section 741 of Public Law 107–76 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

§ 1470.108 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5,000,000 pounds per distinct operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

§ 1470.109 Payment rate and apple operation payment.

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the $75 million available for the Apple Market Loss Assistance Payment Program II by the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is expended.

§ 1470.110 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of 7 CFR part 1403.

§ 1470.111 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

§ 1470.112 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 1470.113 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.117(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1470.114 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1470.115 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

§ 1470.116 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1470.117 Refunds; joint and several liability.

(a) In the event of an error on an Application, a failure to comply with any term, requirement, or condition for payment arising under the Application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this chapter.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

Signed in Washington, DC, on June 28, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE89

Small Business Size Standards; Forest Fire Suppression and Fuels Management Services

AGENCY: U. S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to establish a $15 million size standard for the Forest Fire Suppression and Fuels

Management activities classified within the ''Support Activities for Forestry'' industry (North American Industry Classification System (NAICS) 115310). The current size standard is $6 million. This action is warranted in light of increased emphasis by the Federal Government on removing biomass fuel from the nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires.

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via E-mail to *SIZESTANDARDS@sba.gov.* Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from firms in the Forestry industry to either increase the $6 million size standard for the Support Activities for Forestry industry, or create a separate size standard under this industry for Forest Fire Suppression and Fuels Management Services. [Effective February 22, 2002, the size standard for NAICS 115310 increased from $5 million to $6 million as part of an inflation adjustment to SBA's monetary size standards (see 67 FR 3041, dated January 23, 2002)]. These firms believe that this action is warranted in light of increased emphasis by the Federal Government on removing biomass fuels from the nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires. Funding for these requirements increased from $500 million in fiscal year 1999 to $1.9 billion in fiscal year 2001. For fiscal year 2002, the funding level is proposed to increase to $2.2 billion. To meet the various fire suppression and fuels management requirements issued by the United States Forest Service (USFS) and Bureau of Land Management (BLM), firms need to invest in new capital equipment, such as fire engines, helicopters, brush cutters, and yarders. In addition, the massive buildup of biomass fuels in the forest and severe droughts in the Southeastern and Western sections of the United States have resulted in devastating wildfires in these areas. USFS and BLM now rely heavily on contractors for fighting these fires. In fact, these agencies plan on expanding their use of private sector contractors by increasing their contract requirements and by moving toward a nationwide approach, especially in the area of fire suppression. These agencies require contractors to provide specialized long-term (five to seven years) certifiable training to fire-crew chiefs and to crews, as well as to obtain USFS certification for fire-fighting equipment. In addition, because the contractors have fire-fighting crews and equipment meeting USFS certification standards, USFS and BLM have begun to include ''prescribed burn'' services in their fuels management requirements. These factors caused company revenues to dramatically increase over the last three years to the point where many businesses involved in these activities exceed or may soon exceed the current $6 million size standard, causing the pool of eligible small businesses in this activity to seriously decline. If this continues, these firms argue, Federal agencies could be hampered in using Government procurement preference programs for small business. One organization representing this industry recommends a 500-employee size standard. It claims that an employee-based size standard would allow firms ''to better manage their resources and plan for capital expansion.'' It also states that the Logging industry, a related industry, currently has an employee-based size standard and the two industries should have the same size standard. This organization also recommends, as an alternative, a $27.5 million size standard. To support this recommended size standard, it estimates the amount of revenues generated by a firm that provides 20 fire crews (a crew consists of 20 people) for 90 days for forest fire suppression services. Revenues from that effort alone could amount to $10.8 million.

In recent years USFS and BLM have come to rely heavily on the private sector in the forestry industry to suppress forest fires and perform fuels management duties. As a result, the firms in the forest industry choosing to go into this industry need to invest in capital equipment and develop professional fire crews and fire chiefs certifiable by USFS. Since firms in this emerging industry utilize significantly more capital equipment and specially-trained personnel than for other forestry activities, SBA is proposing a size standard for Forest Fire Suppression and Fuels Management that is separate from other forestry activities.

