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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AG27

Small Business Size Standards: Administrative and Support, Waste Management and Remediation 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 37 industries and retaining the current size standards for the remaining seven industries in North American Industry Classification System (NAICS) Sector 56, Administrative and Support, Waste Management and Remediation Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all receipts-based size standards for industries in NAICS Sector 56 to determine whether they should be retained or revised. SBA did not review the employee-based size standard for Environmental Remediation Services, an “exception” under NAICS 562910, Remediation Services, in NAICS Sector 56, but will do so at a later date with other employee-based size standards.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

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SUPPLEMENTARY INFORMATION:

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 – average 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), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income size based standards. SBA is currently in the process of comprehensively reviewing all of its small business size standards. At the start of this comprehensive review, there were 41 different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities (i.e., “exceptions” in SBA's Table of Size Standards). Of these size standards levels, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its receipts-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 Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), Pub. L. 111-240. The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter.

Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts-based size standards in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, to determine whether the existing size standards should be retained or revised. On October 12, 2011, SBA published a proposed rule in the Federal Register (76 FR 63510) seeking public comment on its proposal to increase the size standards for 37 industries and retain current size standards for 15 industries in

NAICS Sector 56. The rule was one of a series of proposed rules that examines industries grouped by NAICS Sector.

SBA has recently developed a “Size Standards Methodology” for developing, reviewing, and modifying size standards, when necessary. SBA has published the document on its website at www.sba.gov/size for public review and comment and also included it as a supporting document in the electronic docket of the October 12, 2011 proposed rule at www.regulations.gov.

In evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 56 that has a receipts-based size standard, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contracts in each of those industries using the data from the Federal Procurement Data System – Next Generation (FPDS-NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its 7(a) and 504 Loan Programs for fiscal years 2008 to 2010.

SBA’s “Size Standards Methodology” provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency used the results to derive size standards. In the proposed rule, SBA detailed how it

applied its “Size Standards Methodology” to review and modify, where necessary, the existing receipts-based size standards for industries in NAICS Sector 56. SBA sought comments from the public on a number of issues concerning 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 applications 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.

SBA also sought comments on its proposal to increase receipts-based size standards for 37 industries and retain the existing receipts-based size standards for seven industries in NAICS Sector 56. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for several Subsectors and Industry Groups in NAICS Sector 56.

SBA’s analyses of industry and program data could support lowering existing receipts based standards for five industries and keeping current receipts based size standards for two industries. However, as SBA pointed out in the proposed rule, lowering size standards would not serve the interest of small businesses under the current economic environment because it would reduce the number of firms eligible to participate in Federal small business assistance programs. In addition, this would also

run counter to what the Federal government and the Agency are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size standards for those five industries and requested comments on whether the Agency should lower size standards for those industries for which its analyses might support lowering them.

Summary of Comments

SBA received 21 comments from individuals, small businesses, and trade groups on its proposal to increase receipts-based size standards for 37 industries and retain current receipts-based size standards for seven industries in NAICS Sector 56 and its size standards methodology.

Of the 21 comments, 18 commented on proposed size standards changes for specific NAICS codes and three provided general comments, mostly relating to the SBA's size standards methodology. The NAICS codes that received the most comments (six) included NAICS 562910, Remediation Services (including "exception," Environmental Remediation Services), followed by NAICS 561210, Facilities Support Services (four comments), and NAICS 561612, Security Guards and Patrol Services (two comments). Other NAICS codes 561320, Temporary Help Services; 561422, Telemarketing Bureaus and Other Contact Centers; 561440, Collection Agencies; 561510, Travel Agencies; 561520, Tour Operators; 561730, Landscaping Services; and 561920, Conventions and Trade Shows Organizers received one comment each.

Commenters generally supported SBA's effort to review small business size standards for NAICS Sector 56 and its size standards methodology. Comments also generally supported SBA's proposal to increase size standards, but for a number of

industries they recommended larger increases. Below is a discussion of the issues and concerns raised in each of those comments and SBA's responses.

NAICS Code 561210 – Facilities Support Services

SBA received four comments (including two from the same individual) on NAICS Code 561210, Facilities Support Services. One commenter agreed with SBA's proposal to keep the size standard for this industry at the current \$35.5 million level, but recommended that SBA apply the same \$35.5 million size standard for all NAICS industries that could be part of a solicitation for Facilities Support Services. SBA does not adopt this suggestion because doing so would allow otherwise large businesses to become small in some industries, thereby hurting truly small businesses to compete for Federal procurements in those industries. For example, the current size standard for all industries under specialty trade contractors, which could be part of procurements under Facilities Support Services (see Footnote 12, 13 CFR 121.201), is \$14 million. If it were raised to \$35.5 million, many large businesses that exceed the current size standard for specialty trade contractors would become small. In addition, SBA continues to believe that these industries are distinct and deserve separate analyses.

