

determination of the useful life of a facility as a more appropriate method. The increased difficulties in establishing net salvage values and recent experience in using the fixed range of depreciation rates as found in Bulletin 183-1, dictates a more flexible approach.

The RUS is proposing this change to regulations as part of its ongoing effort to minimize administrative burden, streamline the loan process, and update regulations to reflect current requirements. This proposed change in regulations will provide greater latitude in establishing the useful life of a facility being financed but at the same time maintain RUS approval for making the determination.

#### List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

#### PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

#### Subpart C—Loan Purposes and Basic Policies

2. Amend § 1710.115 by revising paragraph (b) to read as follows:

##### § 1710.115 Final maturity.

(b) Loans made or guaranteed by RUS for facilities owned by the borrower generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the useful lives that the borrower proposes for the facilities financed by the loan, provided that the proposed useful lives are deemed appropriate by RUS. RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, submitted as part of the loan application must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. If the useful life determination

proposed by the borrower is not deemed appropriate by RUS, RUS will base expected useful life on an independent evaluation, the manufacturer's estimated useful-life or RUS experience with like-property, as applicable. Final maturities for loans for the implementation of programs for demand side management and energy resource conservation and on and off grid renewable energy sources not owned by the borrower will be determined by RUS. Due to the uncertainty of predictions over an extended period of time, RUS may add up to 2 years to the composite average useful life of the facilities in order to determine final maturity.

\* \* \* \* \*

Dated: March 27, 2002.

**Blaine D. Stockton,**

*Acting Administrator, Rural Utilities Service.*

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#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 121

RIN 3245-AE78

##### Small Business Size Standards; Testing Laboratories

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) is proposing to increase the size standard for the Testing Laboratories industry (North American Industry Classification System (NAICS) code 541380) to \$10 million in average annual receipts. The current size standard for this industry is \$6 million in average annual receipts. The proposed revision is being made to better define the size of businesses in this industry that SBA believes should be eligible for Federal small business assistance programs.

**DATES:** Comments must be submitted on or before June 10, 2002.

**ADDRESSES:** Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW, Mail Code 6530, Washington, DC 20416; or via email to [SIZESTANDARDS@sba.gov](mailto:SIZESTANDARDS@sba.gov). Upon request, SBA will make all public comments available.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Office of Size Standards, (202) 205-6618.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration (SBA) has received requests from Testing

Laboratories to review its \$6 million size standard. These firms believe that a size standard increase is warranted in light of the high level capacities and skills that Federal agencies have recently required among their vendors that specialize in environmental and radiochemical testing. They believe that the minimum government requirements may have raised the costs of doing business in this industry to the point that the pool of eligible small businesses in this activity has seriously declined. If this trend continues, it is argued, Federal agencies could be hampered in using government preference programs for small business. Below is a discussion of SBA's size standards methodology and the analysis leading to the proposal to increase the Testing Laboratories size standard to \$10 million.

(Effective February 22, 2002, the Testing Laboratories size standard increased from \$5 million to \$6 million as part of an inflation adjustment to SBA's monetary size standards (see 67 FR 3041, dated January 23, 2002. This rule proposes a further increase to the size standard based on an analysis of the characteristics of businesses in the Testing Laboratories industry.)

*Size Standards Methodology:* Congress has granted SBA discretion to establish detailed size standards. SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program," available on SBA's web site at <http://www.sba.gov/library/soprooom.html>, sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

*Industry Analysis:* The Small Business Act, 15 U.S.C. 632(a)(3), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics

(Section 3(a)(3)). SBA has in place two “base or anchor size standards” that apply to most industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA’s inception in 1953, and shortly thereafter established a \$1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is \$6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the “typical industry.”

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry’s characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry’s characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry—average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA’s programs as an evaluation factor. SBA generally considers these five factors to be the

most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. These can include the impact of a revision on other agencies’ programs. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. Average firm size is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry’s average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases, a lower size standard.

2. The distribution of firms by size examines the proportion of industry receipts, employment or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry’s economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, for Testing Laboratories, 50% of total industry receipts are generated by firms of \$9.3 million in receipts and less. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of \$6 million) in which firms of \$5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly higher figure for Testing Laboratories suggests that a higher size standard than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. Start-up costs affect a firm’s initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA is using a special measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs associated with capital investment requirements. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. Industry competition is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the “four-firm concentration ratio”—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review, while its

comparison groups also average less than 40%.

