

State or other locality	Regional office
Colorado	Denver.
Connecticut	Washington, DC.
Delaware	Washington, DC.
District of Columbia	Washington, DC.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90 degrees East.	San Francisco.
Idaho	San Francisco.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Chicago.
Kansas	Denver.
Kentucky	Chicago.
Louisiana	Atlanta.
Maine	Washington, DC.
Maryland	Washington, DC.
Massachusetts	Washington, DC.
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri	Chicago.
Montana	Denver.
Nebraska	Denver.
Nevada	San Francisco.
New Hampshire	Washington, DC.
New Jersey	Washington, DC.
New Mexico	Denver.
New York	Washington, DC.
North Carolina	Atlanta.
North Dakota	Chicago.
Ohio	Chicago.
Oklahoma	Denver.
Oregon	San Francisco.
Pennsylvania	Washington, DC.
Puerto Rico and coastal islands	Chicago.
Rhode Island	Washington, DC.
South Carolina	Atlanta.
South Dakota	Chicago.
Tennessee	Chicago.
Texas	Denver.
Utah	Denver.
Vermont	Washington, DC.
Virginia	Washington, DC.
Washington	San Francisco.
West Virginia	Washington, DC.
Wisconsin	Chicago.
Wyoming	Denver.
Virgin Islands	Atlanta.
Panama/limited FLRA jurisdiction	Atlanta.
All land and water areas east of the continents of North and South America to long. 90 degrees East, except the Virgin Islands, Panama, Puerto Rico and coastal islands.	Washington, DC.

Approved: February 8, 2024.

Thomas Tso,

Solicitor and Federal Register Liaison, Federal Labor Relations Authority.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115 and 121

RIN 3245-AG16

Small Business Size Standards: Adjustment of Alternative Size Standard for SBA's 7(a) and CDC/504 Loan Programs for Inflation; and Surety Bond Limits: Adjustments for Inflation

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule finalizes, without change, the U.S. Small Business Administration's (SBA or Agency) July 28, 2023, proposed rule to adopt the current statutory alternative size standard for its 7(a) Business and Certified Development Company (CDC/504) Loan Programs (collectively "Business Loan Programs"), subject to a 34.46 percent adjustment for inflation that has occurred since the establishment of the statutory alternative size standard in 2010. The inflation adjustment would increase the size standard's level for tangible net worth to \$20 million and for net income to \$6.5 million. SBA also is adjusting for

inflation the applicable statutory limits for contract size under the Surety Bond Guarantee (SBG) Program. The adjustment increases the contract limit to \$9 million and the contract limit for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary to \$14 million.

DATES: This rule is effective March 18, 2024.

FOR FURTHER INFORMATION CONTACT: Khem Sharma, Ph.D., Chief, Office of Size Standards, (202) 205-6618, sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background for Small Business Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts over the last several years (either three years or five years for SBA financial assistance programs) and average number of employees over the last 24 months. SBA uses assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

SBA reviews small business size standards and makes necessary adjustments to them for three reasons: (i) changes in industry structure and Federal market conditions under the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111-240, section 1344, Sep. 27, 2010; (ii) inflation in accordance with 13 CFR 121.102(c); and (iii) adoption of the latest North American Industry Classification System (NAICS) revision by the Office of Management and Budget. Updating size standards based on inflation—in addition to updating size standards based on the latest industry and Federal contracting data under the five-year rolling review—not only satisfies the Jobs Act’s mandate that SBA review all size standards every five years, but also is consistent with Executive Order 13563 on improving regulation and regulatory review.

Although SBA is required to assess the impact of inflation on its monetary-

based size standards *at least* once every five years (67 FR 3041; January 23, 2002) (13 CFR 121.102(c)), SBA may modify the timing of its adjustments to size standards and consider adjustments even more frequently than five-year intervals based on the prevailing economic conditions and the important policy objective of maintaining the value of size standards in inflation-adjusted terms.

II. Background on Alternative Size Standards

Section 1116 of the Jobs Act added a new Section 3(a)(5) to the Small Business Act that directed SBA to establish an alternative size standard using maximum tangible net worth and average net income for applicants of the SBA’s 7(a) Business and CDC/504 Loan Programs (collectively “Business Loan Programs”). The Jobs Act also established for applicants for the SBA’s Business Loan Programs an interim alternative size standard of not more than \$15 million in tangible net worth and of not more than \$5 million in the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application (referred to as “Interim Rule”). Under the Jobs Act, this interim statutory alternative size standard would remain in effect until SBA established a new alternative size standard for the Business Loan Programs through rulemaking. 15 U.S.C. 632(a)(5). Prior to that, SBA had a lower regulatory alternative size standard that applied to the CDC/504 Loan Program and applied temporarily to the 7(a) Loan Program for the period beginning on May 5, 2009, and ending on September 30, 2010. 13 CFR 120.301(b)(2).

On September 29, 2010, SBA issued Information Notice 5000-1175 (available at https://www.sba.gov/sites/default/files/files/bank_5000-1175_0.pdf) providing that, effective September 27, 2010, the new statutory alternative size standard applied to its Business Loan Programs, thereby replacing and superseding the lower existing alternative size standard of \$8.5 million in tangible net worth and \$3 million in average net income, as set forth in 13 CFR 121.301(b)(2). The Information Notice further stated that the new statutory alternative size standard would remain in effect until SBA established a permanent alternative size standard for the Business Loan Programs through rulemaking.

In accordance with its regulations, SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years

(67 FR 3041; January 23, 2002) and 13 CFR 121.102(c). Accordingly, except for the statutory alternative size standard for the SBA Business Loan Programs, SBA adjusted its monetary-based size standards for inflation three times since the Congress enacted the Interim Rule in 2010.¹ In its rulemaking for each adjustment, SBA provided that the statutorily set alternative size standard would remain in effect until SBA established a permanent alternative size standard for the 7(a) and CDC/504 Loan Programs.

To move toward codifying a permanent alternative size standard, in March 2018, SBA published in the **Federal Register** an advanced notice of proposed rulemaking (ANPRM) seeking public input to assist in establishing a permanent alternative size standard for its 7(a) and CDC/504 Loan Programs (83 FR 12506; March 22, 2018). SBA also invited suggestions on sources of relevant data and information that SBA should evaluate in developing a permanent alternative size standard and in assessing its impact. SBA received a total of 34 comments on the ANPRM, of which 11 were found to be not pertinent to the scope of the ANPRM. Of the 23 comments that were pertinent, all 23 not only supported the statutory alternative size standard, but also recommended making it the permanent alternative size standard for the SBA’s 7(a) and CDC/504 Loan Programs.