Two other commenters expressed concern that SBA did not propose to increase the size standard for this NAICS Code, which is currently \$35.5 million. One of them offered a detailed response, including the data on his firm's total revenue and revenue from contract work with the Centers for Disease Control (CDC) for years from 1999 to 2010 and projected revenues for 2011 and 2012. He argued that U.S. Department of Labor's (DOL) mandated 8.5 percent labor cost increase to CDC's contracts in 2006 largely contributed to inflationary growth in his company's total revenue since then,

pushing its three-year average annual revenue above \$35.5 million in 2010. As a result, as the commenter stated, his company is currently a large business and has been ineligible to re-compete as a small business for its four follow-on contracts with CDC. The commenter anticipates another DOL's labor cost adjustment soon. The commenter argued that if SBA adjusted its size standard for inflation and DOL's labor cost increases in 2012, the size standard for NAICS Code 561210 would increase to \$37 million to \$38 million, thereby making his company eligible to again compete for its follow-on contract with CDC that is expected to be re-competed in 2012 or 2013.

SBA is required to review all size standards for inflation not less frequently than every five years. Accordingly, the latest inflation adjustment for all receipts-based size standards, including that for NAICS Code 561210, was completed in July 2008. In this comprehensive size standards review, SBA's revisions to size standards are primarily based on the Agency's evaluation of industry and Federal procurement factors. SBA plans to adjust all monetary size standards together for inflation soon after it completes its review of all receipts-based size standards. SBA is reviewing size standards on a Sector by Sector basis, and this can take several years to complete all of them. If SBA were to make additional adjustments for inflation on a Sector by Sector basis, the result would be inconsistent size standards across industries.

The next commenter objected to SBA's proposal to keep the size standard for NAICS Code 561210 at the current \$35.5 million level. The commenter criticized the SBA's analysis as being flawed because the 2007 Economic Census tabulation that the Agency used to examine characteristics of industries is limited to businesses operating primarily in that industry. The commenter argued that the size standard would be much

higher than \$35.5 million had SBA included in its analyses some of the largest companies receiving the Federal contracts under that NAICS code, whose primary industry is not NAICS Code 561210. SBA is aware that there are some problems with the Economic Census tabulation for some industries; therefore it also evaluates Central Contractor Registration and FPDS-NG data for those industries when evaluating a size standard. For example, to assess small business participation in Federal contracting in NAICS Code 561210, SBA evaluated FPDS-NG data for fiscal years 2008 to 2010. The FPDS-NG data for a particular NAICS code include all businesses receiving contracts regardless of whether that industry is their primary industry. Thus, although the Economic Census tabulation may not include all establishments receiving contracts under NAICS Code 561210, FPDS-NG includes them all. Based on the fiscal years 2008-2010 FPDS-NG data, SBA found the small business share of total industry receipts to be very similar to small business share of total Federal contracts in NAICS Code 561210.

The commenter contended further that since procurements for NAICS Code 561210 are very large and include a substantial mix of various services from various industries, most small businesses under the current size standard cannot handle Federal contracts for Facilities Support Services. The commenter included an pipeline summary report of the Federal procurement activities under NAICS Code 561210 for the period from 2004-2008. The report, although somewhat outdated, showed that the majority of Federal contracts awarded by the Federal agencies under NAICS Code 561210 went to larger businesses. This commenter recommended a larger than \$35.5 million size standard for this industry because it, as the commenter stated, would

increase the number of capable small businesses and offer more competition in the Federal market that is currently dominated by very large companies.

SBA has not adopted this recommendation for several reasons. First, although SBA recognizes the challenges small businesses face in the Federal market, the Agency is also very concerned that “smaller” small businesses may not be able to compete effectively with “larger” small businesses for Federal small business contracts if a size standard is set too large. Second, SBA’s analysis of industry and program data suggested a lower \$30 million size standard for this industry. However, for the reasons explained in the proposed rule and also stated above in this rule, SBA has decided not to lower any of its current size standards although the analytical results might support lowering some of them. Thus, SBA proposed to retain the current \$35.5 million size standard for NAICS Code 561210 even if its analysis supported a lower \$30 million. Third, to be consistent with SBA’s size standards methodology and with proposed and final rules for other NAICS Sectors that SBA has issued to date, \$35.5 million is the highest receipts based size standards that SBA will propose or adopt. Thus, SBA is adopting \$35.5 million as the size standard for NAICS Code 561210, Facilities Support Services, as proposed.

NAICS Code 561320 – Temporary Help Services

There was one comment on SBA’s proposed change to the size standard for this NAICS code. The commenter disagreed with SBA’s proposal to increase the size standard for that industry from the current \$13.5 million to \$25.5 million. Rather, he recommended that it should be increased to \$35.5 million. The basis for his suggestion was the breakdown of cost for each employee and the benefits not calculated by the Federal government for a business under this NAICS code. He argued that expenses and

profits contemplated from Federal contracts did not cover other expenses, such as general and administrative expenses. He neither challenged the industry and program data or methodology SBA used to arrive at the proposed \$25.5 million size standard nor did he provide alternative industry data and analysis supporting his recommendation to increase it to \$35.5 million. Thus, SBA has not adopted this recommendation and is adopting \$25.5 million, as proposed.

