

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards: Size Standards Methodology

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Availability of White Paper on Size Standards Methodology.

SUMMARY: The U.S. Small Business Administration (SBA) is advising the public that it is making available a White Paper putting forth and explaining how it establishes, reviews and modifies (when appropriate) small business size standards. The document, entitled "Size Standards Methodology," is available on SBA's Web site where any interested party can review and/or download it. Elsewhere in this issue of the Federal Register SBA has published three proposed rules that would, if adopted, modify a number of size standards in three North American Industry Classification System (NAICS) Sectors, namely: Sector 44-45, Retail Trade; Sector 72, Accommodation and Food Services; and Sector 81, Other Services. SBA has applied "Size Standards Methodology" to those three proposed rules and will apply it to future regulatory actions that relate to establishing, reviewing and modifying size standards. The Agency welcomes comments on "Size Standards Methodology" and on the three proposed rules elsewhere in this issue of the Federal Register. "Size Standards Methodology," is available electronically from the SBA's Web site at: <http://www.sba.gov/size>.

ADDRESSES: The size standards methodology white paper is available electronically on SBA's Web site at <http://www.sba.gov/size>. You may submit comments on "Size Standards Methodology," identified by Docket number SBA-2009-0008 by one of the following methods: (1) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: U.S. Small Business Administration, Khem R. Sharma, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to sizestandards@sba.gov. Highlight the information that you consider to

be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not..

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business 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--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) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect the changes in the Federal contracting marketplace. Therefore, SBA has undertaken a complete review of all small business size standards. The last overall review of size standards occurred during the late 1970s to early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of 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 has, in the past, included its methodology for reviewing size standards in its proposed and final rules that related to the industry or industries under examination. In the course of its comprehensive review of all small business size standards SBA has now developed and formalized its small business size standards processes. "Size Standards Methodology" describes how SBA establishes, evaluates and adjusts its small business size standards pursuant to the Small Business Act (Act) and related legislative guidelines. Under the Act (Pub. L. 85-236, as amended), the SBA Administrator (Administrator) has authority to establish small business size standards for Federal government programs. Congress left to administrative discretion precisely how the Administrator should establish small business size standards or what they should be. "Size Standards Methodology"

provides a brief review of the legal authority, early legislative history and regulatory history of small business size standards, a detailed description of the size standards methodology, and concludes with a discussion of numerous policy issues regarding the objectives and direction of size standards. An appendix at the end of the document summarizes the detailed analytical steps involved in the evaluation of size standard for an industry.

In establishing size standards, the Act and its legislative history highlight two considerations. First, size standards should vary to account for differences among industries. Second, the policies of the Agency should assist small businesses as a means of encouraging and strengthening their competitiveness in the economy. These two considerations form the basis for the SBA current methodology for establishing small business size standards.

SBA examines the structural characteristics of an industry as a way to assess industry differences and the overall degree of competitiveness of an industry and of firms within the industry. "Size Standards Methodology" describes more fully how SBA examines industry structure and analyzes five primary factors--average firm size, degree of competition within an industry, start up costs and entry barriers, distribution of firms by size, and small business share in Federal contracts. SBA also considers other secondary factors as they relate to the industries and the interests of small businesses, including technological change, competition among industries, industry growth trends, and impacts on SBA programs.

SBA conducts a statistical analysis of data on the primary factors, and secondary factors as appropriate, to establish a size standard for a specific industry. As a starting point, SBA presumes \$7.0 million as an appropriate size standard for the services, retail trade, construction, and other industries with receipts based size standards; 500 employees for the manufacturing, mining and other industries with employee based size standards; and 100 employees for the wholesale trade industries. These three levels, referred to as "anchor size standards," are not minimum size standards, but rather benchmarks or starting points. To the extent an industry displays "differing industry characteristics," a size standard higher, or in some cases lower, than an anchor size standard is supportable. "Size Standards Methodology" includes an extensive discussion of the statistical analyses involved in size standards determination.

SBA welcomes comments from the public on a number of issues. SBA is aware that different choices among size standards can involve complex tradeoffs among relevant variables; SBA invites comments on how to

identify and weigh those variables. Suggestions are invited on alternative methodologies for determining small businesses; on how these size standards affect competition in general and within the specific industry; on alternative or additional factors that SBA should consider; on whether SBA's approach to small business size standards makes sense in the current economic environment; on whether SBA's using anchor size standards is appropriate in the current economy; on whether there are gaps in SBA's methodology because of the lack of comprehensive data; and on alternative datasets SBA should consider for a specific sector.

The concluding section of "Size Standards Methodology" raises a number of policy questions that SBA has to address in developing a robust methodology for establishing, evaluating and revising its small business size standards. Examples include how high of a size standard is too high? Should there be a single basis for all size standards (i.e., employees or annual receipts)? Should there be a fixed number of "bands" of size standards or separate standard for each industry? "Size Standards Methodology" includes several other issues, including some that tend to be on-going questions.

SBA encourages the public to review "Size Standards Methodology" and to comment on it either in whole or in part.

Dated: October 9, 2009.
Karen G. Mills,
Administrator.