Because Forest Fire Suppression and Fuels Management activities generated significant private sector activity only recently, the U. S. Bureau of the Census has not published specific information on firms engaged in these activities. Also, currently available Census Bureau data on the Support Activities for Forestry industry do not capture the significant increases in Forest Fire Suppression and Fuels Management activities. For example, contract awards in these activities to firms in the state of Oregon alone, increased from $29 million in fiscal year 1998 to $173 million in fiscal year 2000. Consequently, SBA cannot rely on the Census Bureau data to assess the size standard for the Support Activities for Forestry industry or for Forest Fire Suppression and Fuels Management. SBA conducted an extensive review of the Support Activities for Forestry industry and several other closely related forestry industries and concluded that the Census Bureau data could not support a change to the current $6 million size standard. Therefore, SBA collected data from firms in the industry and from USFS and BLM to assess the size standard for Forest Fire Suppression and Fuels Management. The information consisted of Federal funding for Federal, state, and local communities' initiatives, procurement statistics and procurement forecasts, company revenues and employees, and capital investments. If this rule is adopted, SBA will monitor U. S. Bureau of the Census data, as well as Federal procurement and other industry data to continue to assess the impact that this increased funding is having on the structure of small businesses in these activities.

Since Forest Fire Suppression and Fuels Management is a segment of the Support Activities for Forestry industry, SBA is adding a footnote to the table of size standards defining the activities covered. It explains that firms in this industry provide services to fight forest fires and that these firms usually have fire-fighting crews and equipment. It also includes firms that provide services to clear land of hazardous materials that fuel forest fires and that the treatments used include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling. SBA invites comment on this definition so that it is inclusive of all activities currently performed in these areas.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards. SBA's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's web site at http:/

www.sba.gov/library/soproom.html) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act, 15 U.S.C. 632 (a)(3), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristic. SBA has in place two ''base'' or ''anchor'' size standards that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the ''typical industry.''

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry'average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of $7.5 million in receipts and less This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50 percent of total industry receipts. Viewed in isolation, this higher figure of the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent comparison discussed above. Usually, SBA uses information based on the most recent economic census conducted by the Department of Commerce's Bureau of the Census. In this particular case, the change in Federal policy, the massive infusion of Federal monies, and the increased reliance upon the private sector for these services occurred since 1997, the date of the last economic census. This information, along with information specific to Forest Fire Suppression and Fuels Management segment under NAICS Code 115310 is not reflected in the latest census data. Therefore, SBA gathered the pertinent data from the various firms in this industry, which it will use along with the Census data.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. SBA uses nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the

numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry'generally referred to as the ''four-firm concentration ratio''with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review, while its comparison groups also average less than 40 percent.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Size Standard for the Forest Fire Suppression and Fuels Management and Sub-Industry: The U.S. Bureau of the Census has not published specific data on firms engaged in Forest Fire Suppression and Fuels Management since these activities have historically been a small segment of the Support Activities for Forestry industry. Consequently, the analysis of data collected on businesses engaged in Forest Fire Suppression and Fuels Management cannot be fully evaluated in terms of the methodology described above.

To assess a size standard for Forest Fire Suppression and Fuels Management, SBA collected data from firms in the northwestern part of the United States. Changes in contracting for these forestry services are impacting the entire industry, especially in the northwestern part of the country. Because the Government owns a vast proportion of the lands in the northwest, and because of the increased emphasis on Forest Fire Suppression and Fuels Management on Federal lands, the problem of small businesses rapidly outgrowing the size standard arose in these states. This issue is not limited to the Northwest, as the Federal Government has begun expanding it emphasis on contracting for these services to the remainder of the country. USFS and BLM expect similar situations to develop nationwide where small businesses may rapidly outgrow the current size standard.