5. Competition for Federal procurements and SBA Financial Assistance. SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance

is provided mainly to small businesses much lower than the size standard, an increase to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

*Evaluation of Industry Size Standard:* The two tables below show the characteristics for the Testing Laboratories industry and for the comparison group. The primary comparison group is comprised of all industries with a \$6 million receipts-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Testing Laboratories size standard should be higher than the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. Data on a second comparison group is also shown. This group consists of all industries in NAICS Sector 54, Professional, Scientific, and Technical Services—the NAICS Sector of which Testing Laboratories is a part. The data on this comparison group provide an additional perspective on the size of firms in related industries and their

industry structure. SBA examined economic data on these industries from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U.S. General Services Administration's Federal Procurement Data Center.

*Industry Structure Consideration:* Table 1 below examines the size distribution of Testing Laboratories. For this factor, SBA is evaluating the size of firm that accounts for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts. For example, Testing Laboratories of \$4.6 million or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of \$3.2 million or less in receipts obtained 40% of total industry receipts in the average industry, while in NAICS sector 54, firms of \$2.3 million or less in receipts obtained 40% of total industry receipts.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS IN THE TESTING LABORATORIES INDUSTRY, NONMANUFACTURING ANCHOR GROUP, AND NAICS SECTOR 54  
[Data in Thousands of Dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Testing Laboratories .....	\$4,600	9,262	18,726	33,867
Nonmanufacturing Anchor Group .....	3,206	5,821	11,857	27,957
NAICS Sector 54 .....	2,262	4,683	9,668	31,904

These data suggest that a size standard nearly double the \$6 million size standard may be appropriate for the industry of Testing Laboratories. At the given coverage levels the size of firm for the Testing Laboratories industry is significantly larger than in the two comparison groups. The size of firms for the Testing Laboratories industry is more than 40% larger than in the Nonmanufacturing Anchor comparison group, and about twice as large as the average industry in NAICS Sector 54 for most of the distribution percentages.

Table 2 lists the other four evaluation factors for the Testing Laboratories industry and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF THE TESTING LABORATORIES INDUSTRY, NONMANUFACTURING ANCHOR GROUP, AND NAICS SECTOR 54

Category	Average firm size		Non payroll receipts per establishment (million \$)	Four firm concentration ratio (in percent)
	Receipts (millions \$)	Employees		
Testing Laboratories .....	1.56	19.9	0.68	12.1
Nonmanufacturing Anchor Group .....	0.95	10.6	0.56	14.4
NAICS Sector .....	54	0.77	7.7	0.45

For Testing Laboratories, its average firm size in receipts is one and one-half times larger than the average firm size in the Nonmanufacturing Anchor comparison group, and twice that of the

NAICS Sector 54 industries. Moreover, its average firm size in employees is two to three times the average sizes of these two comparison groups. This factor is sufficiently higher than the comparison

groups to support a size standard appreciably above or double the \$6 million size standard. Its nonpayroll receipts per establishment ratio indicator, a measure of capital

requirements to enter an industry, is also somewhat higher than the anchor comparison group, and about one and one-half times the size of the NAICS Sector 54 group of industries. This factor indicates that a size standard slightly above the \$6 million size standard may be appropriate. Its four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This is the only industry structure parameter not pointing to the need for a higher size standard for Testing Laboratories.

*SBA Program Considerations:* SBA also reviews its size standards in relationship to its programs. Since SBA is reviewing the Testing Laboratories Industry's size standard because of concerns about the application of the size standard to Federal procurement, this proposed rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses

to assess whether its size standard should be revised. SBA provides a relatively small amount of financial assistance to Testing Laboratories. In fiscal year 2000, 66 loans totaling \$21 million were guaranteed to Testing Laboratories. Most of these loans were to labs with less than \$1 million in receipts. It's unlikely that an increase to the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

In the case of Federal procurement, the share of Federal contracts awarded to small Testing Laboratories supports an increase to the current size standard (see Table 3). Small Testing Laboratories received only 8.4% of the dollar value of Federal contracts awarded during fiscal years 1998 to 2000. While there are no NAICS procurement data available for the receipt-based size standards group, or for the 54 group, SBA does have data for total small business awards in which all industries

are summed and combined. In fiscal years 1998–2000, 18.7% of the total value of all Federal prime contracts were awarded to small firms, a figure more than twice the share of small firms in the Testing Laboratories Industry. In addition, this share is disproportionately small when compared with the amount of total industry receipts generated by small Testing Laboratories. Although the Census Bureau data indicate that small Testing Laboratories account for more than 40% of industry receipts, they obtained only 8.4% of Federal contracts during fiscal years 1998–2000. These figures suggest that the Federal contract requirements are different from those of the private marketplace, favoring, in general, larger firms with greater experience and sophistication. These results strongly reinforce the industry structure factors in arguing for a higher size standard for Testing Laboratories.

