

By order of the Board of Governors of the Federal Reserve System, October 18, 2006.

Jennifer J. Johnson,

Secretary of the Board.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AE81

Small Business Size Standards; Surety Bond Guarantee Program

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule finalizes the U.S. Small Business Administration's (SBA) November 14, 2005 interim final rule that amended the small business size standard for its Surety Bond Guarantee (SBG) Program for construction (general or special trades) or service concerns performing contracts in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, and Wilma by allowing them to meet either the size standard for the primary industry in which it, together with its affiliates, is engaged, or the current \$6.5 million standard for the SBG Program, whichever is higher. The size standard under this rule will remain in effect until SBA determines it is no longer necessary.

DATES: *Effective Date:* This regulation becomes effective on November 24, 2006.

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

SUPPLEMENTARY INFORMATION:

SBA's Surety Bond Guarantee Program and Size Standards

SBA, through its SBG Program, can guarantee bid, performance, payment and ancillary bonds for contracts up to \$2 million for small contractors who otherwise cannot obtain surety bonds without SBA's guarantee. SBA's guarantee gives sureties an incentive to provide bonding for eligible contractors; it strengthens a contractor's ability to obtain bonding and provides greater access to contracting opportunities. A contractor applying for an SBA bond guarantee must qualify as a small business concern, in addition to meeting the surety company's underwriting requirements. Generally, except as modified by the November 14, 2005 interim final rule, businesses in construction and service industries can

qualify as small for the SBG Program on commercial, local or State contracts, if their average annual receipts, including those of their affiliates, for the last 3 fiscal years do not exceed \$6.5 million (13 CFR 121.301(d)(1) and 13 CFR 121.104(c)).

In addition, a concern that qualifies as small for a prime contract with the Federal Government is qualified as "small for financial assistance that is directly and primarily related to the performance of that particular contract" (13 CFR 121.305). Therefore, if the concern meets the small business size standard for the North American Industry Classification System (NAICS) code designated by the contracting officer for a specific procurement, the concern is eligible for SBA's financial assistance programs, including the SBG Program, even when its annual receipts exceed \$6.5 million.

What This Final Rule Accomplishes

On November 14, 2005, SBA published an interim final rule (70 FR 69048) revising the size standards for the SBG Program applicable to construction (general or special trades) and service concerns performing contracts in the Gulf Coast Region of the United States and in Florida that the President declared disaster areas following Hurricanes Katrina, Rita and Wilma in 2005. When the contract meets the performance location requirement, that interim final rule established that an SBG Program applicant concern is small when it meets the small business size standard for either the primary industry in which it, together with its affiliates, is engaged, or the then current SBG \$6.0 million size standard, whichever is higher. On December 6, 2005, SBA issued an interim final rule (70 FR 72577) adjusting its monetary based size standards for inflation. In that interim final rule, SBA changed the surety bond guarantee size standard from \$6.0 million to \$6.5 million. Today's final rule adopts the November 14, 2005 interim final rule, with the inflation adjusted size standard of \$6.5 million. Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 are responsible for determining eligibility under this regulation. SBA surety bond personnel are responsible for determining eligibility under this regulation for those surety guarantees that require SBA's prior approval.

This final rule also states in section 121.301(d)(3) that the concern is small if, together with its affiliates, it meets the requisite size standard. This merely clarifies that the concern must include

the annual receipts or number of employees of its affiliates when determining if it is small. This language is the same as in section 121.301(d)(1). In addition, under SBA's small business size regulations and for all SBA programs, concerns must always include the annual receipts or number of employees of affiliates to determine if they are small (13 CFR 121.103, 121.104 and 121.106).

In the Supplementary Information in the November 14, 2005 interim final rule, SBA stated that the amended size standards under the interim final rule are applicable until SBA determines that it is no longer necessary to expand the availability of SBG Program assistance for reconstruction and recovery of the Gulf Coast Region of the United States and in Florida that the President declared disaster areas following Hurricanes Katrina, Rita and Wilma in 2005. SBA further stated that the interim final rule was a specific response to those natural disasters. SBA recognizes that small construction and service contractors need this assistance now and in the very near future.

