SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS Codes | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| 561422 | Telemarketing Bureaus and Other contact Centers | 14.0 | |
| 561431 | Private Mail Centers | 14.0 | |
| 561439 | Other Business Service Centers (including Copy Shops) | 14.0 | |
| 561440 | Collection Agencies | 14.0 | |
| 561450 | Credit Bureaus | 14.0 | |
| 561491 | Repossession Services | 14.0 | |
| 561492 | Court Reporting and Stenotype Services | 14.0 | |
| 561499 | All Other Business Support Services | 14.0 | |
| 561510 | Travel Agencies [10] | [10] 19.0 | |
| 561520 | Tour Operators [10] | [10] 19.0 | |
| 561591 | Convention and Visitors Bureaus | 19.0 | |
| 561599 | All Other Travel Arrangement and Reservation Services | 19.0 | |
| 561611 | Investigation Services | 19.0 | |
| 561612 | Security Guards and Patrol Services | 19.0 | |
| 561613 | Armored Car Services | 19.0 | |
| 561621 | Security Systems Services (except Locksmiths) | 19.0 | |
| 561622 | Locksmiths | 19.0 | |
| 561710 | Exterminating and Pest Control Services | 10.0 | |
| * * * | * * | * | * |
| 561740 | Carpet and Upholstery Cleaning Services | 5.0 | |
| * * * | * * | * | * |
| 561910 | Packaging and Labeling Services | 10.0 | |
| 561920 | Convention and Trade Show Organizers [10] | [10] 10.0 | |
| 561990 | All Other Support Services | 10.0 | |
| * * * | * * | * | * |
| 562111 | Solid Waste Collection | 35.5 | |
| 562112 | Hazardous Waste Collection | 35.5 | |
| 562119 | Other Waste Collection | 35.5 | |
| 562211 | Hazardous Waste Treatment and Disposal | 35.5 | |
| 562212 | Solid Waste Landfill | 35.5 | |
| 562213 | Solid Waste Combustors and Incinerators | 35.5 | |
| 562219 | Other Nonhazardous Waste Treatment and Disposal | 35.5 | |
| 562910 | Remediation Services | 19.0 | |
| * * * | * * | * | * |
| 562920 | Materials Recovery Facilities | 19.0 | |
| * * * | * * | * | * |

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[10] *NAICS codes 488510 (part) 531210, 541810, 561510, 561520,* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * *

Dated: April 25, 2012.

**Karen G. Mills,**

*Administrator.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

**RIN 3245–AG26**

### Small Business Size Standards: Information

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The United States Small Business Administration (SBA) is increasing the receipts based small business size standards for 15 industries and retaining the current receipts based size standards for five industries in North American Industry Classification System (NAICS) Sector 51, Information. As part of its ongoing comprehensive review of all size standards, SBA evaluated all receipts based size standards for industries in NAICS Sector 51 to determine whether they should be retained or revised. SBA did not review the employee based standards for industries in NAICS Sector 51 in this rule, but will do so at a later date with other employee based size standards.

**DATES:** This rule is effective January 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jon Haitsuka, Program Analyst, Size Standards Division, phone: (202) 205–6618 or *sizestandards@sba.gov.*

**SUPPLEMENTARY INFORMATION:** 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—average 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), 7(a), and Certified

Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or net worth and net income size based standards. At the start of the current comprehensive review of SBA's small business size standards, there were 41 different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few 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 since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts based size standards in NAICS Sector 51, Information, to determine whether the existing size standards should be retained or revised. On October 12, 2011, SBA published a proposed rule in the **Federal Register** (76 FR 63216) seeking public comment on its proposal to increase the receipts based size standards for 15 industries in NAICS Sector 51. The rule was one of a series of proposed rules that examines industries grouped by NAICS Sector.

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA has published the document on its Web site at *www.sba.gov/size* for public review and comment and also included it as a supporting document in the electronic docket of the October 12, 2011 proposed rule at *www.regulations.gov.*

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 51 that has a receipts-based size standard, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contracts in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. 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 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing standards for industries in NAICS Sector 51. SBA sought comments from the public on a number of issues concerning 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 applications 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.