The issue of increased contracting began in the northwestern part of the country. Although these firms represent a limited segment of the industry, the Federal Government currently expends a large proportion its forestry contract dollars in this part of the country. In fiscal year 2000, 41 percent of award dollars for Support Activities for Forestry were awarded to firms in the state of Oregon. SBA believes that the firms in the northwest represent the types of firms that will engage in Fuels Management and Fire Suppression throughout the country as USFS and BLM expand their contracting for these activities to other parts of the country.

SBA obtained size data on 15 firms. The average firm performing Forest Fire Suppression and Fuels Management have yearly revenues of $6 million and 164 employees. These levels are significantly greater than the $950,000 average revenue size and 11 employee average size of the nonmanufacturing anchor group. These data, although limited, indicate that firms engaged in these activities tend to be greater in size than the typical nonmanufacturing industry and a size standard well above $6 million is supportable.

In addition, SBA found that start up costs for Forest Fire Suppression and Fuels Management firms are much higher than those in the nonmanufacturing anchor group. These firms must invest in a variety of equipment, purchase specialized tools and safety gear, and provide specialized training to forest firefighters. The capital equipment includes yarders, earth moving equipment, custom fire trucks, helicopters, and communication equipment and mobile units. Fire hoses, fire-retardant clothing for their crews, and other fire-fighting equipment usually last no more than 18 months and often must be replaced two or three times a year, depending on the intensity of the fire season. Furthermore, each year at the start of the fire season and again at the time of a forest fire these firms must meet USFS certification requirement for their equipment and fire crews. Because of the dangers and risks associated with fighting forest fires and performing prescribed burns, these firms also incur higher insurance costs than firms in the nonmanufacturing anchor group. These equipment costs, training costs, and certification requirements influence the size of firms that engage in Fire Suppression and Fuels Management activities and support a size standard much higher than $6 million.

Federal procurement trends also support an increase to the current size standard and the creation of a specific size standard for Forest Fire Suppression and Fuels Management. Most Federal procurement actions reported in the Support Activities for Forestry industry are for Forest Fire Suppression and Fuels Management. Award dollars to small businesses in these industries have decreased 20 percent from fiscal year 1998 to fiscal year 2000. In addition, awards to small businesses in the Forest Fire Suppression and Fuels Management industry have decreased from 89 percent in fiscal year 1998 to approximately 50 percent in fiscal year

2000. As mentioned above, Federal funding in this area has drastically increased from $500 million in fiscal year 1999 to $1.9 billion in fiscal year 2001. For fiscal year 2002, funding is expected to top $2.2 billion. The rapid drop in small business awards has alarmed Federal agencies.

BLM and the USFS are extremely concerned that the increased Federal emphasis on forest management with its massive monetary infusion into their agencies, plus their growing reliance on private industry, caused many small businesses to outgrow the current size standard of $6 million. These two Federal agencies do not have the personnel to meet the increasing requirements placed upon them. They have begun to rely on the private sector and have increased the amount of contracting for all forestry activities, mostly for Fire Suppression and Fuels Management. Historically, the contractors that performed on these contracts have been small businesses. As these small business contractors take on significant amounts of new work over a relatively short period of time, several contractors exceeded the $6 million size standard and more will likely exceed the size standard over the next two years.

In addition, these Federal agencies, along with several firms, expressed concern over the fact that the Forest Fire Suppression and Fuels Management industry is relatively small (200 to 300 firms), unique, and most of this industry's revenues are derived from Federal contracts. Firms in the northwestern part of the United States point out that the Federal Government owns most of the land in the western part of the country, and that USFS and BLM manage this land. For most of these firms, their industry's economic viability relies heavily upon the actions of the Federal Government.

These circumstances strongly reinforce the industry structure factors in arguing for a separate size standard for Forest Fire Suppression and Fuels Management for a higher size standard higher than $6 million.

The considerations described above support a higher size standard for Fuels Management and Fire Suppression but do not provide sufficient information to indicate what range of size standards would be appropriate for these activities. Therefore, SBA decided to select a size standard for Forest Fire Suppression and Fuels Management that is similar to the size standard for industries that perform similar activities with equipment used in Forest Fires Suppression and Fuels Management.

