Dated: May 30, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE89

Small Business Size Standards; Forest Fire Suppression and Fuels Management Services

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting a size standard of $15 million in average annual receipts for the activities of ''Forest Fire Suppression and Fuels Management Service'' classified within the ''Support Activities for Forestry'' industry (North American Industry Classification System (NAICS) 115310). This action will better define the size of businesses in these activities that the SBA believes should be eligible for Federal small business assistance programs. The size standard for the remainder of activities in this industry remains at $6 million.

DATES: This rule is effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Program Analyst, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On July 19, 2002, the SBA published a proposed rule in the **Federal Register** (67 FR 47480) to establish a $15 million size standard for forest fire suppression and fuels management services under NAICS code 115310, the Support Activities for Forestry industry. The SBA proposed to establish a size standard for these activities after reviewing requests from firms in the forestry industry. These firms believe that this action is warranted in light of the increased emphasis by the Federal Government on removing biomass fuels from the Nation's forest, the dramatic increase in funding for this effort, and the Federal Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires.

Based on these concerns, the SBA conducted a review of this industry's size standard. In addition to reviewing patterns of Federal procurement in this industry, it collected and evaluated data on the industry's structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs, and the degree of concentration of economic activity among very large firms in the industry. Based on its review of each of these evaluation factors, and the nature and patterns of Federal contracting for forest fire suppression and fuels management services, the SBA concluded that the data supported a size standard for forest fire suppression and fuels management services industry activities of $15 million in average annual receipts. The SBA did not propose a change to the $6 million size standard for all the other remaining forestry activities within the industry. (For more information on the reasons for the proposed establishment of a $15 million size standard, see the July 19, 2002, proposed rule.) After careful consideration of the comments received on the proposed rule, the SBA has decided to adopt its proposed size standard of $15 million.

Discussion of Comments on the Proposed Rule

The SBA received 19 comments on the proposed size standard from eight environmental and economic associations, five firms, three Federal agencies, two individuals, and one trade association. In summary, eight commenters supported the proposed size standard and 11 commenters opposed that change. Below is a summary of the major issues raised by the comments received on the proposed rule and the SBA's response.

Comments Supporting a Higher Size Standard

One organization supported the proposed increase in the size standard, but claimed that the increase could be greater than $15 million due to the 2002 fire season. This commenter did not provide any supporting statistics or documentation.

The SBA does not adopt this comment. In the proposed rule, the SBA discussed the reasons for proposing the size standard at $15 million. Even though the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) expended record contract dollars for the 2002 fire season, the SBA found that the firms impacted the most were those whose revenues were below $6 million before the 2002 season. Several of these firms now exceed the current size standard. The increased revenues from this past fire season support the SBA's reasons for establishing a size standard above the current $6 million level for forest fire suppression and fuels management services activities. The SBA believes that a $15 million size standard is sufficient to allow these companies to grow to a size to meet the capital requirements of forest fire suppression and fuels management services contracts. The SBA is reluctant to adopt a higher size standard than it proposed without more information on the structure of the industry that demonstrates a stronger basis for a higher size standard.

Three commenters supported the proposed size standard because of the importance it has on firms engaged in forest fire suppression and fuels management services. One commenter pointed out that the firms performing these tasks have been developed primarily for Federal Government work. The commenter contends ''it is a logical extension of the effort that Federal agencies have pursued to allow companies that have been developed for Federal work to continue this work * * * The higher standard allows continued growth as well as expansion of the small business pool through subcontracting.'' Another commenter added that the Federal Government's reliance on the private sector is expected to significantly increase due to the emphasis on contract use under the National Fire Plan and the effort to outsource commercial work that can be done by private concerns.

One Federal agency expressed concern about the shift in the forestry industries away from logging and into forest fire suppression and fuels management services. The commenter stated that if a firm exceeds the size standard, there is no commercial market for these types of firms, as ''The Government is in the only game in town.'' These firms make up a significant portion of one of its contracting offices' fire fighting resources. It also pointed out that normally small business set-aside programs are designed to help small businesses graduate and go onto bigger and more lucrative commercial contracts. In this industry, the Federal Government far exceeds the amount of work done by private landowners, or even by the states and counties.