On July 28, 2023, SBA issued a proposed rule to adopt the current statutory alternative size standard for its Business Loan Programs, subject to a 34.46 percent adjustment for inflation that has occurred since the establishment of the statutory alternative size standard in 2010 (88 FR 48739). As described in the July 2023 proposed rule, the inflation that has occurred since 2010 has eroded the value of the alternative size standard in real terms. SBA has an important policy objective of maintaining the value of monetary-based size standards in real (*i.e.*, inflation-adjusted) terms, and by adjusting the statutory alternative size standard for inflation, SBA is fulfilling that objective. SBA used the inflation adjustment methodology it describes in its “Size Standards Methodology” white

¹ Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards (Interim Final Rule) (79 FR 33647; June 12, 2014), finalized on January 25, 2016 (81 FR 3949); Small Business Size Standards: Adjustment of Monetary-Based Size Standards for Inflation (Interim Final Rule) (84 FR 34261; July 18, 2019), finalized on November 17, 2022 (87 FR 69118); Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation (Joint Final and Interim Rule) (87 FR 69118; November 17, 2022).

paper, available at www.sba.gov/size, to adjust the statutory alternative size standard for inflation. SBA applied the same methodology in its previous inflation adjustments to other monetary based size standards, including the latest inflation adjustment in 2022 (87 FR 69118; November 17, 2022). The proposed inflation adjustment increased the tangible net worth component of the alternative size standard to \$20 million and the net income component to \$6.5 million.

III. Background for Surety Bond Contract Limits

In SBA's July 2023 proposed rule, SBA also proposed amending the contract limits applicable to its Surety Bond Guarantee (SBG) Program. The SBG Program is designed to increase small business access to Federal, state, and local government contracting, as well as private-sector contracting, by guaranteeing bid, payment, and performance bonds on contracts for small and emerging contractors who cannot obtain surety bonds through regular commercial channels.² Surety bonds are important to small businesses interested in competing for Federal contracts because the Federal Government requires prime contractors, prior to the award of a Federal contract exceeding \$150,000 for the construction, alteration, or repair of any building or public work of the United States, to furnish a performance bond issued by a surety satisfactory to the officer awarding the contract in an amount the contracting officer considers adequate to protect the government. SBA's guarantee gives sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a surety and SBA that SBA will assume a certain percentage of the surety's loss should a contractor default on the underlying contract. The SBA's guarantee currently ranges from 80 percent to 90 percent of the surety's loss if a default occurs. For more information about SBA's SBG

Program, see <https://www.sba.gov/funding-programs/surety-bonds>.³

Section 1695 of the National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013 or Act) (Pub. L. 112–239; January 2, 2013) increased the SBG guarantee limit to \$6.5 million, and up to \$10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary.⁴ The Act also included a provision to increase the \$6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. 41 U.S.C. 1908 provides that inflation adjustments for acquisition-related dollar thresholds are to be set by the Federal Acquisition Regulatory Council (FAR Council). It also requires that the Consumer Price Index (CPI) be used to measure inflation. The FAR Council is established under 41 U.S.C. 1302 to assist in the direction and coordination of procurement policy and regulatory activities for the Federal Government. The FAR Council is required to adjust for inflation the acquisition-related dollar thresholds every five years. Based on CPI, inflation has increased more than 30 percent since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013.

SBA has an important statutory requirement to adjust the bonding limits in accordance with CPI and the FAR Council. The current limits are \$6.5 million and, for Federal contracts if a Federal agency certifies that a greater amount is necessary, \$10 million. SBA has not adjusted its bonding limits since 2013. The FAR Council has not set a specific threshold in the Federal Acquisition Regulations (FAR) for SBA bonding limits. The FAR Council adjusts the acquisition-related dollar thresholds every five years with the last adjustments occurring in 2015 and 2020. The FAR Council had a \$6.5 million threshold in effect in 2013 when the SBA bonding limits were set. In 2015, as part of inflationary adjustments to the acquisition-related dollar thresholds, the FAR Council increased the \$6.5 million threshold to \$7 million

(80 FR 38293; July 2, 2015). Likewise, in 2020, the FAR Council adjusted \$7 million threshold to \$7.5 million (85 FR 62485; October 2, 2020). The FAR did not have a \$10 million threshold in effect in 2013.

As described in the July 2023 proposed rule, in absence of a specific FAR threshold for SBA bonding limits, SBA proposed to follow the FAR adjustment from \$6.5 million to \$7.5 million in 2020 and then calculate an adjustment from 2020 to 2023 using the same CPI methodology. SBA also proposed to adjust the existing limit of \$10 million to maintain the same percentage spread (the lower limit is 65 percent of the upper limit). As explained in the July 2023 proposed rule, by adjusting both limits at the same time, SBA maintains the effectiveness of the necessity provision and avoids the upper limit becoming meaningless. If only the lower limit were adjusted, then at some point it will exceed the necessity limit due to inflation. Thus, SBA's actions fulfill the statutory objective of maintaining the value of monetary-based bonding limits in real (*i.e.*, inflation-adjusted) terms.

IV. Summary and Discussion of Public Comments Received on the July 2023 Proposed Rule

SBA's July 2023 proposed rule invited public comments on SBA's proposed changes generally, and on a variety of specific issues, including the appropriateness of applying SBA's size standards methodology for inflation adjustments to the statutory alternative size standard, whether the inflation-adjusted level of the interim statutory alternative size standard is appropriate as a new permanent alternative size standard under the current credit environment, the impact of using the statutory alternative size standard as the permanent alternative size standard on small businesses seeking loans through its Business Loan Programs, and the appropriateness of SBA's proposed methodology for adjusting statutory contract limits for its SBG Program, especially on SBA's approach to adjust the \$10 million contract limit for Federal contracts.

SBA received 13 comments on the proposed rule from various trade associations, businesses, and individual stakeholders, of which 11 comments supported SBA's proposed changes and two comments were not applicable or were outside the scope of SBA's proposed rule. Generally, commenters expressed strong support for SBA's proposed changes without reservation.