NAICS Code 561422 – Telemarketing Bureaus and Other Contact Centers and NAICS Code 561920 – Convention and Trade Show Organizers

SBA received one comment on both NAICS Code 561422 and NAICS Code 561920. SBA had proposed to increase the size standard for NAICS Code 561422 from \$7 million to \$14 million. The commenter suggested SBA to reevaluate its proposal and recommended that the size standard for NAICS Code 561422 be increased to at least \$25 million. He argued that the proposed \$14 million is low compared to size standards for other industries, such as NAICS Code 541511 (Custom Computer and Programming Services) that has a size standard of \$25 million and NAICS Code 511199 (All Other Publishers) that has a size standard of 500 employees. The commenter did not explain the rationale for choosing these industries for comparison, nor did he provide any explanation why NAICS Code 561422 should have the same size standard as those other industries. As such, SBA is not convinced that a higher increase is warranted. Thus, SBA has not adopted the commenter's recommendation and is adopting the \$14 million size standard for NAICS Code 561422, as proposed.

This commenter also urged SBA to re-assess its proposal to increase the size standard for NAICS Code 561920, Convention and Trade Show Organizers, from

\$7 million to \$10 million and recommended that it should be increased further to at least \$14 million, or preferably to \$19 million. The commenter argued that it requires specialized labor categories and hence higher labor costs to perform work in this industry, warranting a larger increase to its size standard. However, the comment did not explain why the proposed \$10 million size standard was not appropriate in view of higher labor costs. Therefore, SBA has not adopted the recommendation and is adopting \$10 million, as proposed.

NAICS Code 561440 – Collection Agencies

SBA received one comment that fully supported its proposal to increase the size standard for NAICS Code 561440, Collection Agencies, from \$7 million to \$14 million. The commenter stated that the proposed size standard accurately reflects current economic conditions and that the higher \$14 million size standard would help small businesses to remain competitive in Federal procurements. Thus, SBA is adopting \$14 million, as proposed.

NAICS Code 561510 – Travel Agencies, and NAICS Code 561520 – Tour Operators

SBA received one comment on behalf of two trade associations, one representing Travel Agencies and the other representing Tour Operators. The comment fully supported the SBA's proposal to increase the size standard for NAICS Code 561510 (Travel Agencies) from \$3.5 million to \$19 million and to increase the size standard for NAICS Code 561520 (Tour Operators) from \$7 million to \$19 million. The comment also supported SBA's current method of measuring revenues in these industries in terms of commissions and other earnings, excluding funds collected for a third party (such as bookings and sales subject to commissions). The trade associations also confirmed that

the proposed size standards are consistent with the data collected from their members and that 73 percent of their members surveyed supported SBA's efforts to increase size standard for those two industries. Thus, SBA is adopting the proposed size standards.

NAICS Code 561612 – Security Guards and Patrol Services

SBA received two comments on its proposal to increase the size standard for NAICS Code 561612 (Security Guards and Patrol Services) from \$18.5 million to \$19 million. The first commenter argued for a higher size standard than SBA's proposed \$19 million size standard for this NAIC code. Citing industry data and the methodology that SBA used to derive the proposed size standard, the commenter contended that SBA's proposal to increase it by only \$500,000.00 (from its existing \$18.5 million) could not be justified. The commenter alleged that the proposed increase from \$18.5 million to \$19 million failed to account for inflation. The commenter argued that simply by updating the \$18.5 million for inflation since the last inflation adjustment in 2008, the size standard should be increased to \$19.5 million.

As stated elsewhere with respect to a comment on another NAICS code, SBA is required to review all size standards for inflation not less frequently than every five years. In this review, SBA's revisions to size standards are primarily based on the Agency's evaluation of industry and Federal procurement factors. The Agency plans to adjust all monetary size standards for inflation after it completes its current review of all receipts based size standards. As SBA is reviewing size standards on a Sector by Sector basis, making additional adjustments for inflation for a particular size standard would result in inconsistent size standards across sectors and industries.

The same commenter also expressed concern that the proposed \$500,000 increase does not ameliorate the growing problem in recent years that small but growing small businesses have to compete with a small number of industry “giants” in the Federal market. He also noted that due to increased security risks agencies often look for brand recognition and because most contracts for security services are “best value” procurements where the cost is not a determining factor, Federal agencies often select large, expensive firms. The commenter added that the security industry is dominated by very large firms and aggressive acquisition by large firms has contributed to further market consolidation and dominance by fewer and fewer firms. As a result, as the commenter explained, very small businesses benefit from the current \$18.5 million size standard, while mid-tiered companies that have exceeded the size standard are forced to compete with the largest and most dominant firms in the Federal market place. To address this problem, the commenter suggested of a size standard of \$50 million to \$75 million. To be consistent with SBA’s size standards methodology and with proposed and final rules for other NAICS Sectors that SBA has issued to date, \$35.5 million is the highest receipts based size standards that SBA will propose or adopt. Thus, SBA is adopting \$35.5 million as the size standard for NAICS Code 561612, Security Guards and Patrol Services.