The SBA agrees with these comments. As stated in the preamble to the proposed rule, over the last several years the Federal Government has placed greater reliance upon contractors to perform these services, resulting in a dramatic increase in contract funding for forest fire suppression and fuels management activities. This is especially true in the western part of the country where the Federal Government owns vast amounts of land. This development has significantly changed the size structure of firms engaged in these activities, and supports the need to establish a higher size standard.

Two commenters cited increased contractor costs as a basis for increasing the size standard. One commenter identified the increasing prevailing wages mandated by the U.S. Department of Labor; the increases in fuels costs for mechanical equipment, chain saws, and drip torches for igniting prescribed fires; and the use of specialty personal protective clothing and equipment as factors leading to the increased costs. Another commenter applauded the SBA's acknowledgment of the increased capital costs placed upon companies due to the Federal Government's reliance upon these firms.

The SBA agrees with these comments. As stated in the proposed rule, because of the shift in forest fire fighting and fuels management services policies by the Federal Government, many firms have had to make capital investments in equipment and specialized clothing. In addition, the SBA obtained from the National Interagency Fire Center (NIFC) information on the average fire crew labor costs for fiscal year 2002. This information shows that the Federal Government's labor costs contracted for fire crews range between $23 and $35 per hour, with an average being $30 per hour. The level of labor costs and capital investments supports the SBA's proposal for a higher size standard.

One Federal agency commented that the increase will benefit the Government by increasing the number of viable small businesses eligible for small business set-aside awards for forest fire suppression and fuels management services. This agency noted that it has witnessed a decreasing number of business bidding on fuels reduction road maintenance contracts. Many of the firms no longer qualify under the $6 million size standard. Many of these firms qualify under the higher size standard of their primary industry (*e.g.*, Other Waste Collection (which includes brush removal) with a $10.5 million size standard and Site Preparation Contractors with a $12 million size standard). In addition, the agency is aware of one contractor who is already hiring fewer crews and refusing fire assignments in order to stay under the size standard.

The agency also expressed concern that it may receive little or no competition for small business set-aside projects because of the number of firms doing fire suppression work and who have also qualified to do prescribed burns are at or above the current size standard. The commenter pointed out that substantial costs are incurred in the acquisition and maintenance of equipment as well as the training and retention of quality employees. In addition, the agency has several contractors who are now running crews under State contracts, and ''with the number of fire emergencies in the 2 years, these firms are near or at the current size standard.''

The agency's comments support the SBA's findings discussed in the proposed rule that due to the increased funding for fuels management services and the severe fire seasons, many firms who perform these services for the Federal Government have had a significant increase in their revenues. Without an increase to the size standard, the Federal Government may help small business to develop their abilities in forest fire suppression and fuels management services only to have them either restrict their growth or force the agency to find and develop a new group of inexperienced firms. This, coupled with the earlier comment that the Federal Government is the primary source of revenues for the industry, strongly supports increasing the current size standard.

Comments Opposing a Size Standard Increase

Four commenters opposed an increase to the current size standard because they believe that there are ample small businesses to perform fuels management services. One of these commenters provided calendar year 2000 data on the number of employees in the Support Activities for Forestry industry for the State of Oregon from the U.S. Bureau of Census' County Business Patterns statistical database. These data show that firms with 99 or less employees comprise 97% of the firms in Oregon, while 60% of the firms have four employees or less. This commenter also stated that in fiscal year 2001, using the BLM and the USFS databases for contracts awarded to firms in the States of Oregon and Washington, $87 million was expended for forestry services. The average income per contractor was $156,000, with the largest contractor capturing $7.2 million. Only 16 firms captured more than $1 million in work, while 396 captured contracts totaling $100,000.

