensure their effectiveness, and a formal evaluation was conducted under the FAIR in 2009.

Accordingly, USDA has determined that the Hass avocado Order should be continued. The Order was established to help increase the consumption of domestic and imported Hass avocados in the United States. Concerns raised in the comments received were to a great extent changes that would require congressional action. AMS will continue to work with the Hass avocado industry in maintaining an effective program.

Dated: October 1, 2010.

**Rayne Pegg,**

*Administrator.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AF70

#### Small Business Size Standards; Other Services.

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The United States Small Business Administration (SBA) is increasing the small business size standards for 18 industries in North American Industry Classification System (NAICS) Sector 81, Other Services, and retaining the current standards for the remaining 30 industries in the Sector. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised.

**DATES:** This rule is effective November 5, 2010.

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

**SUPPLEMENTARY INFORMATION:**

#### Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and, where necessary, to make revisions to current size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector in phases. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA

evaluated every industry in NAICS Sector 81, Other Services, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of **Federal Register** (74 FR 53941) to increase the standards for 18 industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the **Federal Register** proposed rules to increase 47 small business size standards in NAICS Sector 44-45, Retail Trade, (74 FR 53924) and five standards in NAICS Sector 72, Accommodation and Food Services (74 FR 53913). Similarly, SBA is publishing final rules on NAICS Sector 44-45 and NAICS Sector 72 elsewhere in this issue of the **Federal Register**.

In addition, SBA established its "Size Standards Methodology" for reviewing small business size standards and modifying them, where necessary. SBA published in the October 21, 2009 issue of the **Federal Register** (74 FR 53940) a notice of its availability, for public comments, on SBA's Web site at <http://www.sba.gov/contractingopportunities/officials/size/index.html>. In addition, SBA has placed a copy of its "Size Standards Methodology" in the electronic docket of this rule on <http://www.regulations.gov> and is available there as well.

In evaluating an industry's size standard, SBA examines the industry's characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size), Federal government contracting trends, impact on SBA financial assistance programs, and dominance in field of operations. SBA analyzed the characteristics of each industry in NAICS Sector 81 mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2002 Economic Census (the latest available). SBA evaluated Federal contracting trends in that Sector using the data from the Federal Procurement Data System—Next Generation (FPDS-NG) for fiscal years 2006-2008. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2006-2008.

SBA's "Size Standards Methodology" provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the proposed rule itself, SBA detailed how it applied its "Size

Standards Methodology” to review, and to modify where necessary, the existing standards for the Sector and Industries under analysis.

SBA sought comments from the public on a number of issues about its “Size Standards Methodology,” such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA’s approach to establishing small business size standards makes sense in the current economic environment; whether SBA’s definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA’s methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

SBA did not receive any comments on its “Size Standards Methodology.” SBA continues to welcome comments from interested parties.

In the proposed rule, based on its analyses of the latest industry and relevant data SBA proposed to increase 18 of the 48 size standards in NAICS Sector 81. SBA’s analyses supported retaining the existing size standards for nine industries. As noted in the proposed rule, SBA’s analyses would support reducing size standards for the remaining 20 industries in the Sector. However, as the proposed rule pointed out, SBA believes that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency is doing to help small businesses. Therefore, SBA proposed to retain the existing size standards for those 20 industries. Because of similarities between NAICS 811212, Computer and Office Machine Repair and Maintenance, and several computer services related industries in NAICS Sector 54, Professional, Technical and Scientific Services, SBA decided to review the size standard for that Industry when it reviews size standards for computer related services in NAICS Sector 54. SBA proposed to retain the current \$25 million standard for that industry until it reviews that Sector.

#### Summary of Comments

The proposed rule sought comments from the public on SBA’s proposal to increase size standards for the 18 industries in NAICS Sector 81, Other Services, and retain the size standards for remaining 30 industries in that Sector. SBA also requested comments on whether it should simplify size standards by reducing them to eight

fixed levels. SBA received three comments, one of which supported the proposed standards and two did not. Each of these comments is discussed below.