Of the 11 comments pertinent to the proposed rule, SBA received three

² A surety bond is a three-party instrument between a surety, a contractor, and a project owner. The agreement binds the contractor to comply with the contract's terms and conditions. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. The surety bonds reduce the risk of contracting. Surety bonds are viewed as a means to encourage project owners to contract with small businesses that may not have the credit history or prior experience of larger businesses and are considered to be at greater risk of failing to comply with the contract's terms and conditions.

³ Also see a July 8, 2022, Congressional Research Service Report on "SBA Surety Bond Guarantee Program," available at <https://crsreports.congress.gov/product/pdf/R/R42037>.

⁴ Section 508 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5; Feb 17, 2009) temporarily increased, from February 17, 2009, through September 30, 2010, the maximum bond amount from \$2 million to \$5 million. The act also authorized the SBA to guarantee a bond of up to \$10 million for Federal contracts if a Federal contracting officer certified that such a guarantee was necessary. Using its rulemaking authority, SBA made ARRA's temporary size standard permanent on August 11, 2010 (76 FR 48549).

comments from national trade associations, each separately representing surety bond producers, certified development companies (CDCs), and lenders participating in SBA's 7(a) business loan program. These commenters expressed support for SBA's proposed rule on the grounds that SBA's changes would ultimately expand access for small businesses to financial assistance and other resources. For example, the national association representing surety bond producers expressed that SBA's proposal to adjust for inflation the statutory limits for contract size under the SBG Program would allow more small and emerging contractors to grow their businesses by obtaining bonding to bid on public construction projects.

The national association representing CDCs supported SBA's proposal to adopt the statutory alternative size standard of \$15 million in tangible net worth and \$5 million in net income as the permanent alternative size standard, subject to SBA's proposed inflation adjustment. This commenter petitioned SBA to further adjust the alternative size standard for inflation on the same five-year schedule that SBA currently uses for reviewing its monetary-based industry size standards. Moreover, the commenter expressed general support for continuing to allow small businesses to qualify for SBA financial assistance using either the alternative size standard or the industry size standard to ensure that as many small businesses as possible have access to SBA programs. The commenter further explained that the alternative size standard is particularly helpful for CDCs who may find it is easier to use it rather than the industry-based size standards due to the alternative size standard's consistency across all industries.

The national association representing lenders participating in SBA's 7(a) business loan program also expressed support for continued use of alternative size standards for 7(a) and 504 loan eligibility, explaining that the alternative size standard simplifies the size determination process for lenders since it relies on financial information that is readily available from the loan applicant. This commenter also supported SBA's proposal to make the interim alternative size standard permanent while adjusting it for inflation. The commenter petitioned SBA to adjust the alternative size standard on a periodic five-year basis going forward to assure that inflation does not erode the tangible net worth and net income monetary maximums.

The remaining eight pertinent comments were from individual

stakeholders and businesses, including five CDCs, which supported various aspects of SBA's proposed rule. Three individual stakeholders expressed general support for SBA's changes to the bonding thresholds or alternative size standard. The 5 CDCs expressed support for SBA's proposed inflation-adjusted alternative size standard on the basis that the higher levels would ensure that small businesses would remain eligible for SBA financial assistance in an environment of increasing bank conservatism, high inflation and soaring interest rates. Four of the CDCs specifically expressed support for adopting the inflation adjusted statutory threshold as the permanent threshold and further recommended that SBA adjust the alternative size standard for inflation on a periodic basis not to exceed every five years.

SBA Response

SBA agrees with commenters that its proposed changes would allow more small businesses to access SBA programs and financial assistance. As explained in the July 2023 proposed rule, this rule will apply to more than 8.1 million employer firms, of which 98.2 percent are small under industry-based size standards and 92.5 percent are small under the interim statutory alternative size standard. SBA estimates that about 6,275 firms that are above the interim statutory alternate size standard will qualify as small under the inflation-adjusted size alternative standard. While SBA cannot precisely estimate the number of businesses that are approved under the alternative size standard for 7(a) or CDC/504 loans and the number of newly-defined small businesses that will qualify under the inflation-adjusted alternative size standard for loans under these programs due to data limitations, based on the analysis of the available data for fiscal years 2021–2022, SBA estimates that at least 500 7(a) or CDC/504 loans (or 0.4 percent of total loans) will likely be approved under the alternative size standard that otherwise would not have qualified under the industry-based size standard. Likewise, with respect to the SBG Program, under the rule, SBA estimates that more small businesses will qualify to apply for surety bonds as a result of the proposed increases to statutory bonding limits.

SBA also agrees with commenters that using the alternative size standard has benefitted lenders in terms of simplifying and streamlining the loan application process and has reduced burden on applicants by providing an alternative method to establish eligibility for SBA financial assistance

which would otherwise require businesses to keep three years or potentially five years of data to establish eligibility using industry-based size standards. Thus, SBA continues to support the use of alternative size standards for use in its Business Loan programs.

As explained in the July 2023 proposed rule, SBA believes its changes to the alternative size standard will allow more businesses to gain eligibility for SBA's Business Loan Programs for which they would not otherwise be eligible based on their industry-specific size standards. SBA's changes to the SBG statutory contract limits will provide greater access to contracting opportunities for small businesses. Thus, SBA's changes will allow these additional businesses to attain SBA assistance that may be critical to their continued growth or economic viability.

V. Conclusion

With due consideration of all public comments, as discussed above, and in light of the overall strong support for SBA's proposed changes and anticipated impacts, SBA is adopting the proposed adjustments in the July 2023 proposed rule without change. SBA's adoption of the proposed changes provides assurances to the public that the Agency is monitoring inflation to determine whether to adjust size standards and other monetary thresholds within a reasonable period. SBA's adoption of the proposed changes also ensures that the thresholds applicable to the Business Loan Programs and SBG Program are up-to-date and appropriate for the respective intended beneficiaries of the programs. Given the current developments in the U.S. economy, SBA will continue to monitor the inflation and other economic indicators and their impacts on size standards and adjust size standards, as needed. SBA will adjust the levels for inflation on the same five-year schedule that SBA currently uses for reviewing its monetary-based industry size standards in accordance with 13 CFR 121.102(c).