The need for this size standard for the SBG Program should be no longer necessary when expanded contractor participation has ceased or declined significantly relative to past experience. Because of ongoing major recovery efforts in the disaster areas where this size standard is valid, SBA cannot foresee precisely when the need for expanded SBG assistance in the disaster areas will end. Construction contracts can be long term, and subcontracts are sometimes not awarded or begun until well into the overall general contract. SBA does believe, however, that this could take at least three more years.

SBA will monitor the SBG Program, particularly the use of this modified size standard for work in the disaster areas. SBA's Office of Surety Guarantees will monitor annual Federal and State spending for rebuilding efforts, and as rebuilding approaches the desired end state, the office will continue to scrutinize the size and location of contracts bonded and the size of the small businesses that receive them. If SBA determines that this amended size standard causes an adverse effect on local small businesses or that the modified size standard is no longer needed, it will terminate or otherwise modify 13 CFR 121.301(d)(3).

However, SBA will not terminate this special size standard without first proposing to do so by publishing a proposed rule in the **Federal Register**. The proposed rule will seek public comment on discontinuing the size

standard, and it will propose a date on which it would cease to apply.

Cessation or withdrawal of this size standard will have no effect on outstanding surety bonds that SBA has guaranteed. Contractors for whom SBA has guaranteed their bid bonds will remain eligible for performance, payment, maintenance and other required ancillary bonds, regardless of when they are needed. Similarly, contractors for whom SBA has guaranteed performance and payment bonds, will remain eligible for guaranteed maintenance and the other ancillary bonds required by the contract.

Summary of Comments to the November 14, 2005 Interim Final Rule

In the November 14, 2005 interim final rule, SBA requested comments on how long the amended size standards should apply to construction and service concerns performing contracts or subcontracts in the specified disaster areas, factors SBA should consider before determining that the size standards are no longer necessary, and the appropriate Agency action after SBA makes that determination. SBA received three comments to the interim final rule: (1) Two surety associations and an insurance association filed joint comments on behalf of their member companies and their producers; (2) an association of small minority contractors filed comments on behalf of its members; and (3) an independent business submitted comments.

The surety and insurance associations' comments reflected their concern that expanding SBG assistance to more and larger construction and service concerns might dilute SBA financial resources and services available to the truly small and emerging contractor. However, as the association also noted, "the SBA program currently is operating at only one-third of its capacity". SBA believes that its financial resources are sufficient to absorb the additional obligations it may undertake under this regulation without adversely affecting other small businesses.

The surety and insurance industries also expressed concern that the rule could create added administrative burdens for surety companies participating in the PSB Program. The new burdens could involve determining that an applicant company is within its industry size standard and assuring the contractor performs the construction work within the designated disaster areas. SBA believes any additional burden will be minimal. Surety companies already collect substantial information on their clients before they

extend surety credit, such as annual and interim financial statements, company location, past contract performance information, and contract performance location.

Furthermore, sureties already review an applicant's size. Determining whether a company meets a size standard is similar regardless of what the size standard is—\$6.5 million or its industry standard, expressed in annual receipts or number of employees. Sureties collect and report to SBA the NAICS codes for their clients. SBA does not believe matching NAICS industry codes to their small business size standard constitutes a substantially increased burden. For construction, there are few size standards: \$31 million for heavy and civil construction; \$13 million for special trades; and \$18.5 million for dredging. Size standards for service industries range from \$3.5 million to \$32.5 million in average annual receipts. SBA is not changing how to calculate whether a business concern is small. For receipts-based size standards, the calculation is still based upon the average annual receipts for the concern's 3 immediately preceding fiscal years. This is the same calculation used for the current \$6.5 million size standard, and for those concerns and/or contracts that do not meet the location of contract performance criterion of this regulation. Thus, SBA does not believe there are substantial new burdens placed on the surety companies in this rule.

