

Privacy Act and FOIA regulations. See 68 FR 39810 (July 3, 2003). The revised Privacy Act regulation (12 CFR part 913) is written in a "user-friendly" format using plain language and, where appropriate, a question-and-answer format. It reflects a reassignment of responsibility and authority for the agency's Privacy Act program to the Office of General Counsel. The rule also amended the fee schedule in the FOIA regulation (12 CFR 910.9), which the Finance Board uses to determine the amount of the fee it charges to duplicate records under both the FOIA and the Privacy Act, to take into account increased salary and operating costs. The 60-day public comment period for the interim final rule closed on September 2, 2003. See 68 FR at 39811.

## II. Analysis of Public Comments and the Final Rule

The Finance Board received no comments in response to the interim final rule. Thus, for the reasons set forth in detail in the interim final rulemaking, the Finance Board is adopting the interim final rule as a final rule with one technical change to redesignate § 913.7(c)(1)(vii) as § 913.7(c)(1)(vi).

## III. Regulatory Flexibility Act

The Finance Board adopted the amendments to parts 910 and 913 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2), 603(a).

## IV. Paperwork Reduction Act

The final rule does not contain any collections of information under the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

### List of Subjects

#### 12 CFR Part 910

Administrative practice and procedure, Archives and records, Confidential business information, Federal home loan banks, Freedom of information.

#### 12 CFR Part 913

Administrative practice and procedure, Archives and records, Freedom of information, Privacy.

■ For the reasons stated in the preamble, the Finance Board hereby adopts the interim final rule revising 12 CFR parts 910 and 913 that was published at 68 FR 39810 on July 3, 2003, as a final rule with the following change:

## PART 913—PRIVACY ACT REGULATION

■ 1. The authority citation for part 913 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

■ 2. Redesignate § 913.7(c)(1)(vii) as § 913.7(c)(1)(vi).

Dated: October 9, 2003.

By the Board of Directors of the Federal Housing Finance Board.

**John T. Korsmo,**  
*Chairman.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AF03

#### Small Business Size Standards; Facilities Support Services (Including Base Maintenance)

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is adopting an increase to the size standard for the Facilities Support Services industry (North American Industry Classification System (NAICS) code 561210) from \$6 million in average annual receipts to \$30 million and increases the size standard for the sub-category of Base Maintenance from \$23 million to \$30 million. These increased standards better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This final rule also changes the title of "Base Housing Maintenance" under NAICS code 238990 to "Building and Property Specialty Trade Services" to better identify the type of activities that fall under this category.

**DATES:** This rule is effective November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Program Analyst, Office of Size Standards, Office of Government Contracting and Business Development, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** On February 3, 2003, the SBA published a proposed rule in the **Federal Register** (68 FR 5234) to increase the size standard for the Facilities Support Services industry (NAICS code 561210) from \$6 million in average annual receipts to \$30 million and the size

standard for the sub-category of Base Maintenance from \$23 million to \$30 million. The SBA proposed this increase after reviewing requests from firms in the Facilities Support Services industry to review the \$6 million size standard for this industry and the \$23 million size standard for Base Maintenance, a sub-category of the industry. These size standards are based on annual receipts of the business, as described in 13 CFR 121.104. These firms argued that a size standard increase is warranted to reflect the size of Federal contracts issued in this industry. These contracts include a broad spectrum of services involving administrative support, custodial services, facilities repair and maintenance, and technical services, which often are \$10 million per year or more in value. A small business can lose its small business status with only one or two contracts. Costs on these types of contracts have increased greater than the general inflation rate, especially due to changes in the mandated labor rates under the Service Contract Act and increased health insurance costs. The requestors believed that to help develop small businesses to be competitive with large businesses in this industry, the size standard should be increased to the \$25 million to \$30 million range.

Based on these concerns, the SBA conducted a review of this industry's size standards. In addition to reviewing patterns of Federal procurement in this industry, it collected and evaluated data on the industry's structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs, and the degree of concentration of economic activity among very large firms in the industry. Based on its review of each of these evaluation factors, and the nature and patterns of Federal contracting for Facility Support Services, the SBA concluded that the activities comprising this industry and the characteristics of firms in the industry no longer support the need for separate size standards for Base Maintenance and for all other facilities support activities. The SBA also found that the data supported an increase in the size standards for all activities comprising Facility Support Services to \$30 million in average annual receipts. (For more information on the reasons for the proposed size standard increase to \$30 million, see the February 3, 2003, proposed rule, 68 FR 5234).