One commenter supported using Federal contracting as one of the factors SBA considers when determining size standard because it is “consistent with the statutory guidance that encourages an industry-by-industry analysis.” The commenter was referring to the Small Business Act (Act) which states in § 3(a)(3) that “the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.” (15 U.S.C. 632(a)(3))

The commenter suggested that SBA establish “a separate size standard for Federal procurement within each industry category or specific NAICS code.” SBA does not concur with this comment for several reasons. First, SBA believes that having separate size standards for each industry for Federal procurement and other programs would create confusion and unnecessary complexity, and it would run counter to SBA’s ongoing effort to simplify its size standards. Second, SBA’s current methodology examines the Federal procurement market as one of the five primary factors in setting size standards for most industries. Third, SBA has established separate size standards for Federal procurement purposes within certain NAICS Sectors and Industries. For example, for the Retail Trade and Wholesale Trade Sectors, the 500 employee nonmanufacturer size standard applies for procurements of manufactured products, and industry standards in those sectors are generally used for SBA financial assistance programs. In addition, for those industries where there is a need for significantly different size standards for Federal procurement, they already exist. SBA has in the past recognized the need for standards that apply only to Federal procurement in certain industries, because the existing standards, while appropriate for other Federal programs, were not suitable for procurement purposes. Currently there are 18 “exceptions” in the Agency’s table of size standards that relate directly to Federal procurement opportunities for small businesses. Fourth, establishing separate size standards within each industry for businesses that participate in Federal procurement and those that participate in other programs is almost impractical due to lack of necessary data. For example, the Economic Census

data that SBA uses to evaluate industry characteristics are limited to the six-digit NAICS level. Similarly, the Federal procurement data from the FPDS-NG are limited to identifying each contracting firm as “small” or “other than small” only, with no information on its specific firm size (*i.e.*, the number of employees and average annual revenues) that would be needed to establish a separate size standard for Federal procurement purposes.

The commenter also addressed the size standards for NAICS code 811213, Communication Equipment Repair and Maintenance, and NAICS code 811212, Computer and Office Repair Maintenance. SBA had proposed to increase the standard for NAICS 811213 from \$7 million to \$10 million in average annual receipts but did not propose to modify the standard for NAICS 811212. There are similarities among NAICS 811212 and several computer services related industries in Sector 54 (NAICS 541211, NAICS 541212, NAICS 541213 and NAICS 541219), as SBA detailed in the proposed rule. Based on those similarities those four Sector 54 industries and NAICS 811212 have shared a \$25 million size standard since SBA last reviewed the computer related services industries. SBA will review the size standard for NAICS 811212 when it next reviews computer related services in NAICS Sector 54. Therefore, SBA proposed to retain the current \$25 million standard for NAICS 811212 until it reviews Sector 54.

The commenter supported the current \$25 million common size standard for NAICS 811212, but requested SBA to apply the same \$25 million size standard to NAICS 811213 and defer changing the current \$7 million size standard for that industry as well until the Agency analyzes and reviews size standards for the information technology industries in Sector 54. SBA is adopting the proposed \$10 million for NAICS 811213 because it believes it should not defer its increase on the basis of what it might determine is appropriate for industries in another Sector that it has not yet analyzed. Furthermore, for Federal government procurement purposes, the size standard applicable to a contracting opportunity is determined by the principal purpose of the procurement. *See* 13 CFR 121.402. It is not unusual for companies to perform contracts in different NAICS codes that have different size standards. The Central Contractor Registration database shows that many companies can be small for some NAICS codes and not small for others.

NAICS is a production oriented system and classifies companies by their economic activity, that is, by how they produce their products and provide their services. Therefore, economic activities of businesses classified in NAICS 811213 are more closely akin to businesses classified in NAICS Sector 81 than they are to businesses classified in other Sectors. Larger companies can and do perform contracts under NAICS codes in different Sectors and Industries with various size standards—some higher, some lower than others. However, SBA believes it cannot logically conclude that the lower size standards ought to be increased. The same reasoning might lead to lowering the higher size standards.

Based on the analysis according to its “Size Standards Methodology,” SBA has determined that \$10 million is the appropriate size standard for NAICS 811213. SBA believes that, at this level, there exists a sufficient population of small firms that can compete among themselves for opportunities that provide benefits for small businesses. Much larger companies can and do provide some of the same services as smaller companies, but SBA believes that raising the size standard to include much larger firms would not be equitable for those small businesses that the Agency seeks to support and protect.