TABLE 3.—SMALL BUSINESS PRIME CONTRACT AWARDS, FISCAL YEARS 1998–2000  
[Data in thousands of dollars]

Category	FY 1998	FY 1999	FY 2000	Sum of three years
Total Awards .....	\$182,255.7	\$183,579.4	\$203,533.9	\$569,369.0
Small Business Awards .....	\$33,746.7	\$34,482.9	\$38,260.3	\$106,490.0
Percent to Small Business .....	18.5%	18.8%	18.8%	18.7%
Testing Laboratories Awards .....	\$861.6	\$628.0	\$84.7	\$1,574.3
Small Testing Laboratories Awards .....	\$44.1	\$45.3	\$42.1	\$131.7
Percent to Small Testing Laboratories .....	5.1%	7.2%	49.7%	8.4%

**Note:** Data for FY 2000 for Testing Laboratories are not representative of most years due to deobligations of \$135 million from procurements initiated in previous years.

*Overview:* Based on the analysis of each evaluation factor, SBA is proposing a \$10 million size standard. Four of the five evaluation factors clearly support a size standard ranging from slightly above to double the \$6 million nonmanufacturing anchor size standard. The low amount of participation of small businesses in Federal government procurement, however, is of special concern and suggests, as the requestors had pointed out, that Federal contract requirements may indeed influence the size of Testing Laboratories that possesses the equipment and qualifications to perform on Federal analytical testing contracts. After considering all factors, SBA believes that a \$10 million size standard is a reasonable size standard for the Testing Laboratories industry and will help small businesses in this industry to compete for Federal contracts without including businesses that are so large that they could harm the ability of much smaller-sized small businesses to

compete successfully for Federal contracts.

*Dominant in Field of Operation:* Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard, or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that no firm at or below the proposed size standard for the Testing Laboratories industry would be of a sufficient size to dominate its field

of operation. The largest firm at the proposed size standard level generates less than 0.16% of total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard to exert a controlling effect on this industry. *Alternative Size Standards:* SBA considered as an alternative size standard to the proposed \$10 million, a more modest increase to \$7.5 million, and a larger increase to \$12.5 million. SBA, however, decided not to propose the more moderate increase of \$7.5 million because it believes that the very low share of Federal procurements to small Testing Laboratories indicates the need for a higher size standard to include those Testing Laboratories that can meet and perform on many Federal analytical testing contracts. SBA also decided not to propose a larger increase to \$12.5 million based on the fact that two of the five factors reviewed indicated a size standard at, or only slightly above, the

\$6 million nonmanufacturing anchor size standard. SBA believes that the evaluation factors should be virtually unanimous for an increase of this magnitude. While the industry factors pointed to a higher size standard for this industry, they were not strong enough to support a size standard of \$12.5 million—more than twice the present size standard. However, the factors did point to a size standard of \$10 million. The three factors pointing to a \$10 million size standard—the size distribution of firms, average firm size, and the Federal procurement share of small firms—are the factors that SBA believes are most important when analyzing a size standard. (The non-payroll receipts per establishment is only a proxy measure of capitalization, and the four firm concentration measure, generally, is so low outside of the manufacturing and utility industries that it usually has little effect on the analysis.) Thus, with three out of five factors pointing to a higher size standard, and the fact that these factors are more important than the other factors, SBA believes that a size standard of \$10 million is warranted.

SBA welcomes public comments on its proposed size standard for the Testing Laboratories industry. Comments supporting an alternative to the proposal, including the option of retaining the size standard at \$6 million discussed above, should explain why the alternative would be preferable to the proposed size standard.

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

The Office of Management and Budget (OMB) has determined that this proposed rule constitutes a “significant” regulatory action under Executive Order 12866. SBA’s regulatory analysis is set forth below.

**Regulatory Impact Analysis**

*A. General Considerations*

**1. Is There a Need for the Regulatory Action?**

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions.

It also requires that small business definitions vary to reflect industry differences. SBA believes that an adjustment in the size standard of the Testing Laboratories industry is needed to better reflect the industrial structure of this industry.

**2. Alternatives**

There are no viable alternatives to establishing size standards to define a small business for Federal small business programs. The purpose of this rule is to better define the size of firms eligible for SBA assistance.