The SBA received 16 comments on the proposed size standard. After giving careful consideration to the comments, the SBA has decided to adopt its proposed size standard of \$30 million.

### Discussion of Comments on the Proposed Rule

The SBA received 16 timely comments on the proposed size standard from various business concerns. Nine commenters supported the proposed size standard and seven commenters opposed the change. The SBA also received a recommendation from its Office of Hearings and Appeals (OHA) to clarify the footnote. Below is a summary of the major issues raised by the comments received on the proposed rule and the SBA's position on those issues.

### Comments Supporting a Higher Size Standard

Four commenters remarked that increased costs, such as start up costs, wages, workers compensation, health insurance, fuels, and materials, have increased their revenues to the point where after two or three contracts their firms exceed the current size standard. One commenter pointed out that salary, wages, and taxes are the major costs and will normally comprise more than 50% of the contract expense. Two commenters acknowledged that the U.S. Department of Labor's increase in Service Contract Act wage determinations has had a direct impact on the costs of Facility Support Services contracts.

The SBA agrees that increased costs have caused small business to exceed the current size standard with only two or three contracts. Facility Support Services contracts are larger requirements that include varied tasks from Base Maintenance to engineering and technical support. Because of the nature of these requirements, more than two-thirds of total industry revenues go to large firms at or exceeding the current size standard. As presented in the preamble of the proposed rule, industry data on the distribution of revenues by firm size and other industry characteristics show that firms in the Facilities Support Services do have high costs and are much larger in size than firms in most other service industries.

All nine supportive commenters pointed out that the increase in the size standard would increase competition and participation in Federal contracts. Two commenters stated that firms growing beyond the \$6 million size standard are not ready to compete with large firms. One commenter stated that the increased size standard would allow firms a longer period for growth and maturity. One commenter stated that the increase will secure a future for small businesses in this industry, as the

current size standard limits a firm's ability to serve the Federal Government.

The SBA agrees that an increase to the size standard will make small businesses more competitive in this industry. As stated in the preamble to the proposed rule, the share of Federal contracts awarded to small businesses supports an increase to the current size standard. During 1999 to 2001, small businesses accounted for 30.5% of total industry receipts but these firms received only 12% of the dollar value of Federal contracts. This is a disproportionate share of Federal contract dollars relative to industry receipts. Contract requirements make it difficult for smaller firms to perform on Federal Facilities Support Services contracts. For example, contracting data show that two-thirds of small business awards in this industry are made through programs reserved for small businesses rather than through full and open competition. The SBA believes that the increase in size standard will allow firms in this industry to grow to a more competitive size.

Two commenters supported the SBA's proposal to give Facilities Support Services and Base Maintenance the same size standard. One of these commenters acknowledged that "the same companies are likely to compete for contracts with either designation."

The SBA agrees with these comments. As stated in the preamble to the proposed rule, the SBA believes that the activities comprising this industry and the characteristics of firms in the industry no longer require separate size standards for Base Maintenance and for all other facilities support activities. The NAICS 2002 industry description of Facilities Support Services is very similar to the SBA's description of Base Maintenance (see footnotes 12 and 13 of the current 13 CFR 121.201). The SBA believes that the firms performing Base Maintenance services also perform, or have the capability to perform, most other facilities support activities. Given the close similarity of the descriptions of Facilities Support Services and Base Maintenance, the SBA believes that a single size standard is appropriate for all activities within the Facilities Support Services industry.

The SBA received a recommendation from OHA to clarify the title of "Base Housing Maintenance," an exception to NAICS 238990, "All Other Specialty Trade Contractors," as it is often confused with "Base Maintenance," an activity under Facilities Support Services. OHA suggested that the "Base Housing Maintenance" title should be revised to more accurately reflect the

description of that category in Footnote 13.

The SBA agrees with this recommendation and has revised the title for the exception to NAICS code 238990 from "Base Housing Maintenance" to "Building and Property Specialty Trade Services." This revision is appropriate in this rule making process as it does not change the meaning of the exception or the size standard for NAICS code 238990. The new title better identifies the activities that fall under this category.

