Proposed Rules

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

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Small Business Size Standards; Job Corps Centers

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to establish a $30 million size standard in average annual receipts for Job Corps Centers activities classified within the ''Other Technical and Trade Schools'' industry (North American Industry Classification System code 611519). The current size standard for all activities within this industry is $6 million in average annual receipts.

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416; via email to *SIZESTANDARDS@sba.gov,* or via facsimile at (202) 205–6930. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from the U.S. Department of Labor (DOL) and three other organizations to review the size standard used for Federal Job Corps Center contracts. DOL operates most Job Corps Centers though private sector companies. DOL had classified its Job Corps Centers contracts under the Facilities Support Services industry, NAICS code 561210, and applied the previous Base Maintenance size standard of $20 million in average annual receipts (as defined in 13 CFR 121.401). A potential offeror on a recent solicitation appealed this NAICS designation to SBA's Office of Hearings and Appeals (OHA). OHA rendered a decision that the Job Corps Center contract was not properly classified under the Base Maintenance sub-category of Facilities Support Services. (See NAICS Appeal of Global Solutions Network, Inc., SBA No. NAICS–4478, dated March 5, 2002.) For the appealed requirement, OHA determined that the proper classification for an activity that trains individuals in life skills and readies them for the job market through academic studies and/or technical training is Other Technical and Trade Schools, NAICS code 611519. The effect of this decision was to change the size standard for Job Corps Center contracts from $20 million to $5 million. (On February 22, 2002, an inflation adjustment increased the $5 million size standard for NAICS 611519 to $6 million and the $20 million size standard for Base Maintenance to $23 million. *See* 67 FR 3041, dated January 23, 2002.)

According to DOL, Job Corps Center contracts account for more than $900 million annually in contracting and represent about 60 percent of DOL's procurement expenditures. SBA agreed to review the size standard for Job Corps Centers because of the large amount of contracting in one specific activity and the significant change in the size standard resulting from the OHA decision. Based on our review, this rule proposes to establish a $30 million size standard specifically for DOL Job Corp Center contracts. The discussion below describes SBA's general methodology for reviewing size standards, the basis for creating an industry sub-category of Job Corps Centers, the data obtained on Job Corp Center contracts and on the bidders to these contracts, the analysis leading to the decision to propose $30 million, and the alternative size standards considered by SBA.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). SBA's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's Web site at *http:/www.sba.gov/library/soproom.html*) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: Section 3(a)(2) of the Small Business Act (15 U.S.C. 632 (a)(2)), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristic. SBA has two ''base'' or ''anchor'' size standards that apply to most industries—500 employees for manufacturing industries and $6 million in average annual receipts for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was adjusted periodically for inflation so that, currently, the anchor size standard $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the ''typical industry.''

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping.

If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that SBA considers in analyzing the structural characteristics of an industry are listed in 13 CFR 121.102 (a) and (b). Those factors include average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. Average firm size is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. The distribution of firms by size examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supportable for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of $28.5 million in receipts and less. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million and less in receipts generated 50 percent of total industry receipts. Viewed in isolation, the higher figure for the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent comparison discussed above. Usually, SBA uses information based on the most recent economic census conducted by the Department of Commerce's Bureau of the Census. However, Job Corps Centers are germane to the Federal government and involve approximately 35 organizations and firms from various industries. Information specific to Job Corps Centers under NAICS code 611519 is not reflected in the latest census data. Therefore, SBA gathered pertinent data on the various firms in this industry, which it will use along with the Census data.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, SBA has calculated nonpayroll costs per establishment for each industry. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs, which would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. Industry competition is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry'generally referred to as the ''four-firm concentration ratio''with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard in order to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review, while its comparison groups also average less than 40 percent.

5. ''Impact of size standard revisions on SBA programs'' refers to the possible impact a size standard change may have on the level of small business assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

Another factor to evaluate the impact of a proposed size standard on SBA programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially if it is already above the anchor size standard) may not be necessary.

Establishing a Job Corps Centers Sub-Industry Category

The Other Technical and Trade Schools industry which OHA designated for Job Corps Center contracts comprises establishments primarily engaged in offering job or career vocational or technical courses that are not specifically designated under NAICS as industries in their own right. The curriculums offered by these schools are highly structured and specialized and lead to job-specific certification. Examples of these schools include truck driving schools, bartending schools, and graphic arts schools. These schools tend to offer trade specific training and certification, and are usually small. More than 95 percent of these firms have revenues at or below $6 million.

The DOL's Job Corps Centers, on the other hand, go beyond trade certification programs. Job Corps is a residential education and training program that helps students between the ages of 16 and 24 gain the experience they need to get a better job and take control of their lives. The mission is to prepare economically disadvantaged youth to obtain and hold gainful employment, pursue further education or training, or satisfy entrance requirements for careers in the Armed Forces. The centers provide comprehensive life skills training, comprehensive career preparation and development services which include academic, vocational, social and independent living skills, and career-readiness training and support services. The centers offer college preparatory training, military entrance training, career transition activities, and training and certification in a trade. Basic life-skills training include basic reading and math skills, English as a second language, dietary, dental, basic health, personal hygiene, as well as job life skills. The centers provide academic training that will lead to a high school diploma or equivalent and conduct training in computer skills, resume development, interview skills, and career development. Besides providing teachers for these requirements, several centers have agreements with local high schools as well as local community colleges. Centers also prepare interested participants for military service exams, and train students in various trades, including plumbing, carpentry, culinary arts, auto-mechanic, electrician, facilities maintenance, landscaping, brick masonry, etc. The Job Corps contractors are required to provide outreach activities and also to maintain the facility, purchase any equipment needed in the teaching of a trade (outfitting kitchens for culinary studies, purchasing heavy machinery for mechanical and automotive trades, *etc.*), provide medical and dental facilities, and perform admission physicals which include drug and alcohol abuse screening.

