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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AE56

Small Business Size Standards; Inflation Adjustment to Size Standards.

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting as final the size standards promulgated as an interim final rule effective on February 22, 2002. This rule, like the interim final rule, adjusts the monetary-based size standards (e.g., receipts, net income, net worth, and assets) by 15.8 percent to account for the effects of inflation since 1994. SBA is also adopting a provision in its regulations that will require, at least once every five years, an assessment of the impact of inflation on monetary-based size standards. This periodic review will generally ensure that monetary-based standards are current with inflation trends.

DATES: This final rule is effective on October 24, 2002.

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

SUPPLEMENTARY INFORMATION:

Inflation Adjustment

On January 23, 2002 (67 FR 3041), SBA issued an interim final rule, effective February 22, 2002, that increased our monetary-based size standards by 15.8 percent in order to restore eligibility to firms that may have lost small business status due solely to the effects of inflation since the last inflation adjustment in 1994 (see 67 FR 3041 for a description of methodology adjusting size standards for inflation). Small business size standards are based

on the six-digit industry codes of the North American Industry Classification System (NAICS). In addition, SBA has several programs that have their own size standards (e.g., Certified Development Company Program, Surety Bond Guarantee Program, Sale of Government Property, etc.). The size standards that SBA changed are those that are receipts-based and those based upon other monetary measures of business size. Employee-based, production-based, and other size standards established by legislation are unaffected by inflation, and are not part of this rulemaking. However, some receipt-based standards that were recently increased were not adjusted as the inflation effect had been factored into the new size standard. In the interim final rule, SBA did not apply the inflation increase to the \$1 million size standard for Travel Agencies and the \$1.5 million size standard for Real Estate Agencies because it believed that the increase would be too small to serve any meaningful purpose.

This final rule adopts the changes promulgated in the interim final rule.

Inflation Review

In the interim final rule, SBA added a provision to its size standards regulations requiring that at least once every five years it will assess the impact of inflation on its monetary-based size standards. This provision provides assurances to the public that SBA is monitoring inflation and is making a decision whether or not to adjust size standards within a reasonable period of time since its last inflation adjustment. If SBA decides not to make an inflation adjustment after a review, it will continue to monitor inflation on an annual basis until such time an adjustment is made. SBA received favorable comments on this provision and adopts the language contained in the interim final rule without change.

Discussion of Comments on the Interim Final Rule

SBA received 32 comments on the interim final rule's inflation adjustment and SBA's provision requiring it to assess at least every five years the impact of inflation on its size standards. Five comments were received from two members of Congress, seven comments came from four industry associations, while the remainder of the comments

were received from businesses operating in various industries.

SBA received no comments opposing the 15.8 percent inflation adjustment. Five comments supported the provision requiring SBA to assess every five years the impact of inflation on its size standards. One comment recommended that SBA perform a biennial inflation review of its size standards. Six comments were received on the Travel Agencies industry size standard. Two comments addressed issues concerning the way inflation was calculated. Three comments addressed a concern about the listing of size standards in the interim final rule. The remaining comments addressed size standards issues pertaining to specific industries. Below, we address each significant issue raised by these comments and explain our reason for adopting or rejecting the comment's recommendation.

Travel Agencies Be Included in Inflation Adjustment

SBA received five comments supporting an inflationary increase for the travel agencies size standard. SBA had decided that it would not include travel agencies in its inflation adjustment because a 15.8 percent would be too small to warrant an increase to a size standard of only \$1 million. These commenters believe that the travel agencies size standard should be increased by the 15.8 percent inflation adjustment at this time. They emphasized the fact that revenues for travel agencies are counted differently than other industry revenues. Travel agencies are allowed to exclude funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. One commenter pointed out that \$1 million in commissions equates to approximately \$20 million in sales and a 15.8 percent inflationary increase would equate to \$23 million in sales. In addition, SBA received one comment requesting that the size standard for travel agencies be increased beyond the amount for inflation.

At the time of the interim final rule SBA was reviewing the Travel Agencies size standard. We subsequently proposed and adopted a \$3 million size standard for travel agencies (see 67 FR 38186, dated May 31, 2002, effective July 1, 2002).