The SBA does not agree with the comment that a size standard increase is unnecessary. The information presented by one of the commenters does not accurately reflect all firms, nationwide, that are involved in forest fire suppression and fuels management services. When developing size standards, the SBA looks at industry statistics on a national level, as its size standards affect all industry firms and Federal programs. One commenter relied on a Census Bureau report for the State of Oregon that presented information only on the number of employees in the Support Activities for Forestry industry. This report did not give data on industry receipts, which is a more accurate representation of the size distribution of firms in this industry because of its seasonal nature. The SBA's reasons for using receipts instead of employees were discussed in the proposed rule. In addition, the information presented by these commenters was for the entire Support Activities for Forest industry in Oregon, which includes firms that estimate timber, provide forest pest control services, consultant on wood attributes and reforestation, plant trees, and provide land treatment services. As explained in the proposed rule, the SBA could not use the Census Bureau data it usually relies upon to evaluate industry structure. Although that database (a special tabulation of the 1997 Economic Census) provides national industry data on firms by receipts size, it does not provide firm data on specific activities within the industry. Moreover, the significant increase in spending for forest fire suppression and fuels management services occurred after the 1997 Economic Census, and thus, the data do not reflect the impact of this increased spending on the size distribution of firms in the industry.

This commenter also presented Federal contract awards limited to firms in the States of Oregon and Washington for all forestry support services. As stated in the proposed rule, the SBA obtained information from the Federal Data Procurement Center on forest fire suppression and fuels management services contract awards from fiscal years 1998—2000, which showed that the contract awards to firms increased from $29 million in fiscal year 1998 to $173 million in fiscal year 2000. During that period the percentage of Federal contract award dollars to small business for forest fire suppression decreased from 76% to 51%. During the period of 1998 through the first two quarters of fiscal year 2002, the percentage of Federal contract award dollars to small business for fuels management decreased from 100% to 75%. The SBA believes that these trends reflect the changing composition of businesses in forest fire suppression and fuels management services and the need to establish a new size standard.

Two commenters stated that the SBA's approximation for forest fire suppression firm size is unrealistically large. These commenters stated that the SBA's estimate of 20 fire crews (one crew has 20 members) for 90 days is overestimated. They pointed out that the largest firms in the Pacific Northwest have 10 crews, and that 60 days is more of a realistic fire season. One of these commenters also used a labor cost of $20.25 per hour.

The SBA does not agree with this comment. In the proposed rule, the SBA stated that it had received a request from an organization, representing forest fire suppression firms, to increase the size standard for forest fire suppression and fuels management services to 500 employees or $27.5 million. This organization justified its recommendations, in part, by stating that 20 fire crews for 90 days could generate $10.8 million.

The SBA obtained information on fire crew lists and labor and engine rates on the national fire fighting contract from NIFC for the 2002 season. The national average labor rate for fire crews was $30 per hour and the average rate for a fire engine was $1,500 per day. The average number of fire crews was four and the average number of engines was three. In addition, the 2002 fire season was unusually long, starting in April and ending in October, a 150–180 day season. Using this information the SBA calculated the potential revenues of firms engaged in forest fire suppression. With the extended fire season, the SBA recognized that the crews would not work everyday, and used a 120 estimate of days crews worked. The table below estimates the potential revenues by the number of crews.

TABLE 1.—POTENTIAL REVENUES BY NUMBER OF CREWS

Average hourly rate	12 hour work day	Average days worked	# of 20 person crews	Total # of employees	Potential 2002 revenues
$30	12	120	4	80	$3.5M
$30	12	120	9	180	$7.8M
$30	12	120	15	300	$12.9M

Using these estimates, the average firm with four crews would have the potential to generate $3.5 million in revenues just from forest fire suppression activities. Add in the cost of three fire engines at $1,500 per engine, $4,500 per day, for the 120 days, $540,000, and the average firm's 2002 revenues for just fire suppression is greater than $4 million. Given that many of the firms that fight forest fires are in other industries, these firms potentially will have revenues in excess of $6 million. The SBA believes that the size standard must be set at a level above $6 million to properly take into account these higher cost activities.

Two commenters stated that increasing the size standard will cause greater market concentration in the fuels management services. Two other commenters stated that an increase would allow for ''dominant industries'' to out-compete small businesses.

