Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM); notice of extension of the comment period.

SUMMARY: By means of an advance notice of proposed rulemaking (ANPRM), the U.S. Small Business Administration (SBA) is requesting comments addressing the Certified Development Company (CDC) Loan Program (the ''CDC Program'' or the ''504 Program''). After a review of the comments, SBA will consider proposing amendments to existing program regulations that will improve overall program management.

SBA is revisiting the 504 Program policies as a prudent management exercise in light of major changes in the economy, the financial services industry, technology, and in CDCs' operations since the program's inception in 1980. The review has also been prompted by SBA's on-going discussions with the 504 industry and by specific requests made to SBA to expand CDCs' product base to include 7(a) loans or Small Business Investment Companies. In particular, SBA is seeking comments on the following: Whether the 504 Program is meeting its statutory purpose as defined in section 501(a) of the Small Business Investment Act; the appropriate long-term goals and annual performance measures for the program given its statutory requirement; the appropriate data elements required to assure solid program oversight while minimizing public data collection burdens; operational or regulatory impediments to providing long-term financing in rural or urban areas; and programmatic changes that could increase CDC competition and increase small businesses' access to loans.

The ANPRM is intended to stimulate dialogue on these and other issues pertaining to the CDC Program. The ANPRM was published on December 6, 2002, 67 FR 72622. The comment period closes on February 4, 2003. Because of the broad range of topics and issues addressed in the ANPRM, and due to requests from the public and members of Congress, SBA is extending the time period for comments by an additional 30 days to March 6, 2003. We do this because of our desire to have a meaningful dialogue on the important issues that seek to enhance SBA's efforts to serve small businesses through the CDC Program.

DATES: The comment period for the ANPRM published December 6, 2002 (67 FR 72622) is extended through March 6, 2003.

ADDRESSES: Address all comments to: James E. Rivera, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Comments may be sent by e-mail to *ANPR@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, Chief, 504 Loan Policy Branch, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Questions may be sent by e-mail to *gail.helpler@sba.gov* or by telephone at (202) 205–7530. This is not a toll-free number.

Dated: January 27, 2003.

James E. Rivera,

Associate Administrator for Financial Assistance.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF03

Small Business Size Standards; Facilities Support Services (Including Base Maintenance)

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase the size standard for the Facilities Support Services industry (North American Industry Classification System (NAICS) code 561210) from $6 million in average annual receipts to $30 million and the size standard for the sub-category of Base Maintenance from $23 million to $30 million. This proposed revision is being made to better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs.

DATES: Comments must be received on or before April 4, 2003.

ADDRESSES: Send written comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW, Mail Code 6530, Washington DC 20416; by email to *SIZESTANDARDS@sba.gov;* or by facsimile at (202) 205–6390. Upon request, SBA will make all public comments available to any person or entity.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, Office of Government Contracting and Business Development, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from firms in the Facilities Support Services industry to review its $6 million size standard for this industry and the $23 million size standard for Base Maintenance, a sub-category of the industry. These size standards are based on annual receipts of the business, as described in 13 CFR 121.104. These firms argue that a size standard increase is warranted to reflect the size of Federal contracts issued in this area. These contracts include a broad spectrum of services involving administrative support, custodial services, facilities repair and maintenance, and technical services, which often are $10 million per year or more in value. A small business can lose its small businesses status with only one or two contracts. Costs on these types of contracts have increased greater than the general inflation rate, especially due to changes in the mandated labor rates under the Service Contract Act and increased health insurance costs. The requestors believe that to help develop small businesses to be competitive with large businesses in this industry, the size standard should be increased to the $25 million to $30 million range.

Based on a review of these issues and data on the Facilities Support Services industry, SBA concludes that a higher size standard for activities in this industry is supportable. This rule proposes a $30 million size standard for all activities in the Facilities Support Services industry. As explained below, SBA believes that the activities comprising this industry and the characteristics of firms in the industry no longer support the need for separate size standards for Base Maintenance and for all other facilities support activities. SBA solicits comments on all aspects of this proposed rule, including its methodology and analysis. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposed $30 million size standard.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). SBA's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's Web site at *http:/www.sba.gov/library/soproom.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: Section 3(a)(2) of 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. SBA has two ''base'' or ''anchor'' size standards that apply to most industries—500 employees for manufacturing industries and $6 million in average annual receipts for nonmanufacturing 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 average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was adjusted periodically for inflation so that, currently, the anchor size standard 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 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's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that SBA considers in analyzing the structural characteristics of an industry are listed in 13 CFR 121.102 (a) and (b). Those factors include 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 for a particular industry. 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. ''Distribution of firms by size'' is 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. A size standard higher than the anchor size standard is supported 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 firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of $28.5 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 and less in receipts generated 50 percent of total industry receipts. Viewed in isolation, the higher figure for the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent 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 one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, SBA has calculated

nonpayroll costs per establishment for each industry. 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, which 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 compares 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 in order to assist firms in a broader size range to 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 percent for an industry under review.

