\hspace{0.1cm} § 1219.38(k) of the Order require the Board to evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR). The Board routinely evaluates its programs to ensure their effectiveness, and a formal evaluation was conducted under the FAIR in 2009.

Accordingly, USDA has determined that the Hass avocado Order should be continued. The Order was established to help increase the consumption of domestic and imported Hass avocados in the United States. Concerns raised in the comments received were to a great extent changes that would require congressional action. AMS will continue to work with the Hass avocado industry in maintaining an effective program.

Dated: October 1, 2010.

Rayne Pegg, Administrator.

[FR Doc. 2010–25130 Filed 10–5–10; 8:45 am]

BILLING CODE 3140–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF70

Small Business Size Standards; Other Services.

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 18 industries in North American Industry Classification System (NAICS) Sector 81, Other Services, and retaining the current standards for the remaining 30 industries in the Sector. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised.

DATES: This rule is effective November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Office of Size Standards, (202) 205–6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA’s existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA’s Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income size standards. Currently, SBA’s size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the Federal Register on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and, where necessary, to make revisions to current size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector in phases. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 81, Other Services, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of Federal Register (74 FR 53941) to increase the standards for 18 industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by a NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the Federal Register proposed rules to increase 47 small business size standards in NAICS Sector 44–45, Retail Trade, (74 FR 53924) and five standards in NAICS Sector 72, Accommodation and Food Services (74 FR 53913). Similarly, SBA is publishing final rules on NAICS Sector 44–45 and NAICS Sector 72 elsewhere in this issue of the Federal Register.

In addition, SBA established its “Size Standards Methodology” for reviewing small business size standards and modifying them, where necessary. SBA published in the October 21, 2009 issue of the Federal Register (74 FR 53940) a notice of its availability, for public comments, on SBA’s Web site at http://www.sba.gov/contractingopportunities/officials/size/index.html. In addition, SBA has placed a copy of its “Size Standards Methodology” in the electronic docket of this rule on http://www.regulations.gov and is available there as well.

In evaluating an industry’s size standard, SBA examines the industry’s characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size), Federal government contracting trends, impact on SBA financial assistance programs, and dominance in field of operations. SBA analyzed the characteristics of each industry in NAICS Sector 81 mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2002 Economic Census (the latest available). SBA evaluated Federal contracting trends in that Sector using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2006–2008. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2006–2008.

SBA’s “Size Standards Methodology” provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the proposed rule itself, SBA detailed how it applied its “Size
standards by reducing them to eight
on whether it should simplify size
for remaining 30 industries in that
industry until it reviews that Sector.

SBA sought comments from the
public on a number of issues about its
“Size Standards Methodology,” such as
whether there are alternative
methodologies that SBA should
consider; whether there are alternative
or additional factors or data sources that
SBA should evaluate; whether SBA’s
approach to establishing small business
size standards makes sense in the
current economic environment; whether
SBA’s definitions of anchor size
standards are appropriate in the current
economy; whether there are gaps in
SBA’s methodology because of the lack
of comprehensive data; and whether
there are other facts or issues that SBA
should consider in its methodology.

SBA did not receive any comments on
its “Size Standards Methodology.” SBA
continues to welcome comments from
interested parties.

In the proposed rule, based on its
analyses of the latest industry and
relevant data SBA proposed to increase
18 of the 48 size standards in NAICS
Sector 81. SBA’s analyses supported
retaining the existing size standards for
nine industries. As noted in the
proposed rule, SBA’s analyses would
support reducing size standards for the
remaining 20 industries in the Sector.
However, as the proposed rule pointed
out, SBA believes that lowering size
standards and thereby reducing the
number of firms eligible to participate in
Federal small business assistance
programs would run counter to what the
Agency is doing to help small
businesses. Therefore, SBA proposed to
retain the existing size standards for
those 20 industries. Because of
similarities between NAICS 811212,
811213, Computer and Office Machine
Repair and Maintenance, and several
computer services related industries in
NAICS Sector 54, Professional, Technical
and Scientific Services, SBA decided to
review the size standard for that
Industry when it reviews size standards
for computer services in NAICS
Sector 54. SBA proposed to retain the
current $25 million standard for that
industry until it reviews that Sector.

