SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
112112	Cattle Feedlots	$7.0	
*	* * * *	*	*
112310	Chicken Egg Production	$14.0	
*	* * * *	*	*
113110	Timber Tract Operations	$10.0	
113210	Forest Nurseries and Gathering of Forest Products	$10.0	
*	* * * *	*	*
114111	Finfish Fishing	$19.0	
114112	Shellfish Fishing	$5.0	
114119	Other Marine Fishing	$7.0	
114210	Hunting and Trapping	$5.0	
*	* * * *	*	*
115111	Cotton Ginning	$10.0	
*	* * * *	*	*
115114	Postharvest Crop Activities (except Cotton Ginning)	$25.5	
115115	Farm Labor Contractors and Crew Leaders	$14.0	
*	* * * *	*	*

Dated: June 13, 2013.

Karen G. Mills,

Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG44

Small Business Size Standards: Support Activities for Mining

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 three of the four industries in North American Industry Classification System (NAICS) Subsector 213, Support Activities for Mining, that are based on average annual receipts. As part of its ongoing comprehensive size standards review, SBA evaluated the four receipts based standards in NAICs Subsector 213 under NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, to determine whether the current size standards should be retained or revised. Within NAICS Sector 21, only NAICS Subsector 213 has receipts based size standards. The rest of the industries in that Sector have employee based size standards which SBA will review in the near future with other employee based size standards.

DATES: This rule is effective July 22, 2013.

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

SUPPLEMENTARY INFORMATION:

Introduction

In an effort to eliminate possible public confusion, SBA would like to explain the changes made to the title of this rule. When SBA initially announced in the Fall 2012 Unified Agenda of Federal Regulatory and Deregulatory Actions, 78 FR 1636 at 1639 (January 8, 2013) (Item #390) that it intended to propose this rule, it was titled ''Small Business Size Standards: Mining, Quarrying, and Oil and Gas Extraction'' under Regulatory Information Number (RIN) 3245–AG44. This title was based on the one for Sector 21 of the Small Business Size Standards by NAICS Industry. However, SBA later concluded that this title was a misnomer since this rule only covers the four revenue based size standards under Subsector 213, Support Activities for Mining and not the entire Sector 21. The rest of the size standards in NAICS Sector 21 are employee-based size standards and will be addressed in a separate rule. As a result, the title of the proposed rule was clarified to read: ''Small Business Size Standards: Support Activities for Mining.'' 77 FR 72766 (December 6, 2012). We believed that this title change would make it easier for affected parties to recognize the rule when it was published, understand the scope of its coverage, and also engender more public comment and involvement.

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 current size standards use two primary measures of business size—average annual receipts and average 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 the Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income based size standards. At the start of the current comprehensive size standards review, there were 41 different size 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. Presently, there are a total of 1,031 size standards, 516 of which are based on average annual receipts, 499 on number of employees, 10 on megawatt hours, and six on average assets.

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. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were 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 comprehensive size standards 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 all size standards no 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.

Rather than review all size standards at one time, SBA is reviewing a group of related industries on a Sector by Sector basis.

As part of SBA's comprehensive size standards review, the Agency evaluated the four industries with receipts based size standards in NAICS Subsector 213, Support Activities for Mining within NAICS Sector 23, to determine whether their existing size standards should be retained or revised. After its evaluation, on December 6, 2012, SBA published a proposed rule in the **Federal Register** (77 FR 72766) seeking public comment on its proposal to increase three of the four receipts based size standards in that Subsector. The comment period ended on February 4, 2013. The proposed rule was one of the rules that will examine industries grouped by a NAICS Sector.

In conjunction with the current comprehensive size standards review, SBA developed a ''Size Standards Methodology'' for establishing, reviewing, and modifying size standards, where necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comment, and included it as a supporting document in the electronic docket of the December 6, 2012 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. To develop the proposed rule, SBA analyzed the characteristics of each industry in NAICS Subsector 213, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (the latest available). To examine the Federal marketplace, SBA evaluated the level and small business share of Federal contract dollars 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 2009 to 2011.

SBA's ''Size Standards Methodology'' provides a detailed description of 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 Subsector 213. 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 applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of complete data; and whether there are other facts or issues that SBA should consider.

SBA sought comments on its proposal to increase the size standards for three industries and retain the existing size standard for the remaining one industry in NAICS Subsector 213. 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 levels for receipts based size standards are appropriate.

Summary of Comments

SBA received only one comment to the proposed rule. The commenter suggested that $7 million should be the limit of a small business definition and anything larger than that, such as that SBA's proposed $35.5 million size standard for NAICS 213112 (Support Activities for Oil and Gas Operations) should be treated as a large business. The commenter did not provide any supporting data or analysis for his argument.

SBA disagrees with the commenter's suggestion for two reasons. First, the Small Business Act (15 U.S.C. 632(a)) (Act) requires that small business size definitions vary to reflect industry differences. Thus, a single size standard of $7 million or less across the board would be inconsistent with the Act. Second, SBA's analyses of relevant industry and Federal market data using its ''Size Standards Methodology'' show significant differences among industries, supporting a $7 million or lower size standard for some industries and higher size standards for others. Therefore, SBA is adopting the size standards increases in NAICS Subsector 213, as proposed.