5. ''Impact of size standard revisions on SBA programs'' refers to the possible impact a size standard change may have on the level of small businesses 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.

Another factor to evaluate the impact of a proposed size standard on SBA programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially if it is already above the anchor size standard) may not be necessary.

Elimination of Base Maintenance size standard: Currently, there are two size standards for activities in the Facilities Support Services industry—$23 million for Base Maintenance and $6 million for all other facilities support activities. In 1966, when SBA established a size standard for Base Maintenance, no facilities support related industry existed. Base Maintenance and other Facilities Support Services were classified under a general industry titled ''Business Services, Not Elsewhere Classified,'' along with airplane rental, drafting services, lecture bureaus, and many other miscellaneous business services. The revisions to the 1972 Standard Industrial Classification (SIC) System moved facilities support activities to a new industry titled ''Personnel Supply Services, Not Elsewhere Classified,'' which also consisted of temporary help services. The 1987 revisions to the SIC System eliminated this industry and established two new industries—''Facilities Support Management Services'' and ''Help Supply Services.'' In the absence of data on the new Facilities Support Management industry, SBA retained its $13.5 million size standard for Base Maintenance and applied its $3.5 million ''nonmanufacturing anchor size standard'' in effect at that time to all other industry activities.

The current NAICS industry description of Facilities Support Services is very similar to SBA's description of Base Maintenance (see footnotes 12 and 13 of 13 CFR 121.201). Facilities Support Services comprises establishments providing staff to perform a range of support services within a client's facilities. They do not provide staff to perform the core responsibilities of the client. SBA defines Base Maintenance in a similar manner, but limits the sub-industry to services and special trade activities related to supporting a specific base operation. SBA believes that firms performing Base Maintenance services also perform, or have the capability to perform, most other facilities support activities. Given the close similarity of the descriptions of Facilities Support Services and Base Maintenance, SBA believes a single size standard is appropriate for all activities within the Facilities Support Services industry.

Evaluation of Industry Size Standard: The two tables below show the characteristics for the Facilities Support Services industry and for the two comparison groups. The first comparison group is comprised of all industries with a $6 million receipts-based size standard, referred to as the nonmanufacturing anchor group. Since SBA assumes that the $6 million anchor size standard is appropriate for a nonmanufacturing industry, this is the most logical set of industries to group together for the industry analysis to assess whether a size standard at the anchor size standard or higher is appropriate. The second comparison group consists of nonmanufacturing industries which have the highest levels of receipt-based size standards established by SBA, referred to as the nonmanufacturing higher-level size standard group. Size standards for these industries range from $21 million to $29 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to the characteristics of the higher-level size standards group. By doing so, SBA can assess if a size standard among its highest receipts-based size standards is appropriate or whether an intermediate size standard between the anchor size standard and the higher size standards should be selected.

SBA examined economic data on the Facilities Support Services industry and the comparison group industries taken from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the Census (Census), Federal contract award data for fiscal years 1999–2001 from the U.S. General Services Administration's Federal Procurement Data Center, and loan data from SBA's internal data base for SBA guaranteed loans.

Industry Structure Consideration: Table 1 below examines the size distribution of firms. For this factor, SBA is evaluating the size of firm that accounts for predetermined percentages of total industry receipts (40 percent, 50 percent, 60 percent, and 70 percent). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts.

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Table 1: Size Distribution of Firms in the Facilities Support Services Industry, Nonmanufacturing Anchor Group, and Higher-level Size Standard Group (Data in Millions of Dollars)

Category	Size of Firm at 40%	Size of Firm at 50%	Size of Firm at 60%	Size of Firm at 70%
Facilities Support Services	$55.0	$134.8	$475.3	$1,333.6
Nonmanufacturing Anchor Group	$3.2	$5.8	$11.8	$28.0
Higher-level Size Standards	$24.2	$50.4	$135.6	$423.6

The Facilities Support Services industry is comprised of firms significantly larger than firms in the nonmanufacturing anchor group. Facilities Support Services firms of $55 million and less in receipts account for 40 percent of total industry receipts while firms of $3.2 million and less in receipts in the nonmanufacuturing anchor group received 40 percent of total industry receipts. For the remaining percentages of industry receipts, firms in the Facilities Support Services industry range between 11 to 47 times larger than the size of firms in the nonmanufacturing anchor group. In relation to the higher-level size standards group, Facilities Support Services firms are two to three times larger at every percentage level. These data indicate that a size standard at least comparable to SBA's highest receipts-based size standard of $29 million is appropriate for the Facilities Support Services industry.