SBA also sought comments on its proposal to increase the size standards for 15 industries and retain the existing size standards for remaining industries in NAICS Sector 51 (Information) that have receipts based size standards. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for some industries in NAICS Sector 51.

SBA's analyses supported lowering existing receipts based standards for four industries and keeping the current size standard for one industry. However, as SBA explained in the proposed rule, lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs and would run counter to what the Federal government and SBA are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size standards for those industries and requested comments on whether the Agency should lower size standards for those five industries for which its analyses might support lowering them.

**Summary of Comments**

SBA sought comments on its proposed rule to increase the size standard for 15 industries and retain the existing size standards for the remaining five industries in NAICS Sector 51 that have receipts based size standards. SBA requested comments on whether the size standards should be revised as proposed or different size standards were appropriate. SBA received two comments to the proposed rule, which are summarized below.

One commenter fully supported SBA's proposed size standards, particularly with regard to increasing the size standard for NAICS 519190, All

Other Information Services, from $7 million to $25.5 million.

The second commenter raised a number of issues on SBA's size standards. The commenter stated that SBA has not kept up with current business practices, making the size standards ''nearly irrelevant.'' The comment contended that today's businesses are involved in several NAICS industries, including manufacturing, wholesale trade, retail trade, and services. The commenter stated further that when a manufacturer is also a wholesaler of products manufactured overseas, it easily would meet an employee based size standard. The second concern the commenter expressed that some manufacturers that meet the 1,000-employee to 1,500-employee size standards may have several hundred million dollars in average annual revenue and are considered small. The commenter recommended that SBA's size standards include both number of employees and annual receipts.

SBA agrees that many businesses are involved in industries covering more than one NAICS code, but it does not adopt the commenter's recommendation for two reasons. First, although a concern might participate in multiple industries, a Federal procurement generally does not use multiple NAICS codes. SBA regulations provide that NAICS codes and their size standards for Wholesale Trade (NAICS Sector 42) and Retail Trade (NAICS Sector 44–45) do not apply to Federal procurement. To qualify as small for a Federal procurement opportunity, a business must meet the size standard for the NAICS code under that procurement. A procuring agency's contracting officer must use the NAICS code, along with the appropriate size standard, that best describes the principal purpose of the procurement. (13 CFR 121.402(b)). If the procurement is for services, the contracting officer will assign a service NAICS code and the associated size standard will likely be based on average annual receipts. To qualify as small under a receipts based size standard the firm's total annual receipts—together with those of its affiliates (*see* 13 CFR 121.103)—must meet that size standard, regardless of whether it might qualify as small under an employee based size standard for another NAICS code. If the procurement is for manufactured products, then, to qualify as small, the company must meet the size standard for the NAICS industry that manufactures that product. In the event that a company did not manufacture the product the government wishes to buy, then it may qualify as small by supplying the product as a ''nonmanufacturer.'' However, the nonmanufacturer must have 500 or fewer employees (regardless of what the size standard is for the manufacturer making the product) and provide the product of a small, domestic manufacturer. This is provided for in the nonmanufacturer rule. (13 CFR 121.406(b)). Second, for the reasons provided in its ''Size Standards Methodology'' available at *www.sba.gov/size,* SBA uses number of employees to measure the size of manufacturing industries and average annual receipts to measure the size of services industries. SBA believes that using both number of employees and average annual receipts for a size standard would add tremendous complexity to size standards, and it would run counter to SBA's ongoing effort to simplify size standards. For these reasons SBA declines to adopt the comment.

The third issue raised by the commenter was related to publicly traded companies bidding on small business Federal contracts. The commenter contended that typically the publicly traded companies are managed by people formerly associated with large businesses. SBA's small business size regulations do not preclude a publicly traded company from qualifying as small if it meets the small business size requirements. Whether a company is publicly or privately owned or how widely a company's stock is held is not a relevant factor in determining whether it can qualify small. If a company represents itself as a small business concern on a particular procurement, and one or more interested parties believe that the entity does not qualify as small, SBA has established rules and procedures for protests of the small business size status of the company. (*See* 13 CFR 121.1001 through 121.1010). If a company is managed by individuals formerly associated with large businesses, that may be a relevant fact in determining whether the company is affiliated with other firms and qualifies as small. (13 CFR 121.103).