Summary of Comments

The proposed rule sought comments
from the public on SBA’s proposal to
increase size standards for the 18
industries in NAICS Sector 81, Other
Services, and retain the size standards
for remaining 30 industries in that
Sector. SBA requested comments on
whether it should simplify size
standards by reducing them to eight
fixed levels. SBA received three
comments, one of which supported the
proposed standards and two did not
Each of these comments is discussed
below.

One commenter supported using
Federal contracting as one of the factors
SBA considers when determining size
standard because it is “consistent with
the statutory guidance that encourages
an industry-by-industry analysis.” The
commenter was referring to the Small
Business Act (Act) which states in
§3(a)(3) that “the [SBA] Administrator
shall ensure that the size standard varies
from industry to industry to the extent
necessary to reflect the differing
characteristics of the various industries
and consider other factors deemed to be
relevant by the Administrator.” (15
U.S.C. 632(a)(3))

The commenter suggested that SBA
establish “a separate size standard for
Federal procurement within each
industry category or specific NAICS
code.” SBA does not concur with this
comment for several reasons. First, SBA
believes that having separate size
standards for each industry for Federal
procurement and other programs would
create confusion and unnecessary
complexity, and it would run counter to
SBA’s ongoing effort to simplify its size
standards. Second, SBA’s current
methodology examines the Federal
procurement market as one of the five
primary factors in setting size standards
for most industries. Third, SBA has
established separate size standards for
Federal procurement purposes within
certain NAICS Sectors and Industries.
For example, for the Retail Trade and
Wholesale Trade Sectors, the 500
employee nonmanufacturer size
standard applies for procurements of
manufactured products, and industry
standards in those sectors are generally
used for SBA financial assistance
programs. In addition, for those
industries where there is a need for
significantly different size standards for
Federal procurement, they already exist.
SBA has in the past recognized the need
for standards that apply only to Federal
procurement in certain industries
because the existing standards, while
appropriate for other Federal programs,
were not suitable for procurement
purposes. Currently there are 18
“exceptions” in the Agency’s table of
size standards that relate directly to
Federal procurement opportunities for
small businesses. Fourth, establishing
separate size standards within each
industry for businesses that participate
in Federal procurement and those that
participate in other programs is almost
impractical due to lack of necessary
data. For example, the Economic Censsus
data that SBA uses to evaluate industry
characteristics are limited to the six-
digit NAICS level. Similarly, the Federal
procurement data from the FPDS–NG
are limited to identifying each
contracting firm as “small” or “other
than small” only, with no information
on its specific firm size (i.e., the number
of employees and average annual
revenues) that would be needed to
establish a separate size standard for
Federal procurement purposes.

The commenter also addressed the
size standards for NAICS code 811213,
Communication Equipment Repair and
Maintenance, and NAICS code 811212,
Computer and Office Repair
Maintenance. SBA had proposed to
increase the standard for NAICS 811213
from $7 million to $10 million in
average annual receipts but did not
propose to modify the standard for
NAICS 811212. There are similarities
among NAICS 811212 and several
computer services related industries in
Sector 54 (NAICS 541211, NAICS
541212, NAICS 541213 and NAICS
541219), as SBA detailed in the
proposed rule. Based on those
similarities those four Sector 54
industries and NAICS 811212 have
shared a $25 million size standard since
SBA last reviewed the computer related
services industries. SBA will review the
size standard for NAICS 811212 when it
next reviews computer related services
in NAICS Sector 54. Therefore, SBA
proposed to retain the current $25
million standard for NAICS 811212
until it reviews Sector 54.