Biennial Inflation Review

One commenter believed that a biennial review of size standards would be more timely to reflect changes in business conditions. SBA is not adopting this comment. Under the adopted provision, if SBA finds that inflation increased significantly before the required five-year review, it has the authority to initiate an adjustment to the monetary size standards. SBA believes that a policy of adjusting for inflation on a more frequent interval than it has in the past is appropriate, but that it must retain the discretion to decide when inflation adjustments need to be made in light of inflation trends and other factors that influence the decision on size standards.

Projected Inflation Adjustment Approach

One commenter requested SBA consider a projected or forward adjustment approach that would take into account "what the average increase would be at the mid-point for the next five year adjustment period." The commenter believed by adopting this approach SBA would always have current monetary-based size standards and eliminate the "catch up" approach with 5-year adjustments. SBA does not agree that this additional adjustment is better than its new policy of reviewing and making inflation adjustments on a regular basis. Furthermore, forecasting future inflation involves much uncertainty. Past inflation trends have proven not to be accurate measures of future inflation, especially in times of extremely high or low rates of inflation.

The Use of the Personal Consumption Expenditures Chain-Type Price Index

To measure the rate of inflation, one commenter recommended that SBA use the "Personal Consumption Expenditures (PCE) Chain-Type Price Index" instead of the "Gross Domestic Product (GDP) Chain-Type Price Index." This commenter believes that "Due to recent world events causing a downturn for the United States economy * * * the use of a Chain-Type Price Index for GDP does not properly reflect industry differences from industry-to-industry."

SBA does not adopt this comment. As discussed in the preamble of the interim final rule, SBA decided to convert from the "Implicit Price Deflator for GDP" to the GDP Chain-Type Price Index for its measure for the inflation adjustment. This index is a broader measure of inflation for the entire economy than the PCE Chain-Type Price Index. The recommended PCE Chain-Type Price

Index measures primarily purchases by U.S. individuals from private businesses and excludes the purchases of business and government. Furthermore, both indices track inflation very closely. Between the fourth quarter of 1993 to the fourth quarter of 2001, the two indices were only three-tenths of one percent different. This minor difference has no effect on the adopted size standards.

Application of New Size Standards

One commenter requested that under the effective date, SBA change the word "issued" to "closing" in the statement "For the purposes of Federal procurements, this rule applies to solicitations, except for noncompetitive Section 8(a) contracts, issued (emphasis added) on or after February 22, 2002." The commenter stated that "the rule as now written, creates a situation where an entity that qualifies as a small business on February 22, 2002, as intended by the rule, would be precluded from pursuing a previously issued, but still open solicitation, for which that businesses would otherwise be qualified."

SBA does not adopt this comment. When contracting officers plan their procurements they explore the possibility of setting aside their solicitation for small business programs based upon the number of small businesses, at that time, able to submit an acceptable proposal or bid. Potential bidders then decide to pursue a contracting opportunity based partly on the potential competition. SBA is concerned that there would be legal and administrative burdens placed on contracting agencies if it were to make this change. Any change to the size standard of a pending solicitation must depend on the specific circumstances of the solicitation. SBA believes that it is the contracting officer's decision whether to amend a solicitation to incorporate the new size standards rather than SBA impose that requirement.

Listing of Size Standards

SBA received three comments concerning the industries listed in the interim final rule. One commenter recommended that SBA publish the entire table of size standards. Two commenters recommended that we publish all the size standards under NAICS code 562910, Remediation Services. These commenters believed that the publication of only the Remediation Services size standard that increased to \$12 million and not the segmented size standard of 500 employees for Environmental

Remediation Services caused confusion within the industry. SBA also received several phone calls regarding this NAICS code because many firms and contracting officers erroneously viewed SBA's action as eliminating the segmented size standard for Environmental Remediation Services. SBA has not eliminated the 500-employee size standard for Environmental Remediation Services.