The next commenter stated that raising the size standard by a mere \$500,000 was insufficient compared to what SBA is doing in other industries. The commenter recommended that the size standard for NAICS Code 561612 should be at least \$23 million and an even higher \$30 million for Service Disable Veteran Owned Small Businesses (SDVOSBs). The commenter noted that a size standard higher than the

proposed \$19 million size standard is needed to meet the statutorily required 3 percent small business contracting goal for SDVOSB's program. All increases to size standards SBA proposed or adopted in other industries were supported by the analyses of industry and Federal procurement Factors using the same methodology and data sources. The analysis only supported a \$500,000 increase to the size standard for NAICS Code 561612. SBA evaluates the level and small business share of Federal contracts for each industry as one of the primary factors in establishing or reviewing a size standard, but whether the Federal agencies are meeting their small business contracting goals or not is not important to deciding a size standard. SBA does not establish separate size standards for individual small business procurement programs. SBA establishes only one set of small business size standards for all small business procurement programs, such as SDVOSB, 8(a), businesses located in Historically Underutilized Business Zones (HUBZone), and Woman-Owned Small Business Programs (WOSB). Thus, SBA has not adopted the commenter's recommendation and is adopting the \$19 million size standard for NAICS Code 561622, as proposed.

NAICS Code 561730 – Landscaping Services

SBA received one comment on NAICS Code 561730, Landscaping Services, for which SBA had proposed to retain the current size standard of \$7 million. The commenter expressed concern that his business' average annual revenue has exceeded the \$7 million size standard for NAICS Code 561730. The commenter felt that the \$7 million size standard is too low for this industry and it should be much higher. The commenter stated that his company also does irrigation work under NAICS Code 238910 (Site Preparation Contractors) which has a size standard of \$13 million and recommended

that NAICS Codes 561730 and 238910 have the same size standard of at least \$13 million. The comment argued further that 80-85 percent of actual costs of contracts performed under NAICS Code 561730 is for landscaping and the remainder for other services, warranting a higher size standard. SBA is not adopting the commenter's recommendation for several reasons. First, SBA's analyses of industry and program data actually supported lowering the size standard for that industry to \$5 million. However, for the reasons provided in the proposed rule, SBA proposed not to reduce any size standard, even if the data appeared to support reducing it. Second, irrigation falls under NAICS Code 221310 (not NAICS Code 238910 as the commenter argued) and it currently has the same size standard of \$7 million as for NAICS Code 561730. Third, the commenter did not provide any explanation or analysis of similarities between NAICS Codes 238910 and 561730 for them to have the same size standard. Therefore, SBA has not adopted the commenter's recommendation and is adopting \$7 million as the size standard for NAICS Code 561730, as proposed.

NAICS Code 562910 – Remediation Services

Six commenters offered data, analysis and suggestions regarding the proposed change to the size standard for this NAICS code. SBA had proposed to increase the size standard for NAICS Code 562910, Remediation Services, from \$14 million to \$19 million. In the October 12, 2011 proposed rule, SBA had stated that it did not review the 500-employee size standard for the "exception" to NAICS Code 562910, Environmental Remediation Services, and that the 500-employee size standard will remain effective until the Agency reviewed it with all employee-based size standards at a later date.

Of the six comments, two pertained to the receipts based size standard for NAICS Code 562910, Remediation Services, and four pertained to the “exception,” Environmental Remediation Services, that has a 500-employee size standard.

One commenter supported SBA’s proposal to increase the receipts-based size standard for NAICS Code 562910 from \$14 million to \$19 million, but suggested further increase to \$30 million. The commenter noted that a higher size standard will allow procuring agencies to have more discretion in using the receipts-based size standard for specific procurements. He added that historically the receipts-based size standard has not been used much in comparison to the 500-employee size standard. It should be noted that the 500-employee size standard applies only to very specific types of procurements, as described in Footnote 14 in 13 CFR 121.201, and contracting officers cannot apply the employee-based size standard to all contracts under NAICS Code 562910 if they do not meet the requirements under the footnote. The Small Business Size Regulations require Federal agencies to designate the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. See 13 CFR 121.402(b). The regulations also provide that any interested party adversely affected by a NAICS code designation may appeal the designation to the Office of Hearings and Appeals. See 13 CFR 121.1102-1103. Because the commenter did not provide any data or analysis supporting why a higher \$30 million higher size standard he suggested was more appropriate than the SBA’s proposed \$19 million, SBA is adopting the proposed \$19 million.

Another commenter supported the application of the receipts-based size standard to NAICS Code 562910, Remediation Services, but expressed concern with the 500-

employee size standard and its impact on businesses with less than 100 employees or \$50 million in revenue. The commenter argued that there exist significant similarities in terms of labor and equipment utilized between remediation activities and some of the construction activities under NAICS Subsector 237, Heavy and Civil Engineering Construction, and yet the size standard for construction activities is \$33.5 million without an employee-based size standard. The commenter noted that under the 500-employee size standard companies with hundreds of millions of dollars in revenue qualify for small business set-asides and that it is easy for companies to remain permanently below 500 employees by subcontracting out their non-core activities to others. He alleged that procurement personnel have applied the NAICS Code 561290, Remediation Services, for procurements where NAICS Code 541620, Environmental Consulting Services would be more appropriate, thereby causing an adverse impact on much smaller businesses. He expressed disappointment that SBA deferred the review of the 500-employee size standard for NAICS Code 562910, thereby allowing this situation to continue. Given these concerns, he urged SBA to remove the 500-employee size standard and instead increase the revenue based size standard to \$33.5 million in par with the construction industries.