The fourth issue the commenter raised related to mergers and acquisitions (M&A) activities. The commenter contended that, without regular review of size standards, businesses involved in M&As will be considered small. SBA disagrees with this comment. Mergers create affiliation (*see* 13 CFR 121.103) between or among the companies involved and their receipts and employees should be aggregated to determine if the company qualifies as small after the merger. To address this issue, on November 15, 2006, SBA issued a final rule requiring small business government contractors to recertify their size status on long-term contracts when a contract option is exercised, when a small business is involved in an executed merger or purchase with another business, or at the end of the first five years of a contract. (71 FR 66434). For contract opportunities after a merger has occurred, any interested party may protest the size of a small business offeror under 13 CFR 121.1001 through 121.1010. SBA would apply its affiliation rules during any protest.

## Conclusion

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 15 industries in NAICS Sector 51 to the levels it proposed. Those industries and their revised size standards are shown in the following Table 1, Summary of Revised Size Standards in NAICS Sector 51.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 51

| NAICS Code | NAICS Industry title | Current size standard ($ million) | Revised size standard ($ million) |
|---|---|---|---|
| 511210 | Software Publishers | $25.0 | $35.5 |
| 512110 | Motion Picture and Video Production | 29.5 | 30.0 |
| 512131 | Motion Picture Theaters (except Drive-Ins) | 7.0 | 35.5 |
| 512199 | Other Motion Picture and Video Industries | 7.0 | 19.0 |
| 512290 | Other Sound Recording Industries | 7.0 | 10.0 |
| 515111 | Radio Networks | 7.0 | 30.0 |
| 515112 | Radio Stations | 7.0 | 35.5 |

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 51—Continued

| NAICS Code | NAICS Industry title | Current size standard ($ million) | Revised size standard ($ million) |
|---|---|---|---|
| 515120 .. | Television Broadcasting | 14.0 | 35.5 |
| 515210 .. | Cable and Other Subscription Programming | 15.0 | 35.5 |
| 517410 .. | Satellite Telecommunications | 15.0 | 30.0 |
| 517919 .. | All Other Telecommunications | 25.0 | 30.0 |
| 518210 .. | Data Processing, Hosting, and Related Services | 25.0 | 30.0 |
| 519110 .. | News Syndicates | 7.0 | 25.5 |
| 519120 .. | Libraries and Archives | 7.0 | 14.0 |
| 519190 .. | All Other Information Services | 7.0 | 25.5 |

For the reasons stated above in this rule and in the proposed rule, SBA has decided to retain the current receipts based size standards for four industries for which analytical results suggested lowering them. Not lowering size standards in NAICS Sector 51 is consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597, October 6, 2010); NAICS Sector 72, Accommodation and Food Services (75 FR 61604, October 6, 2010); and NAICS Sector 81, Other Services (75 FR 61591,October 6, 2010). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons. SBA is also retaining the existing receipts based size standard for one industry for which the results supported it at its current level. Accordingly, SBA has retained the existing receipts-based size standards for five industries in NAICS Sector 51. SBA did not review the 12 industries in NAICS Sector 51 that have employee based size standards. Therefore, SBA has retained the size standards for those industries at their current levels until the Agency reviews employee based size standards at a later date.