The commenter supported the current
$25 million common size standard for
NAICS 811212, but requested SBA to
apply the same $25 million size
standard to NAICS 811213 and defer
changing the current $7 million size
standard for that industry as well until
the Agency analyzes and reviews size
standards for the information
technology industries in Sector 54. SBA
adoption of the proposed $10 million for
NAICS 811213 because it believes it
should not defer its increase on the
basis of what it might determine is
appropriate for industries in another
Sector that it has not yet analyzed.
Furthermore, for Federal government
procurement purposes, the size standard
applicable to a contracting opportunity
is determined by the principal purpose
of the procurement. See 13 CFR
121.402. It is not unusual for companies
to perform contracts in different NAICS
codes that have different size
standards. The Central Contractor
Registration database shows that many
companies can be small for some NAICS codes and
not small for others.
NAICS is a production oriented system and classifies companies by their economic activity, that is, by how they produce their products and provide their services. Therefore, economic activities of businesses classified in NAICS 811213 are more closely akin to businesses classified in NAICS Sector 81 than they are to businesses classified in other Sectors. Larger companies can and do perform contracts under NAICS codes in different Sectors and Industries with various size standards—some higher, some lower than others. However, SBA believes it cannot logically conclude that the lower size standards ought to be increased. The same reasoning might lead to lowering the higher size standards.

Based on the analysis according to its “Size Standards Methodology,” SBA has determined that $10 million is the appropriate size standard for NAICS 811213. SBA believes that, at this level, there exists a sufficient population of small firms that can compete among themselves for opportunities that provide benefits for small businesses. Much larger companies can and do provide some of the same services as smaller companies, but SBA believes that raising the size standard to include much larger firms would not be equitable for those small businesses that the Agency seeks to support and protect.

Based on its analyses of relevant industry and Federal contracting data, SBA has determined that the proposed $10 million size standard is appropriate for NAICS 811213. Moreover, a size standard higher than the $10 million level would create substantial competitive disadvantages for small businesses below that level in bidding for Federal procurement opportunities. Therefore, SBA is adopting as final its proposed $10 million size standard for NAICS 811213.

Another commenter stated that SBA should not raise size standards to enable Federal agencies to meet their small business contracting goals. However, whether Federal agencies meet their goals or not is not a factor SBA considers in its analysis. Once SBA has established small business size standards, it is the various agencies’ responsibility to structure and monitor their contracting activities to meet their small business contracting goals. SBA’s objective is to assure that there are an adequate number of small businesses to maintain suitable competition among them. At the same time, SBA wants to make certain that the pool is not too large so that there would be an inordinate number of apparently small businesses. The commenter stated that a company with $7 million in receipts or one that has 500 employees is not a small business and such levels might not suggest smallness for many people. SBA draws the line of demarcation between small and other than small where it will provide adequate procurement opportunities for businesses below that level.

In the proposed rule, SBA requested comments on whether simplification of size standards by reducing them to eight fixed levels was appropriate. SBA also requested comments on whether it should, as a policy, limit the amount of increase or decrease to a size standard, and whether SBA should, as a policy, establish certain minimum or maximum values for size standards.

The commenter stated that there should be only one maximum revenue based standard and one maximum employee based size standard, regardless of NAICS industry. While this would simplify size standards even more than what SBA had proposed, the Act, as noted above, states in §3(a)(3) that “the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.” (15 U.S.C. 632(a)(3)). The relevant data show significant differences among industries within each NAICS Sector, including Sector 81, and SBA believes that varying the size standard by industry not only complies with the Act, but it also serves the best interests of small businesses in that Sector. Therefore, SBA does not presently plan to reduce the number of receipts based size standard levels below eight as detailed in the proposed rule.

SBA did not receive any comments on whether it should lower the size standards for the 20 industries in NAICS Sector 81 for which SBA’s analyses supported reducing the existing size standards. SBA did not receive any comments on nine industries for which SBA’s analyses supported retaining the existing size standards and on NAICS 811212 for which SBA had proposed retaining the current standard until it reviews NAICS Sector 54. Therefore, SBA is retaining the existing size standards for 28 of the 48 Industries in NAICS Sector 81. All comments to the proposed rule are available for public review at http://www.regulations.gov.