In 1994, based on its analyses of businesses involved in environmental remediation work and the nature of Federal marketplace, SBA created an “Environmental Remediation Services” sub-industry category (see 59 FR 47237, (September 15, 1994)). The SBA’s analyses showed that environmental remediation work involved services from multiple industries and that businesses involved in environmental remediation work tended to be much larger than those doing general remediation work. SBA also found

that Federal contracts for environmental remediation work to be of much more sophisticated, multidisciplinary, and large-scale nature than general remediation work. SBA determined that relatively large companies will be necessary to perform environmental remediation procurements. Based on these factors, SBA established a 500-employee based size standard for Environmental Remediation Services and also specified requirements to classify a procurement as Environmental Remediation Services and to apply the 500-employee size standard. A large percentage of commenters on the 1993 proposed rule (58 FR52452, (October 8, 1993)) also had supported the creation of Environmental Remediation Services sub-industry and recommended an employee-based size standard for it instead of a revenue-based size standard. Several commenters on this proposed rule, as discussed below, also recommended the continuation of the employee-based size standard for Environmental Remediation Services exception to NAICS Code 562910, Remediation Services. SBA is concerned that replacing the 500-employee size standard with a receipts-based size standard of \$33.5 million, as recommended by the commenter above, would cause several currently eligible small businesses to lose their eligibility for Federal assistance, which is not in the interest of small businesses under the current economic environment, as stated elsewhere in this final rule. At \$33.5 million, small businesses may not have adequate capabilities to meet the scope and size requirements of Federal procurements for Environmental Remediation Services and it may hamper the government critical environmental remediation programs. In addition, at \$33.5 million, given the large size of most environmental remediation contracts, even with one or two contracts small businesses will quickly exceed the size standard and they will be forced to compete with much larger companies in the Federal market, which is,

according to several commenters to this proposed rule, already dominated by very large businesses. Therefore, SBA is not adopting the recommendation. Instead it is adopting the proposed \$19 million size standard for NAICS Code 562910, Remediation Services and retaining its Environmental Remediation Services exception and the 500-employee based size standard.

In response to the previous two comments, SBA believes it should clarify why there are two size standards under NAICS Code 562910, one for Remediation Services and the other for Environmental Remediation Services. When SBA converted its table of size standards from Standard Industrial Classification (SIC) codes to NAICS in 2000, it underlined the difference between the two. SBA stated in its September 5, 2000 final rule (65 FR 53533) that the distinction "...lies in the extent and complexity of work to be performed on a specific Federal government contract. 'Environmental Consulting Services' is one activity, and ...often conducted in conjunction with an environmental remediation contract. However, 'Environmental Remediation Services' requires that (1) the purpose of the procurement be the restoration of a contaminated environment, i.e., environmental remediation; and (2) the procurement be composed of activities in three or more separate industries, none of which constitutes 50 percent or more of the contract value, and each of which would, if it were a separate contract, be a different NAICS (formerly SIC) code. Footnote 14 more fully details when 500 employees is the appropriate size standard for an Environmental Remediation Services contract."

Although SBA did not review the 500-employee based size standard for Environmental Remediation Services exception under NAICS Code 562910 in the October 12, 2011 proposed rule, the Agency received four comments on this size

standard. All four commenters recommended that SBA retain the employee-based size standard for Environmental Remediation Services and felt that the current 500-employee size standard is too low and needs to be increased. Three suggested that it should be increased to 1,000 employees and one recommended 1,500 employees. They provided several reasons for their recommendations: (1) there have been significant mergers and acquisitions and industry consolidation since 1994, resulting in dominance of the Federal market place by several larger firms; (2) the 500-employee size standard has been a barrier for small businesses to acquire financial and technical ability to be able to perform tasks under environmental remediation procurements that are getting increasingly complex and large; (3) it limits ability to grow as a small business, thereby forcing small businesses to compete with mega firms with thousands of employees and billions in revenues once they exceed the size standard; and (4) more mid-sized businesses will retain or regain small business status under a higher size standard, thereby providing agencies with a large selection of capable small business to choose from for their critical small business procurements. SBA recognizes the challenges mid-sized businesses face in Federal marketplace for environmental remediation services, but as stated in the proposed rule, the Agency has decided to retain the current 500-employee size standard for Environmental Remediation Service until it reviews that size standard with other employee based size standards at a later date. SBA will consider the comments identified here when it reviews the 500-employee Environmental Remediation Service size standard at a later date.

Comments on SBA's Size Standards Methodology and Other Issues

SBA received three comments that did not directly refer to any particular NAICS codes, but offered general comments on the SBA's size standards methodology for evaluating size standards.

The first commenter alleged that proposed size standards are still too low and suggested that they should start at \$50 million in total sales. He added that when contracts are valued at \$250 million or more, even a company with \$50 million in sales cannot compete. He suggested that SBA take into account the costs of materials and labor and establish size standards in terms of gross profit instead of total receipts. SBA doesn't accept this recommendation for three reasons. First, under SBA's current size standards methodology, the maximum receipts based size standard the Agency can adopt or propose for any industry is \$35.5 million. Second, if a size standard were set at \$50 million in average annual receipts, SBA is concerned that it would adversely affect the ability of truly small businesses to compete for Federal small business opportunities. Third, for most industries, SBA uses either average annual receipts or number of employees to establish size standards. If a size standard were established in terms of gross profit, as suggested by the commenter, a company with hundreds of millions of revenues and thousands of employees can qualify as small under a profit-based size standard. It is not unusual for very large companies to have little or negative profit over the course of business cycles, for instance General Motors during the recent recession. Such a firm would clearly be "dominant" in the industry and, thus, not a small business under the statutory requirement that a small business is one that is independently owned

and operated and not dominant in its field of operation. Moreover, a firm's profit can be manipulated and, thus, would be an inconsistent and misleading guide to firm's size.