**Compliance With Executive Orders 12866, 13563, 12988, 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*

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 15 industries in NAICS Sector 51, Information, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. SBA's mission is to aid and assist 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 the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act requires the Administrator to review one-third of all size standards within each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The supplementary information sections of the October 12, 2011 proposed rule and this final rule explained in detail SBA's methodology for analyzing a size standard for a particular 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 gaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. In the 15 industries in NAICS Sector 51 for which SBA has decided to increase size standards, SBA estimates that more than 500 firms exceeding the current size standards will gain small business status and become eligible for these programs. That number is 1.2 percent of the total number of firms that are classified as small under the current size standards in all 20 industries in NAICS Sector 51 that are covered by this final rule. SBA estimates that this will increase the small business share of total industry receipts in those industries from 13 percent under the current size standards to 15 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups in the following ways: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards; thereby enabling them 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 enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

For the October 12, 2011 proposed rule, SBA analyzed FY 2007–2009 FPDS–NG data and found that, among the industries that SBA examined, nearly 98 percent of Federal contracting dollars in Sector 51 were accounted for by those 15 industries for which SBA has increased size standards. This also held true in SBA's updated analysis using the FY 2008–2010 FPDS–NG data. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain

Federal contracts totaling between $15 million and $20 million annually through the 8(a), HUBZone, WOSB, and SDVOSB programs and other, unrestricted procurements. The added competition for many of these procurements may also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Based on the 2008 to 2010 data alone, SBA estimates that approximately 5 to 10 more loans totaling $1 million to $2 million could be made to newly defined small businesses under its 7(a) and 504 Loan Programs. However, under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. The Jobs Act also established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. Under the alternative size standard, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has tangible net worth that does not exceed $15 million and has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5.0 million. Thus, increasing the size standards may result in an increase in small business guaranteed loans to small businesses in these industries, but it is impractical to try to estimate the extent of their number and the total amount loaned.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since the EIDL program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of future EIDL benefits.

To the extent that those 500 newly defined small firms under the revised size standards could become active in Federal procurement programs, there may be some additional administrative costs to the Federal Government. There will be additional bidders for Federal small business procurement opportunities, additional firms applying for SBA guaranteed loans, additional firms eligible to enroll in the Central Contractor Registration's (CCR) Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVOSB, and SDB status. Among these businesses, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. 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 unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may 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. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation preferences when they compete on full and open bidding opportunities. 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 more 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 small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards for Information 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 13563*

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563, Improving Regulation and Regulatory Review, are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. SBA also presented its size standards methodology to businesses in 13 cities in the United States and sought their input as part of the Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 51, Information, is consistent with Executive Order 13563, § 6 calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. 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, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

*Executive Order 12988*

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

For purposes of Executive Order 13132, Federalism, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule would not impose any new reporting or record keeping requirements.

*Final Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 51, Information. As described above, this final rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA's Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are 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 are the need for and objective of the rule?

Most of SBA's size standards for the Information industries had not been reviewed since the 1980s. Technological changes, productivity growth, international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

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

SBA estimates that approximately 500 additional firms will become small because of increases in size standards in 20 industries in NAICS Sector 51. That represents 1.2 percent of the total firms in industries in that Sector that have receipts-based size standards. This will result in an increase in the small business share of total industry receipts in those industries from about 13 percent under the current size standards to nearly 15 percent under the revised size standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The revised size standards will enable more small businesses to retain their small business status for a longer period. Under current size standards, many small businesses may have lost their eligibility or found it difficult to compete with companies that are significantly larger than they are, and this final rule attempts to correct that impact. SBA believes these changes will have a positive impact for existing small businesses and for those that have either exceeded or are about to exceed current size standards.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal 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 are designed to 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?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), 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, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising 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)).

(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 practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual NAICS Code industries within NAICS Sector 51 are discussed in the supplementary information to the proposed rule and this final rule.

**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

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

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(b), 662, 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ‘‘511210’’, ‘‘512110’’, ‘‘512131’’, ‘‘512199’’, ‘‘512290’’, ‘‘515111’’, ‘‘515112’’, ‘‘515120’’, ’’515210’’, ‘‘517410’’, ‘‘517919’’, ‘‘518210’’, ‘‘519110’’, ‘‘519120’’, and ‘‘519190’’ to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