The interim final rule listed only those NAICS industries and size standards changed by the inflation adjustment. SBA recognizes that the interim final rule may have led to the misinterpretation of its size standards. SBA considered publishing the size standards for all industries within the NAICS sectors in which one or more of the monetary-based size standards are revised. However, on September 6, 2002, SBA published the entire table of size standards (see 67 FR 55944), which included the inflation adjustment, as part of a correction to a proposed rule (see 67 FR 52633, dated August 13, 2002) to adopt the use of the Office of Management and Budget's 2002 revisions to the NAICS (this rule was adopted on August 13, 2002 (67 FR 52597) and was effective on October 1, 2002). This published listing should eliminate any misunderstanding of which size standards changed as a result of the inflation increase. A complete listing of current size standards is available at SBA's Size Standards' Web site at <http://www.sba.gov/size>, or by calling (202) 205-6618 for a copy of the table of size standards.

More Than an Inflation Adjustment for Specific Industries and Programs

SBA received 10 comments requesting additional increases beyond the inflation adjustment to SBA's Surety Bond program and seven industries: Accounting Services, Architectural and Engineering Services, Mapping Services, Construction Inspection and Management Services, Facility Support Services, Refuse Collection, and Automobile Dealers. The purpose of this final rule and the interim final rule is to adjust monetary-based size standards for the effects of inflation. Any additional change to a size standard based on other considerations must be assessed specifically through a separate rulemaking action. SBA is currently reviewing the size standards for the Surety Bond program, Facility Management Services, Refuse Collection, Accounting Services, and Automobile Dealers to determine if a change is warranted. SBA recently reviewed, with significant public input, and increased the size standards for

Architectural and Engineering Services and, Mapping Services (64 FR 26275, dated May 14, 1999), and Construction and Inspection Management Services (65 FR 37689, dated June 16, 2000). SBA does not plan on revisiting these industries unless significant changes occur in these industries.

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

The Office of Management and Budget (OMB) has determined that this 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. More information follows in our Regulatory Impact Analysis and Final Regulatory Flexibility Analysis. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. 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. For those size standards based on monetary measures of size (receipts, net worth, assets, etc.), SBA has made periodic adjustments to restore the real value of the size standard eroded by increases in the general level of prices.

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, 8,760 additional firms generating \$55 billion percent of sales, or 29.3 percent of sales, will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses, as well as those awarded through full and open competition after application of the HUBZone or SDB price adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses. Other Federal agencies also use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these programs to evaluate the impact of size standard changes. However, in cases where an SBA's size standard is not appropriate, an agency may establish its own size standard with the approval of the SBA Administrator (see 13 CFR 121.801).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also 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 higher size standard, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's programs, 7(a) Guaranteed Loan Program and Certified Development Company (504) Program. SBA estimates that approximately \$17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19% of the \$9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-bases size standards.

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.

SBA estimates that approximately \$39.2 million of additional Federal contracts may be awarded to businesses becoming newly designated small businesses. The percentage increase of annual sales attributed to these new small businesses is estimated at seven-tenths of one percent. SBA applied this factor to the fiscal year 2000 total small business prime contractor initial awards which totaled \$5.6 billion [$\$5.6B \times .007$ (.7 of 1%) = \$39.2M].

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 business may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Large 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 and 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 up to 8,760 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in 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 administrative costs since administrative mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With 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 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 through HUBZone and SDB price adjustments. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), 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, there may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contracting 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 a large business since those two categories of small businesses are eligible for price adjustments 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 were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers may not 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 inflation adjustment to SBA's monetary-based size standards operators is consistent with SBA's statutory mandate to assist small business. This regulatory action also 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 to develop their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets

forth a final regulatory flexibility analysis (FRFA) of this rule addressing the need for, and objectives of, the rule; the significant issues raised by commenters to the initial regulatory flexibility analysis; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; and alternatives to the final rule considered by SBA that minimize the impact on small businesses.

(1) What Is the Need for, and Objectives of, This Rule?

A review of the latest available inflation indices show inflation has increased a sufficient amount to warrant an adjustment to the current receipt-based size standards. As discussed in the supplemental information, the objective of this rule is to restore the small business eligibility of businesses who have grown above the size standard due to inflation rather than to an expansion of business activity.

(2) What Significant Issues Were Raised By the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IFRA)?

SBA received no comments in response to the IRFA of the Interim Final Rule.