The next commenter generally supported SBA's effort to increase several size standards and also agreed with the Agency's position that lowering size standards under current economic conditions is not in the best interests of small business. However, he felt that increasing size standards by 180 percent to over 300 percent at one time is also not in the best interests of small business, although he did not explain why. He urged that size standards should be raised between 50-75 percent immediately across all NAICS codes within NAICS Sector 56. He argued that this will enable truly small businesses to seek SBA's assistance and foster positive competition in Federal contracting and more accurately reflect today's economic environment where some businesses are still suffering the effects of recent recession. The commenter also recommended a full review of SBA's loan data, small business participation in Federal contracting, and other relevant factors within 2-3 years to determine if another increase is appropriate. Finally, he suggested that some of the sole-sourced 8(a) contracts should be competed among small businesses, but this issue is beyond the scope of this rule.

SBA's agrees that the proposed increases to size standards in NAICS Sector 56 are quite significant for some industries and the Agency had sought comments in this proposed rule as well as in proposed rules for other Sectors, if the increases to size standards should be limited to certain amounts. Comments have generally supported SBA's size standards methodology, industry and program data it evaluated and its proposed increases to size standards. SBA believes that the changes in industry structure since the last comprehensive review of size standards nearly 30 years ago may have

resulted in large increases to size standards for some industries. The Jobs Act requires SBA to review all size standards at least once every five years and make adjustments to reflect market conditions. Prior to the next review, SBA will assess the impact of size standards revisions adopted in the current review.

This last commenter disagreed with SBA's proposed changes to size standards because, as he stated, it will create more competition for real small businesses. He stated that more than two-thirds of businesses that are registered in CCR have less than 20 employees, and argued that those are the companies that need support. He maintained that businesses with 10-20 employees hire new people when they receive new contracts, while those with 40 employees can do additional work with existing workers and have no need to hire new people. For industries selling commodities, he suggested that businesses with less than 20 employees should be classified as "small business" and contracts valued at \$150,000 or less should be set-aside for those businesses. Similarly, according to the commenter, businesses with 40 employees should be classified as "medium sized small business" and contracts between \$150,000 and \$500,000 should be reserved for those businesses. For services industries, he suggested less than \$100,000 in sales as "small business," \$300,000 as "medium small business" and \$500,000 as "large small business."

SBA does not adopt these suggestions for several reasons. First, SBA is concerned that very small size standards, such as those suggested by the commenter, may not adequately capture the small business segment in an industry that small business programs are intended to assist. The size standards should be such that small businesses are able to grow and develop to an economically viable size while remaining eligible for

Federal assistance. If size standards were set too low, small businesses will quickly outgrow the size standards and be forced to compete with significantly larger businesses for Federal contracts on a full and open basis. However, as stated elsewhere in this rule, SBA is also equally concerned about setting size standards too high, as doing so could put smaller businesses at a disadvantage in competing for Federal opportunities. Second, SBA believes that such tiered size standards would add significant complexity to size standards, which many believe are already too complex, which would run counter to SBA's ongoing effort to simplify them. More importantly, the Small Business Act requires SBA to establish one definition of what is a small business concern, not what is small, medium, and so forth.

Further Increases for Inflation

A number of commenters suggested that SBA adopt size standards higher than what it proposed based on industry and Federal contracting factors, to account for inflation since its last inflation adjustment in 2008. As stated elsewhere in this rule, for the current comprehensive size standards review, SBA is not considering the inflation factor for the following reasons.

SBA will, as required by the regulations, increase all monetary based size standards for inflation soon after it completes the review of all receipts based size standards. If SBA were to increase size standards for inflation in this Sector, it would need to re-adjust all of previously revised receipts based size standards for other Sectors to make them consistent across sectors and equitable among small businesses from different industries. For inflation adjustment, as described in the SBA's "Size Standards Methodology" Whitepaper, SBA establishes a starting (base) period and an ending period

and calculates the inflation rate during the period covered. For example, SBA's latest adjustment covered inflation that occurred from the third quarter of 2001 through the fourth quarter of 2006 (73 FR 41237). Since we are reviewing size standards on a Sector by Sector basis and different Sectors are at different stages of rulemaking process, it is not practicable to adjust size standards for inflation as part of the current review. Moreover, because of the long time lag from the start of the proposed rule to the publication of the final rule, unless SBA were to re-adjust the proposed standards at the final rule stage, any inflationary increases would already be outdated.

Therefore, SBA is not adopting the recommendation to make additional adjustment for inflation to proposed revisions to size standards based on industry and federal procurement factors. As stated above, after SBA completes the review of all receipts based size standards it will adjust them across the board for inflation that has occurred since its last increase.

All comments to the proposed rule are available for public review at <http://www.regulations.gov>.