Based on its analyses of relevant industry and Federal contracting data, SBA has determined that the proposed \$10 million size standard is appropriate for NAICS 811213. Moreover, a size standard higher than the \$10 million level would create substantial competitive disadvantages for small businesses below that level in bidding for Federal procurement opportunities. Therefore, SBA is adopting as final its proposed \$10 million size standard for NAICS 811213.

Another commenter stated that SBA should not raise size standards to enable Federal agencies to meet their small business contracting goals. However, whether Federal agencies meet their goals or not is not a factor SBA considers in its analysis. Once SBA has established small business size standards, it is the various agencies’ responsibility to structure and monitor their contracting activities to meet their small business contracting goals. SBA’s objective is to assure that there are an adequate number of small businesses to maintain suitable competition among them. At the same time, SBA wants to make certain that the pool is not too large so that there would be an inordinate number of apparently small businesses. The commenter stated further that a company with \$7 million in receipts or one that has 500 employees is not a small business and such levels might not suggest smallness for many people. SBA draws the line of demarcation between small and other than small where it will provide adequate procurement opportunities for businesses below that level.

In the proposed rule, SBA requested comments on whether simplification of size standards by reducing them to eight fixed levels was appropriate. SBA also requested comments on whether it should, as a policy, limit the amount of increase or decrease to a size standard, and whether SBA should, as a policy, establish certain minimum or maximum values for size standards.

One commenter suggested that there should be only one maximum revenue based standard and one maximum employee based size standard, regardless of NAICS industry. While this would simplify size standards even more than what SBA had proposed, the Act, as noted above, states in § 3(a)(3) that “the [SBA] Administrator shall

ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.” (15 U.S.C. 632(a)(3)). The relevant data show significant differences among industries within each NAICS Sector, including Sector 81, and SBA believes that varying the size standard by industry not only complies with the Act, but it also serves the best interests of small businesses in that Sector. Therefore, SBA does not presently plan to reduce the number of receipts based size standard levels below eight as detailed in the proposed rule.

SBA did not receive any comments on whether it should lower the size standards for the 20 industries in NAICS Sector 81 for which SBA’s analyses supported reducing the existing size standards. SBA also did not receive any comments on nine industries for which SBA’s analyses supported retaining the existing size standards and on NAICS 811212 for which SBA had proposed retaining the current standard until it reviews NAICS Sector 54. Therefore, SBA is retaining the existing size standards for 28 of the 48 Industries in NAICS Sector 81. All comments to the proposed rule are available for public review at <http://www.regulations.gov>.

#### Conclusion

Based on the analyses of relevant industry and program data and public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 18 industries in NAICS Sector 81 to the levels it proposed. The revised size standards are shown in the following table.

SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 81

NAICS	Current size standard (\$ million)	Revised size standard (\$ million)
811122—Automotive Glass Replacement Shops .....	\$7.0	\$10.0
811213—Communication Equipment Repair and Maintenance .....	7.0	10.0
811219—Other Electronic and Precision Equipment Repair and Maintenance .....	7.0	19.0
811412—Appliance Repair and Maintenance .....	7.0	14.0
812191—Diet and Weight Reducing Centers .....	7.0	19.0
812220—Cemeteries and Crematories .....	7.0	19.0
812320—Dry-cleaning and Laundry Services (except Coin-Operated) .....	4.5	5.0
812331—Linen Supply .....	14.0	30.0
812332—Industrial Launderers .....	14.0	35.5
812921—Photo Finishing Laboratories (except One-Hour) .....	7.0	19.0
812922—One-Hour Photo Finishing .....	7.0	14.0
812930—Parking Lots and Garages .....	7.0	35.5
813211—Grantmaking Foundations .....	7.0	30.0
813212—Voluntary Health Organizations .....	7.0	25.5
813219—Other Grant Making and Giving Services .....	7.0	35.5
813311—Human Rights Organizations .....	7.0	25.5

SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 81—Continued

NAICS	Current size standard (\$ million)	Revised size standard (\$ million)
813312—Environment, Conservation and Wildlife Organizations .....	7.0	14.0
813920—Professional Organizations .....	7.0	14.0

Although there were two comments opposing the proposed increases, SBA believes that its analyses warrants the increases, for the reasons it gave in the October 21, 2009 proposed rule. SBA’s proposed rule indicated that its analysis might justify proposing reductions to size standards for 20 industries in this Sector. However, SBA has opted not to reduce the size standards for these industries for the reasons given in the proposed rule. Lowering small business size standards would be inconsistent with its ongoing effort to promote small business assistance under the Recovery Act.