| NAICS codes | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| * * * | * | * * | * |
| 511210 | Software Publishers | $35.5 | |
| * * * | * | * * | * |
| 512110 | Motion Picture and Video Production | 30.0 | |
| * * * | * | * * | * |
| 512131 | Motion Picture Theaters (except Drive-Ins) | 35.5 | |
| * * * | * | * * | * |
| 512199 | Other Motion Picture and Video Industries | 19.0 | |
| * * * | * | * * | * |
| 512290 | Other Sound Recording Industries | 10.0 | |
| * * * | * | * * | * |
| 515111 | Radio Networks | 30.0 | |
| 515112 | Radio Stations | 35.5 | |
| 515120 | Television Broadcasting | 35.5 | |
| 515210 | Cable and Other Subscription Programming | 35.5 | |
| * * * | * | * * | * |
| 517410 | Satellite Telecommunications | 30.0 | |
| * * * | * | * * | * |
| 517919 | All Other Telecommunications | 30.0 | |
| * * * | * | * * | * |
| 518210 | Data Processing, Hosting, and Related Services | 30.0 | |
| * * * | * | * * | * |
| 519110 | News Syndicates | 25.5 | |
| 519120 | Libraries and Archives | 14.0 | |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| * | * * * * | * | * |
| 519190 | All Other Information Services | 25.5 | |
| * | * * * * | * | * |

Dated: April 25, 2012.

**Karen G. Mills,**

*Administrator.*

**Editorial Note:** This document was received at the Office of the Federal Register on November 30, 2012.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 91

**[Docket No. FAA–2003–14766; Amendment No. 91–327; SFAR No. 77]**

**RIN 2120–AK07**

### Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action is taken to allow U.S. civil flight operations to and from Erbil and Sulaymaniyah International Airports in Northern Iraq by any United States (U.S.) air carrier or commercial operator, any person exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S.-registered aircraft for a foreign air carrier (who are not covered by the prohibition), or a person operating an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier (which also is not covered by the prohibition). The FAA has recently determined that a full flight prohibition is no longer necessary for these airports in Northern Iraq, and this action will allow flights to be conducted provided that certain measures are taken. Additional adjustments to the current flight prohibition may be appropriate as the risk to aviation safety and security lessens in other parts of the country, and ultimately the prohibition may be lifted completely.

**DATES:** This action is effective January 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** For technical questions about this final rule, contact: Will Gonzalez, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–4080. For legal questions, contact: Lorna John, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3921.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered aircraft, and U.S.-certificated airmen throughout the world. Also, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. The FAA's authority to issue rules for aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106(g), describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements. Furthermore, the FAA has broad authority under section 44701(a)(5) to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

### I. Background

On October 16, 1996, SFAR No. 77 was issued to prohibit flight operations within the territory and airspace of Iraq by any U.S. air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier (who are not covered by the prohibition), or by a person operating an aircraft registered in the United States, unless the operator of such aircraft is a foreign air carrier (which also is not covered by the prohibition). The prohibition was issued in response to concerns for the safety and security of U.S. civil flights within the territory and airspace of Iraq. In the final rule, the FAA cited a threat made by then President Saddam Hussein who urged his air defense forces to ignore both the southern and northern no-fly zones and to attack ''any air target of the aggressors.'' The FAA was concerned that this threat could apply to civilian as well as military aircraft, and therefore issued SFAR 77.

In early 2003, a U.S.-led coalition removed Saddam Hussein's regime in Iraq from power. The FAA anticipated that when hostilities ended in Iraq, humanitarian efforts would be needed to assist the people of Iraq. To facilitate those efforts, in April 2003, the FAA amended paragraph 3 of SFAR No. 77 to clarify what the approval process was for such flights, making clear that operations could not be authorized by another agency without the approval of the FAA.

On November 19, 2003, the FAA determined that certain limited overflights of Iraq could be conducted safely, subject to the permission of the appropriate authorities in Iraq and in accordance with the conditions established by those authorities. Accordingly, the FAA amended SFAR No. 77 to permit overflights of Iraq above Flight Level (FL) 200. That amendment also allowed aircraft departing from countries adjacent to Iraq to operate at altitudes below FL 200 within Iraq to the extent necessary to permit a climb above FL 200 if the climb performance of the aircraft would not permit operation above FL 200 prior to entering Iraqi airspace.