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

SBA estimates that there will be approximately 8,760 newly designated small business, distributed as follows by NAICS Sectors and Subsectors:

ESTIMATE OF FIRMS GAINING SMALL BUSINESS STATUS

	Number of firms	Associated annual sales (billion)
Retail		
Sectors 44-45	2,800	\$17
Services		
Sectors 51, 52, 54, 55, 61, 62, 71, 72, 81, and Subsectors 531, 532, 561	4,100	22
Finance, Insurance and Real Estate		
Sectors 52-53	650	3
Transportation & Utilities,		
Sectors 22 & 48	450	3
Construction and Refuse		
Sector 23 & Subsector 562	760	10
Total	8,760	55

Source: 1997 Economic Census, U.S. Census Bureau, Special Tabulation for SBA. Sales estimates restated to 2000 dollars.

The percentage increase in the number of small businesses that will result from this rule, compared to the existing base of small businesses, is

estimated to be about two-tenths of one percent. The special tabulation of the 1997 Economic Census for SBA reports 5,082,970 total firms in the U.S.

economy as defined by this census. We estimate that 98.4 percent of all businesses in the U.S. are currently defined as small under the existing size

standards. Under the rule, this will increase to 98.6 percent. The percentage increase of annual sales in the U.S. economy attributed to these new small businesses is likely to be approximately seven-tenths of one percent. This will be applied to a base of 28.6 percent. Thus under this proposal the percent of sales attributed to firms defined as small businesses in the U.S. is likely to increase to 29.3 percent.

Currently, 5,003,048 businesses are small. Less than five percent of these businesses utilize SBA programs. For example, in SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 195,000 firms are currently registered. In fiscal year 2001, 43,817 firms received 7(a) guaranteed loans. Thus, with this inflation adjustment, the likely impact of this rule would be limited to the 8,760 firms that will gain small business status as a result of this rule. This figure is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards, using size distribution of firms' tables. The following table shows these data.

TABLE 1.—INDUSTRY DATA

Category	Firms
Total Businesses	5,082,970
Current Small Businesses (all sectors)	5,003,048
Current Small Businesses (affected sectors)	5,001,642
Small Businesses with the adoption of this rule	5,011,808
Small Businesses Registered in PRO-Net	195,000
Small Businesses with 7(a) Loans	43,817

The 8,760 firms gaining small business status will become eligible to seek available SBA assistance provided that they meet other program requirements.

In addition, SBA cannot ascertain the entire impact of this inflation adjustment on current small businesses as many Federal, state, and local agencies and authorities use SBA's size standards for their programs and SBA does not have information on each of these uses to evaluate the impact of the size standards changes.

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

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A

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

(5) What Are the Steps SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that would obtain small business status as a result of adoption of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Businesses Zones; and (2) the eligibility for SBA's financial assistance programs such as 7(a), 504, and Economic Injury Disaster Loan (EIDL) Assistance programs.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth \$39.2 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents 0.7 of 1 percent of the \$5.6 billion the Federal government awarded to small business prime contractors in FY2000 for initial awards. We view the additional amount of contract activity as the potential amount of transfer from non-small to newly designated small firms. In many cases, businesses that had been small but outgrew the size standards within the past seven years due to inflation will again be considered small businesses. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different size firms.

Under SBA's 7(a) Guaranteed Loan program and Certified Development Company (504) program, SBA estimates that approximately \$17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19 percent of the \$9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-based size standards. Considering that the average size of firms gaining small business status will be \$6 million, demand for assistance will likely be less than the overall participation rate for SBA loans among firms of all sizes. In any given year less than 1 percent of all small businesses

receive SBA financing. Since larger firms are less likely to seek SBA financial assistance, we believe that no more than one-half of 1 percent of the newly designated small business would seek SBA assistance. SBA estimates that approximately 45 out of the 8,760 firms would seek SBA financing. SBA financial assistance recipients of this size on average obtain assistance worth \$375,000, so the impact in terms of new loans generated is estimated to be \$17 million.

The adopted inflation adjustment to size standards will minimize the impact on small businesses in two ways. First, small and more periodic inflation adjustments than SBA had adopted in the past will help to retain small business status for many businesses and limit the number of businesses whose status changes from small to non-small back to small. Second, more frequent inflation adjustments avoid the situation where existing small businesses find themselves immediately competing against a large number of newly defined small businesses. For example, SBA estimated that 20,000 businesses gained small business status from the 1994 inflation compared to the 8,760 businesses by this final rule's adjustment.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act 15. U.S.C. 631 and 13 CFR part 121, SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of the annual average gross receipts of a business concern over a period of three years. As these referenced concerns' receipts are subject to the effects of inflation, SBA must make an adjustment of 15.8 percent in order to restore eligibility to firms that may have lost small business status solely due to the effect of inflation.

(b) What Alternatives Did SBA Reject?

SBA considered two alternatives to this rule. First, to wait until inflation has increased a greater amount before proposing an adjustment to receipt-based size standards. Previous inflation adjustments ranged between 48 percent to 100 percent. SBA believes that more frequent adjustments are necessary since smaller amounts of inflation can change the small business eligibility of a large number of businesses.

Second, SBA considered a policy of automatically adjusting size standards for inflation on a fixed schedule. SBA

believes inflation must be closely monitored to assess the impact of inflation on size standards. Automatic adjustments may lead to inappropriate changes to size standards and prevent the Agency from taking into consideration other factors that bear on the review of size standards, such as changes in industry structure or Administration policies. Furthermore, an automatic adjustment could require SBA to make insignificant changes (*i.e.*, 1 percent) or to wait a longer period of time than necessary to adjust size standards if inflation rapidly increases.

List of Subjects in 13 CFR Part 121

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

Accordingly, the interim rule amending 13 CFR part 121, which was published at 67 FR 3041 on January 23, 2002, is adopted as a final rule.

Dated: October 10, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02–27060 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–44–AD; Amendment 39–12920; AD 2002–21–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 35, 35R, A35, and B35 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–13–02, which currently requires operating limitations on Raytheon Aircraft Company (Raytheon) Beech Models 35, 35R, A35, and B35 airplanes. This AD is the result of Raytheon developing inspection and modification procedures that, when accomplished on the affected airplanes, will eliminate the need for the operating limitations. This AD retains the operating limitations for the affected airplanes until the recently developed inspection and modification procedures are accomplished. This AD also requires repetitive inspections of the fuselage structure. The actions

specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: This AD becomes effective on December 10, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 10, 2002.

ADDRESSES: You may get the service information referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action on the Raytheon Airplane Ruddervator System to This Point?

AD 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), currently requires the following on Raytheon Beech Models 35, A35, B35, and 35R airplanes:

- Fabricating a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS) and installing this placard on the instrument panel within the pilot's clear view;
- Marking a red line on the airspeed indicator glass at 144 MPH (125 KTS);
- Marking a white slippage mark on the outside surface of the airspeed indicator between the glass and case; and
- Inserting a copy of this AD into the Limitations Section of the pilot's operating handbook/airplane flight manual (POH/AFM).

In addition, AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), requires the following on certain Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes, as well as the Beech Models 35, A35, B35, and 35R airplanes:

- Checking the ruddervator static balance and rebalancing the ruddervators when the balance is not in accordance with manufacturer's specifications or anytime the ruddervators are repaired or repainted;
- Repetitively inspecting the fuselage bulkheads for damage and replacing any damaged parts;
- Installing stabilizer reinforcements for some airplane models, as applicable;
- Fabricating and installing airspeed limitation placards;
- Incorporating certain airspeed limitations into the POH/AFM;
- Inspecting the empennage, aft fuselage, and ruddervator control system for damage and replacing or repairing any damaged parts; and
- Ensuring the accuracy of the airplane basic weight and balance information and immediately correcting any discrepancies.

Accomplishment of these actions is required in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin No. 2188, dated May, 1987, and the applicable maintenance and shop manuals.

What Has Happened Since AD 94–20–04 and AD 98–13–02 To Initiate This Action?

AD 94–20–04 contains minor errors and FAA receives periodic calls from the public for clarification.

In addition, Raytheon has issued Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, which includes procedures for inspecting the aft fuselage, ruddervator, and related systems for acceptable condition and rebalancing the ruddervators to new specifications (upper limit reduced from 19.8 to 18 inch-pounds (tail heavy)). Accomplishing these inspections will eliminate the need for the operating limitations of AD 98–13–02. This service bulletin also includes the procedures necessary for continuing the repetitive inspections of the empennage, aft fuselage, and ruddervator control system (the inspections that AD 94–20–04 currently requires).

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Beech Models 35, 35R, A35, and B35 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 26, 2001