Specifically, SBA is adopting the statutory alternative size standard of \$15 million in tangible net worth and \$5 million in net income as the permanent alternative size standard, subject to adjustment for inflation that has occurred since the establishment of the statutory alternative size standard in 2010. The inflation adjustment increases the size standard's level for tangible net worth to \$20 million and for net income to \$6.5 million. SBA is also adopting, as proposed, the inflation-adjusted thresholds applicable to the statutory

limits for contract size under the SBG Program. The adjustment increases the contract limit to \$9 million and to \$14 million for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary. The statutory responsibility for adjusting the size standard for inflation lies with the Federal Acquisition Regulation. In the absence of FAR action, SBA will adjust the SBG contract limits on the same five-year schedule that SBA currently uses for reviewing its monetary-based industry size standards in accordance with 13 CFR 121.102(c).

As required under 13 CFR 121.102(e), SBA advises readers that interested eligible parties may file a petition for reconsideration of a revised, modified, or established size standard at SBA's Office of Hearings and Appeals (OHA) within 30 calendar days after publication of this final rule in accordance with 15 U.S.C. 632(a)(9) and 13 CFR 134 Subpart I. You may reach OHA using the following contact information: by mail at U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third St. SW, Eighth Floor, Washington, DC 20416, by email at ohafilings@sba.gov, by phone: 202-401-8200 TTY/TRS: 711, or by fax at (202) 205-7059.

VI. Compliance With Executive Order 12866, the Congressional Review Act (5 U.S.C. 801-808), the Regulatory Flexibility Act (5 U.S.C. 601-612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

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. This rule affects applicants for SBA's 7(a) Business and CDC/504 Loan Programs and businesses and sureties that use the SBG Program. To help explain the need for this rule and the rule's potential benefits and costs, SBA is providing below a Regulatory Impact Analysis for this rule.

Regulatory Impact Analysis

1. What is the need for this regulatory action?

SBA is required by the Jobs Act to adopt an alternative size standard based on tangible net worth and net income after taxes for its 7(a) and CDC/504 Loan Programs. SBA believes that adopting an alternative size standard is in the best interests of small businesses seeking SBA's financial assistance. SBA's mission is to aid and assist small businesses through a variety of

financial, procurement, business development, and counseling programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions (usually referred to as "size standards") to determine which businesses are deemed small businesses. One of the SBA's missions has been to provide necessary financing to small businesses that are not able to obtain loans in the commercial market in reasonable terms. Many businesses that have exceeded their industry-based size standards cannot grow and support their employees without additional capital from SBA's financial assistance programs. The alternative size standard established by Congress assisted some small businesses that could not have otherwise qualified under their industry-based size standards.

SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years (67 FR 3041 (January 23, 2002) and 13 CFR 121.102(c)). Inflation, as measured by the change in GDP price index, has increased more than 34 percent from the enactment of the interim statutory alternative size standard in 2010. Inflation has caused the statutory alternative size standard to decrease in real terms, thereby forcing some businesses to lose small business status and eligibility for SBA's Business Loan Programs. As stated previously, SBA adjusted its monetary size standards three times since the establishment of the statutory alternative size standard in 2010, but the Agency did not adjust the statutory alternative size standard for SBA's Business Loan Programs. SBA has an important policy objective of maintaining the value of monetary-based size standards in real (*i.e.*, inflation-adjusted) terms, and by adjusting the statutory alternative size standard for inflation this rulemaking fulfills that objective.

The Small Business Act delegates to SBA's Administrator responsibility for establishing definitions for small business. The Act requires that small business definitions vary to reflect industry differences. 15 U.S.C. 632(a). Some businesses in need of financial assistance from SBA's 7(a) and CDC/504 Loan Programs may exceed the applicable size standard for their industries. The alternative size standard, in addition to the industry-based size standards, would apply uniformly across all industries and expand credit opportunities to businesses that are in need of SBA's financial assistance. The inflationary adjustment of the statutory alternative size standard would not affect existing

industry-based size standards but rather would supplement them and make financing available to otherwise eligible applicants that exceed their industry-based size standards.

NDAA 2013 increased the SBG guarantee limit to \$6.5 million, and up to \$10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary. The act also included a provision to increase the \$6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. Based on the CPI, inflation has increased more than 30 percent since 2013. SBA has not adjusted its bonding limits since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. The adjustment of the SBG contract limits will bring them in line with ongoing inflation and current contracting trends and increase contracting opportunities to small businesses.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit of this regulatory action for businesses is that certain businesses, especially in industries with receipts-based size standards, will gain eligibility for SBA's Business Loan Programs for which they would not otherwise be eligible based on their industry-specific size standards. This will allow them to attain financing that may be critical to their continued growth or economic viability.

Table 1, Comparison Between Industry-Based and Inflation-Adjusted Statutory Alternative Size Standard (FY 2021-2022), compares the percentages of industries that have higher industry-based size standards relative to inflation-adjusted statutory size standard by type of size standard. For nearly 96 percent of industries with receipts-based size standards, the inflation-adjusted alternative size standard is found to be, in relative terms, higher than the industry-based size standards, thereby allowing businesses exceeding industry-based size standards in those industries to qualify for 7(a) and CDC/504 Loan Programs under the inflation-adjusted alternative size standard. The corresponding figure for the interim statutory alternative size standard is nearly 93 percent. On the other hand, for 77 percent of industries with employee-based size standards, industry-based size standards are, in relative terms, higher than the inflation-adjusted alternative size standard. That figure for the interim statutory alternative size standard is 82.5 percent. This suggests that the alternative size

standard provides more benefits to businesses in the receipts-based industries than those with employee-

based size standards. The higher inflation-adjusted alternative size standard will continue to help

businesses above the industry-based size standards to receive SBA's financing.

