

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
Subsector 541—Professional, Scientific and Technical Services			
541519	Other Computer Related Services	\$21.0	
EXCEPT ...	Information Technology Value Added Resellers ¹⁸		18150

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■ 3. In § 121.201, add footnote 18 at the end of the footnote section, under the table to read as follows:

Footnotes

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18. NAICS code 541519—An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15% and not more than 50% of value added services as measured by the total price less the cost of information technology hardware, computer software, and profit. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. To qualify as an Information Technology Value Added Reseller for purposes of SBA assistance, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provide value added services which account for at least 15% of its receipts but not more than 50% of its receipts.

Dated: September 24, 2003.

Hector V. Barreto,
Administrator

[FR Doc. 03-31795 Filed 12-24-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AE78

Small Business Size Standards; Testing Laboratories

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

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting the proposed increase to the size standard for the Testing Laboratories industry (North American Industry Classification System (NAICS) code 541380) from \$6 million to \$10 million in average annual receipts. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs.

DATES: This rule is effective January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Office of Size Standards, at (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION: On April 9, 2002, the SBA issued a proposed rule in the **Federal Register** (67 FR 17020) to increase the size standard for the Testing Laboratories industry (NAICS 541380) from \$6 million to \$10 million in average annual receipts (available at <http://www.sba.gov/size/indexwhatsnew.html>). The SBA proposed this size standard after receiving requests from testing laboratories to review the \$6 million size standard for that industry in light of upgraded capacities and skills that Federal agencies have recently required among contractors that specialize in environmental and radiochemical testing. The requesting testing laboratories claimed that these minimum requirements have raised the

costs of doing business in this industry, and reduced the pool of eligible small testing laboratories capable of satisfying these requirements. If this trend persists, they maintain, Federal agencies could be hampered in using Government preference programs designed to assist small testing laboratories.

Based on these concerns, the SBA conducted a review of this industry's size standard. In addition to reviewing patterns of Federal procurement in this industry, the SBA evaluated data on the industry 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 activity among very large firms in the industry. Based on its review of each evaluation factor, and the amount of participation of small testing laboratories in Federal Government procurement, the SBA concluded that the data supported a size standard in this industry of \$10 million in average annual receipts. (For more detailed information on the reasons for proposing a \$10 million size standard see the April 9, 2002, (67 FR 17020) proposed rule.) After careful consideration of the comments received on the proposed rule, the SBA has decided to adopt the proposed size standard of \$10 million.

Discussion of Comments on the Proposed Rule

The SBA received 35 comments on the proposed rule after extending the comment period through September 30, 2002 (67 FR 56966, September 6, 2002). Of the 35 commentators, 21 supported the proposed increase, while 14 opposed it. Below is a summary of the major issues raised by the comments and the SBA's response.

Comments Supporting the Proposed Increase to \$10 Million

The 21 comments in favor of the proposed rule raised a number of issues in support of a higher size standard. The most important issue discussed was the requirements contained in Federal contracts. Six commentators cited a pattern of increased Government requirements in recent years as leading to the result in which testing laboratories under the present size standard of \$6 million often cannot adequately perform on a Federal contract. These Federal Government requirements for laboratory operations include: reporting requirements, quality assurance plans, emergency contingency plans, analytical requirements, electronic data deliverable requirements, audit requirements, management costs, health and safety requirements, regulatory requirements and insurance and liability requirements. In addition, radioactive and non-radioactive hazards often required testing by environmental radiochemistry laboratories that have the licenses, procedures, insurance protection, and approvals for both types of hazardous samples. Therefore, the general belief among these commentators is that large capital and labor expenses are required for a testing laboratory to be active as a successful Federal contractor. These commentators believed that the size standard should be raised so that more Federal contracts will be set aside for small businesses, and there will be a larger pool of small testing laboratories to compete for those contracts.