The surety and insurance industries also expressed concern that SBA would not honor a surety bond guarantee if a surety did not properly document that the bond the company issued and SBA guaranteed met the criteria required by this rule. However, the information that surety companies collect and maintain for this amended size standard is what they now collect to support SBA guaranteed surety bonds. SBA has specified in this rule that the place of performance must be within certain geographical areas in order to use the amended size standards. SBA expects that sureties know the place of performance when they issue surety bonds. So long as they retain that information in their underwriting files, and the place of contract performance is in fact within the declared disaster areas, SBA does not see this as jeopardizing its guarantee on those bonds.

Moreover, SBA's small business size regulations at 13 CFR 121.305 have permitted a small construction or service contractor with annual receipts greater than \$6.5 million to qualify for its SBG Program when a concern is a

prime contractor with the Federal Government and it meets the size standard corresponding to the NAICS code assigned to the procurement. Under such circumstances, the surety has been determining whether a construction or service concern meets the size standard for the Federal procurement for which it submits an offer as a prime contractor, regardless of whether or not the concern has receipts in excess of \$6.5 million. Thus, SBA believes that this final rule creates no additional burdens on the surety companies, since they now use the same criteria under section 121.305. Because a surety must now determine a contractor's eligibility based on the NAICS code that the contracting officer specified, SBA does not believe there is a substantially increased burden under this final rule.

SBA also received comments from an association of small minority contractors. The association opposed the new SBG Program size standard and requested an immediate return to the prior size standard. In lieu of an immediate return, the association suggested terminating it 90 days from its effective date, which was November 14, 2005. The association expressed concern that increasing the size standard for these contracts unfairly increases competition for smaller businesses, specifically those below the current \$6.5 million SBG size standard. The association was also concerned that the interim final rule rendered any construction or services concern eligible for SBG assistance, regardless of its principal place of business, so long as it performs its contract in the disaster area and meets the modified size standard. This would, according to the association, unnecessarily increase competition for contractors located in the disaster areas. The association believed these factors would negatively affect small minority contractors, who most need bond guarantees.

SBA takes very seriously the possibility of negative effects on smaller contractors. In this case, however, SBA does not believe that companies not located in the disaster areas, if they perform contracts in the disaster areas and meet the modified standard, will adversely affect local small businesses. Because of the extreme demand for construction and services in the disaster areas, SBA expects there will be more contracts. SBA believes that the priority should be to help restore and reconstruct the disaster areas, and all small businesses should have greater opportunities to participate in this effort. As SBA states above, it will monitor these bonded contracts. If SBA

finds that this rule has adversely affected local smaller businesses, then it will consider withdrawing or otherwise modifying this subsection.

The third commenter was a small business that fully supported this regulation. Based on the commenter's remarks, it would appear that this size standard would not apply to its businesses. As the commenter describes his company, it is a supplier of telecommunications equipment. Therefore, it is not subject to a receipts-based size standard. The company would not be categorized as a construction or services firm. Rather, it would be classified as a manufacturer or dealer subject to a size standard based on the number of employees. The SBG size standard that applies is the same as this rule establishes; that is, it must meet the size standards for the industry in which it, together with its affiliates, is engaged (13 CFR 121.301(d)(2)). The commenter included additional comments that were not germane to the specifics of this regulation, but rather related to the size standard for the SBG Program itself.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget has determined that this rule is a significant regulatory action under section 3(f) of Executive Order 12866. A general discussion of the need for this regulatory action and its potential costs and benefits follows.

1. Is there a need for the regulatory action?

As discussed in the November 14, 2005 interim final rule, this rule is necessary to extend the Agency's SBG Program to certain construction and service contractors when they undertake contracts in the disaster areas. The amended SBG Program size standard has limited applicability; that is, to contracts in the areas that the President declared a disaster in the Gulf Coast Region of the United States and in Florida, following Hurricanes Katrina, Rita and Wilma in 2005.

The amended size standard enables as many small construction and service concerns as possible to help in the enormous task of renewing and reconstructing the disaster areas. This rule will increase available resources toward that end.

SBA's statutory mission is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs.

To assist intended beneficiaries of these programs effectively, SBA must establish distinct standards to define small businesses. The Small Business Act (Act) delegates responsibility for establishing small business definitions to the SBA Administrator (15 U.S.C. 632(a)). The Act also requires that small business definitions vary to reflect industry differences, as necessary. This modified size standard provides financial assistance to small businesses, a part of SBA's statutory mission.