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

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule is a “significant” regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA’s Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

*Regulatory Impact Analysis*

Is there a need for the regulatory action?

SBA believes that the adopted adjustments to certain size standards in Sector 81, Other Services, better reflect the changes in economic characteristics of small businesses in those industries. SBA provides aid and assistance to small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA’s Administrator responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of the proposed rule and this rule explained in detail SBA’s methodology

for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA’s financial assistance programs, economic injury disaster loans and Federal procurement opportunities reserved for small businesses. Federal procurement provides opportunities for small businesses under SBA’s business development programs, such as 8(a) participants, small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses and service disabled veteran owned small businesses (SDVOSB). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive.

Of 18 industries in Sector 81 for which SBA has increased their size standards, 12 are for-profit industries and six are non-profits. In the 12 for-profit industries for which SBA has increased size standards, the Agency estimates that about 325 additional firms will obtain small business status and become eligible for these programs. That represents 0.6 percent of total firms and 5.6 percent of total sales in those industries. In the six non-profit industries for which size standards have been increased, SBA estimates that about 1,175 additional firms, representing 4.2 percent of total firms and 16.9 percent of total sales in those industries, will qualify as small organizations (a non-profit entity cannot qualify as a small business concern). 13 CFR 121.105 In the 20 industries (including non-profits) for which SBA’s analyses indicated a lower size standard is appropriate, about 1,850 firms, representing 0.6 percent of total firms and 5.1 percent of total sales in those industries, might have lost their small business status, had SBA lowered their size standards. Thus, the net impact for the Sector as a whole is about 1,400

additional firms gaining and none losing small business status under this final rule. This will increase the small business share of total industry receipts for the Sector from 59.0 percent under the current size standards to 63.5 percent under the revised standards.

The benefits of increasing size standards to a more appropriate level will accrue to three groups: (1) Businesses that are above the current size standards will benefit by gaining small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies that award contracts under procurement programs that require small business status.

More than 40 percent of total Federal contracting dollars received by industries in Sector 81 (excluding NAICS 811212 and those in Subsector 813) during fiscal years 2006–2008 were accounted for by two of the 18 industries for which SBA is increasing size standards in this final rule, namely NAICS 811213 and NAICS 811219. SBA estimates that additional firms gaining small business status in those two and other industries in Subsectors 811 and 812 under the proposed size standards could potentially obtain Federal contracts totaling up to between \$25 million and \$30 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements. The added competition for many of these procurements also could likely result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA’s 7(a) Guaranteed Loan Program and CDC Program, SBA estimates that approximately 10 additional loans totaling between \$4 million and \$5 million in new Federal loan guarantees will be made to newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses

well below the size standard. SBA has also applied its CDC alternative size standard to its 7(a) Business Loan Program, and more capital is therefore available to small businesses. Thus, increasing the size standards will likely result in an increase in small business guaranteed loans to small businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

The newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of disasters, no meaningful estimate of benefits can be projected.

To the extent that 325 additional firms in Subsectors 811 and 812 that become small under the revised size standards could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government. Additional firms will likely participate in Federal procurement opportunities reserved for small businesses, seek SBA guaranteed loans and SBA guaranteed surety bonds in connection with Federal projects, register in the Central Contractor Registration, be listed in the Dynamic Small Business Search databases, and seek certification as 8(a) or HUBZone firms. Among businesses in this group seeking SBA assistance, there could be additional costs associated with compliance and verification of small business status and protests of businesses that claim small business standing. These additional costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer bidders. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a) or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The adopted size standards may have some distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several likely impacts can be identified. There will likely be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. Also, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for an evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the currently available data on the size of business receiving a Federal contract are limited to identifying small or other than small businesses, without regard to the exact size of the business.