Three commentators cited a recent pattern of increasing consolidation in the industry as one or more very large testing laboratories have acquired a number of smaller testing laboratories, while competing testing laboratories have gone out of business. They claimed that this trend has resulted in greater concentration in the industry, and less ability for small testing laboratories to compete for Federal contracts.

Two commentators, both large firms, supported the higher size standard because they have found it difficult to find competent small testing laboratories to meet their Federal subcontracting goals under the present size standard. A higher size standard would immediately qualify more testing laboratories as small, while permitting additional small testing laboratories to expand in size and still be qualified as small.

Finally, two commentators believed that a higher size standard would allow them to expand. These commentators

contended that the present size standard tends to frustrate growth and reduce competition.

Comments Opposing the Proposed Increase

The strongest criticism of the proposed increase focused on the claim that testing laboratories in the \$6 million to \$10 million size range are relatively successful and well capitalized compared to testing laboratories with less than \$6 million in sales. Eight of the 14 commentators opposing the proposed change asserted that testing laboratories in this size range are too successful to be considered small. They indicated that these larger testing laboratories have lower costs than smaller testing laboratories due to higher volume. They also view larger laboratories as better able to target Federal contracts. A common observation is that testing laboratories in the \$6 million to \$10 million size range have larger facilities than smaller testing laboratories, and that Federal contracts are often awarded on the basis of individual facility qualifications. Four commentators believed that a higher size standard would give significant advantages to the large, single-site testing laboratories when competing for Federal contracts.

Commentators opposing the proposed change also generally believed that there is a stagnant market for Federal contracts and that increasing the size standard in such an environment would increase competition for Federal contracts. This additional competition would have a negative impact on testing laboratories that are presently under the \$6 million size standard.

The comments opposing the proposed size standard also raised an issue regarding the performance of small testing laboratories on subcontracts awarded by large businesses in fulfillment of subcontracting goals on Federal contracts. They contended that small testing laboratories are very successful and competitive in obtaining subcontracts, and thus, a higher size standard was not needed. One comment provided data on such subcontracts awarded by several large businesses. These data indicated that small testing laboratories were able to achieve a higher proportion of subcontracts than Federal contracts.

Other commentators opposing the proposed change cited information in two key areas identified in the proposed rule as reasons supporting an increase in the size standard. First, three commentators noted that the trend toward consolidation in the industry was associated with one or more very

large companies buying out smaller, less successful, testing laboratories. These commentators recognized that there has been a shakeup in the industry, with smaller testing laboratories often unsuccessfully competing with very large testing laboratories for Federal Government contracts. Second, three commentators also contended that recent Federal Government requirements have tended to reduce the pool of small testing laboratories that can effectively bid on Federal contracts. They viewed these developments as reasons for retaining the current size standard rather than supporting an increase.

Response to Significant Issues Raised by Comments

The SBA believes that the trends in the Testing Laboratories industry and the level of small business participation in Federal contracting support a size standard higher than \$6 million and the adoption of the proposed \$10 million size standard. Since the time of the proposed rule, Federal contracting data have become available for fiscal years (FY) 2001–02. These data show small testing laboratories have increased their level of participation in Federal contracting over previous years. Small testing laboratories obtained 23.1% of testing contract dollars in FY 2002, and 29.7% in FY 2001. However, these levels remain significantly below the small business share of 44% of total industry revenues. The SBA found in a detailed review of fiscal years 2001–02 Federal testing contracts that small testing laboratories are successful in obtaining contracts of varying sizes. However, the consistent discrepancy between the Federal and industry share does lend credence to the arguments advanced by the comments supporting the proposed size standard that Federal contract requirements have become more restrictive in recent years, and that this pattern favors larger, more heavily capitalized firms. The SBA also agrees with the view that the industry has become more concentrated over time with a much greater presence of very large testing laboratories. In 1997, \$3.1 billion out of \$6.4 billion in sales were generated by testing laboratories with more than \$10 million in sales. This share, almost 50%, has probably increased significantly with the recent consolidation in the industry and the departure of small testing laboratories. The SBA believes that these patterns of more stringent contracting requirements and greater industry concentration support a higher size standard.