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

Anticipated total recovery and reconstruction costs for the Gulf Coast and Florida will be in the billions of dollars. SBA cannot estimate the number or value of contracts, whether Federal or non-Federal, that small construction and service concerns will receive in this undertaking. SBA also cannot estimate the number or value of contracts that will require surety bonds or the number or value of surety bonds that SBA will guarantee. Nor can it estimate the number of small businesses that will participate in the SBG Program under the expanded eligibility this rule provides.

SBA can say, however, that given the possible volume and size of awards, it is probable that the needs of the disaster area exceed local available resources, at least to the extent necessary to accomplish the necessary work within a suitable time. SBA believes it is important to have as many small businesses as possible participating in renewing and reconstructing the disaster areas.

Broadening eligibility for its SBG Program will provide disaster victims with significant and timely benefits when and where the greatest needs exist. For example, disaster affected small business concerns can receive SBG Program assistance to restart their businesses. Small businesses eligible under this modified size standard will also participate, as either general contractors or subcontractors, in the reconstruction of the areas' infrastructure. More small business concerns may now qualify for surety bonds with SBA's guarantee, and recover from and help others recover from the hurricanes' effects.

SBA expects the number of SBA guaranteed bonds to increase under this regulation. Although SBA does not anticipate loss rates changing significantly, the Government may incur additional costs to honor its guarantee on a greater volume of (but stable percentage of) defaulted bonds. SBA must honor its guarantees to the sureties

on defaulted bonds for the percentage of loss that it guaranteed. Guaranteed amounts vary as follows: (1) Under the PSB Program, 70 percent; and (2) under the prior approval program, contracts valued at \$100,000 or less, or on behalf of a concern owned by a socially and economically disadvantaged individual, or a HUBZone qualified small business, 80 percent to 90 percent (13 CFR 115.31 and 115.68). For fiscal years 2003, 2004 and 2005, SBA's loss rates were 1.8 percent, 1.3 percent and 1.6 percent, respectively. SBA expects these rates to remain stable even though the volume of SBA guaranteed surety bonds may increase.

Among businesses seeking SBA's assistance through the SBG Program, there could be additional costs for professional time required to complete applications for the surety and the SBA guarantee. Businesses also incur costs through payment of fees to participate in the SBG Program. Surety companies pay SBA 26 percent of the bond premium they collect and contractors pay \$7.29 per \$1,000 of the contract value, which the surety companies remit to SBA (71 FR 9632, dated April 3, 2006). This rule does not affect these fees. Total fees will increase because aggregate contract values will increase as a result of greater usage of the SBG Program.

Although there have been no protests of an SBG Program participant's small business status in at least the last 5 years, businesses might also incur legal costs associated with defending themselves against size protests. Businesses may also incur legal costs associated with compliance.

Both surety companies and SBA could incur additional administrative costs associated with processing the anticipated increased volume of surety bond applications and applications for the SBA guarantee. There may be additional administrative costs for PSB surety bond companies because they must document the contractors' eligibility for the SBA guaranteed surety bond under the amended size standard. SBA anticipates, however, that these additional administrative costs will be minimal because surety companies and SBA already perform these administrative functions in the ordinary course of business. SBA does not anticipate an increase in its human resources with the related administrative costs. The increased surety fees, as described above, will also add to SBA's reserves and proportionately offset the additional guarantee payments, if any.

SBA anticipates little or no adverse effects on currently defined small

businesses because of the increased number of newly eligible small businesses. Potentially, a newly defined small business could obtain a contract that a currently defined small business might have received. SBA expects those cases to be few in number because the decision to award a contract is based on many considerations. This rule enhances the environment for small construction and service concerns to compete for opportunities and strengthens their competitiveness related to contracts in the Gulf Coast Region of the United States and in Florida that the President declared disaster areas following Hurricanes Katrina, Rita and Wilma in 2005.