**Conclusion**

Based on the analyses of relevant industry and program data and public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 18 industries in NAICS Sector 81 to the levels it proposed. The revised size standards are shown in the following table.

**SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 81**

<table>
<thead>
<tr>
<th>NAICS</th>
<th>Current size standard ($ million)</th>
<th>Revised size standard ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>811122—Automotive Glass Replacement Shops</td>
<td>$7.0</td>
<td>$10.0</td>
</tr>
<tr>
<td>811123—Communication Equipment Repair and Maintenance</td>
<td>7.0</td>
<td>10.0</td>
</tr>
<tr>
<td>811129—Other Electronic and Precision Equipment Repair and Maintenance</td>
<td>7.0</td>
<td>10.0</td>
</tr>
<tr>
<td>811412—Appliance Repair and Maintenance</td>
<td>7.0</td>
<td>14.0</td>
</tr>
<tr>
<td>812191—Diet and Weight Reducing Centers</td>
<td>7.0</td>
<td>19.0</td>
</tr>
<tr>
<td>812220—Cemeteries and Crematories</td>
<td>7.0</td>
<td>19.0</td>
</tr>
<tr>
<td>812320—Dry-cleaning and Laundry Services (except Coin-Operated)</td>
<td>4.5</td>
<td>5.0</td>
</tr>
<tr>
<td>812331—Laundry Supply</td>
<td>14.0</td>
<td>30.0</td>
</tr>
<tr>
<td>812332—Industrial Launderers</td>
<td>14.0</td>
<td>35.5</td>
</tr>
<tr>
<td>812921—Photo Finishing Laboratories (except One-Hour)</td>
<td>7.0</td>
<td>19.0</td>
</tr>
<tr>
<td>812922—One-Hour Photo Finishing</td>
<td>7.0</td>
<td>14.0</td>
</tr>
<tr>
<td>812930—Parking Lots and Garages</td>
<td>7.0</td>
<td>35.5</td>
</tr>
<tr>
<td>813211—Grantmaking Foundations</td>
<td>7.0</td>
<td>30.0</td>
</tr>
<tr>
<td>813212—Voluntary Health Organizations</td>
<td>7.0</td>
<td>25.5</td>
</tr>
<tr>
<td>813219—Other Grant Making and Giving Services</td>
<td>7.0</td>
<td>25.5</td>
</tr>
<tr>
<td>813311—Human Rights Organizations</td>
<td>7.0</td>
<td>25.5</td>
</tr>
</tbody>
</table>
Although there were two comments opposing the proposed increases, SBA believes that its analyses warrants the increases, for the reasons it gave in the October 21, 2009 proposed rule. SBA’s proposed rule indicated that its analysis might justify proposing reductions to size standards for 20 industries in this Sector. However, SBA has opted not to reduce the size standards for these industries for the reasons given in the proposed rule. Lowering small business size standards would be inconsistent with its ongoing effort to promote small business assistance under the Recovery Act.

Compliance With Executive Orders 12866, 12998, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a “significant” regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA’s Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

Is there a need for the regulatory action?

SBA believes that the adopted adjustments to certain size standards in Sector 81, Other Services, better reflect the changes in economic characteristics of small businesses in those industries. SBA provides aid and assistance to small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA’s Administrator responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of the proposed rule and this rule explained in detail SBA’s methodology for analyzing a size standard for a particular industry.

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, including SBA’s financial assistance programs, economic injury disaster loans and Federal procurement opportunities reserved for small businesses. Federal procurement provides opportunities for small businesses under SBA’s business development programs, such as 8(a) participants, small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses and service disabled veteran owned small businesses (SDVOSB). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive.