The SBA is aware that firms that are larger in size will often possess greater

capabilities than smaller firms. This pattern occurs in most industries. Regardless of where a size standard is established, there will be a variation in firm size and capabilities within the pool of eligible small businesses and this variation will generally favor larger firms in the distribution. However, Federal contract requirements vary from procurement to procurement, and there is no certainty that firms with less than \$6 million in sales will be unable to compete with firms in the \$6 million to \$10 million range for most contracts. The SBA is concerned that small testing laboratories under the current \$6 million size standard need to be able to grow to a larger size to capably handle Federal testing requirements and to develop a stronger competitive base

before they grow beyond the size standard.

The SBA does not agree that subcontract awards to small testing laboratories should be used as a basis to retain the current size standard. Subcontract awards by industry activity on Federal contracts are not reported by large businesses. Without a systematic collection of testing subcontract data, the SBA is unable to adequately assess the implications of Federal subcontracting on the size standard. In addition, the SBA received comments from two large businesses supporting the proposed size standard because they were experiencing difficulty in finding capable small testing laboratories to satisfy their testing requirements. The SBA believes that the industry data offer an alternative to considering Federal subcontracting trends. These data reflect

the amount of revenues obtained by testing laboratories from all sources. As discussed in this rule and the proposed rule, the SBA has concluded that data on the characteristics of testing laboratories support the proposed size standard.

Explanation of Revised and Updated Federal Contracting Data

Comments expressed a concern about the accuracy of the Federal procurement data discussed in the proposed rule. In table 3 of the proposed rule, a formatting error occurred that showed the Federal testing contract data in thousands of dollars instead of millions of dollars. The table below shows the correct data as well as the recently available contract data for fiscal years 2001–02.

SMALL BUSINESS PRIME CONTRACT AWARDS, FISCAL YEARS 1998–2002

[Data in millions of dollars]

Category	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Testing laboratories awards	\$861.6	\$628.0	\$84.7	\$176.7	\$233.7
Small testing laboratories awards	\$44.1	\$45.3	\$42.1	\$52.5	\$54.0
Percent to small testing laboratories	5.1%	7.2%	49.7%	29.7%	23.1%

Source: Federal Procurement Data Center, U.S. General Services Administration.

Note: Data for FY 2000 for Testing Laboratories are not representative of most years due to deobligations of \$135 million from procurements initiated in previous years.

The concerns regarding the Federal contracting data also questioned the overall quality of the testing contracts reported. While a certain degree of error exists with all large databases, the SBA believes the data collected by the Federal Procurement Data System (FPDS), the official database on Federal contract award information, satisfactorily reports the overall level of Federal testing contracts and the amount of contracting to various organizational categories. FPDS collects detailed information on all Federal contracts with a value of \$25,000 or more. The table above shows data on Federal contracts for testing services as evidenced by the assignment of an industry code for the testing laboratories industry (NAICS 541380 and SIC 8734). For these contracts, testing comprises the predominate activity of the contract. The dollar amounts reported show that amount of funds obligated to a contract within a fiscal year. That is, for a contract that is more than 1 year in duration, the amount of funds spent in a fiscal year are reported rather than the entire anticipated dollar value of the contract in the year awarded. For indefinite delivery/indefinite quantity contracts, only amounts actually awarded through a task order are

reported, not potential amounts. The SBA recognizes that testing may be included within other Federal contracts; however, no method exists to accurately identify those contracts. Further, testing would tend to comprise only a minor part of those contracts. The SBA does not believe that those contracts have a bearing on the size standard for testing laboratories.