SBA recognizes that firms performing Forest Fire Suppression and Fuels Management activities have higher capital costs because of the equipment and personnel training investments. In many ways, they are similar to firms in the construction industry, i.e., firms in NAICS Subsector 234, Heavy Construction, having a $28.5 million size standard, and firms under NAICS 235930, Excavation Contractors, having a $12 million size standard. Firms in these industries have large investments in capital equipment like firms in Forest Fire Suppression and Fuels Management. SBA believes that adopting a $12 million size standard similar to that of Excavation Contractors is too low because of the additional mandated training investments for fire crews and fire crew chiefs. However, the $28.5 million size standard is extremely high for Forest Fire Suppression and Fuels Management, as it would make nearly all firms in this industry small. Given the uncertainty of industry data provided and the fact that firms performing Forest Fire Suppression and Fuels Management have rapidly increasing revenues that exceed or will soon exceed $12 million, SBA is proposing a $15 million size standard. This size standard is about one-half the Heavy Construction size standard, but sufficiently above the Excavation Contractor's size standard to account for additional training and certification costs to businesses engaged in Forest Fire Suppression and Fuels Management.

SBA recognizes how this industry is developing. The structure of this industry is Federally dependent and the increased Government contracting for these services has caused rapid growth in these firms. Therefore, SBA considers that at the proposed $15.0 million size standard firms will be able to grow to an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other small businesses.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm below the proposed size standard in the Forest Fire Suppression and Fuels Management Activities would be of a sufficient size to dominate its field of operation. For Forest Fire Suppression and Fuels Management Services, a firm with a $15 million size standard would generate approximately 2 percent of receipts based on fiscal year 2000 funding levels. These levels of market share effectively preclude any ability for a firm at or below the proposed size standards to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered several alternative size standards. One of the Fuels Management industry groups recommends a $27.5 million size standard for Forest Fire Suppression and Fuels Management. The $27.5 million size standard equates to the previous size standard for the General Construction and Heavy Construction subsectors. [Effective February 22, 2002, the $27.5 size standard increased to $28.5 million as part of an inflation adjustment to SBA's monetary size standards (see 67 FR 3041, dated January 23, 2002)]. Firms in these subsectors usually have major capital equipment investments, similar to those in the Fire Suppression and Fuels Management industry. Firms involved in the General and Heavy Construction subsectors are primarily responsible for an entire construction project. These construction projects tend to be large in dollar value and, because of the nature of construction industry, lend themselves to a substantial amount of subcontracting. The regulation at 13 CFR 125.6, as implemented under the Federal Acquisition Regulations, 52–219–14, Limitation in Subcontracting Clause, qualifying small firms are permitted to subcontract out up to 85 percent of the cost of the contract. Unlike these types of construction firms, companies involved in Fire Suppression and Fuels Management must perform greater than 50 percent of the contract costs with its own employees. These types of contracts do not lend themselves to much subcontracting and normally have a lower dollar award threshold than general construction awards. In addition, by adopting a $27.5 million size standard, SBA would be making all but approximately 20 firms in the entire Support Activities for Forestry industry small. Therefore, SBA decided that a $27.5 million size standard was too high for Fire Suppression and Fuels Management.

Like firms in Fire Suppression and Fuels Management, Excavation Contractors, which have an $12 million size standard, are engaged in clearing land and making substantial investments in capital equipment. However, firms involved in Fire Suppression and Fuels Management also have the added costs of intensive training and certification for crew chiefs and crews, and certification costs for their equipment at the time of contract award and at the time of each fire. Because of these training and certification costs, SBA decided that a $12 million size standard was too low.