Of 18 industries in Sector 81 for which SBA has increased its size standards, 12 are for-profit industries and six are non-profits. In the 12 for-profit industries for which SBA has increased size standards, the Agency estimates that about 325 additional firms will obtain small business status and become eligible for these programs. That represents 0.6 percent of total firms and 5.6 percent of total sales in those industries. In the six non-profit industries for which size standards have been increased, SBA estimates that about 1,175 additional firms, representing 4.2 percent of total firms and 16.9 percent of total sales in those industries, will qualify as a small business concern. 13 CFR 121.105 In the 20 industries (including non-profits) for which SBA’s analyses indicated a lower size standard is appropriate, about 1,850 firms, representing 0.6 percent of total firms and 5.1 percent of total sales in those industries, might have lost their small business status, had SBA lowered their size standards. Thus, the net impact for the Sector as a whole is about 1,400 additional firms gaining and none losing small business status under this final rule. This will increase the small business share of total industry receipts for the Sector from 59.0 percent under the current size standards to 63.5 percent under the revised standards.

The benefits of increasing size standards to a more appropriate level will accrue to three groups: (1) Businesses that are above the current size standards will benefit by gaining small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies that award contracts under procurement programs that require small business status.

More than 40 percent of total Federal contracting dollars received by industries in Sector 81 (excluding NAICS 811212 and those in Subsector 813) during fiscal years 2006–2008 were accounted for by two of the 18 industries for which SBA is increasing size standards in this final rule, namely NAICS 811213 and NAICS 811219. SBA estimates that additional firms gaining small business status in those two and other industries in Subsectors 811 and 812 under the proposed size standards could potentially obtain Federal contracts totaling up to between $25 million and $30 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements.

The added competition for many of these procurements also could likely result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA’s 7(a) Guaranteed Loan Program and CDC Program, SBA estimates that approximately 10 additional loans totaling between $4 million and $5 million in new Federal loan guarantees will be made to newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses.

### SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 81—Continued

<table>
<thead>
<tr>
<th>NAICS</th>
<th>Current size standard ($ million)</th>
<th>Revised size standard ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>813312 Environment, Conservation and Wildlife Organizations</td>
<td>7.0</td>
<td>14.0</td>
</tr>
<tr>
<td>813320 Professional Organizations</td>
<td>7.0</td>
<td>14.0</td>
</tr>
</tbody>
</table>
The adopted size standards may have some 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 likely impacts can be identified. There will likely be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. Also, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for an 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 under the revised size standards. 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 currently available data on the size of business receiving a Federal contract are limited to identifying small businesses in size standards in the 18 industries. Based on an analysis of the industry definitions may have changed while minimizing the impact on small businesses. Although the newly defined size standards for Other Services industries are consistent with SBA’s statutory mandate to assist small business. This regulatory action promotes the Administration’s objectives. One of SBA’s goals in support of the Administration’s objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 12998: For purposes of Executive Order 12998, Civil Justice Reform, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment. Paperwork Reduction Act: This interim final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 USC Chapter 35.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in NAICS Sector 81, Other Services. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA’s description and estimate of the number of small entities to which the rule will apply? (3) what are the projected reporting, record keeping, and other compliance requirements of the rule? (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

Most of SBA’s size standards for the Other Services industries have not been reviewed since the early 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

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

In this final rule, SBA estimates that approximately 1,400 additional firms will become small because of increases in size standards in the 18 industries within Sector 81. That represents about 1.8 percent of approximately 75,500 total firms in those industries. This will
result in an increase in the small business share of total industry receipts for that Sector from 59.0 percent under the current size standards to 63.5 percent under the revised standards.

(3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A new size standard does not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

This rule overlaps with other Federal rules that use SBA’s size standards to define a small business. Under §3(a)(2)(C) of the Small Business Act, Federal agencies must use SBA’s size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the Federal Register a list of statutory and regulatory size standards that identified the application of SBA’s size standards as well as other size standards used by Federal agencies (60 FR 57988, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards. However, the Small Business Act and SBA’s regulations allow Federal agencies to develop different size standards if they believe that SBA’s size standards are not appropriate for their programs, with the approval of SBA’s Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 657(a), 657(f), and 662(5); and Pub. L. 105–135, Sec. 401, et seq., 111 Stat. 2592.