The revisions to the existing size standards for Other Services industries are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

*Executive Order 12988:* For purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity and reduce burden.

*Executive Order 13132:* For purposes of Executive Order 13132, SBA has

determined that this rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act:* This interim final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 USC Chapter 35.

#### *Final Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in NAICS Sector 81, Other Services. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business programs.

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

(1) What is the need for and objective of the rule?

Most of SBA's size standards for the Other Services industries have not been reviewed since the early 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

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

In this final rule, SBA estimates that approximately 1,400 additional firms will become small because of increases in size standards in the 18 industries within Sector 81. That represents about 1.8 percent of approximately 75,500 total firms in those industries. This will

result in an increase in the small business share of total industry receipts for that Sector from 59.0 percent under the current size standards to 63.5 percent under the revised standards.

(3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A new size standard does not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

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

This 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, 15 U.S.C. 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. 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, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no

alternative exists to the systems of numerical size standards.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

**Subpart A—Size Eligibility Provisions and Standards**

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

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 657(a), 657(f), and 662(5); and Pub. L. 105–135, Sec. 401, et seq., 111 Stat. 2592.

■ 2. In § 121.201, in the table, revise the entries for “811122”, “811213”, “811219”, “811412”, “812191”, “812220”, “812320”, “812331”, “812332”, “812921”, “812922”, “812930”, “813211”, “813212”, “813219”, “813311”, “813312”, and “813920” to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

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**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
* * * * *			
811122	Automotive Glass Replacement Shops	\$10.0	
* * * * *			
811213	Communication Equipment Repair and Maintenance	10.0	
811219	Other Electronic and Precision Equipment Repair and Maintenance	19.0	
* * * * *			
811412	Appliance Repair and Maintenance	14.0	
* * * * *			
812191	Diet and Weight Reducing Centers	19.0	
* * * * *			
812220	Cemeteries and Crematories	19.0	
* * * * *			
812320	Dry-cleaning and Laundry Services (except Coin-Operated)	5.0	
812331	Linen Supply	30.0	
812332	Industrial Launderers	35.5	
* * * * *			
812921	Photo Finishing Laboratories (except One-Hour)	19.0	

## 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 .....	\$14.0 .....	.....
812930 .....	Parking Lots and Garages .....	35.5 .....	.....
* .....	* .....	* .....	* .....
813211 .....	Grantmaking Foundations .....	30.0 .....	.....
813212 .....	Voluntary Health Organizations .....	25.5 .....	.....
813219 .....	Other Grant Making and Giving Services .....	35.5 .....	.....
813311 .....	Human Rights Organizations .....	25.5 .....	.....
813312 .....	Environment, Conservation and Wildlife Organizations .....	14.0 .....	.....
* .....	* .....	* .....	* .....
813920 .....	Professional Organizations .....	14.0 .....	.....
* .....	* .....	* .....	* .....

Dated: September 10, 2010.

Marie C. Johns,

Deputy Administrator.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AF69

#### Small Business Size Standards: Retail Trade

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The United States Small Business Administration (SBA) is modifying 47 small business size standards for industries in North American Industry Classification System (NAICS) Sector 44-45, Retail Trade, and retaining the current standards for the remaining industries in the Sector. In this final rule, SBA is increasing 46 of the size standards and converting the measure of size for one industry (NAICS 441110, New Car Dealers) from annual receipts to number of employees. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in NAICS Sector 44-45 to determine whether the existing size standards should be retained or revised. This rule also modifies SBA's Small Business Size Regulations to clarify that a NAICS code that represents a Wholesale Trade (NAICS Sector 42) or Retail Trade (NAICS Sector 44-45) Industry shall not be used for the Federal government's procurement of supplies.

**DATES:** This rule is effective November 5, 2010.

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

#### SUPPLEMENTARY INFORMATION:

##### Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in

response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data and, where necessary, to make revisions to existing size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within a NAICS Sector. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 44-45, Retail Trade, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of the **Federal Register** (74 FR 53924) to increase the size standards for 47 industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by a NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the **Federal Register** proposed rules to increase small business size standards for five industries in NAICS Sector 72, Accommodation and Food Services (74 FR 53913) and for 18 industries in NAICS Sector 81, Other Services (74 FR