The Fuels Management group also recommends the 500-employee Logging industry size standard for Forest Fire Suppression and Fuels Management. SBA did not accept this recommendation for two reasons. First, businesses engaged in Forest Fire and Fuels Management are not primarily logging firms. A search of logging firms registered in SBA's PRO-Net data base lists only 25 businesses out of 126 that are involved in Forest Fire Suppression or Fuels Management Services. Of these 25, none had more than 100 employees. Second, almost all firms engaged in Forest Fires Suppression and Fuels Management employ much fewer than 500 employees. SBA's PRO-Net data base lists only 7 businesses that has more than 100 employees engaged in Forest Fire Suppression and Fuels Management Services. SBA is concerned that a 500-employee size standard may have the effect of allowing a few firms to grow into well-established mid-sized firms at the expense of much smaller firms.

SBA welcomes public comments on its proposed size standard for the Forest Fire Suppression and Fuels Management industry. SBA is concerned with how the proposed size standards may negatively impact those qualified under the current size standards. Comments supporting an alternative to the proposal, including the option of retaining the size standards at $6 million, $27.5 million or 500-employees size standards discussed above, should explain why the alternative would be preferable to the proposed size standard, and how the alternative impacts current small businesses.

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)

The Office of Management and Budget (OMB) has determined that the proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a size standard for Forest Fire Suppression and Fuels Management is needed to better define small businesses engaged in these activities.

ii. 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. Under this rule, approximately 50 to 60 additional firms will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those for contracts awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses sufficient to evaluate the impact of size standards changes. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs, (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program SBA estimates that $100,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 50 to 60 additional businesses will likely result in only one or two small business guaranteed loans to businesses in this industry.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

Awards to small businesses for Forest Fire Suppression and Fuels Management have decreased 27 percent over the last three fiscal years. Small business award dollars to firms in the Forestry Services Activities, most of which were for Forest Fire Suppression and Fuels Management, amounted to

$185 million. If this rule becomes final, small business status would be restored to several firms that have lost small business status because of the rapid growth in federal funding and contracting in this industry. SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year ($185 million × 27 percent) under the small business set-aside program, the 8(a) and HUBZone Programs, or unrestricted contracts.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Other than small businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 50 to 60 additional firms could become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers 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 is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have 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 trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standard Forest Fire Suppression and Fuels Management is consistent with SBA's statutory mandate to assist small businesses. 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. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in Forest Fire Suppression and Fuels Management Services. As described in the above Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses engaged in Forest Fire Suppression and Fuels Management competing for Federal Government procurements reserved for small business, and small disadvantaged businesses and HUBZone businesses eligible for price preferences, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Forest Fire Suppression and Fuels Management services may be set aside for small business as the pool of eligible small businesses expands. As discussed in the preamble, SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with USFS and BLM regarding a possible increase to the Forest Fire Suppression and Fuels Management size standard. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Forest Fire Suppression and Fuels Management Services industry 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 is 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 proposed 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?

A separate size standard for the Forest Fire Suppression and Fuels Management industry more appropriately defines the size of businesses in this industry activity that SBA believes should be eligible for Federal small business assistance programs. The significant increase in Federal funding and the Federal Government's increased use of contractors to perform these services have caused small businesses to grow beyond the current size standard. Other small businesses are likely to outgrow the current size standard within the next two years. A review of the latest available industry data and information on recent trends in the Forestry industry provided by businesses and associations in the Forestry industries, USFS, and BLM indicate that these growing businesses are relatively small and should continue to be eligible for small business programs. SBA welcomes additional data and information on the Forest Fire Suppression and Fuels Management Services industry that may be useful in assessing the size standard and the impact of the proposed size standard on small businesses.

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

SBA estimates that 200 to 300 businesses are engaged in Forest Fire Suppression and Fuels Management activities. These businesses come from the Forestry and Logging Subsector, and Support Activities for Forestry (NAICS codes 113110, 113210, 113310, and 115310). As this is an emerging industry, SBA developed its estimate from discussions with, and information provided by the USFS, BLM, and industry groups. From these discussions, SBA estimates approximately 50% of these firms are small businesses, many of which may be currently at or just below the $6.0 million threshold. If this rule were adopted, 50 to 60 additional businesses would be considered small as a result of this rule. Although this may not represent a substantial number of small businesses, SBA is preparing an IRFA to ensure that the impact on small businesses of higher size standards are known and being considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and SBA's knowledge of contracting in these areas, SBA estimates that small business coverage could increase by 12 percent of total revenues in this activity. These revenue estimates were calculated from the size distributions of the parent industries in which Forest Fire Suppression and Fuels Management service firms are presently classified.