**3. What is the baseline?**

The baseline in this rule is the coverage of businesses whose size is at or below SBA’s size standard of \$6 million for this industry. A special tabulation of the 1997 Economic Census prepared for SBA reports that 3,762 firms active in this industry are defined as small out of 4,126 firms in the industry. These account for 91.2% of total firms in the industry. These firms generate \$2.66 billion of the \$6.44 billion produced in the industry. SBA estimates that 98.4% of all businesses in the U.S. are currently defined as small under the existing size standards and they account for 28.6% of industry sales.

*B. Benefit Estimates*

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 120 additional firms will obtain small business status and become eligible for these programs. These include SBA’s financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses, as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses to evaluate the impact of size standards changes. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these

programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would accrue to three groups. First, businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs. Second, growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA’s financial programs, in particular its 7(a) Guaranteed Loan Program and Certified Development Company (504) Program. SBA estimates that approximately \$2.1 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 9.8% of the \$21 million in loans that were guaranteed by the SBA under these two financial programs to firms in the Testing Laboratories industry in FY 2000. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to businesses in this industry, and the \$2.1 million estimated figure may overstate the actual impact.

The newly defined small businesses would also benefit from SBA’s economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that approximately \$51 million per year of additional Federal prime contracts may be awarded to businesses becoming newly designated small businesses in the Testing Laboratories industry. This represents 9.8% of the \$525 million that the Federal government awarded in the average year in this industry during fiscal years 1998–2000.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Non-small businesses with

small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

### C. Costs Estimates

To the extent that up to 120 additional firms could become active in Government programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs since administrative mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

### D. Other Considerations Including Distributional Effects, Equity Considerations and Uncertainty

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large

businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

SBA has determined that this proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Immediately below is an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, and (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

#### (1) What Is the Need for and Objective of the Rule?

SBA believes that this revision to the size standard for Testing Laboratories more appropriately defines the size of businesses in this industry that should be eligible for Federal small business assistance programs. A review of the latest available data supports a change to the current size standard.

#### (2) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that 120 additional businesses out of 4,126 businesses in the industry would be considered small

as a result of this rule, if adopted. The number of small businesses would increase from 3,762 firms to 3,882. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Businesses becoming newly eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate \$635 million in this industry. The amount of receipts by small firms would increase from \$2.7 billion to \$3.3 billion out of a total of \$6.4 billion in receipts. The small business coverage in this industry would increase by 9.8% of total receipts. This figure of 9.8% is used to estimate the potential economic impacts of this rule as they relate to Federal programs that are discussed below.

*Description of Potential Benefits of the Rule:* The most significant benefit to businesses obtaining small business status as a result of this rule is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone).

SBA estimates that firms gaining small business status could potentially obtain additional Federal contracts worth \$51 million per year under the small business set-aside program, the 8(a) and HUBZone programs or unrestricted contracts. This represents 9.8% of the \$525 million that the Federal government awarded per year in this industry during fiscal years 1998–2000. The added competition for many of these procurements also would likely result in a lower price to the government for procurements set aside for small businesses, but SBA is not able to quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that an additional \$2.1 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 9.8% of the \$21 million in loans that were guaranteed by SBA under these two financial programs for firms in the Testing Laboratories Industry in FY 2000. Because of the size of the loan guarantees, most loans are made to businesses well below the size standard. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to businesses in this industry, and the \$2.1 million estimated figure may overstate the actual impact.

We view the additional amount of contract activity as the potential amount of transfer from non-small to newly designated small firms. This does not represent the creation of new contracting activity by the Federal government, merely a reallocation or transfer to different sized firms.

*Description of Potential Costs of the Rule:* The changes in size standards as they affect Federal procurement are not expected to add any significant costs to the government. As a matter of policy, procurements may be set aside for small business or under the 8(a) and HUBZone Programs only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. A change to a size standard is not anticipated to have any appreciable effect on any of these factors, although small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industry may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more larger small businesses competing for small business set-aside and 8(a) procurements, Federal agencies are likely to increase the overall number of contracting opportunities available under these programs, and this could result in greater opportunities for businesses much smaller than the size standard.

Under this rule, there will be 120 additional firms that are considered small and eligible for SBA preference programs. To the extent that these firms

are active in Government programs, this will entail some additional administrative costs to the Federal government associated with additional bidders for SBA's procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's Pro Net program. Among firms in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification. These costs are likely to be small.

(3) What Is the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping 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 as they neither regulate nor control business behavior.