Conclusion

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 37 industries in NAICS Sector 56 to the levels it proposed. Those industries and their revised size standards are shown in the following table, Table-1, Summary of Proposed Size Standard Revisions.

Table 1 - Summary of Proposed Size Standard Revisions

NAICS codes	NAICS industry title	Current size standard (\$ million)	Proposed size standard (\$ million)
561311	Employment Placement Agencies	\$7.0	\$25.5
561312	Executive Search Services	\$7.0	\$25.5
561320	Temporary Help Services	\$13.5	\$25.5
561330	Professional Employer Organizations	\$13.5	\$25.5
561410	Document Preparation Services	\$7.0	\$14.0
561421	Telephone Answering Services	\$7.0	\$14.0
561422	Telemarketing Bureaus and Other contact Centers	\$7.0	\$14.0
561431	Private Mail Centers	\$7.0	\$14.0
561439	Other Business Service Centers (including Copy Shops)	\$7.0	\$14.0
561440	Collection Agencies	\$7.0	\$14.0
561450	Credit Bureaus	\$7.0	\$14.0
561491	Repossession Services	\$7.0	\$14.0
561492	Court Reporting and Stenotype Services	\$7.0	\$14.0
561499	All Other Business Support Services	\$7.0	\$14.0
561510	Travel Agencies	\$3.5	\$19.0
561520	Tour Operators	\$7.0	\$19.0
561591	Convention and Visitors Bureaus	\$7.0	\$19.0
561599	All Other Travel Arrangement and Reservation Services	\$7.0	\$19.0
561611	Investigation Services	\$12.5	\$19.0
561612	Security Guards and Patrol Services	\$18.5	\$19.0
561613	Armored Car Services	\$12.5	\$19.0
561621	Security Systems Services (except Locksmiths)	\$19.0	\$12.5
561622	Locksmiths	\$7.0	\$19.0
561710	Exterminating and Pest Control Services	\$7.0	\$10.0
561740	Carpet and Upholstery Cleaning Services	\$4.5	\$5.0
561910	Packaging and Labeling Services	\$7.0	\$10.0
561920	Convention and Trade Show Organizers	\$7.0	\$10.0

561990	All Other Support Services	\$7.0	\$10.0
562111	Solid Waste Collection	\$12.5	\$35.5
562112	Hazardous Waste Collection	\$12.5	\$35.5
562119	Other Waste Collection	\$12.5	\$35.5
562211	Hazardous Waste Treatment and Disposal	\$12.5	\$35.5
562212	Solid Waste Landfill	\$12.5	\$35.5
562213	Solid Waste Combustors and Incinerators	\$12.5	\$35.5
562219	Other Nonhazardous Waste Treatment and Disposal	\$12.5	\$35.5
562910	Remediation Services	\$14.0	\$19.0
562920	Materials Recovery Facilities	\$12.5	\$19.0

For the reasons stated above in this rule and in the proposed rule, SBA will retain the current receipts-based size standards for seven industries in this Sector. SBA's analysis of industry and program data had suggested that it could reduce standards for five of those seven industries. However, lowering size standards in NAICS Sector 56 is not consistent with SBA's recent final rules on NAICS Sector 44-45, Retail Trade (75 FR 61597, (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604,(October 6, 2010)); and NAICS Sector 81, Other Services (75 FR 61591,(October 6, 2010)). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons. SBA is also retaining the existing receipts-based size standards for two industries for which the results supported their current levels. Accordingly, SBA has retained the existing receipts-based size standards for seven industries in NAICS Subsector 561 (Administrative and Support Services) and Subsector 562 (Waste Management and Remediation Services).

SBA did not review the 500-employee size standard for Environmental Remediation Services, which is an exception under NAICS Code 562910, Remediation

Services. SBA will retain that size standard until later when the Agency reviews it with other employee based size standards.

Compliance with Executive Orders 12866, 13563, 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:

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 37 industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. SBA’s mission is to aid and assist 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 the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act requires SBA to review at least one-third of all size standards

within each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The Supplementary Information Sections of the October 12, 2011 proposed rule and this final rule explain the SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status as a result of this rule is gaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. In the 37 industries in NAICS Sector 56 for which SBA is increasing size standards, SBA estimates that about 2,700 additional firms will gain small business status and become eligible for these programs. That number is nearly 1.0 percent of the total number of firms in industries in NAICS Sector 56 that have receipts-based size standards. SBA estimates that this would increase the small business share of total industry receipts in those industries from 32 percent under the current size standards to 37 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups in the following ways: (1) some businesses that are above the current size standards will gain small business status under the higher size standards, thereby enabling them 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 enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

Based on the data for fiscal years 2008 to 2010, more than two-thirds of total Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 37 industries for which SBA is increasing size standards. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling up to \$60-75 million per year through SBA's small business, 8(a), HUBZone, WOSB, and SDVOSB programs and through other, unrestricted procurements. The added competition for many of these procurements may also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the 2008 to 2010 data, SBA estimates that approximately 20-30 additional loans totaling \$3 million to \$5 million in new Federal loan guarantees could be made to the newly defined small businesses under the revised size standards. Under the Jobs Act, SBA can now guarantee substantially

larger loans than in the past. In addition, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has tangible net worth that does not exceed \$15 million and also has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed \$5.0 million. Thus, increasing the size standards may 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.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since the EIDL program is contingent on the occurrence and severity of one or more disasters, SBA cannot make a meaningful estimate of benefits for businesses impacted by those disasters.