### Comments Opposing a Size Standard Increase

The SBA received four comments which stated that entry costs for this industry are low and that Facility Support Services contracts are performed in Government-provided facilities using Government-provided equipment. Five comments asserted that the increase is detrimental to emerging small businesses and that it will hinder small business growth. Four comments stated that the current size standard encourages large businesses to mentor "emerging small businesses."

The SBA does not concur with these comments, and believes that these comments do not accurately characterize the Facility Support Services industry. The SBA does recognize that a higher size standard could have an impact on the smallest businesses in this industry. However, the smallest firms are usually limited to contracts for one type of industry or to work as subcontractors. The nature of the industry and the data presented in the preamble of the proposed rule show that the Facility Support Services industry is comprised predominately of larger firms. The industry characteristics show that start-up costs are high, and that Federal contracts for Facility Support Services contain varied tasks, including engineering and other technical support tasks, administrative functions, specialty trade tasks, and high-end equipment maintenance. Often, after two or three contracts, firms in this industry find that they have outgrown the current size standard. In addition, the SBA believes this increase will expand small business subcontracting opportunities and mentoring with large businesses. All requirements over \$500,000 for Facility Support Services awarded to large businesses include incentives and goals for subcontracting with small businesses. The fact that an industry's size standard is \$6 million or \$30 million will not have a detrimental bearing on a large business's plans to subcontract to or mentor a small

business. The higher size standard would likely encourage more subcontracting with all small businesses since they would be able to remain as small subcontractors for a longer period of time and offer more capabilities to the large business contractor.

The comments received supporting the SBA's actions agree that the increase is reasonable. They endorsed the SBA's findings that firms are quickly outgrowing the current size standard, that costs are high, and that the increase will augment the number of small business set-aside awards, thereby increasing competition in this industry. This increase will add to a small business's maturity and encourage small business growth.

### Recommended Alternative Size Standards

One commenter only supported an increase of 50%. However, the commenter did not provide any data to justify this alternative, nor did the commenter indicate whether the 50% increase was appropriate for both the \$6 million and \$23 million size standards. The SBA can only assume that the commenter meant 50% of the \$6 million size standard, which equates to \$9 million, and 50% of the \$23 million which would put the size standard above \$30 million.

One commenter recommended a \$12 million size standard. This commenter stated that \$12 million will enable small businesses additional opportunities within the Facilities Support Services industry without forcing emerging small businesses to compete against larger firms.

The SBA disagrees with both of these alternatives. Neither an increase to \$9 million or \$12 million would be representative of the overall characteristics of firms in the industry, nor would either alternative provide competition and growth for small businesses. In addition, Federal contract award data show that firms under the current \$23 million size standard have only been able to obtain a relatively small share of Facilities Support Services contracts.

### Non-Related Comments

One commenter pointed out that the increase in bundled contracts has caused Federal agencies to contract with larger firms. This commenter called for a 12 month moratorium on any changes so that the effect of combining contracts and its impact on small businesses can be further analyzed.

One commenter alleged that all mid-sized businesses are 8(a) firms and alleges that 8(a) certification is being

abused. Another commenter stated that the 8(a) program (13 CFR 124) and the HUBZone program (13 CFR 126) usually serve the same companies and that the success rate of companies after graduating from the 8(a) program will be hampered by this increase.

The issues regarding the SBA's 8(a) and HUBZone programs concern program policy, and the issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see the recently proposed rule on this issue (68 FR 5134, dated January 31, 2003).

One commenter stated that the definition of a small business is causing problems with emerging businesses, as it relates to the current set of NAICS codes for the Information Technology industry, which are "\$6 million and \$21 million." This commenter emphasized that emerging small businesses cannot compete with firms that produce \$21 million in revenues. This commenter recommended that there be a category to identify mid-sized businesses.

This comment does not relate specifically to the SBA's proposal to increase the size standard for Facilities Support Services. The commenter refers to the size standard of \$6 million and \$21 million for the Information Technology industry. With respect to that industry, the SBA published a proposed rule that would create a separate size standard for Information Technology Value Added Resellers (67 FR 48479, July 24, 2002). Additionally, the size standards are intended to define only small businesses, not a separate category of mid-size firms.