TABLE 1—COMPARISON BETWEEN INDUSTRY-BASED AND INFLATION-ADJUSTED ALTERNATIVE SIZE STANDARD [FY 2021–2022]

Size standard type	Whether industry size standard is higher or lower than interim statutory alternative standard (Table 11)		Whether industry size standard is higher or lower than inflation-adjusted statutory alternative standard		Total
	Higher	Lower	Higher	Lower	
Employee-based	392 (82.5%)	83 (17.5%)	366 (77.1%)	109 (22.9%)	475 (100.0%)
Receipts-based	35 (7.3%)	445 (92.7%)	20 (4.2%)	460 (95.8%)	480 (100.0%)
Total	427 (44.7%)	528 (55.3%)	386 (40.4%)	569 (59.6%)	955 (100.0%)

Table 2, Comparison Between Industry-Based and Inflation-Adjusted Statutory Alternative Size Standards by Sector (FY 2021–2022), shows by sector the impacts of inflation adjustment to the statutory alternative size standard on proportions of industries for which industry-based size standards are higher than the inflation-adjusted alternative size standard. Compared to the interim statutory alternative size standard, the

proportions of industries for which alternative size standard is higher than the industry-based size standards are higher under the inflation-adjusted alternative size standard, especially for industries with employee-based size standards. For example, for just 7.8 percent of industries in manufacturing, the statutory size alternative size standard is higher than the industry-based size standards. That figure

increases to 13.3 percent under the inflation-adjusted size standard. Another example is wholesale trade, where percentage of industries for which the statutory alternative size standard is higher than the industry-based size standard increases from about 68 percent under the statutory alternative size standard to about 78 percent under the inflation-adjusted alternative size standard.

TABLE 2—COMPARISON BETWEEN INDUSTRY-BASED AND INFLATION-ADJUSTED STATUTORY ALTERNATIVE SIZE STANDARDS BY SECTOR [FY 2021–2022]

Sector code	Sector title	Whether industry size standard is higher or lower than interim statutory alternative standard (Table 12)		Whether industry size standard is higher or lower than inflation-adjusted statutory alternative standard		Total
		Higher	Lower	Higher	Lower	
11	Agriculture, Forestry, Fishing and Hunting.	0 (0.0%)	63 (100.0%)	0 (0.0%)	63 (100.0%)	63 (100.0%)
21	Mining, Quarrying, and Oil and Gas Extraction.	17 (81.0%)	4 (19.0%)	17 (81.0%)	4 (19.0%)	21(100.0%)
22	Utilities	12 (85.7%)	2 (14.3)	12 (85.7%)	2 (14.3%)	14 (100.0%)
23	Construction	0 (0.0%)	30 (100.0%)	0 (0.0%)	30 (100.0%)	30 (100.0%)
31–33	Manufacturing	319 (92.2%)	27 (7.8%)	300 (86.7%)	46 (13.3%)	346 (100.0%)
42	Wholesale Trade	22 (31.9%)	47 (68.1%)	15 (21.7%)	54 (78.3%)	69 (100.0%)
44–45	Retail Trade	0 (0.0%)	57 (100.0%)	0 (0.0%)	57 (100.0%)	57 (100.0%)
48–49	Transportation and Warehousing.	15 (27.8%)	39 (72.2%)	12 (22.7%)	42 (77.8%)	54 (100.0%)
52	Finance and Insurance	0 (0.0%)	16 (100%)	0 (0.0%)	16 (100.0%)	16 (100.0%)
53	Real Estate and Rental and Leasing.	10 (41.7%)	14 (58.3%)	6 (25.0%)	18 (75.0%)	24 (100.0%)
54	Professional, Scientific, and Technical Services.	3 (6.3%)	45 (93.8%)	3 (6.3%)	45 (93.8%)	48 (100.0%)
55	Management of Companies and Enterprises.	0 (0.0%)	2 (100.0%)	0 (0.0%)	2 (100.0%)	2 (100.0%)
56	Administrative and Support and Waste Management and Remediation Services.	0 (0.0%)	44 (100.0%)	0 (0.0%)	44 (100.0%)	44 (100.0%)
61	Education Services	3 (17.6%)	14 (82.4%)	2 (11.8%)	15 (88.2%)	17 (100.0%)
62	Health Care and Social Assistance.	3 (7.7%)	36 (92.3%)	3 (7.7%)	36 (92.3%)	39 (100.0%)
71	Arts, Entertainment, and Recreation.	9 (36.0%)	16 (64.0%)	4 (16.0%)	21 (84.0%)	25 (100.0%)
72	Accommodation and Food Services.	1 (6.7%)	14 (93.3%)	0 (0.0%)	15 (100.0%)	15 (100.0%)
81	Other services	5 (11.6%)	38 (88.4%)	4 (9.3%)	39 (90.7%)	43 (100.0%)
	Total	427 (44.7%)	528 (55.3%)	386 (40.4%)	569 (59.6%)	955 (100.0%)

SBA cannot make a precise determination of the number of

businesses that were approved under the alternative size standard for 7(a) or

CDC/504 Business Loans since the enactment of the statutory alternative

size standard in 2010 because the Agency does not store the data on whether an applicant for its 7(a) or CDC/504 Loan Program was qualified under its industry-based size standard or under the alternative size standard. The available data show that alternative size standard established by Congress enabled some small businesses above the industry-based size standards to get SBA's financing.

As stated elsewhere, SBA also does not compile the data on average annual receipts, net worth, and net income. The only available data on business size is the number of employees. SBA examined its 7(a) and CDC/504 loan data for fiscal years 2021–2022. Based on this data, SBA estimates that 500 recipients of the SBA Business Loans (or

0.4 percent of the total loans) that appeared to have exceeded their industry-based size standards were granted 7(a) and CDC/504 loans, implying that most likely they qualified under the statutory alternative size standard. Thus, this result indicates that the higher alternative size standard expanded credit availability to more small businesses through SBA's 7(a) and CDC/504 Loan Programs.

Table 3, Applicant's Eligibility Under the Inflation-Adjusted Statutory Alternative and Industry-Based Size Standards (FY 2021–2022), shows the eligibility of recipients of SBA loans through 7(a) and CDC/504 Programs during fiscal years 2021–2022 under the industry-based and inflation-adjusted alternative size standard. More than

99.5 percent (*i.e.*, 117,327/117,882 = 0.9953) of loan recipients were found to have met both the industry-based size standards and inflation-adjusted alternative size standard. As in the case of the statutory alternative size standard, about 500 or 0.4 percent of loan recipients that did not meet the industry-based size standard met inflation-adjusted alternative size standard. About 0.1 percent (*i.e.*, 94/117,882 = 0.001) of loan recipients were found to have exceeded the interim statutory alternative size standard. That figure was 0.05 percent (*i.e.*, 54/117,882 = 0.0005) for the inflation-adjusted alternative size standard. Thus, 40 loan recipients that did not meet the statutory size standard met the inflation-adjusted alternative size standard.