If all of the estimated 2,700 newly defined small firms under the revised size standards could become active in Federal procurement programs, there may be added administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. There may be new firms seeking SBA guaranteed loans, more eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database, and others seeking certification in SBA's 8(a) or HUBZone Programs. More firms may also qualify for WOSB, SDVOSB, and SDB status. 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 added 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 under the higher revised size standards. 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 total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of price evaluation preferences. 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), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may 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. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. 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 more 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 small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards for Administrative and Support, Waste Management and Remediation 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 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to obtain their

feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation included information on the status of the comprehensive size standards review at that time, SBA's anticipated schedule for reviewing other Sectors, and how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this final rule.

The review of size standards in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, is consistent with E.O. 13563 Sec, 6 calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. 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, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them

when necessary. In addition, the Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions.

Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule would not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 56, Administrative and

Support, Waste Management and Remediation Services. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA's Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are 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 are the need for and objective of the rule?

Most of SBA's size standards for the industries in Sector 56, Administrative and Support, Waste Management and Remediation Services, had not been reviewed since the 1980s. Technological changes, productivity growth, international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal small business assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

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

SBA estimates that approximately 2,700 additional firms will become small because of increases in size standards in 37 industries in NAICS Sector 56. That represents about 1.0 percent of total firms in industries in that Sector that have receipts-based size standards. The small business share of total industry receipts in those industries will increase from about 32 percent under the current size standards to nearly 37 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The revised size standards will enable more small businesses to retain their small business status for a longer period. Under current size standards, many small businesses may have lost their eligibility or found it difficult to compete with companies that are significantly larger than they are and this final rule attempts to correct that impact. SBA believes these changes will have a positive impact for existing small businesses and for those that have either exceeded or are about to exceed current size standards.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal 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 are designed to 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?

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, (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising 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)).

(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 practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual NAICS Code industries within NAICS Sector 56 are discussed in the supplementary information to the proposed rule and this final rule.

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

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, 694a(9).

2. In § 121.201, in the table, revise the entries for “561311,” “561312,” “561320,” “561330,” “561410,” “561421,” “561422,” “561431,” “561439,” “561440,” “561450,” “561491,” “561492,” “561499,” “561510,” “561520,” “561591,” “561599,” “561611,” “561612,” “561613,” “561621,” “561622,” “561710,” “561740,” “561910,” “561920,” “561990,” “562111,” “562112,” “562119,” “562211,” “562212,” “562213,” “562219,” “562910,” “562920” 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
* * * * *			
561311	Employment Placement Agencies	\$25.5	

561312	Executive Search Services	\$25.5	
561320	Temporary Help Services	\$25.5	
561330	Professional Employer Organizations	\$25.5	
561410	Document Preparation Services	\$14.0	
561421	Telephone Answering Services	\$14.0	
561422	Telemarketing Bureaus and Other contact Centers	\$14.0	
561431	Private Mail Centers	\$14.0	
561439	Other Business Service Centers (including Copy Shops)	\$14.0	
561440	Collection Agencies	\$14.0	
561450	Credit Bureaus	\$14.0	
561491	Repossession Services	\$14.0	
561492	Court Reporting and Stenotype Services	\$14.0	
561499	All Other Business Support Services	\$14.0	
561510	Travel Agencies ¹⁰	\$19.0 ¹⁰	
561520	Tour Operators ¹⁰	\$19.0 ¹⁰	
561591	Convention and Visitors Bureaus	\$19.0	
561599	All Other Travel Arrangement and Reservation Services	\$19.0	
561611	Investigation Services	\$19.0	
561612	Security Guards and Patrol Services	\$19.0	
561613	Armored Car Services	\$19.0	
561621	Security Systems Services (except Locksmiths)	\$19.0	
561622	Locksmiths	\$19.0	
561710	Exterminating and Pest Control Services	\$10.0	
* * * * *			
561740	Carpet and Upholstery Cleaning Services	\$5.0	
* * * * *			
561910	Packaging and Labeling Services	\$10.0	
561920	Convention and Trade Show Organizers ¹⁰	\$10.0 ¹⁰	
561990	All Other Support Services	\$10.0	
* * * * *			
562111	Solid Waste Collection	\$35.5	
562112	Hazardous Waste Collection	\$35.5	
562119	Other Waste Collection	\$35.5	

562211	Hazardous Waste Treatment and Disposal	\$35.5	
562212	Solid Waste Landfill	\$35.5	
562213	Solid Waste Combustors and Incinerators	\$35.5	
562219	Other Nonhazardous Waste Treatment and Disposal	\$35.5	
562910	Remediation Services	\$19.0	
* * * * *			
562920	Materials Recovery Facilities	\$19.0	
* * * * *			

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10. NAICS codes 488510 (part) 531210, 541810, 561510, 561520, and 561920 —As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

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Dated: April 25, 2012

Karen G. Mills,
Administrator.

Editorial Note: This document was received at the Office of the Federal Register on November 30, 2012.

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