Table 2 lists the other three evaluation factors for the Facilities Support Services 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 Facilities Support Services Industry, Nonmanufacturing Anchor Group, and Higher-level Size Standards Group

Category	Average Firm Size		Non payroll receipts per establishment (million $)	Four Firm Concentration Ratio
	Receipts (millions)	Employees		
Facilities Support Services	$6.2	93.0	$1.73	21.4%
Nonmanufacturing Anchor Group	$0.95	10.6	$0.56	14.4%
Higher-level Size Standards Group	$4.6	21.4	$1.80	26.7%

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The Facilities Support Services industry's average firm size in receipts is over six times larger than the average firm size in the nonmanufacturing anchor group and one-third higher than the higher-level size standard group. Moreover, its average firm size in employees is four to nine times the average sizes of these two comparison groups. The average size of firms in the Facilities Support Services industry is substantially higher than the comparison groups and also supports a size standard at least comparable to SBA's highest receipts-based size standard of $29 million.

As a measure of industry start-up costs, the nonpayroll receipts per establishment indicator for Facilities Support Services is twice that of the anchor comparison group, and at about the same as the higher-level size standard group. This factor suggests a Facilities Support Services size standard within the $21 million to $29 million range of size standards of the higher-level size standards group.

The Facilities Support Services four-firm concentration ratio is appreciably higher than the average of industries in the nonmanufacturer anchor group, but moderately below the level of the higher-level size standard. This factor shows the Facilities Support Services industry to be a relatively competitive industry where a size standard is between the $6 million nonmanufacturer anchor size standard and $21 million (the lowest size standard of the higher level size standard).

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. Since the

SBA is reviewing the Facilities Support Services industry's size standard because of concerns regarding 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 Facilities Support Services firms. In fiscal years 2000 and 2001, an average of 19 loans for $4.5 million were guaranteed to firms in the Facilities Support Services industry. Most of these loans were to firms with less than $2 million in receipts. It's unlikely that an increase to the size standard will have a significant impact on the amount of new loans in SBA's financial programs or will crowd-out other small businesses from obtaining SBA guaranteed loans. Consequently, this factor is not part of the assessment of the size standard.

In the case of Federal procurements to Facilities Support Service firms, the share of Federal contracts awarded to small businesses supports an increase to the current size standard. Small Facilities Support Service firms account for 30.5 percent of total industry receipts but have received only 12 percent of the dollar value of Federal contracts awarded during fiscal years 1999 to 2001. Moreover, two-thirds of small business awards are made though programs reserved for small businesses or 8(a) firms. This disproportional share of Federal contract dollars relative to industry receipts generated by small Facilities Support Service firms indicates that contract requirements make it difficult for smaller firms to perform on Federal Facilities Support Services contracts. An increase to the size standard would be beneficial to small businesses in this industry by allowing them to grow in size to better perform the contract requirements.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $30 million size standard for Facilities Support Services. Two evaluation factors support a size standard of $29 million or higher, one factor supports a size standard within the range of SBA's higher-level size standards ($21 to $29 million), and one factor supports an intermediate range size standard between $6 million and $21 million. The assessment of small business participation in Federal procurements supports a size standard higher than the current Base Maintenance size standard of $23 million. The low amount of participation of small businesses in Federal government procurement is of special concern and suggests that contract requirements may indeed influence the size of Facilities Support Services firms that can perform the requirements of Federal contracts. The SBA believes that a size standard of $30 million, significantly higher than the current size standard of $23 million, is well supported by the analysis of industry data and will help small businesses in this industry 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. The 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.

The SBA has determined that no firm at or below the proposed size standard for the Facilities Support Services 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 0.4 percent 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 an alternative size standard $35 million. As the industry evaluation showed, some of the factors might support a size standard at this level, but other factors supported a size standard within the range of its highest size standards ($21 million to $29 million). The industry data also show that firms earning $35 million in receipts tend to have more establishments than firms between $10 million to $30 million in size. This finding suggests that firms with $35 million in receipts have developed competitive capabilities that enable them to successfully expand operations.

SBA welcomes public comments on its proposed $30 million size standard for the Facilities Support Services industry. Comments on alternatives to the proposal, including the option of retaining the current size standards at $6 million and $23 million discussed above, should present the reasons that would make them preferable to the proposed size standard.