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation 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 responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

SBA has determined that this rule does not impose any new information collection requirements from SBA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA). The FRFA addresses the reasons for promulgating the rule; the objectives of this rule; SBA's descriptions and estimate of the number of small entities to which the rule will apply; the projected reporting record keeping and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives considered by SBA.

1. What is the reason for this action?

This rule increases contracting opportunities for more small businesses. It extends eligibility for SBG Program assistance to certain construction and service contractors that were previously ineligible for the program because their average annual receipts exceed \$6.5 million. It provides eligibility under the same small business size standards that

apply to applicants for all other SBA financial assistance programs. Construction and service concerns that will perform contracts in the Gulf Coast regions and in Florida that the President declared disaster areas following Hurricanes Katrina, Rita and Wilma in 2005 are eligible if they meet the size standard stated in the regulation.

The amended size standard will also assist small construction and service concerns in the disaster areas whose financial conditions suffered adverse effects from the disasters. SBA's SBG guarantee can afford surety companies added incentive to provide these companies surety bonds if they meet their other underwriting requirements.

2. What are the objectives and legal basis for the rule?

SBA intends to assist firms that will contribute to the recovery and reconstruction efforts in the Gulf Coast and Florida. SBA's objective is to involve as many small businesses as possible in that effort.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA authority to establish and change size standards. SBA is using this authority to provide SBG Program assistance to those who need it and who can help with recovery and reconstruction.

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

This rule applies to all construction (general and special trades) and service concerns that meet the amended size standard, regardless of their principal place of business, that will perform their SBA guaranteed bonded contracts in the declared disaster areas. As stated above, SBA will monitor the SBG Program, particularly the use of this modified size standard for work in the disaster areas. SBA has not assessed the number of small construction and service contractors to whom it will apply, because there is not yet any adequate data on which to make such an estimate. SBA cannot estimate how many small construction and service concerns are in and how many are outside of the declared disaster areas. In addition, while it does have data on small businesses on a national basis, it does not have such information by State or other political jurisdiction. These data are what SBA uses to evaluate and establish small business size standards, which apply on a national basis.

The scope of this amended size standard is limited to contracts performed in the Gulf Coast Region of the United States and in Florida that the President declared disaster areas

following Hurricanes Katrina, Rita and Wilma in 2005.

The most significant benefits of this rule will flow to small construction and service contractors that had not been eligible for SBG assistance before this rule because their average annual receipts exceeded \$6.5 million. Under this rule, they are eligible if they (together with their affiliates) meet the small business size standards for their primary industries or the current SBG \$6.5 million standard, whichever is higher, as well as meet the other requirement as to place of contract performance. Benefits will also flow to other entities in the disaster areas that can use the services of contractors not eligible for the SBG Program until now.

SBA cannot estimate the number or value of Federal or non-Federal contracts that will require surety bonds. SBA cannot estimate the number of small businesses that will apply for SBG guarantees on their surety bonds or how many of those are located in the declared disaster areas. SBA believes, however, that increased contracting opportunities to participate in SBA's SBG Program will provide disaster victims with significant and timely benefits. Small construction and service contractors can receive SBG Program assistance to restart their businesses, if necessary, or help in their areas' reconstruction efforts. Under this size standard, more small business concerns may also qualify for more contracts and surety bonds with SBA's guarantee.

Entities that are not small businesses, such as not-for-profit entities, cities, towns, and other political subdivisions that often require contractors to provide surety bonds to guarantee their contract performance, will benefit as well, because there will be a larger pool of bondable contractors that can perform work as needed.

4. Summary of significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis in the November 14, 2005 Interim Final Rule

SBA summarized above the three comments it received to the November 14, 2005 interim final rule. The surety and insurance industries' comments addressed a perceived increased recordkeeping burden on them to preserve SBA's guarantee on bonds they issue under this rule. However, SBA does not believe that this rule adds any additional recordkeeping requirements since it does not require sureties to maintain any information that they are not already required to maintain when they issue a bond with SBA's guarantee. The surety must document that the concern meets the small business size

standard, which will continue as a requirement. The surety also knows where the contractor will perform its contract or subcontract before it issues its bond. Under this modified size standard, before issuing a surety bond with SBA's guarantees, the surety must be sure the bond guarantees a contract in one or more of the counties or parishes that the President declared disaster areas following Hurricanes Katrina, Rita and Wilma in 2005. SBA has made the list of those counties and parishes readily available at http://www.sba.gov/disaster_recov/katrina_rita_and_wilma_counties.pdf.