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 this final rule is a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule, however, 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 record keeping 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 the 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 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. It also requires that small business definitions vary to reflect industry differences (the Small Business Act is available at <http://www.sba.gov/library/lawroon.html>). The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, and comments received on the proposed rule, the SBA believes

that a revision to the current size standard for testing laboratories is needed to better define 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 is eligibility for Federal small business assistance programs. Under this rule, 120 additional firms generating 9.9% of sales in this industry would obtain small business status and could be eligible for these programs. These programs include the SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZones). 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. (See 13 CFR 121.901-904. The SBA's regulations are available at <http://www.sba.gov/library/lawroon.html>.) 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 the RFA (5 U.S.C. 603(a)), available at <http://www.sba.gov/advo/laws/regflex.html>). 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 from the higher size standard; and (3) Federal

agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses could benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that approximately \$2 million in new Federal loan guarantees would be made to these newly defined small businesses. This represents approximately 9.9% of the annual average of \$19 million in loans that were guaranteed by the SBA under this financial program to testing laboratories firms during fiscal years 1998-2002. 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 will likely result in only a small increase in small business guaranteed loans to testing laboratories, and the \$2 million estimated figure may overstate the actual impact.

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

The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth an additional \$42 million in sales. This represents 9.9% of approximately \$424 million that the Federal Government awarded per year in this industry during fiscal years 1998-2002.

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 larger base of small businesses may create an incentive for Federal agencies to set aside more contracts, resulting in greater opportunities for all small businesses. Small business opportunities will be enhanced in full and open procurements as newly eligible firms gain experience in Federal contracting through 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 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 120 additional firms could become active in

Federal Government small business programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal procurements, additional firms seeking assistance from the SBA's guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net database program. Among businesses in this group seeking the SBA's assistance, there will be some additional costs associated with compliance, protests, and verification 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 a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from full and open to set-aside contracting 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. The additional costs associated with fewer bidders and price evaluation preferences, 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) and HUBZone programs, only if awards are expected to be made at fair and reasonable prices.

The new final 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 from large businesses to small businesses will probably occur. Large businesses may have fewer Federal contract opportunities if Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone and SDB businesses instead of large businesses, since those two categories of small business are eligible for 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, however, 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, however, would 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 since the data on the size of business receiving a Federal contract are limited to identifying whether a business is small or other-than-small, without regard to the exact size of business.

The revision to current size standards for testing laboratories 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. As described in the regulatory impact analysis, this rule may impact small entities seeking SBA 7(a) Guaranteed Loans or Economic Injury Disaster Loans as well as the Federal Government's procurement preference programs.

The size standard may also affect small businesses participating in the programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. No comments were received that identified a program or regulation that would be adversely affected by the proposed size standard. In cases where an SBA 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 (15

U.S.C. 632(a)(2)(c) and 13 CFR 121.902). If the agency is seeking to change size standards for the purposes of an RFA analysis, then the SBA's Office of Advocacy should be contacted pursuant to the RFA).

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the reasons and objective of the rule; a description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the 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 this rule?

The objective of this rule is to establish an appropriate size standard for the Testing Laboratories industry. The revision to the size standard for the Testing Laboratories industry more accurately defines the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. Significant changes in the industry and in the requirements of Government clients support the need for a different size standard.

(2) What significant issues were raised by the public comments in response to the Initial Regulatory Flexibility Act (IRFA)?

About a third of commentators believe that the SBA is permitting testing laboratories to be eligible that are already very successful and that do not need the additional advantage of being considered small. The SBA, however, believes that a higher size standard is necessary due to Federal contract requirements that require a high degree of competence and physical investment, a tendency for very large firms to acquire smaller testing laboratories, and the fact that small testing laboratories have been awarded Federal procurements significantly less than their overall share in the industry.

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

Within the Testing Laboratories industry, 3,762 out of 4,126 businesses are small under the \$6 million size standard that is presently in place. The number of small businesses will increase by 120 testing laboratories to 3,882 under a \$10 million size standard. Testing laboratories becoming newly

eligible for the SBA's assistance as a result of this rule cumulatively generate \$635 million in receipts. The amount of receipts by small testing laboratories would increase from \$2.7 billion to \$3.3 billion out of a total of \$6.4 billion in receipts. The small business coverage in this industry would increase by 9.9% of total receipts. This is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for the SBA's Office of Size Standards, which shows industry characteristics by firm size.