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

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866 because size standards determine which businesses are eligible for Federal small business programs. 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, the SBA has determined that this rule would not impose new reporting or recordkeeping requirements. For purposes of Executive Order 13132, the 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, the 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

#### 1. Is There a Need for This Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist the intended beneficiaries of these programs, the 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. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to the final rule explains the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, the SBA believes that a change in the Facilities Support Services size standard is needed to better reflect small businesses in this industry.

#### 2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule will be eligibility for Federal small business assistance programs. Under this rule, 177 additional firms may obtain small business status and become eligible for these programs. Of these 177, 19 are between the current \$23 million Base Maintenance size standards and the \$30 million proposed size standard. These programs include the SBA's financial assistance programs, economic injury disaster loans (EIDL), and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or SDB price evaluation adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA's size standards for their programs

for a variety of regulatory and program purposes. The SBA does not have information on each of these uses sufficient to evaluate the impact of the size standard change. If an agency believes that a different size standard is appropriate for its programs, it must contact the SBA. If an agency is seeking to change size standards in a general rulemaking context, then the agency should contact the SBA's Office of Size Standards (13 CFR 121.901-904). If the agency is seeking to change size standards for the purposes of a Regulatory Flexibility Act (RFA) analysis then the SBA's Office of Advocacy should be contacted pursuant to section 601(3) of the RFA. Section 601(3) of the RFA requires the agency to consult with the Office of Advocacy and provide an opportunity for public comment when using a different size standard for the RFA analysis.

The benefits of a size standard increase to a more appropriate level would affect three groups: (1) Businesses that benefit by gaining small business status from the proposed size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standard in the near future and who will retain small business status under the proposed 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 7(a) Guaranteed Loan Program. The SBA estimates that approximately \$2.5 million to \$5.5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the \$2 million maximum size of the SBA 7(a) loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in a smaller increase in guaranteed loans to small businesses than the estimated range. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for the SBA's loan programs, which have averaged about 40,000 loans totaling about \$10 billion per year in recent years.

The newly defined small businesses would also benefit from the 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.

The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth \$65

million to \$95 million under the small business set-aside program, the 8(a), SDB, and HUBZone programs, or unrestricted contracts. This estimate is based on an analysis of small business participation in Federal contracting and the industry market share of businesses between the current and proposed size standards. During fiscal years 1999-2001, small businesses obtained 11.8% of Facilities Support Services contract dollars out of approximately \$12 billion in total Federal Facilities Support Services contracts. About two-thirds of small business awards were made as small business set-aside or 8(a) contracts. Most Facilities Support Services contracts are for Base Maintenance services, which has a \$23 million size standard. Businesses between \$23 million and \$30 million account for 3.6% of industry sales.

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 would 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 creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. 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 obtain lower subcontract 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 177 additional firms 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 access to the SBA guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net data base program. Among businesses in this group seeking the SBA's assistance, there will be some additional costs associated with compliance and verification associated with certification 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. 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 contracting is likely to result in competition among fewer bidders. 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. 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 reserved for the 8(a) or 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 will likely be 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 SDB concerns instead of large businesses since those two categories of small businesses may be eligible for a price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses, without regard to the exact size of the business.

The revision to current size standards for Facilities Support Services is consistent with the SBA's statutory

mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator'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 the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

### Final Regulatory Flexibility Analysis

Under the RFA, this rule may have a significant impact on a substantial number of small entities. This rule may impact small entities in two ways. The SBA estimates that an additional 177 businesses may obtain small business status as a result of this rule. Also small businesses may obtain an additional \$65 to \$95 million in Federal contracts.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, the SBA cannot fully estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and the 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 the SBA's Office of Advocacy when developing different size standards for their programs.

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA), addressing the need for and objective of the rule; description and estimate of the number of small entities to which the rule will apply; the projected reporting, recordkeeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the final rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

#### *(1) What Is the Need for and Objective of the Rule?*

The revision to the size standards for Facilities Support Services more appropriately defines the size of businesses in these industries that the SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

#### *(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?*

The SBA received no comments in response to the IRFA of this rule.

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

Within the Facilities Support Services industry, 896 out of 1,219 businesses are currently small. With the adoption of this rule, the SBA estimates that 177 additional businesses out of 1,219 firms will be considered small. Of these 177, 19 are between the current \$23 million Base Maintenance size standards and the new \$30 million size standard. These businesses will be eligible to seek available SBA assistance provided that they meet other program requirements. As a result of this rule, businesses becoming eligible for SBA assistance cumulatively will generate approximately \$25.8 billion out of a total of \$75.8 billion in receipts, or 34.1% of industry receipts. The small business coverage in the Facilities Support Services industry will increase by 3.6% of total receipts.