2. In §121.201, in the table, revise the entries for “811122”, “811213”, “811219”, “811412”, “811290”, “812320”, “812331”, “812332”, “812921”, “812922”, “813211”, “813212”, “813219”, “813311”, “813312”, and “813920” to read as follows:

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

<table>
<thead>
<tr>
<th>NAICS codes</th>
<th>NAICS U.S. industry title</th>
<th>Size standards in millions of dollars</th>
<th>Size standards in number of employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>* * * * * *</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>$10.0</td>
<td>* * * * * * * * * * * *</td>
</tr>
<tr>
<td>811122 .....</td>
<td>Automotive Glass Replacement Shops</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>* * * * * * * * * * * *</td>
</tr>
<tr>
<td>* * * * * *</td>
<td>811213 ..... Communication Equipment Repair and Maintenance</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>10.0</td>
</tr>
<tr>
<td>811219 .....</td>
<td>Other Electronic and Precision Equipment Repair and Maintenance</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>19.0</td>
</tr>
<tr>
<td>* * * * * *</td>
<td>811412 ..... Appliance Repair and Maintenance</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>14.0</td>
</tr>
<tr>
<td>* * * * * *</td>
<td>812191 ..... Diet and Weight Reducing Centers</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>19.0</td>
</tr>
<tr>
<td>* * * * * *</td>
<td>812220 ..... Cemeteries and Crematories</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>19.0</td>
</tr>
<tr>
<td>* * * * * *</td>
<td>812320 ..... Dry-cleaning and Laundry Services (except Coin-Operated)</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>5.0</td>
</tr>
<tr>
<td>812331 .....</td>
<td>Linen Supply</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>30.0</td>
</tr>
<tr>
<td>812332 .....</td>
<td>Industrial Launderers</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>35.5</td>
</tr>
<tr>
<td>* * * * * *</td>
<td>812921 ..... Photo Finishing Laboratories (except One-Hour)</td>
<td>* * * * * * * * * * * * * * * * *</td>
<td>19.0</td>
</tr>
</tbody>
</table>
## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

<table>
<thead>
<tr>
<th>NAICS codes</th>
<th>NAICS U.S. industry title</th>
<th>Size standards in millions of dollars</th>
<th>Size standards in number of employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>812922</td>
<td>One-Hour Photo Finishing</td>
<td>$14.0</td>
<td></td>
</tr>
<tr>
<td>812930</td>
<td>Parking Lots and Garages</td>
<td></td>
<td>$35.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>813211</td>
<td>Grantmaking Foundations</td>
<td></td>
<td>$30.0</td>
</tr>
<tr>
<td>813212</td>
<td>Voluntary Health Organizations</td>
<td></td>
<td>$25.5</td>
</tr>
<tr>
<td>813219</td>
<td>Other Grant Making and Giving Services</td>
<td></td>
<td>$35.5</td>
</tr>
<tr>
<td>813311</td>
<td>Human Rights Organizations</td>
<td></td>
<td>$25.5</td>
</tr>
<tr>
<td>813312</td>
<td>Environment, Conservation and Wildlife Organizations</td>
<td>$14.0</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>813920</td>
<td>Professional Organizations</td>
<td></td>
<td>$14.0</td>
</tr>
</tbody>
</table>

### SUPPLEMENTARY INFORMATION:

#### Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA’s existing size standards use two primary measures of business size—annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA’s Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA’s size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the Federal Register on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data and, where necessary, to make revisions to existing size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 44–45, Retail Trade, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of the Federal Register (74 FR 53924) to increase the size standards for 47 industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the Federal Register proposed rules to increase small business size standards for five industries in NAICS Sector 72, Accommodation and Food Services (74 FR 53913) and for 18 industries in NAICS Sector 81, Other Services (74 FR 53913).

### FOR FURTHER INFORMATION CONTACT:

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### Dated: September 10, 2010.

Marie C. Johns, Deputy Administrator.

*BILLING CODE 8025–01–P*