The SBA disagrees with these comments. Federal procurement statistics show that there has been a dramatic drop in the percentage of award dollars going to small business in fuels management services. In 1998, 100% went to small businesses. However, in the first two quarters of fiscal year 2002 small business captured only 75% of the award dollars. The percentage of contract dollars going to small business will continue to decrease because of the dramatic increase in fire suppression dollars in 2002, the growth in Federal monies for fuels reduction, and because many of the fuels management firms also are forest fire suppression contractors. As discussed in the proposed rule, the SBA believes that increasing the size standard will increase competition in the industry, thereby increasing opportunities for small business.

Seven commenters stated that the problem of size growth stems from the way the Federal Government is issuing contracts, *i.e.*, the size of each requirement, the use of Request for Proposals and Indefinite Delivery Indefinite Quantity (IDIQ) type contracts, and the bundling of requirements. Two of these commenters recommended that Federal land management agencies issue smaller contracts that would be accessible to smaller businesses. Both claimed that the rapid growth of the largest firms in the industry is a result of the Federal Government offering increasing large contracts.

The SBA does not agree with this comment. The SBA reviewed the fiscal year 2003 procurement forecasts for the BLM and USFS and found that these agencies were structuring their requirements for specific areas and not offering large bundled contracts. All but two of the BLM's fiscal year 2003 projected solicitations and three of the USFS fiscal year 2003 projected solicitations have estimated values not to exceed $250,000. Also, this issue is not relevant to adopting or rejecting the proposed size standard. Additionally, issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see its recently proposed rule on this issue (68 FR 5134, dated January 31, 2003).

One commenter stated that $15 million was not a small business. In fact, this commenter stated that $1 million is larger than any small business operation existing in her area. The commenter claimed that a $15 million business would not be a local forestry small business.

The SBA does not agree with this recommendation. Firms with revenues below $1 million are not representative of all small businesses that perform forest fire suppression and fuels management contracts. Data the SBA analyzed on firms engaged in forest fire suppression and fuels management services clearly support a size standard above the current $6 million size standard.

Separate Forest Fire Suppression and Fuels Management Services Categories

The SBA received five comments recommending that forest fire suppression be separated from fuels management services. All five commenters claimed that many of the small firms were well below the current size standard and are capable of doing fuels management services. Three of these commenters acknowledge that the forest fire suppression activity may have higher capital costs, start up costs, and training costs. These firms stated that the capital costs, start up costs, and training needs may be more limited for fuels management services. Two commenters claimed that combining these two activities into one industry activity may inaccurately merge businesses of two different types together. Two different commenters stated that fuels management firms are more like firms in other forestry services than they are like forest fire suppression firms. The equipment and skill levels for mechanical thinning are unrelated to fire suppression equipment.

The SBA acknowledges that some misinterpretation may have been caused by combining forest fire suppression and fuels management services into a single sub-industry description. Both are separate activities under the Support Activities for Forestry industry. Instead of listing one exemption for both forest fire suppression and fuels management services, the SBA will modify its table of small business size standards by listing two separate exceptions under Support Activities for Forestry—one for forest fire suppression and one for fuels management services.

The SBA does not agree with the comments regarding mechanical thinning, capital costs, training, and skill levels. Mechanical thinning is only one aspect of fuels management services. As stated in the definition of fuels management services in the proposed rule, this activity also involves prescribed fire, establishment of fuel breaks, as well as thinning, pruning, and piling. In addition, contracts for these services include the removal and/or disposal of biomass. The use of prescribed fire for these services requires firms experienced in controlling forest fires. Firms who perform this portion of fuels management have expended capital on fire retardant clothing, fire fighting equipment, and training. These firms also pay higher insurance premiums because of the danger in working with controlled fire. These firms, along with their fire engines, are also certified for controlling fires by the USFS. Firms that establish fuel breaks as part of their fuel management services, require capital investment in heavy equipment such as yarders, and earth moving equipment. Many times, these firms are also involved as excavation contractors and heavy equipment contractors (site preparation contractors have a $12 million size standard and heavy equipment contractors have a $28.5 million size standard). In addition, fuels management contracts may include the removal and/or disposal of the biomass (brush removal contractors have a size standard of $10.5 million size standard). Fuels management services is not limited to mechanical thinning, as suggested by some commenters. The costs, training, and equipment for various fuels management contractors may be just as high as for forest fire suppression contractors.

