

6. For analytical simplicity and efficiency, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values as was SBA's methodology in its past size regulations. SBA welcomes any comments on this procedure and suggestions for alternative methods.

Public comments on above issues are very critical for SBA to validate its size standard methodology and move forward in a timely manner with review of size standards of other industry groups under the two-year comprehensive size review.

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)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a “significant” regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that adjustments to certain size standards in Sector 81, Other Services, are needed to better reflect the economic characteristics of small businesses in those industries. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively 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 SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial

assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses. Federal procurement provides opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses, and service disabled veteran owned small businesses (SDVOSB). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable, and competitive businesses.

Of 18 industries in Sector 81 for which SBA has proposed to increase their size standards, 12 are for-profit industries and six are non-profits. In the 12 for-profit industries for which SBA has proposed to increase their size standards, about 325 additional firms are estimated to obtain small business status and become eligible for these programs. That represents 0.6 percent of total firms and 5.6 percent of total sales in those industries. In the six non-profit industries, about 1,175 additional firms, representing 4.2 percent of total firms and 16.9 percent of total sales in those industries, are estimated to qualify as small organizations (a non-profit cannot qualify as a small business). 13 CFR 121.105. In the 19 industries (including non-profits) for which SBA's analyses indicated a lower size standard is appropriate, about 1,850 firms, representing 0.6 percent of total firms and 5.1 percent of total sales in those industries, might have lost their small business status, had SBA proposed lowering their size standards. Thus, the net impact for the Sector as a whole is about 1,400 additional firms gaining and none losing small business status under the proposed rule. This will increase the small business share of total industry receipts for the Sector from 59.0 percent under the current size standards to 63.5 percent under the proposed standards.

The benefits of increasing certain size standards to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

More than 40 percent of total Federal contracting dollars received by industries in Sector 81 (excluding NAICS 811212 and those in Subsector 813)) during fiscal years 2006–2008 was accounted for by two of the 18 industries for which size standards have been proposed to increase, namely NAICS 811213 and NAICS 811219. SBA estimates that additional firms gaining small business status in those two and other industries in Subsectors 811 and 812 under the proposed size standards could potentially obtain Federal contracts totaling up to between \$25 million and \$30 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements. The added competition for many of these procurements also would likely result in a lower price to the Government for procurements reserved 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 approximately 10 additional loans totaling between \$4 million and \$5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. Moreover, under the Recovery Act, effective February 17, 2009, SBA is temporarily raising guarantees on its SBA 7(a) loan program and also temporarily eliminating fees for borrowers on SBA 7(a) loans and for both borrowers and lenders on 504 Certified Development Company loans, through calendar year 2009, or until the funds are exhausted. The fee elimination is retroactive to February 17, 2009, the day the Recovery Act was signed. Furthermore, SBA is developing a mechanism for refunding fees paid on loans since then. In addition, since SBA has applied its CDC alternative size standard to its 7(a) Business Loan Program, more capital is available to small businesses. Thus, increasing the size standards will likely result in an increase in small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

The newly defined small businesses would also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

To the extent that 325 additional firms in Subsectors 811 and 812 that become small under the proposed size standards could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in Central Contractor Registration's Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These additional costs are likely to be minimal because mechanisms are already in place to handle these additional administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a 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. In addition, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a) or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standards 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 likely impacts can be identified. 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 contracts for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts competed on a full and open basis.

Similarly, currently defined small businesses may obtain fewer Federal contracts 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 businesses receiving a Federal contract are limited to identifying small or other than small businesses, without regard to the exact size of the business.

As mentioned above, in addition to the estimated 325 businesses that may qualify as small if this proposed rule is adopted, an additional 1,175 non-profit organizations may also be designated as small organizations within the industries in Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations. Non-profit organizations do not qualify for SBA small business programs or for Federal contracts reserved for small business (13 CFR 121.105). However, Federal agencies pursuant to the Regulatory Flexibility Act must consider the impact of their regulations on small entities, which by definition include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(b)). SBA's Office of Advocacy advises Federal agencies to use SBA's numerical size standards by NAICS industry when assessing the impact of a regulation on small organizations.

The proposed revisions to the existing size standards for the Other Services industries are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 12988

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.

Executive Order 13132

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.

Paperwork Reduction Act

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 recordkeeping requirements, other than those required of SBA.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in Sector 81, Other Services. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business 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 are 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 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?