TABLE 3—APPLICANT'S ELIGIBILITY UNDER THE INFLATION-ADJUSTED STATUTORY ALTERNATIVE AND INDUSTRY-BASED SIZE STANDARDS [FY 2021–2022]

		Interim statutory alternative size standard (Table 5)		Inflation-adjusted alternative size standard		Total
		Meets	Does not meet	Meets	Does not meet	
Industry size standard.	Meets	117,288	81	117,327	42	117,369
	Does not meet	500	13	501	12	513
Total	117,788	94	117,828	54	*117,882

* **Note:** This excludes invalid or incomplete observations in the form of invalid NAICS codes or missing RMA or receipts-to-employee ratios to estimate tangible net worth, net income, or receipts equivalent size standard.

Based on the data for 2017 Economic Census, Agricultural Census, and County Business Patterns special tabulations, SBA estimates that about 6,275 businesses that are above the interim statutory alternative size standard will qualify under the inflation-adjusted alternative size standard. About 25 additional SBA Business Loans, totaling up to \$50 million, will be made to these newly-qualified businesses using the higher inflation-adjusted alternative size standard. That constitutes less than 0.1 percent of the loan activity during fiscal years 2021–2022. These results are consistent with results in Tables 7 and 8 of the July 2023 proposed rule, which showed that only a very small fraction of the SBA Business Loans and loan amount go to businesses that were close to the tangible net worth and net income thresholds of the statutory size standard. Thus, the vast majority of SBA Business Loans go to businesses that are significantly below the tangible net worth and net income thresholds of the statutory alternative size standard.

The 7(a) Loan Program, SBA's largest loan program, includes financial help

for businesses with special requirements. Small businesses can use SBA's 7(a) guaranteed loans for short- and long-term working capital, revolving funds based on inventory or receivables, fixed assets, and refinancing. Small businesses can use SBA's CDC/504 loans for the purchase of land, buildings, improvements, and equipment. These loans provide long-term, fixed-rate financing to small businesses to acquire real estate or machinery or equipment for expansion or modernization. The CDC/504 loan proceeds are generally limited to fixed assets and their related soft costs.

Businesses are often denied SBA's loans for reasons unrelated to the use of the loan proceeds, the concern's ability to repay the loan, or other credit-based reasons. Rather, they can be denied because they exceed the size standards for their industries. Some business concerns that exceed their industry-based size standards might be eligible for SBA's financial assistance under the alternative size standard that this final rule adopts.

Raising the SBG bond guarantee limits will increase contracting opportunities

for more small businesses and bring the limits in line with inflation. Due to the lack of data, SBA is unable to estimate the number of additional small businesses that will qualify to apply for bonding through the SBG Program for non-Federal (*e.g.*, state government, local government, private sector, etc.) contracting because of increases to bond guarantee limits for inflation. Because the construction sector accounts for more than 95 percent of surety bonds and total value of bonded contracts, to estimate the number of additional small businesses and contracts that will qualify for surety bonds on Federal contracts, SBA analyzed the small business contract awards from FPDS-NG for the construction sector for fiscal years 2021–2022. These results are presented in Table 4, Federal Contracts in Construction for Fiscal Years 2021–2022. Because of the adopted increase to the lower contract limit from \$6.5 million to \$9 million, without contracting officer's certification, annually up to about 150–155 additional small businesses will be eligible to apply for surety bonds on about 175–180 Federal construction

contracts totaling between \$1.4 billion and \$1.5 billion in value. Similarly, as a result of the adopted increase to the upper contract limit from \$10 million to \$14 million, with contracting officer's certification, annually up to about 100–110 additional small businesses will be eligible to apply for surety bonds on 110–120 Federal construction contracts totaling between \$1.3 billion and \$1.4 billion in value.

TABLE 4—FEDERAL CONTRACTS IN CONSTRUCTION FOR FISCAL YEARS 2021–2022

Contract limits	Number of small firms	Number of contracts	Total contract value (\$ billion)
<= 6.5 million	6,100	25,312	\$10.7
> \$6.5 million <= \$9 million	155	179	\$1.4
> 9 million <= \$10 million	45	45	\$0.4
> \$10 million to <= \$14 million	106	115	\$1.3
> \$14 million	142	172	\$5.3
Total	6,547	25,822	\$19.1

Raising the contract bond limits could lead to larger contracts being guaranteed by the SBA and, as a result, could increase the risk of program losses. To determine if higher contract limits will increase the risk of program losses, SBA analyzed all claim activity from October 1, 2020, to March 31, 2023. These results are presented in Table 5, Net Claims by Contract Size for October 1, 2020, to March 31, 2023. The results

show a positive relationship between contract size and net claims. For example, contracts below \$1 million in value accounted for nearly 66 percent of total claims but accounted for only 29 percent of net claim amount. On the other hand, contracts above \$1 million in value accounted for 34 percent of claims but accounted for 71 percent of total net claim amount. Thus, the data suggests that higher contract limits may

lead to larger contracts being guaranteed, which in turn may lead to an increase in defaults and, as a result, higher losses. However, SBA is unable to estimate exact losses due to the lack of data to estimate the number additional surety bonds on non-Federal contracts resulting from increases to contract bond limits.

TABLE 5—NET CLAIMS BY CONTRACT SIZE FOR OCTOBER 1, 2020, TO MARCH 31, 2023

Contract size (\$ million)	Number of claims			Net claim		
	Count	%	Cum. %	Amount (\$ million)	%	Cum. %
< 0.1	12	5.8	5.8	0.5	0.9	0.9
0.1 to 0.25	32	15.4	21.2	2.3	4.3	5.2
0.25 to 0.5	50	24.0	45.2	4.2	7.9	13.1
0.5 to 1.0	43	20.7	65.9	8.5	16.1	29.3
1.0 to 2.0	44	21.2	87.0	17.7	33.5	62.8
2.0 to 3.0	8	3.8	90.9	5.1	9.6	72.4
3.0 to 4.0	10	4.8	95.7	5.5	10.5	82.9
4.0 to 5.0	7	3.4	99.0	5.0	9.4	92.3
5.0 to 6.5	2	1.0	100.0	4.1	7.7	100.0
Total	208	100.0	52.7	100.0

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that

this final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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. As described above, this final rule could affect small entities seeking assistance through SBA's (7a) and CDC/504 Loan and SBG Programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for, and the objective of, the rule? (2) What significant issues were raised by the public comments in response to the initial regulatory flexibility analysis, and what changes were made as a result

of such comments? (3) What is SBA's response to comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and what changes were made as a result of such comments? (4) What are SBA's description and estimate of the number of small entities to which the rule would apply? (5) What are the projected reporting, record keeping, and other compliance requirements of the rule? (6) What steps has SBA taken to minimize significant economic impact on small entities and why has SBA rejected the other significant alternatives to the rule in favor of the adopted one?