Periodic Reviews and Adjustments Aside From Inflationary Adjustments

One commenter recommended that the SBA perform periodic reviews on the Forestry industry aside from inflationary adjustments. The SBA agrees with this comment. As stated in the proposed rule, the SBA would continue to monitor this activity in the future to determine if another increase is warranted. If the review shows that another change in the size standard is needed, the SBA will issue a proposed rule, outlining the reasons for the change.

Use of Receipts Over Number of Employees

One commenter, a contracting officer, supported the SBA's decision to establish this size standard by receipts instead of number of employees because of the great fluctuation in employment which rises and falls throughout the year due to the fire suppression season. During a severe fire season, like 2002, some firms may operate 25 20-person crews for a period of weeks or a few months. The number of employees then drops to the amount needed to conduct fuels management.

As discussed in the proposed rule, the SBA believes that using a number of employees size standard is not appropriate for forest fire suppression and fuels management services, as most firms performing these activities have fluctuating numbers of employees because of the seasonal nature of forest fire suppression. A receipts-based size standard is a more appropriate measure of a firm's operations in these activities.

Contrary to National Fire Plan

Three commenters stated that the SBA's actions would be contrary to the National Fire Plan, which was developed to reduce forest fire hazards and increase preparedness for fire suppression. All three emphasized that Congress' approach was not to create larger businesses but to build new capacity in rural communities near national forests and other public lands, and that they provided authority to direct work to small and micro businesses.

The SBA does not agree with this comment. The SBA believes its actions are aligned with Congress' intent for the National Fire Plan. Because of the devastating fire seasons during the past 5 years, and the establishment of National Fire Plan, funding to firms in forest fire suppression and fuels management services has dramatically increased. With this rule and because of the National Fire Plan, the SBA is recognizing the effect this dramatic increase in funding has had, and will continue to have, on firms in this industry.

Workers' Health and Safety in Jeopardy

One commenter claimed that increasing the size standard would ''allow firms to grow beyond the point where contractors can ensure adequate attention to worker health and safety.'' This issue does not pertain to factors related to establishing a size standard. Health and safety issues are the function of the administrative contracting officer as they monitor the compliance with the clauses in the contract that regulate these issues.

Negative Environmental Outcome

One commenter stated that the SBA actions would ''open the doors to the potentially damaging new industry of removing unsustainable quantities of biomass fuel from the nation's forest.'' This comment deals with environmental issues and does not relate to the size of a firm in the forest fire suppression and fuels management services.

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

The Office of Management and Budget (OMB) has determined that the proposed rule is a significant regulatory action for purposes of Executive Order 12866. 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 purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. Below is a regulatory impact analysis of this size standard change.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, the SBA believes that a size standard for forest fire suppression and fuels management services is needed to better define small businesses engaged in these industry activities.

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. Under this rule, approximately 50 to 60 additional firms will obtain small business status and become eligible for these programs. These programs include the SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone), including the application of a HUBZone or SDB price evaluation preference or adjustment for contracts awarded through full and open competition. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA size standards for a variety of regulatory and program purposes. In situations where the SBA's size standard is not appropriate for an agency's program, the agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.902).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards; 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 financial programs, in particular its 7(a) Guaranteed Loan program. Under this program the SBA estimates that $100,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 50 to 60 additional businesses will likely result in only one or two small business guaranteed loans to businesses in this industry.

The newly defined small businesses would also benefit from the 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. During fiscal years 2001–02, however, no loans were made to firms in the Support Activities for Forestry industry.

Awards to small businesses for forest fire suppression and fuels management services have decreased 27% over the last three fiscal years. Small business award dollars to firms in the forestry services activities, most of which were for forest fire suppression and fuels management services, amounted to $185 million. If this rule becomes final, small business status would be restored to several firms that have lost small business status because of the rapid growth in Federal funding and contracting in this industry. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year ($185 million × 27%) under the small business set-aside program, the 8(a) and HUBZone programs, or unrestricted contracts.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Federal contractors with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 50 to 60 additional firms could become active in Federal 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 the SBA guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net database program. Among businesses in this group seeking the SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental 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 as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since 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.