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

A new size standard does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determine "voluntary" access to the SBA and other Federal programs that assist small businesses, but do not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the

Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

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

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, SDBs, and businesses located in HUBZones; and (2) eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth \$65 million to \$95 million per year under the small business set-aside programs, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents less than 1% of the \$12 billion in total Federal expenditures for Facility Support Services. The SBA estimates that approximately \$2.5 million to \$5.5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the \$2 million maximum size of the SBA 7(a) loan guarantees, most loans are made to small businesses well below the size standard.

#### *(6) Alternatives*

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

As stated in the Small Business Act, 15 U.S.C. 632, and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The SBA's research showed that Facility Support Services contracts include a broad spectrum of services involving administrative support, custodial services, janitorial, facilities repair and maintenance, and technical services. The size standards for many of these industries, such as security guard services, janitorial services, and technical support for navigational waterways and military weapons systems, are well in excess of \$6 million. Contract costs often are \$10 million per year or more in value. A small business can lose its small business status with only one or two contracts. Costs on these types of contracts have increased greater than the general inflation rate, especially due

to changes in the mandated labor rates under the Service Contract Act and increased health insurance costs.

The SBA's review of these issues and data on the Facilities Support Services industry, as described in the February 3, 2003, proposed rule, support increasing the size standard to \$30 million.

(b) What Alternatives Did the SBA Reject?

One commenter opposed to any increase except an increase of 50%, but no data was provided to justify this alternative. The commenter did not state 50% of which current size standard, \$6 million or \$23 million. The SBA can only assume that the commenter meant 50% of the \$6 million size standard, which equates to \$9 million. A 50% increase to the \$23 million would put the size standard above \$30 million.

One commenter recommended a \$12 million size standard. This commenter stated that \$12 million will enable small businesses additional opportunities within the Facilities Support Services

industry without forcing emerging small businesses to compete against larger firms.

The SBA rejects both of these alternatives. Neither an increase to \$9 million or \$12 million would be representative of this industry, nor would either alternative provide competition and growth for small businesses. The industry data provided in the preamble to the proposed rule show that all of the characteristics measured firms in the Facilities Support Services industry were much larger than firms in most nonmanufacturing industries. This finding supports a size standard at the highest receipts levels. In addition, Federal contract award data show that firms under the current \$23 million size standard have only been able to obtain a relatively small share of Facilities Support Services contracts.

**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 stated in the preamble, amend part 121 of title 13 Code of Federal Regulations as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 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. Amend § 121.201 as follows:

■ a. In the table "Small Business Size Standards by NAICS Industry," under the heading NAICS Subsector 238, "Specialty Trade Contractors," revise the entry for 238990; and under the heading NAICS Subsector 561, "Administrative and Support Services," revise the entry for 561210, to read as follows; and,

■ b. Revise footnotes 12 and 13 to read as follows:

**SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY**

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Subsector 238—Specialty Trade Contractors</b>			
*	*	*	*
238990	All Other Specialty Trade Contractors	\$12.0	.....
	Except, Building and Property Specialty Trade Services <sup>13</sup>	<sup>13</sup> 12.0	.....
*	*	*	*
<b>Subsector 561—Administrative and Support Services</b>			
*	*	*	*
561210	Facilities Support Services <sup>12</sup>	<sup>12</sup> 30.0	.....

<sup>12</sup> NAICS code 561210—Facilities Support Services:

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) "Facilities Support Services" requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as "Building and Property Specialty Trade Services." Since "Building and Property Specialty Trade Services" is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

<sup>13</sup> NAICS code 238990—Building and Property Specialty Trade Services: If a procurement requires the use of multiple specialty trade contractors (i.e., plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50% or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

Dated: August 20, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03-26036 Filed 10-14-03; 8:45 am]

BILLING CODE 8025-01-P

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4022 and 4044**

**Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2003. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** November 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under

section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2003, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2003, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.60 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for October 2003) of 0.30 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for October 2003) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 121, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
*	*		*	*	*	*	*	*
121	11-1-03	12-1-03	3.25	4.00	4.00	4.00	7	8