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

Under the Jobs Act, SBA is required to adopt an alternative size standard using maximum tangible net worth and net income for its 7(a) and CDC/504 Loan Programs. The Jobs Act defined an interim statutory alternative standard based on tangible net worth of \$15 million and net income of \$5 million until the SBA Administrator permanently designates an alternative size standard based on tangible net worth and net income for those programs. Many businesses that exceed their industry-based size standards cannot grow and support their employees and other businesses that depend on them without additional capital from SBA's financial assistance programs. The inflation-adjusted alternative size standard adopted under this final rule will enable such businesses to qualify for SBA's 7(a) and CDC/504 Loan Programs.

Section 3(a) of Small Business Act (15 U.S.C. 632(a)) gives the SBA's Administrator responsibility to establish and change small business size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and make any changes as appropriate. SBA has adjusted its monetary-based size standards three times since the enactment of the interim statutory alternative size standard in 2010. However, SBA did not adjust the statutory alternative in each of those adjustments. Inflation, as measured by the change in GDP price index, has increased more than 34 percent since 2010. This has eroded the value of the statutory alternative size standard in real terms. Consequently, many businesses above their industry-based size standards and in need of financial assistance from SBA's 7(a) or CDC/504 Loan Programs may have exceeded the statutory alternative size standard and lost eligibility for benefits of those programs. The inflationary adjustment of the statutory alternative size standard in this final rule will enable such businesses to qualify for those programs. The alternative size standard applies uniformly across all industries and does not affect existing size standards by industry. Rather it supplements them, by making more financing available to otherwise ineligible businesses that exceed their industry-based size standard.

Regarding the SBG Program, NDAA 2013 increased the SBG guarantee limit to \$6.5 million, and up to \$10 million

for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary. The Act also included a provision to increase the \$6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. Based on the CPI, inflation has increased more than 30 percent since 2013. SBA has not adjusted its bonding limits since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. This has adversely impacted small business contractors seeking bonding assistance from the SBA SBG Program. The adjustment of the SBG contract limits will bring them in line with ongoing inflation and current contracting trends and increase contracting opportunities to small businesses.

(2) What significant issues were raised by the public comments in response to the initial regulatory flexibility analysis, and what changes were made as a result of such comments?

SBA received 13 comments on the July 2023 proposed rule from various trade associations, businesses, and individual stakeholders, of which 11 comments supported SBA's proposed changes and two comments were not applicable or were outside the scope of SBA's proposed rule. Generally, commenters expressed strong support for SBA's proposed changes, without reservation. Thus, with due consideration of all public comments, as discussed in detail in Section IV of this final rule, and in light of the overall strong support for SBA's proposed changes and anticipated impacts, SBA is adopting the proposed adjustments in the July 2023 proposed rule without change. Specifically, SBA is adopting the statutory alternative size standard of \$15 million in tangible net worth and \$5 million in net income as the permanent alternative size standard, subject to adjustment for inflation that has occurred since the establishment of the statutory alternative size standard in 2010. The inflation adjustment increases the size standard's level for tangible net worth to \$20 million and for net income to \$6.5 million. SBA is also adopting, as proposed, the inflation-adjusted thresholds applicable to the statutory limits for contract size under the SBG Program. The adjustment increases the contract limit to \$9 million and to \$14 million for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary. The statutory responsibility for adjusting the size standard for inflation lies with the Federal Acquisition Regulation. In the absence of FAR action, SBA will adjust

the SBG contract limits on the same five-year schedule that SBA currently uses for reviewing its monetary-based industry size standards in accordance with 13 CFR 121.102(c).

(3) What is SBA's response to comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and what changes were made as a result of such comments?

SBA did not receive public comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule. As such, no changes were made to the rule in response to such comments.

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

This rule will apply to more than 8.1 million employer firms, of which 98.2 percent are small under industry-based size standards and 92.5 percent are small under the interim statutory alternative size standard. About 92.6 percent of firms will qualify as small under the inflation-adjusted alternative size standard. About 6,275 firms that are above the interim statutory alternate size standard will qualify as small under the inflation-adjusted size alternative standard. That is less than 0.1 percent of firms that are small under the interim statutory alternative size standard.

For the reasons discussed under the *Regulatory Impact Analysis* section of this rule, because of lack of relevant data (e.g., receipts, tangible net worth, and net income of loan recipients), SBA cannot precisely state the number of businesses that were approved under the alternative size standard for 7(a) or CDC/504 loans and the number of newly-defined small businesses that will qualify under the inflation-adjusted alternative size standard for loans under these programs. However, based on the analysis of the available data for fiscal years 2021–2022, SBA estimates that at least 500 7(a) or CDC/504 loans (or 0.4 percent of total loans) were likely approved under the alternative size standard.

With respect to the SBG program, more than 95 percent of the bonding activity is concentrated in the construction sector. Based on the 2017 Economic Census, there are 689,260 small employer firms in construction to which this rule will apply. Additionally, about 2.5 percent of the bonding activity occurs in 11 industries in Sector 56 with more than 209,000 small firms in those industries to which this rule will also apply. More small businesses will qualify to apply for

surety bonds as a result of adopted increases to statutory bonding limits.

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

A new size standard does not impose any additional reporting, record keeping, or compliance requirements on small entities. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as the size standards neither regulate nor control business behavior.

(6) What steps has SBA taken to minimize significant economic impact on small entities and why has SBA rejected the other significant alternatives to the rule in favor of the adopted one?