In lieu of survey data on Forest Fire Suppression and Fuels Management businesses, SBA welcomes additional data and comments on the impact of the proposed size standard on small businesses in this sub-industry.

(3) What Are the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

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

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

(5) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

As discussed in the preamble, SBA considered several alternative size standards and their implications on small businesses. First, SBA considered retaining a single size standard for the Support Activities for the Forestry industry. In researching firms engaged in Forest Fire Suppression and Fuels Management Services, SBA concluded that no single size standard could adequately define small business in the whole industry. The size standard would be either too low for Forest Fire Suppression and Fuels Management Services or too high for other industry activities, such as forestry consulting, timber valuation, and timber pest control. Establishing two size standards for this industry would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA considered maintaining the $6 million size standard for Forest Fire Suppression and Fuels Management, however as discussed in the preamble, circumstances strongly reinforce the industry structure factors in arguing for a size standard higher than $6 million.

For the Forest Fire Suppression and Fuels Management sub-industry, SBA assessed the higher size standards of $27.5 million and 500 employees, as requested by several organizations. Both size standards were viewed as too high for these activities and the types of firms performing Forest Fire Suppression and Fuels Management services. Almost all firms currently providing these services to USFS and BLM are significantly smaller than $27.5 million and 500 employees. Adopting size standards at either of these levels may result in Federal contracting being concentrated among a few firms, and therefore, diminish opportunities for currently defined small businesses.

SBA also considered establishing a $12 million size standard for this sub-industry, and believed that adopting this size standard, similar to that of Excavation Contractors, is too low because of the additional mandated training investments for fire crews and fire crew chiefs. SBA found that firms performing Forest Fire Suppression and Fuels Management services have rapidly increasing revenues due to these requirements that in many cases will soon force them to exceed the $12 million size standard.

By establishing the size standard at $15 million, SBA will minimize the impact on the small businesses in this emerging industry. Increased Federal funding and requirements have caused many firms to outgrow the $6 million size standard, thus reducing small business competition for these services. On the other hand, if SBA established the size standard at $28.5 million or 500 employees, almost all firms in this sub-industry would be considered small businesses.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to the proposed rule.

List of Subjects in 13 CFR Part 121

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

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

PART 121—[AMENDED]

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

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

a. In the middle column, revise the heading ''Description (N.E.C.=Not Elsewhere Classified)'' to read ''NAICS industry descriptions'';

b. Under the heading ''Subsector 115—Support Activities for Agriculture and Forestry,'' revise the entry for 115310; and

c. Add footnote 16 to the end of the table.

The revisions and additions read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS industry descriptions	Size standards in number of employees or million of dollars
*	* * * * *	*
	Subsector 115—Support Activities for Agriculture and Forestry	
*	* * * * *	*
115310	Support Activities for Forestry	$6.0
EXCEPT	Forest Fire Suppression and Fuels Management [16]	15.0
*	* * * * *	*

Footnotes

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[16] *NAICS code 115310 (support Activities for Forestry)*—Forest Fire Suppression and Fuels Management, a component of Support Activities for Forestry, includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. This component also includes Fuels Management firms that provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

Dated: April 29, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18112 Filed 7–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–35–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters. This proposal would require inspecting the tail rotor pitch change rod (change rod) bearing and replacing the bearing if the bearing does not meet the specified tolerance. Also, this proposal would require inspecting the bearing for spalling, friction, and grinding and removing any unairworthy bearing. This proposal is prompted by the seizure of a bearing on an ECF Model SA330 helicopter. The actions specified by this proposed AD are intended to prevent bearing wear, bearing seizure of the change rod, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before