The new size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal 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 potential transfer of contracts away from large and currently defined small businesses would be limited by the newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to the current size standard for forest fire suppression and fuels management services is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Federal 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 the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. The SBA estimates that an additional 50 to 60 businesses may obtain small business status as a result of this rule. Also, small businesses may obtain an additional $50 million in Federal contracts.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and the 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 the SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the need for and objective of the rule; a description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

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

The SBA's objective of this rule is to establish an appropriate small business definition of businesses engaged in forest fire suppression and fuels management services, and therefore, eligible for Federal small business assistance programs. The significant increase in Federal funding and the Federal Government's increased use of contractors to perform these services has altered the structure of the industry and support the need for a new size standard for these activities.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

The SBA received no comments in response to the IRFA of the proposed rule.

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

The SBA estimates that 200 to 300 businesses are engaged in forest fire suppression and fuels management services. These businesses come from industries in the Forestry and Logging Subsector (NAICS codes 113110, 113210, 113310, and 115310). As this is an emerging industry, the SBA developed its estimate from discussions with, and information provided by the USFS, the BLM, and industry groups. From these discussions, the SBA estimates that approximately 50% of these firms are small businesses, many of which may be currently at or just below the $6 million threshold. With the adoption of this rule, 50 to 60 additional businesses will gain small business status. Although this may not represent a substantial number of small businesses, the SBA is preparing an FRFA to ensure that the impact on small businesses of higher size standards are known and have been considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and the SBA's knowledge of contracting in these areas, the SBA estimates that small business coverage will increase by 12% of total revenues in this activity. These revenue estimates were calculated from the size distributions of the parent industries in which forest fire suppression and fuels management service firms are presently classified.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

A new size standard does not impose any additional reporting, record keeping or other compliance requirements on small entities for the SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determines ''voluntary'' access to the SBA and other Federal programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Business Zones (HUBZone); and (2) eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year under the small business set-aside program, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents approximately 27% of the $185 million in total Federal expenditures for forest fire suppression and fuels management.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act, 15 U.S.C. 632, and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The increased emphasis by the Federal Government on removing biomass fuels from the Nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires supports establishing a separate size standard of $15 million.

(b) What Alternatives Did the SBA Reject?

One commenter recommended a $1 million size standard, stating that $15 million was not a small business. In fact, this commenter stated that $1 million is larger than any small business operation existing in the commenter's area and that a $15 million business would not be a local forestry small business.

The SBA does not consider this alternative realistic. Firms with revenues below $1 million are not representative of all small businesses that perform forest fire suppression and fuels management services. A $1 million size standard is well below the $6 million size standard for all forestry industries, including Support Activities for Forestry. In addition, a $1 million size standard is below the base size standard for non-manufacturing industries.

By adopting the size standard at $15 million, the SBA will minimize the impact on the small businesses in these emerging activities. Increased Federal funding and requirements, the Federal Government's growing reliance on the private sector for these services, and the severe fire seasons over the last several years have caused many firms to outgrow the $6 million size standard, thus reducing small business competition for these services. The $15 million size standard will allow firms in these activities to grow to an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other 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, amend part 121 of title 13 of the 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 ''Subsector 115—Support Activities for Agriculture and Forestry,'' revise the entry for 115310 to read as follows; and

■ b. Add footnote 17 at the end of the table to read as follows:

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 115—Support Activities for Agriculture and Forestry		
* * * * * * *			
115310	Support Activities for Forestry	$6.0	
EXCEPT	Forest Fire Suppression [17]	[17] 15.0	
EXCEPT	Fuels Management Services [17]	[17] 15.0	
* * * * * * *			

Footnotes

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[17] *NAICS code 115310 (Support Activities for Forestry)*—Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

Dated: April 25, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–14037 Filed 6–3–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–125–AD; Amendment 39–13174; AD 2003–11–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that requires replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. This action is necessary to ensure that the lanyards on the pressure relief door have adequate strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 9, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on February 27, 2003 (68 FR 9034). That action proposed to require replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $10,080, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive: