

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 |
|-------------|--|---------------------------------------|---------------------------------------|
| 531110 | Lessors of Nonfinancial Intangible Assets (except Copyrighted Works) | 35.5 | |

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Footnotes

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9. NAICS code 531190—Leasing of building space to Federal Government by Owners: For Government procurement, a size standard of \$35.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

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Dated: June 22, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–23389 Filed 9–21–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION**13 CFR Part 121****RIN 3245–AG30****Small Business Size Standards: Health Care and Social Assistance**

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 28 industries in North American Industry Classification System (NAICS) Sector 62, Health Care and Social Assistance, and retaining the current standards for the remaining 11 industries in that Sector. As part of its ongoing comprehensive review of all size standards, SBA evaluated every industry in NAICS Sector 62 to determine whether the existing size standards should be retained or revised. **DATES:** This rule is effective October 24, 2012.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Economist, Size Standards Division, by phone at (202) 205–6618 or by email at sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:**Introduction**

To determine eligibility for Federal small business assistance programs,

SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and the Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income based size standards. At the start of the current comprehensive SBA's size standards review, there were 41 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.*, “exceptions” in SBA's table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases

relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing a group of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency evaluated every industry in NAICS Sector 62, Health Care and Social Assistance, to determine whether the existing size standards should be retained or revised. On February 24, 2012, SBA published a proposed rule in the **Federal Register** (77 FR 11001) seeking public comment on its proposal to increase the size standards for 28 industries in that Sector. The comment period ended on April 24, 2012.

SBA has recently developed a “Size Standards Methodology” for establishing, reviewing and modifying size standards, where necessary. SBA has published the document on its Web site at www.sba.gov/size for public review and comment and also included it as a supporting document in the electronic docket of the February 24, 2012 proposed rule at www.regulations.gov.

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of

Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 62, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contract dollars in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS—NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's "Size Standards Methodology" provides a detailed description of analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its "Size Standards Methodology" to review, and modify, where necessary, the existing standards for industries in NAICS Sector 62. SBA sought comments from the public on a number of issues about its "Size Standards Methodology," such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data

sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's application of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

In the proposed rule, SBA sought comments on its proposal to increase the size standards for 28 industries and retain the existing size standards for the remaining 11 industries in Sector 62. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for certain Industry Groups and Subsectors in NAICS Sector 62.

SBA's analyses could allow lowering existing size standards for two industries in NAICS Sector 62, should the Agency choose to do so. However, as SBA explained in the proposed rule, lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs and would be counter to what the Federal government and SBA are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size

standards for those industries and requested comments on whether the Agency should lower size standards for those two industries for which its analyses might support lowering them.

Summary of Comments

SBA received only one response to the proposed rule. The respondent asked what the fine is for a firm that performs sterilization procedures and does not use an autoclave to sterilize. The question does not address or relate to the size standards changes that SBA proposed for NAICS Sector 62, Health Care and Social Assistance. The regulations or guidelines governing sterilization procedures are beyond the purview of SBA and hence this proposed rule. Thus, SBA is not making any adjustment to proposed size standards based on this comment.

The comment to the proposed rule is available for public review at <http://www.regulations.gov>, using RIN 3245-AG30 or docket number SBA-2012-0003.

Conclusion

Based on the analyses of relevant industry and program data and no public comments against the proposed rule, SBA has decided to increase the small business size standards for the 28 industries in NAICS Sectors 62, as proposed. The revised size standards are shown in Table 1, Summary of Revised Size Standards in NAICS Sector 62, below.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 62

| NAICS Codes | NAICS Industry title | Current size standard (\$ million) | Revised size standard (\$ million) |
|--------------|--|------------------------------------|------------------------------------|
| 621420 | Outpatient Mental Health and Substance Abuse Centers | \$10.0 | \$14.0 |
| 621491 | HMO Medical Centers | 10.0 | 30.0 |
| 621492 | Kidney Dialysis Centers | 34.5 | 35.5 |
| 621493 | Freestanding Ambulatory Surgical and Emergency Centers | 10.0 | 14.0 |
| 621498 | All Other Outpatient Care Centers | 10.0 | 19.0 |
| 621511 | Medical Laboratories | 13.5 | 30.0 |
| 621512 | Diagnostic Imaging Centers | 13.5 | 14.0 |
| 621610 | Home Health Care Services | 13.5 | 14.0 |
| 621910 | Ambulance Services | 7.0 | 14.0 |
| 621991 | Blood and Organ Banks | 10.0 | 30.0 |
| 621999 | All Other Miscellaneous Ambulatory Health Care Services | 10.0 | 14.0 |
| 622110 | General Medical and Surgical Hospitals | 34.5 | 35.5 |
| 622210 | Psychiatric and Substance Abuse Hospitals | 34.5 | 35.5 |
| 622310 | Specialty (except Psychiatric and Substance Abuse) Hospitals | 34.5 | 35.5 |
| 623110 | Nursing Care Facilities (Skilled Nursing Facilities) | 13.5 | 25.5 |
| 623210 | Residential Intellectual and Developmental Disability Facilities | 10.0 | 14.0 |
| 623220 | Residential Mental Health and Substance Abuse Facilities | 7.0 | 14.0 |
| 623311 | Continuing Care Retirement Communities | 13.5 | 25.5 |
| 623312 | Assisted Living Facilities for the Elderly | 7.0 | 10.0 |
| 623990 | Other Residential Care Facilities | 7.0 | 10.0 |
| 624110 | Child and Youth Services | 7.0 | 10.0 |
| 624120 | Services for the Elderly and Persons with Disabilities | 7.0 | 10.0 |
| 624190 | Other Individual and Family Services | 7.0 | 10.0 |
| 624210 | Community Food Services | 7.0 | 10.0 |
| 624221 | Temporary Shelters | 7.0 | 10.0 |

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 62—Continued

| NAICS Codes | NAICS Industry title | Current size standard (\$ million) | Revised size standard (\$ million) |
|--------------|---|------------------------------------|------------------------------------|
| 624229 | Other Community Housing Services | 7.0 | 14.0 |
| 624230 | Emergency and Other Relief Services | 7.0 | 30.0 |
| 624310 | Vocational Rehabilitation Services | 7.0 | 10.0 |

For the reasons as stated above in this rule and in the proposed rule, SBA is retaining the current size standards for the two industries for which analytical results suggested the Agency could lower. This is consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597 (October 6, 2010)), NAICS Sector 72, Accommodation and Food Services (75 FR 61604 (October 6, 2010)), NAICS Sector 81, Other Services (75 FR 61591 (October 6, 2010)), NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)), and NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)). In each of those final rules, SBA retained the existing size standards for those that it could have reduced. SBA is also retaining the existing size standards for the nine industries in NAICS Sector 62 for which the results supported their current levels.

Compliance With Executive Orders 12866, 13563, 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 final rule is not a “significant regulatory action for purposes of Executive Order 12866. In order to help explain the need for this rule and the rule's potential benefits and costs, SBA is providing a Cost Benefit Analysis in this section of the rule. This is also not a “major rule” under the Congressional Review Act (5 U.S.C. 801)

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 28 industries in NAICS Sector 62, Health Care and Social Assistance, reflect the changes in economic characteristics of small businesses and the Federal procurement market. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development,

and advocacy programs. To assist the intended beneficiaries of these programs, SBA establishes distinct definitions to determine which businesses are deemed small. The Small Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (15 U.S.C. 632(a)). The Act also requires that small business size definitions vary to reflect industry differences. The Jobs Act requires the Administrator to review at least one-third of all size standards within each 18-month period from the date of its enactment, and review all size standards at least every five years thereafter. The supplementary information sections of the February 24, 2012 proposed rule and this final rule explained in detail 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 because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement programs reserved for small businesses. Federal small business programs provide targeted 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 (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Other Federal agencies may also use SBA's size standards for a variety of regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 28 industries in NAICS Sector 62 for which SBA has increased size standards, SBA estimates that more than 4,100 additional firms will obtain small business status and become eligible for these programs. That is about 0.7 percent of the total number of firms that are classified as small under the current standards in all industries within

NAICS Sector 62. SBA estimates this will increase the small business share of total industry receipts in all industries within NAICS Sector 62 from about 30 percent under the current size standards to nearly 32 percent.

Three groups will benefit from the revised size standards in NAICS Sector 62 in the following ways: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

During fiscal years 2008 to 2010, about 66 percent of Federal contracting dollars spent in industries in NAICS Sector 62 were accounted for by the 28 industries for which SBA has increased size standards. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling up to \$25 million to \$30 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the data for fiscal years 2008 to 2010 data, SBA estimates about 35 to 45 additional loans totaling about \$11 million to \$15 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, as described above, the Jobs Act established an alternative size standard (\$15 million in tangible net worth and \$5 million in net income

after income taxes) for business concerns that do not meet the size standards for their industry. Thus, increasing the size standards will likely result in more 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.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of one or more disasters, SBA cannot make a meaningful estimate of future EIDL benefits.

To the extent that all 4,100 newly defined additional small firms under the revised size standards become active in Federal procurement programs, there may be some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. In addition, there will be new firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone forms or those qualifying for small business, WOSB, SDVOSB, and SDB status. Among businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. 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 might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the small business, 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, there are several likely impacts. There may 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. In addition, some Federal agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by more 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 small businesses under the existing size standards. SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards in NAICS Sector 62, Health Care and Social Assistance, 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 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups.

SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and how interested parties can provide SBA with input and feedback on the size standards review.

Furthermore, when SBA issued the proposed rule, it provided notice of its publication to individuals and companies that had in recent years exhibited an interest by letter, email, or phone, in size standards for NAICS Sector 62 so they could comment.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the proposed rule and this final rule for NAICS Sector 62.

The review of size standards in NAICS Sector 62, Health Care and Social Assistance, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them, where necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size

standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 62, Health Care and Social Assistance. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a), 504 and economic injury disaster loans, and various small business benefits under other programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (RFA) of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that 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 are the need for and objective of the rule?

Although size standards for three Subsectors of NAICS 62 (NAICS Subsector 621, Ambulatory Health Care Services; NAICS Subsector 622, Hospitals; and NAICS Subsector 623, Nursing and Residential Care Facilities) were reviewed during 1999–2000, size standards for NAICS Subsector 624, Social Assistance, which includes nine industries, have not been reviewed since the early 1980s. Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries within NAICS Sector 62. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised size standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

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

SBA estimates that more than 4,100 additional firms will become small because of increases in size standards in 28 industries in NAICS Sector 62. That represents 0.7 percent of total firms that are small under current size standards in all industries within that Sector. This will result in an increase in the small business share of total industry receipts for the Sector from about 30 percent under the current size standard to nearly 32 percent under the proposed standards. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least once annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to Federal 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?

Under § 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 to do otherwise. 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 (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)).

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

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no

practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual industries within NAICS Sector 62 are discussed in the supplementary information to the proposed rule and this final rule.

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 amends 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), 662, and 694a(9).

■ 2. In § 121.201, in the table, revise the entries for “621420”, “621491”,

“621492”, “621493”, “621498”, “621511”, “621512”, “621610”, “621910”, “621991”, “621999”, “622110”, “622210”, “622310”, “623110”, “623210”, “623220”, “623311”, “623312”, “623990”, “624110”, “624120”, “624190”, “624210”, “624221”, “624229”, “624230”, and “624310” 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 |
|--------------|--|---------------------------------------|---------------------------------------|
| * * * * * | | | |
| 621420 | Outpatient Mental Health and Substance Abuse Centers | \$14.0 | |
| 621491 | HMO Medical Centers | 30.0 | |
| 621492 | Kidney Dialysis Centers | 35.5 | |
| 621493 | Freestanding Ambulatory Surgical and Emergency Centers | 14.0 | |
| 621498 | All Other Outpatient Care Centers | 19.0 | |
| 621511 | Medical Laboratories | 30.0 | |
| 621512 | Diagnostic Imaging Centers | 14.0 | |
| 621610 | Home Health Care Services | 14.0 | |
| 621910 | Ambulance Services | 14.0 | |
| 621991 | Blood and Organ Banks | 30.0 | |
| 621999 | All Other Miscellaneous Ambulatory Health Care Services | 14.0 | |
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| 622110 | General Medical and Surgical Hospitals | 35.5 | |
| 622210 | Psychiatric and Substance Abuse Hospitals | 35.5 | |
| 622310 | Specialty (except Psychiatric and Substance Abuse) Hospitals | 35.5 | |
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| 623110 | Nursing Care Facilities (Skilled Nursing Facilities) | 25.5 | |
| 623210 | Residential Intellectual and Developmental Disability Facilities | 14.0 | |
| 623220 | Residential Mental Health and Substance Abuse Facilities | 14.0 | |
| 623311 | Continuing Care Retirement Communities | 25.5 | |
| 623312 | Assisted Living Facilities for the Elderly | 10.0 | |
| 623990 | Other Residential Care Facilities | 10.0 | |
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| 624110 | Child and Youth Services | 10.0 | |
| 624120 | Services for the Elderly and Persons with Disabilities | 10.0 | |
| 624190 | Other Individual and Family Services | 10.0 | |
| 624210 | Community Food Services | 10.0 | |
| 624221 | Temporary Shelters | 10.0 | |
| 624229 | Other Community Housing Services | 14.0 | |
| 624230 | Emergency and Other Relief Services | 30.0 | |
| 624310 | Vocational Rehabilitation Services | 10.0 | |
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Dated: September 14, 2012.

Karen G. Mills,
Administrator.

[FR Doc. 2012–23394 Filed 9–21–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0638; Directorate Identifier 2011–NM–266–AD; Amendment 39–17201; AD 2012–19–06]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes. This AD was prompted by a report of a lightning strike hitting an airplane tail boom causing certain rear bulkhead parts to jam an elevator control rod. This AD requires installing or reworking, as applicable, metallic diverters and aluminum sheets; modifying the light assembly on the tail boom rear movable fairing; and replacing the hood assembly with a new hood assembly and rerouting its electrical harness. We are issuing this AD to prevent lightning strikes from causing certain parts to contact the airplane pitch control system, which could reduce airplane controllability.

DATES: This AD becomes effective October 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA

98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 18, 2012 (77 FR 36224). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

[A] lightning strike event hitting the airplane tail boom [caused certain rear bulkhead parts to jam an elevator control rod] * * *. The lack of the appropriate protection against lightning strike effects [could cause certain parts to contact the airplane pitch control system, which could reduce airplane controllability.]

* * * * *

The required actions include installing or reworking, as applicable, metallic diverters and aluminum sheets; modifying the light assembly on the tail boom rear movable fairing; and replacing the hood assembly with a new hood assembly and rerouting its electrical harness. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 36224, June 18, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 668 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$2,507 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$2,356,036, or \$3,527 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 36224, June 18, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.