The comment to the proposed rule is available for public review at *http://www.regulations.gov.*

Conclusion:

Based on the analyses of relevant industry and program data and evaluation of one public comment it received on the proposed rule, as discussed above, SBA has decided to increase the small business size standards for the three industries in

NAICS Subsectors 213, as proposed. These industries and their revised size standards are in Table 1, Summary of Revised Size Standards in NAICS Subsector 213, below.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SUBSECTOR 213

NAICS code	NAICS industry title	Current size standard ($ million)	Proposed size standard ($ million)
213112	Support Activities for Oil and Gas Operations	$7.0	$35.5
213113	Support Activities for Coal Mining	$7.0	$19.0
213114	Support Activities for Metal Mining	$7.0	$19.0

SBA is retaining the $7 million size standard for NAICS 213115, Support Activities for Nonmetallic Minerals (except Fuels). NAICS Subsector 213 has one industry, namely NAICS 213111 (Drilling Oil and Gas Wells), that has an employee based size standard, which SBA will review later with other employee based size standards in Sector 21. Until then the current 500-employee size standard will remain valid for that industry.

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 not a ''significant regulatory action'' for purposes of Executive Order 12866. To help explain the need of this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a ''major'' rule, under the Congressional Review Act, 5 U.S.C. 801, *et. seq.*

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that the changes to small business size standards for three industries in NAICS Subsector 213, Support Activities for Mining within NAICS Sector 23, reflect changes in the economic characteristics of small businesses and the Federal procurement market in these industries. 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, SBA establishes distinct definitions to determine which businesses are small and eligible for them. The Small Business Act delegated to SBA's Administrator the responsibility for establishing small business size definitions (15 U.S.C. 632(a)). The Act also requires that small business size definitions vary to reflect industry differences. The Jobs Act requires the Administrator to review at least one-third of all size standards within each 18-month period from the date of its enactment, and review all size standards at least every five years thereafter. The supplementary information sections of the December 6, 2012 proposed rule and this final rule explained the 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 because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement programs reserved for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB). These programs assist small businesses to become more knowledgeable, stable, and competitive. Other Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. In the three industries in NAICS Subsector 213 for which SBA is increasing size standards, more than 475 firms that are above the current size standards will become small under the revised size standards and eligible for these programs. That number is about 8.5 percent of total firms that are classified as small under the current size standards in all industries in NAICS Subsector 213. SBA estimates this will increase the small business share of total industry receipts in those industries from about 13 percent under the current size standards to nearly 25 percent under the revised size standards.

Three groups will benefit from the revised size standards in NAICS Subsector 213 in the following ways: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, becoming eligible 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, being able 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.

Because of limited Federal contracting activities in those industries, the revised increases in size standards in the three industries in NAICS Subsector 213 will cause very minimal impact on Federal contracting programs under SBA's small business, 8(a), SDB, HUBZone, WOSB, EDWOSB and SDVOSB Programs, and other unrestricted procurements.

Under SBA's 7(a) and 504 Loan Programs, based on the 2009–2011 data, SBA estimates about five additional loans totaling about $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and, (2) the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. The EIDL program is contingent on the occurrence and severity of one or more disasters and SBA cannot make a meaningful estimate of this impact.

The revisions to the existing size standards for three industries in NAICS Subsector Sector 21, Support Activities for Mining are consistent with SBA's statutory mandate to assist small businesses. 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 distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

In an effort to engage interested parties in this regulatory action, SBA presented its methodology (discussed above under Supplementary Information in this final rule and detailed in December 6, 2012 proposed rule) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation included information on the latest status of the comprehensive size standards review and how interested parties can provide SBA with input and feedback on size standards review. Moreover, SBA also presented the same information to Department of Defense (DoD) contracting personnel at their annual training session. It included updates on what size standards rules SBA was currently reviewing and plans to review in the future.

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's 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 the proposed rule and this final rule for NAICS Subsector 213.

The review of the four receipts based size standards in NAICS Subsector 213, Support Activities for Mining, is consistent with Executive Order 13563, Section 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 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 all size standards to ensure that existing size standards have supportable bases and to revise them, where necessary. In addition, the Jobs Act requires 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 all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This regulatory 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 the 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 purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will 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 Subsector 213, Support Activities for Mining. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a), 504 and economic injury disaster loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth an final regulatory flexibility analysis (RFA) 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 businesses 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 that 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?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries within NAICS Subsector 213. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised size standards in this final 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 more than 475 firms, not small under the current size standards, will become small because of increases in size standards in three industries in NAICS Subsector 213. That represents 8.5 percent of total firms that are small under current size standards in all industries within NAICS Subsector 21. This will result in an increase in the small business share of total industry receipts for those industries from about 13 percent under the current size standard to nearly 25 percent under the revised size standards. The new size standards will enable more small businesses to retain their small business status for a longer period. Many businesses may have lost their eligibility and be finding it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

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 programs requires that entities register in the SAM database and certify in SAM at least once annually that they are small. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with either SAM registration or certification. Revising size standards alters the access to Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

Under section 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 to do otherwise. 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 size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to establish 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 industries within NAICS Subsector 213 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 the 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), 662, and 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ''213112'', ''213113'', and ''213114'' 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
* * * * * * *			
213112	Support Activities for Oil and Gas Operations	$35.5	
213113	Support Activities for Coal Mining	$19.0	
213114	Support Activities for Metal Mining	$19.0	
* * * * * * *			

Dated: June 13, 2013.

Karen G. Mills,

Administrator.

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