There are no alternatives to establishing a size standard for the Agency's 7(a) and CDC/504 Loan Programs based on an applicant's tangible net worth and net income because this is a statutory requirement. Specifically, the Jobs Act directs the Agency to use a firm's tangible net worth of not more than \$15 million and average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years immediately before its application of not more than \$5 million until the Administrator adopts a different, permanent alternative size standard based on net worth and net income measures. SBA may propose to adopt a higher or lower alternative size standard based on an applicant's tangible net worth and net income, however, SBA's proposed alternative size standards, as detailed in the July 2023 proposed rule, were strongly supported by commenters, including trade associations small businesses and individuals. Thus, in this final rule, SBA is adopting the interim statutory alternative size standard as a permanent alternative size standard, subject to adjustment for inflation that has occurred since the standard's establishment in 2010.

Executive Order 13563

A description of the need for this regulatory action and its associated benefits and costs associated with this action, including possible impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis. This final rule will further expand the benefits of the Jobs Act which also increased the upper limits of loans available under the 7(a) and CDC/504 Loan Programs, without restricting access and availability to qualified entities. SBA's changes to the SBG

statutory contract limits will increase contracting opportunities to small businesses.

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. This rule does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined this rulemaking 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 rulemaking will not impose any new reporting or recordkeeping requirements.

List of Subjects

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

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, the Small Business Administration amends 13 CFR part 115 and 13 CFR part 121 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 636i, 687b, 687c, 694a, and 694b note.

■ 2. Amend § 115.10 by revising the definition of “Applicable Statutory Limit” to read as follows:

§ 115.10 Definitions.

* * * * *

Applicable Statutory Limit means the maximum amount, set forth below, of

any Contract or Order for which SBA is authorized to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond: (1) \$9 million (as adjusted for inflation in accordance with 41 U.S.C. 1908).

(2) \$14 million if a contracting officer of a Federal agency certifies, in accordance with section 115.12(e)(3), that such guarantee is necessary.

(3) If SBA is guaranteeing the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110–246, see section 115.12(e)(4).

* * * * *

■ 3. Amend § 115.12 by revising paragraph (e)(3) to read as follows:

§ 115.12 General program policies and provisions.

* * * * *

(e) * * *

(3) *Federal Contracts or Orders in excess of \$9,000,000 (as adjusted for inflation in accordance with section 1908 of title 41, United States Code).* SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than \$9,000,000 (as adjusted for inflation in accordance with 41 U.S.C. 1908), but not exceeding \$14 million, upon a signed certification of a Federal contracting officer that the SBA guarantee is necessary. The certification must be either express mailed to SBA, Office of Surety Guarantees, 409 Third Street SW, Washington, DC 20416 or sent by email to suretybonds@sba.gov, and include the following additional information:

- (i) Name, address and telephone number of the small business;
- (ii) Offer or Contract number and brief description of the contract; and
- (iii) Estimated Contract value and date of anticipated award determination.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9).

■ 5. Amend § 121.301 by revising the introductory text of paragraphs (a), (b), (b)(2), and paragraph (e) to read as follows:

§ 121.301 What size standards and affiliation assistance are applicable to financial assistance programs?

* * * * *

(a) For Business Loans (other than for 7(a) Business Loans) and for Disaster Loans (other than physical disaster

loans), an applicant business concern must satisfy two criteria:

* * * * *

(b) For 7(a) Business Loans and Development Company programs, an applicant business concern must meet one of the following standards:

* * * * *

(2) Including its affiliates, tangible net worth not in excess of \$20 million, and average net income after Federal income taxes (excluding any carry over losses) for the preceding two completed fiscal years not in excess of \$6.5 million.

* * *

* * * * *

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25 percent whenever the applicant agrees to use all of the financial assistance within a labor surplus area. The U.S. Department of Labor (DOL) issues the Labor Surplus Area (LSA) list on a fiscal year basis on its website at www.dol.gov/agencies/eta/lsa.

* * * * *

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2024-02776 Filed 2-14-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0933; Project Identifier MCAI-2022-00554-T; Amendment 39-22666; AD 2024-02-02]

RIN 2120-AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC-8-401 and -402 airplanes. This AD was prompted by reports that the saddle washer (radius filler) for the front and rear spar joints may have been incorrectly manufactured for several years. This AD requires inspecting the horizontal stabilizer to vertical joint for gaps and bending of the saddle washer and adjacent washers, and replacing parts if necessary. The FAA is issuing

this AD to address the unsafe condition on these products.

DATES: This AD is effective March 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 21, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-0933; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855-310-1013 or 647-277-5820; email thd@dehavilland.com; website dehavilland.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2023-0933.

FOR FURTHER INFORMATION CONTACT:

Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited Model DHC-8-401 and -402 airplanes. The NPRM published in the **Federal Register** on April 19, 2023 (88 FR 24144). The NPRM was prompted by AD CF-2022-21, dated April 21, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that certain saddle washers for the front and rear spar joint may have been incorrectly manufactured for several years. Non-

conforming saddle washers could potentially become deformed when installed, and lead to gaps at the horizontal stabilizer to vertical stabilizer joint, that would result in reduction of the pre-load at the joint.

In the NPRM, the FAA proposed to require inspecting the horizontal stabilizer to vertical joint for gaps and bending of the saddle washer and adjacent washers, and replacing parts if necessary. The FAA is issuing this AD to address gapping and bending of the saddle washer that could have the potential to reduce the life of the bolt, which in turn could affect the structural integrity of the horizontal stabilizer to vertical stabilizer joint.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2023-0933.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA). ALPA supported the NPRM without change.

The FAA received additional comments from De Havilland Aircraft of Canada Limited. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Refer to New Service Information

De Havilland Aircraft of Canada Limited requested that the FAA revise the proposed AD to refer to De Havilland Aircraft of Canada Limited Service Bulletin 84-55-12, Revision B, dated April 20, 2023. De Havilland Aircraft of Canada Limited noted that the service information had been updated since the NPRM was released.

The FAA agrees with the request. De Havilland Aircraft of Canada Limited Service Bulletin 84-55-12, Revision B, dated April 20, 2023, provides clarity on service information that may be used to do rework if there are gaps in the new radius fillers (saddle washers), and specifies an additional radius filler part number. The FAA has revised this AD to refer to De Havilland Aircraft of Canada Limited Service Bulletin 84-55-12, Revision B, dated April 20, 2023. The FAA has also revised paragraph (i) of this AD to provide credit for De Havilland Aircraft of Canada Limited Service Bulletin 84-55-12, Revision A, dated February 16, 2022.

Request To Revise Corrective Actions

De Havilland Aircraft of Canada Limited requested that the FAA revise paragraph (h) of the proposed AD. The