(4) Will this rule impose any additional reporting or recordkeeping requirements or other compliance 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's 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's 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 collection requirements from the SBA which require approval by the OMB under the Paperwork Reduction Act of 1980, 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 rule are eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance and eligibility for the Federal Government's procurement preference programs for small business, 8(a) firms, SDBs, and HUBZone small businesses. The SBA estimates that approximately \$42 million per year of additional Federal prime contracts may be awarded to businesses becoming newly designated small businesses in the Testing Laboratories industry and that approximately \$2 million in new Federal loan guarantees could be made annually to these newly defined small businesses. The projected increase of three additional loans totaling approximately \$2 million in new

Federal loan guarantees will have virtually no impact on the overall availability of loans for the SBA's loan programs, which have averaged about 50,000 loans totaling more than \$12 billion per year in recent years.

(6) *What alternatives were considered by the SBA to accomplish its regulatory objectives while minimizing the impact on small entities?*

In the proposed rule of April 9, 2002, the SBA considered alternative size standards which included a more limited increase to \$7.5 million, and a larger increase to \$12.5 million. The SBA decided not to propose the more moderate increase to \$7.5 million because it believed that the very low share of Federal procurements to small testing laboratories indicated the need for a higher size standard to include those testing laboratories that can meet

and perform on the majority of Federal analytical testing contracts. The SBA also considered, but rejected, the larger increase to \$12.5 million based on the fact that two of the five factors considered in determining the appropriate size standard pointed to a size standard at, or only slightly above, the \$6 million nonmanufacturing anchor size standard. The SBA believes that the evaluation factors should be virtually unanimous for an increase of this magnitude.

List of Subjects in 13 CFR Part 121

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

For reasons set forth in the preamble, the SBA amends part 121 of title 13 of

the 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), 636(b), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

■ 2. In § 121.201, in the table “Small Business Size Standards by NAICS Industry”, under the heading NAICS “Subsector 541—Professional, Scientific and Technical Services,” revise entry 541380 to read as follows:

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

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SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
Subsector 541—Professional, Scientific and Technical Services			
* * * * *			
541380	Testing Laboratories		\$10.0
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Dated: September 27, 2003.
Hector V. Barreto,
Administrator.
Editorial Note: This document was received in the Office of the Federal Register on December 19, 2003.
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BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[TD 9103]
RIN 1545–BC97
Information Statements for Certain Substitute Payments
AGENCY: Internal Revenue Service (IRS) Treasury.
ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6045(d) that reflect the changes to information reporting for payments in lieu of dividends effected by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). These regulations provide that brokers must file information returns and furnish information statements reporting substitute payments in lieu of dividends to individuals who receive substitute payments in lieu of dividends on or after January 1, 2003.
DATES: *Effective Date:* These final regulations are effective December 29, 2003.
Applicability Date: These regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.
FOR FURTHER INFORMATION CONTACT: Michael Hara of the Office of Associate Chief Counsel (Procedure and

Administration), (202) 622–4910 (not a toll-free number).
SUPPLEMENTARY INFORMATION:
Background
 Section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the JGTRRA), Public Law No. 108–27 (117 Stat. 752), reduced the tax rate for “qualified dividends” paid to an individual shareholder to the same tax rate as capital gains for taxable years beginning after December 31, 2002, and beginning before January 1, 2009. The legislative history states, however, “Payments in lieu of dividends are not eligible for the lower rates.” See H.R. Rep. No. 108–94, 108th Cong., 1st Sess. 31 n.36 (2003).
Explanation of Provisions
 Section 6045(a) of the Internal Revenue Code (Code) provides that every person doing business as a broker shall, when required by the Secretary, make a return showing the name and