Most of SBA's size standards for the Other Services industries have not been reviewed since the early 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

If this rule is adopted in its present form, SBA estimates that approximately 1,400 additional firms will become small because of proposed increases in size standards in the 18 industries within Sector 81. That represents about 1.8 percent of approximately 75,500 total firms in those industries. This will result in an increase in the small business share of total industry receipts for that Sector from 59.0 percent under the current size standards to 63.5 percent under the proposed standards.

(3) What are 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, recordkeeping or compliance requirements on small entities. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

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

This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business.

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. 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.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

SBA is required to develop numerical size standards for identifying businesses

eligible for Federal small business programs. Other than varying the size standards, no viable alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR Part 121 as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. Amend the table in § 121.201 by revising all entries under Sector 81 to read as follows:

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

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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
Sector 81—Other Services (Except Public Administration)			
Subsector 811—Repair and Maintenance			
811111	General Automotive Repair	\$7.0	
811112	Automotive Exhaust System Repair	\$7.0	
811113	Automotive Transmission Repair	\$7.0	
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	\$7.0	
811121	Automotive Body, Paint and Interior Repair and Maintenance	\$7.0	
811122	Automotive Glass Replacement Shops	\$10.0	
811191	Automotive Oil Change and Lubrication Shops	\$7.0	
811192	Car Washes	\$7.0	
811198	All Other Automotive Repair and Maintenance	\$7.0	
811211	Consumer Electronics Repair and Maintenance	\$7.0	
811212	Computer and Office Machine Repair and Maintenance	\$25.0	
811213	Communication Equipment Repair and Maintenance	\$10.0	
811219	Other Electronic and Precision Equipment Repair and Maintenance	\$19.0	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	\$7.0	
811411	Home and Garden Equipment Repair and Maintenance	\$7.0	
811412	Appliance Repair and Maintenance	\$14.0	
811420	Reupholstery and Furniture Repair	\$7.0	
811430	Footwear and Leather Goods Repair	\$7.0	
811490	Other Personal and Household Goods Repair and Maintenance	\$7.0	
Subsector 812—Personal and Laundry Services			
812111	Barber Shops	\$7.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
812112	Beauty Salons	\$7.0	
812113	Nail Salons	\$7.0	
812191	Diet and Weight Reducing Centers	\$19.0	
812199	Other Personal Care Services	\$7.0	
812210	Funeral Homes and Funeral Services	\$7.0	
812220	Cemeteries and Crematories	\$19.0	
812310	Coin-Operated Laundries and Drycleaners	\$7.0	
812320	Drycleaning and Laundry Services (except Coin-Operated)	\$5.0	
812331	Linen Supply	\$30.0	
812332	Industrial Launderers	\$35.5	
812910	Pet Care (except Veterinary) Services	\$7.0	
812921	Photo Finishing Laboratories (except One-Hour)	\$19.0	
812922	One-Hour Photo Finishing	\$14.0	
812930	Parking Lots and Garages	\$35.5	
812990	All Other Personal Services	\$7.0	
Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations			
813110	Religious Organizations	\$7.0	
813211	Grantmaking Foundations	\$30.0	
813212	Voluntary Health Organizations	\$25.5	
813219	Other Grantmaking and Giving Services	\$35.5	
813311	Human Rights Organizations	\$25.5	
813312	Environment, Conservation and Wildlife Organizations	\$14.0	
813319	Other Social Advocacy Organizations	\$7.0	
813410	Civic and Social Organizations	\$7.0	
813910	Business Associations	\$7.0	
813920	Professional Organizations	\$14.0	
813930	Labor Unions and Similar Labor Organizations	\$7.0	
813940	Political Organizations	\$7.0	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	\$7.0	

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Dated October 9, 2009.

Karen G. Mills,
Administrator.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-9073; 34-60825; IC-28946; File No. S7-22-09]

RIN 3235-AK25

Amendments to Rules Requiring Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing changes to the proxy rules under the Securities Exchange Act of 1934 to improve the notice and access model for furnishing proxy materials to shareholders. Specifically, we are proposing revisions to our rules to provide additional flexibility regarding the format of the

Notice of Internet Availability of Proxy Materials that is sent to shareholders. We are also providing guidance about the current requirement for the Notice to identify the matters intended to be acted on at the shareholders' meeting. In addition to the proposed changes and guidance regarding the format of the Notice, we are proposing a new rule that will permit issuers and soliciting shareholders to include explanatory materials regarding the process of receiving and reviewing proxy materials and voting. Finally, we are proposing revisions to the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option.

DATES: Comments should be received on or before November 20, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-22-09 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-22-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.