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 (OMB) has determined that this rule is a ''significant'' regulatory action for purposes of Executive Order 12866 because size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Need for This 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 the 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. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to this proposed rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a change in the Facilities Support Services size standard is needed to better reflect small businesses in this industry.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule will be eligibility for Federal small business assistance programs. Under this rule, 177 additional firms may obtain small business status and become eligible for these programs. Of these 177, 19 are between the current $23 million Base Maintenance size standards and the $30 million proposed size standard. Federal small business assistance programs include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or SDB price evaluation 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. 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 121.902). 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 affect three groups: (1) Businesses that benefit by gaining small business status from the proposed size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standard in the near future and who will retain small business status under the proposed size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that approximately $2.5 million to $5.5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the $2 million maximum size of SBA 7(a) loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in a smaller increase in guaranteed loans to small businesses than the estimated range. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 40,000 loans totaling about $10 billion per year in recent years.

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 firms gaining small business status could potentially obtain Federal contracts worth $65 million to $95 million under the small business set-aside program, the 8(a), Small Disadvantaged Business, and HUBZone programs, or unrestricted contracts. This estimate is based on an analysis of small business participation in Federal contracting and the industry market share of businesses between the current and proposed size standards. During fiscal years 1999–2001, small businesses obtained 11.8 percent of Facilities Support Services contract dollars out of approximately $12 billion in total Federal Facilities Support Services contracts. About two-thirds of small business awards were made as small business set-aside or 8(a) contracts. Most facilities support contracts are for Base Maintenance services, which has a $23 million size standard. Businesses between $23 million and $30 million account for 3.6 percent of industry sales.

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 would 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 creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large 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 and 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.

To the extent that 177 additional firms 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 associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. 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 reserved for the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

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, there will likely be 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 HUZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for a price evaluation adjustment 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 number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standards for Facilities Support Services is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. As described above in the Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses in the Facilities Support Services industry competing for Federal Government procurements reserved for small business, and SDB and HUBZone businesses eligible for price adjustment, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Facilities Support Services may be set aside for small businesses as the pool of eligible small businesses expands.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot fully 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.

Immediately below, SBA sets forth 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, recordkeeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What Is the Need for and Objective of the Rule?

The revision to the size standards for Facilities Support Services more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

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

Within the Facilities Support Services industry, 896 out of 1,219 businesses are small. SBA estimates that 177 additional businesses out of 1,219 firms in the Facilities Support Services industry would be considered small as a result of this rule, if adopted. Of these 177, 19 are between the current $23 million Base Maintenance size standards and the $30 million proposed size standard. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Businesses becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate approximately $25.8 billion out of a total of $75.8 billion in receipts, or 34.1 percent of industry receipts. The small business coverage in the Facilities Support Services industry would increase by 3.6 percent of total receipts. SBA estimates that $2.5 million to $5.5 million additional loans may be guaranteed by SBA and $65 million to $95 million in additional Federal contracts may be awarded to the newly eligible small businesses.

3. What Are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That 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 completely 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.

5. What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

SBA considered two alternative size standards. First, it considered adopting the current $23 million Base Maintenance size standard to all activities in the Facilities Support Services industry. SBA believes this size standard level is inadequate given that most Federal contracts obtained by small businesses have been awarded through reserved contracting methods. This indicates that small businesses at the current size standard have not developed to a size to be competitive for most Facilities Support Services contracts. Thus, a size standard higher than $23 million will help small businesses to grow to a more competitive level.

Second, SBA considered proposing a $35 million standard for the Facilities Support Services industry. As discussed in the supplementary analysis, some industry factors support a size standard at this level. Businesses at that size and larger tend to have more establishments than those between $10 million to $35 million. This indicates that businesses of $35 million have developed more competitively than currently defined small businesses.

List of Subjects in 13 CFR Part 121

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

For the reasons stated in the preamble, SBA proposes to amend part 121 of title 13 Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of 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. Amend § 121.201 as follows:

a. In the table ''Small Business Size Standards by NAICS Industry,'' under the heading NAICS Subsector 561, ''Administrative and Support Services,'' revise the entry for 561210 to read as follows; and,

b. Revise footnotes 12 and 13 to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * * * *			
Subsector 561—Administrative and Support Services			
* * * * * * *			
561210	Facilities Support Services [12]		$30.0[12]
* * * * * * *			

Footnotes

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[12] *NAICS code 562120—Facilities Support Services:*

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50 percent or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) ''Facilities Support Services'' requires the performance of three or more separate activities in the areas of services or specialty trade construction industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as ''Facilities Support Services.''

[13] *NAICS code 238990 '' Base Housing Maintenance:* If a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50 percent or more of the value of the procurement, all such specialty trade construction activities are considered a single activity and classified as Base Housing Maintenance.

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Dated: November 15, 2002.

Hector V. Barreto,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM242; Notice No. 25–03–01–SC]

Special Conditions: Embraer Model 170–100 and 170–200 Airplanes; Sudden Engine Stoppage; Operation Without Normal Electrical Power; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model 170–100 and 170–200 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) engine size and torque load which affect sudden engine stoppage, (2) electrical and electronic flight control systems which perform critical functions, and