(4) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 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. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988-57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every

Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

**PART 121—[AMENDED]**

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

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. In § 121.201, in the table "Small Business Size Standards by NAICS Industry", under the heading Subsector 541—Professional, Scientific and Technical Services, revise the entry for 541380 to read as follows:

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

\* \* \* \* \*

**SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY**

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
* * * * *	Sector 54—Professional, Scientific and Technical Services Subsector 541—Professional, Scientific and Technical Services	
* * * * *	541380 ..... Testing Laboratories .....	\$10.0

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of em- ployees or millions of dollars
* * * * *	Hollow Road, Clarksburg, West Virginia, 26306.	value of the vehicle prior to the incident causing the damage. A salvage vehicle may be rebuilt, retitled, and allowed to operate legally on the road. A junk motor vehicle is a vehicle that is non-repairable, incapable of operation on roads or highways, and has no value except as a source of parts or scrap. The definitions for salvage and junk motor vehicles include any individual state and federally recognized tribe's definition for a vehicle that is declared a total loss or economically impractical to repair. The only parts affected by the Act ("covered major parts") are original major parts that are dismantled, recycled, salvaged, or otherwise removed from motor vehicles and that possess a parts marking label with the 17-character VIN or a derivative of the VIN.
<p>Dated: January 8, 2002.</p> <p><b>Hector V. Barreto,</b> Administrator.</p> <p>[FR Doc. 02-8359 Filed 4-8-02; 8:45 am]</p> <p>BILLING CODE 8025-01-P</p>	<p><b>FOR FURTHER INFORMATION CONTACT:</b> Supervisory Special Agent Stephen A. Bucar, telephone number (304) 625-2751.</p>	
<b>DEPARTMENT OF JUSTICE</b>	<p><b>SUPPLEMENTARY INFORMATION:</b> Section 609 of the Anti Car Theft Act of 1992, Public Law Number 102-519 (codified at 49 U.S.C. 33109), directed the Attorney General to establish a National Stolen Auto Part Information System (NSAPIS) to track and monitor stolen parts. Further legislation renamed the system as the National Stolen Passenger Motor Vehicle Information System. <i>See</i> Public Law 103-272 (1994).</p>	
<b>28 CFR Part 89</b>	<b>What is the nature of the problem that needs to be addressed?</b>	
<b>[AG ORDER No. 2570-2002]</b>	<p>The total cost of motor vehicle theft in the United States in 1994 was \$7.6 billion, according to the National Insurance Crime Bureau (NICB). This total compares to \$3.2 billion in 1970 (1994 dollars), an increase of 134 percent. A 1995 NICB study shows that criminals in the 1990s were utilizing more sophisticated methods in selling and disguising stolen vehicles and vehicle parts compared to thieves in previous years. The NICB study revealed that not only were stolen vehicles less likely to be recovered in 1995 as compared to 1970, but the condition of recovered vehicles also deteriorated.</p>	
<b>RIN 1110-AA01</b>	<b>What was the congressional response to the theft problem?</b>	
<b>National Stolen Passenger Motor Vehicle Information System Regulations</b>	<p>In response to the continuing problem of motor vehicle theft in the United States, Congress passed the Anti Car Theft Act of 1992 (the "Act"). Among other anti-theft measures, the Act mandates the establishment of a national computer system to verify the theft status of salvage and junk motor vehicles and covered major parts.</p>	
<b>AGENCY:</b> Department of Justice.	<p>The Act affects salvage and junk motor vehicles and covered major parts. A salvage motor vehicle is a vehicle that has been damaged by collision, fire, flood, accident, trespass, or other incident to the extent that its fair salvage value plus the cost of repairing the vehicle for legal operation on roads or highways exceeds the fair market</p>	
<b>ACTION:</b> Proposed rule.		
<b>SUMMARY:</b> The United States Department of Justice (Department) is publishing a proposed rule to implement the National Stolen Passenger Motor Vehicle Information System (NSPMVIS or System) that will verify the theft status of salvage and junk motor vehicles and major parts marked with a Vehicle Identification Number (VIN) or a derivative of a VIN. Under specific conditions detailed in this proposed rule an insurance carrier selling comprehensive motor vehicle insurance coverage or a person engaged in the business of salvaging, dismantling, recycling, or repairing passenger motor vehicles must verify the theft status of salvage and junk motor vehicles or major parts. In addition, this proposed rule contains prescribed procedures under which an individual or entity, not engaged in the business of salvaging, dismantling, recycling, or repairing passenger motor vehicles, intending to transfer a passenger motor vehicle or passenger motor vehicle part, may obtain information on whether the vehicle or part is listed in the System as stolen.		
<b>DATES:</b> Comments must be submitted on or before June 10, 2002.		
<b>ADDRESSES:</b> All comments concerning this proposed rule should be mailed to: Stephen A. Bucar, Supervisory Special Agent, Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer		