

2. Amend § 120.710 by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

§ 120.710 What is the Loan Loss Reserve Fund?

* * * * *

(b) *Level of Loan Loss Reserve Fund.* Until it is in the Microloan program for at least five years, an Intermediary must maintain a balance on deposit in its LLRF equal to 15 percent of the outstanding balance of the notes receivable owed to it by its Microloan borrowers ("Portfolio").

(c) *SBA Review of Loan Loss Reserve.* After an Intermediary has been in the Microloan program for five years, it may request the SBA's AA/FA to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five year period. Upon receipt of such request, the AA/FA will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve.* The AA/FA has the authority to reduce the percentage of an Intermediary's Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five year period. The AA/FA can not reduce the loan loss reserve to less than ten percent of the Portfolio.

(e) *What Intermediary Must Demonstrate to Get a Reduction in Loan Loss Reserve.* To get a reduction in its loan loss reserve, an Intermediary must demonstrate to the satisfaction of the AA/FA that

(1) Its average annual loss rate during the preceding five years is less than fifteen percent, and

(2) No other factors exist that may impair the Intermediary's ability to repay all obligations which it owes to the SBA under the Microloan program.

Dated: July 20, 1999.

Aida Alvarez,
Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; General Building Contractors, Heavy Construction, Dredging and Surface Cleanup Activities, Special Trade Contractors, Garbage and Refuse Collection, and Refuse Systems

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes a size standard of \$25.0 million in average annual receipts for all industries in General Building Contractors (Standard Industrial Classification (SIC) Major Group 15) and for all industries except Dredging and Surface Cleanup Activities in Heavy Construction Other Than Building Construction (SIC Major Group 16); \$20.0 million for Dredging and Surface Cleanup Activities (part of SIC 1629, Heavy Construction, Not Elsewhere Classified (NEC)); \$10.5 million for all Special Trade Contractors industries (SIC Major Group 17); and \$9.0 million for Garbage and Refuse Collection, Without Disposal (part of SIC 4212, Local Trucking Without Storage), and Refuse Systems (SIC 4953). The proposed revisions are being made to adjust these industries' size standards for the effects of inflation since the time they were established in the mid-1980s.

DATES: Comments must be submitted on or before September 24, 1999.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW, Mail Code 6880, Washington DC 20416.

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

SUPPLEMENTARY INFORMATION: SBA proposes revisions to its size standards in two industry groups—Construction and Refuse Systems and Related Services. For Construction, SBA proposes an increase to the size standards for all industries in General Building Contractors and Heavy Construction (except Dredging and Surface Cleanup Activities), Major Groups 15 and 16, respectively, from \$17 million in average annual receipts to \$25 million; for Dredging and Surface Cleanup Activities (a component of SIC 1629, Heavy Construction, NEC), from \$13.5 million to \$20 million; and for all industries in Special Trade Contractors, Major Group 17, from \$7 million to \$10.5 million. For the two industries comprising Refuse Systems and Related Services, SBA proposes an increase to the size standard from \$6 million to \$9 million for Garbage and Refuse Collection, part of SIC 4212 (Local Trucking Without Storage) and for Refuse Systems, SIC 4953.

These proposed revisions adjust the current size standards for inflation that has occurred since 1984, when all but one of these size standards became effective. The size standard for Dredging and Surface Cleanup Activities became effective on December 9, 1985 (50 FR 46418, November 8, 1985), based on a

special study of the industrial structure of the Dredging industry. That study essentially verified that the inflation adjustment of 40% which applied to all other Construction industries in 1984 was also appropriate for Dredging. Thus, SBA believes it is appropriate to apply the 1994 inflation adjustment to the Dredging industry without any adjustment for the later date when the Dredging size standard actually took effect.

From September 30, 1988 until September 30, 1996, SBA was prohibited by statute from changing the size standards for the Construction and Refuse Systems and Related Services industries. These industries are subject to the special procurement procedures of the Small Business Competitiveness Demonstration Program (Program) (Title VII of Pub. L. 100-656, 102 Stat. 3853, 3889). This Program specifies special procedures on the use of small business set-aside contracting for the procurement of services within four designated industry groups. The designated groups are: Construction (SIC codes 1521-1542, SIC codes 1611-1629 and SIC codes 1711-1799); Engineering Services (SIC code 8711), Architectural Services (SIC code 8712), and Surveying and Mapping Services (SIC codes 8713 and part of SIC code 7389); Refuse Systems and Related Services (SIC code 4953 and part of SIC code 4212); and Non-nuclear Ship Repair (part of SIC code 3731, Ship Building and Repairing).

Between 1988 and 1996, the Program included a provision that prohibited any change to the size standards for any industry in the designated industry groups that were in effect as of September 30, 1988. However, the Small Business Act of 1996 included an amendment to the Program that repealed this prohibition (Omnibus Consolidated Appropriations Act, 1997, Division D, Title I, section 108 of Pub. L. 104-208, 110 Stat. 3009-733.) In the accompanying legislative history, Congress indicated that SBA should take appropriate action to adjust the size standards for the designated industry groups, although no specific guidance was provided on how these size standards should be adjusted by SBA.

SBA's preliminary assessment of the industries covered by the Program indicated that the size standards for the Engineering Services, Architectural Services, and Surveying and Mapping Services industries, among the lowest of SBA's size standards, were more in need of adjustment than the other size standards. Further review of those industries led to a proposed rule to increase their size standards published

on February 3, 1998 (63 FR 5480) and a final rule adopting new size standards published on May 14, 1999 (64 FR 26275). At this time, SBA is proposing only an inflation adjustment to the remaining industries covered by the Program which have a receipts-based size standard. A decision will be made at a later time on whether to propose a change to the 1,000-employee size standard for Non-nuclear Ship Repair.

The inflation adjustment proposed for the Construction and Refuse Systems and Related Services industries' size standards is identical to the percentage SBA made to most of its receipts-based size standards in 1994 (see 59 FR 16513, April 7, 1994) to account for the effects of inflation that had occurred since 1984, the year of SBA's previous inflationary adjustment (49 FR 5024, February 9, 1984). SBA is choosing to adjust these size standards to the levels that would have occurred in 1994, if they could have been adjusted at that time, so that all receipts-based size standards will be adjusted for inflation to the same point in time. All of SBA's receipts-based size standards will have been adjusted to the same time period if this rule becomes final (except for the agricultural production size standards which are statutorily set). SBA recognizes that inflation has occurred since 1994, but not to a sufficient amount to warrant further adjustment at this time to these or other receipts-based size standards. SBA will make a consistent inflation adjustment to all receipts-based size standards when data suggest the need for such an inflation adjustment.

Inflation Adjustment Methodology

On April 7, 1994, SBA adjusted most of its receipt-based size standards to account for the effects of inflation that had occurred since SBA's previous inflationary adjustment in 1984 (59 FR 16513, April 7, 1994). In that rule, SBA applied an inflation adjustment of 48.2% to each receipts-based size standard and then rounded that level to the nearest half million dollar increment. This rounding method produces increases to most industry size standards that are slightly above or below the calculated inflation rate of 48.2%.

In determining the rate of inflation, SBA used the U.S. Department of Commerce's Gross Domestic Product (GDP) Implicit Price Deflator. The 1994 adjustment calculated inflation from the third quarter of 1982 (the ending period for the previous inflation adjustment in 1984) to the fourth quarter of 1993 (the latest data available at the time of the 1994 final rule). SBA proposes to make

the same adjustments to the industries addressed in this notice of proposed rulemaking.

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. Meets detailed definitions or standards established by the Administrator of SBA.

In lieu of a separate small business eligibility criterion, SBA includes as part of its evaluation of a size standard whether a concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally takes into consideration the market share of firms at a recommended size standard, or other factors that may reveal if a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that at the recommended size standards of \$25.0 million for General Building Contractors and Heavy Construction, \$20 million for Dredging and Surface Cleanup Activities, \$10.5 million for Special Trade Contractors and \$9.0 million for Garbage and Refuse Collection and for Refuse Systems, no firm at or below those levels would be of a sufficient size to be dominant in its field of operation. Firms at the proposed size standards generate less than one percent of total industry sales for each industry reviewed in this proposed rule. This low level of market share for the largest firm covered by SBA's proposed size standards effectively precludes any ability by a firm to exert a controlling effect on the industry in which it operates.

Alternative Size Standards

SBA considered adjusting the Construction and Refuse Systems and Related Services size standards by the amount of inflation that has been reported by the latest available GDP deflator (first quarter of 1999). The GDP deflator records an inflation rate of 60.6% from the third quarter of 1982 through the first quarter of 1999. As discussed earlier, if this adjustment were applied to the Construction and Refuse Systems and Related Services size standards it would result in receipts-based size standards being adjusted at different time periods.

SBA is closely monitoring the amount of inflation that has occurred since the 1994 adjustment and will propose an

inflation adjustment to all receipts-based size standards when it has determined that a significant amount of inflation has occurred to warrant such an adjustment. Thus far, inflation has only increased 9.6% since the 1994 adjustment—an amount too small to warrant an inflation adjustment at this time. Furthermore, industry data from the U.S. Bureau of the Census' 1997 Economic Census will be available next year upon which to reassess these industries' size standards.