The association of small minority contractors expressed concern that there will be increased competition for contracts in the disaster areas as a result of this rule. This competition could come both from larger small companies in the disaster areas and from out of state companies. As stated above, SBA takes very seriously the possibility of negative effects on smaller contractors. In this case, however, SBA does not believe that companies not located in the disaster areas, if they are performing contracts in the disaster areas and meet this modified standard, will adversely affect resident small businesses. Because of the extreme demand for construction and services in the disaster areas, SBA expects there will be more contracts in the affected areas. SBA believes that the priority should be to help restore and reconstruct the disaster areas, and all small businesses should have greater opportunities to participate in this. SBA will monitor bonded contracts for which SBA has extended its guarantee. If SBA finds that this rule has adversely affected local smaller businesses, then it will consider withdrawing or otherwise modifying this subsection.

5. Will this rule impose any additional reporting or recordkeeping requirements on small business entities?

This rule does not impose any new information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35. A new size standard does not impose any additional reporting, recordkeeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden because small business size standards neither regulate nor control business behavior.

6. What are the relevant Federal rules that may duplicate, overlap or conflict with this rule?

This rule affects only SBA's SBG Program. This rule does not overlap with other Federal rules that use SBA's size standards to define a small business. Under § 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. SBA published in the November 24, 1995, **Federal Register** a table of statutory and regulatory size standards set by agencies other than SBA. (60 FR 57988-57991) SBA is not aware of any Federal rule that would duplicate or conflict with this rule.

7. What alternatives did SBA consider?

SBA considered establishing a termination date for application of this size standard. SBA is not adopting this approach because it has no data it can use to anticipate when the amended size standard should no longer be available. Because SBA will be monitoring use of this size standard, it will be able to determine in the future how long the Agency should retain it for the SBG Program. As discussed above in the Supplemental Information, SBA will not terminate or withdraw this size standard without first seeking public comment to a proposed rule to do so. SBA will publish, in accordance with the Administrative Procedure Act, its proposal in the **Federal Register**.

Another alternative SBA considered was limiting applicability to concerns that were located within or had a place of business in the disaster areas when the hurricanes occurred. As noted above, some commenters indicated a preference for limiting eligibility to small businesses located within the disaster areas. Because this is a specific response to the disasters' effects, SBA believes it must increase available resources for the recovery and reconstruction by increasing the number of small businesses that can participate in this work. SBA's Office of Surety Guarantees will continue to monitor the SBG Program, including in particular the use of this modified size standard, for work in the disaster areas. SBA will examine the size of contracts bonded and the size of the small businesses that receive them. If SBA determines that this amended size standard causes an adverse effect on local small businesses or that the modified size standard is no longer necessary, it will consider modifying the regulation.

SBA also considered applying this size standard to any contract, no matter where performed, provided it was

directly and/or primarily related to the recovery and reconstruction efforts in the declared disaster areas. However, SBA believes that establishing a clear and direct nexus of a contract or subcontract to the recovery and reconstruction efforts in the disaster areas would not be practicable, and would cause an unnecessary burden on sureties.

List of Subjects in 13 CFR Part 121

Government procurement, Loan programs—business, Reporting and recordkeeping requirements, Small business.

■ For the reasons set forth in the preamble, amend part 121 of title 13 Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

■ 2. Amend § 121.301 by revising paragraph (d)(1) and paragraph (d)(3) to read as follows:

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

* * * * *

(d) * * *

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts do not exceed \$6.5 million, except as provided in § 121.301(d)(3).

(2) * * *

(3) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, a construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, it meets the size standard for the primary industry in which it, together with its affiliates, is engaged, or if it meets the size standard set forth in paragraph (d)(1), whichever is higher.

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Dated: October 13, 2006.

Steven C. Preston,
Administrator.

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