SBA welcomes public comments on the proposed size standards for the Construction and Refuse Systems and Related Services industries. Comments on alternative size standards should explain the reasons why they are preferable to the proposed size standards.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

SBA certifies that this rule, if adopted, would be a significant regulatory action within the meaning of Executive Order 12866 since it is expected to have an annual economic impact of over \$100 million. For purposes of the Regulatory Flexibility Act, this rule would have a significant impact on a substantial number of small businesses if adopted. Immediately below, SBA has set forth an initial regulatory flexibility analysis and economic impact analysis of this proposed rule.

1. Description of Entities to Which the Rule Applies

SBA estimates that 2,279 additional firms would be considered small as a result of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided they meet other program requirements. Many of these firms (if in existence at the time) probably had small business status in 1984 when the size standards for these industries were established, but have since lost eligibility because of inflationary increases.

Of the additional firms gaining eligibility, 621 operate in General Building Contractors, 375 operate in Heavy Construction, 1,153 operate in the Special Trade Construction industries, while 130 operate in Refuse Systems and Related Services.

Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate \$28.9 billion in annual sales, while total sales in these industries are \$564 billion. Of the \$28.9 billion in annual sales for newly eligible firms, \$11.7 billion are in the General

Building Contractors industry, \$7.2 billion are in Heavy Construction, \$9.1 billion are in the Special Trades and \$0.9 billion are in Refuse Systems and Related Services.

SBA estimates that out of the approximately \$7.85 billion in total initial Federal contracts per year, an additional \$400 million worth of contracts could be awarded to firms designated as small firms in the four industry groups affected by this rule. Of these contracts, \$378 million could be awarded to the newly defined firms and \$22 million to current small firms. These contracts could be obtained through awards under the small business set-aside Program, the 8(a) Program, the Small Disadvantaged Business (SDB) Program, the HUBZone Empowerment Contracting Program, or on an unrestricted basis.

Also, these newly defined small businesses would be eligible for SBA's financial assistance programs and could potentially receive an estimated \$21.2 million in loans under the 7(a) Guaranteed Loan Program and \$3.9 million in loans under the Certified Development Company (504) Program.

2. Description of Potential Benefits of the Rule

This rule will result in an increase in the number of firms eligible for small business set-aside contracts, the 8(a) Program, the HUBZone Program, and SDB and HUBZone price preferences. For Federal contracts set aside for small business or competed under the 8(a) and HUBZone Programs, this rule will lead to an increase in competition for these contracts and thus lower overall costs to the government.

When an SDB or HUBZone firm competes for an unrestricted contract, the Federal government generally allows them a price preference of up to 10%. This rule may increase the number of firms competing for these contracts in two ways. First, the number of SDB and HUBZone firms will increase. Second, with more small firms competing on unrestricted contracts, the government may decide to set aside more contracts for competition among all small businesses where they had previously awarded price preferences. Any increase

in competition that results in a more efficient or competitive firm winning a contract will result in a benefit.

3. Description of Potential Costs of the Rule

In areas where the rule acts to decrease competition for contracts, it may lead to an increase in costs. This may occur in areas where small businesses are currently not present or are not bidding on Federal contracts. If, after issuance of this rule, small businesses bid on these contracts and require the government to provide a price preference or this rule causes a decision to set aside a contract under one of the procurement preference programs, it may increase costs to the Federal government on some contracts. These additional costs will be relatively minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a) and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

4. Transfers

The primary effect of the rule will be transfers among the four parties involved—Federal government, large firms, firms gaining small business status under this rule, and firms that are currently small firms. SBA estimates that, of the \$400 million in Federal contracts expected to be awarded to the small firms, approximately 11.3%, or \$45.2 million, may be reallocated from large firms to current small firms and the newly defined small firms.

The remaining \$354.8 million of contracts will not change hands, rather, the firms holding the contracts will be reclassified as small under the rule. In addition, of \$3.9 billion of initial contracts awarded to small firms, SBA estimates that \$43.8 million could be transferred from current small firms to larger, more efficient or competitive, newly defined small firms.

5. Description of Reasons Why This Action Is Being Taken and Objectives of Rule

SBA has provided in the supplementary information a statement of the reasons why these new size

standards should be established and a statement of the reasons for and the objectives of this rule.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, SBA certifies that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small business.

For the reasons stated 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: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

§ 121.201 [Amended]

2. In § 121.201, the table “SIZE STANDARDS BY SIC INDUSTRY,” is amended as follows:

- a. Revise DIVISION C—CONSTRUCTION:
- b. Under DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES, MAJOR GROUP 42—MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING, revise the entry 4212 (Part):
- c. Under DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES, MAJOR GROUP 49—ELECTRIC, GAS, AND SANITARY SERVICES, revise the entry 4953 to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
* * * * *	
DIVISION C—CONSTRUCTION	
MAJOR GROUP 15—GENERAL BUILDING CONTRACTORS	\$25.0