The significantly broader scope of activities performed by Job Corps Center contractors as compared with the activities of all other trade schools within its industry supports a separate assessment of an appropriate size standard. Job Corps Centers are larger than the typical trade school, with an average yearly funding of $8.8 million for one center (yearly funding for each center ranges from $5 million to over $44 million). The average size trade school in NAICS 611519 is less than one million dollars.

Because the performance of Job Corps Center contracts is a segment of the Other Technical and Trade Schools industry, SBA's proposal includes a footnote to the table of size standards defining the activities covered. It explains that contracts for Job Corps Centers require the complete maintenance and operation of the centers. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. SBA invites comment on this definition so that it is accurately depicts the scope of activities currently performed by Job Corps Center contractors.

Industry Data on Job Corp Centers

The U.S. Bureau of the Census does not published specific data on firms engaged in the operation and management of Job Corps Centers. Also, companies that perform and compete for these Job Corp Center contracts operate primarily in industries outside of the Other Technical and Trade Schools industry. To assess a size standard for the operation and maintenance of Job Corps Centers, SBA collected contract and company data from DOL and Dun and Bradstreet (D&B). Tables 1–3 summarize these data.

SBA collected fiscal years 2000–01 data from the DOL on organizations who have contracts or who have submitted proposals on Job Corps Center requirements, and used information provided on D&B Information Reports on these organizations. A review of those organizations shows the following information. There are approximately 35 organizations in this activity. The organizations include for-profit businesses, the YWCA, businesses owned by Native American tribes and nations, and several non-profit establishments. There are 21 organizations currently under contract with DOL to operate Job Corps Centers. According to D&B reports, these organizations are in the following industries: Management of youth facilities, vocational rehabilitation, facilities maintenance, home health care services, human resource counseling, management consulting, and information retrieval. Seven organizations were awarded contracts under Small Business Set-Aside procedures with the contracting officer using the appealed NAICS code of 561210 and the previous Base Maintenance size standard of $20 million. Five of the organizations in this activity have receipts below $6 million, but only one of these currently has a Job Corps Center contract. In addition, D&B information shows that four of the five organizations have receipts below $1 million. These firms are in the following industries: temporary help services, construction, investigation services, and engineering and technical services.

Twenty six of the 35 organizations are listed with D&B. Two non-profit organizations do not have receipts and employees listed on their D&B reports, therefore, SBA has relevant information on 24 organizations. D&B reports on eight organizations show the number of employees but lacked information on those firms' receipts. For these eight organizations, SBA estimated their receipts based organizations in similar industries with similar employee counts.

SBA calculated the average characteristics of the 24 Job Corp Center organizations that provided D&B with receipt and employee information. Table 1 shows the mean and median values of these organizations. Because of the small number of organizations competing for Job Corps Center contracts, the mean values are inordinately influenced by a few very large firms. The median values are considered more reflective of the average characteristics of Job Corps

Center firms and are used in the analysis of industry structure discussed later in this rule.

TABLE 1.—INDUSTRY CHARACTERISTICS OF THE JOB CORPS CENTER ACTIVITY

Category	Mean		Median	
	Receipts (millions)	Employees	Receipts (millions)	Employees
Job Corps Center	$75.3	1,820	$30.0	400

Tables 2 and 3 examine the distribution of firms in relation to receipts and number of employees. In addition, Table 2 contains information on the percentage distribution of Job Corps Center contract dollars by receipts size of the firm.

TABLE 2.—RECEIPTS DISTRIBUTION AND PERCENTAGE OF CONTRACT DOLLARS FOR JOB CORPS CENTER ACTIVITY

Receipts (in millions)	Number of firms/organizations	Percent of total job corps center contract dollars
$100 and over	3	52
$50–$99,999	7	28
$30–$49,999	2	7
$20–$29,999	2	2
$10–$19,999	4	5
$6–$9,999	1	1
Below $6	5	1
Undetermined	[1] 3	4

[1] Two organizations with Job Corps Center contracts are listed with D&B, but provided no receipt and employee information. One non-profit organization with a Job Corps Center contract is not listed with Dun and Bradstreet.

TABLE 3.—EMPLOYEE DISTRIBUTION FOR JOB CORPS CENTER ACTIVITY

Employees	Number of firms and organizations
Over 2,500	1
1,000–2,499	5
500–999	5
250–499	5
150–249	4
0–149	4
Undetermined	[1] 3

[1] Two organizations with contracts are listed with D&B, but provided no receipt and employee information. One non-profit organization with a Job Corps Center contract is not listed with Dun and Bradstreet.

Evaluation of Size Standard for the Job Corps Center Sub-industry: Tables 4 and 5 below show the characteristics of the Job Corp Centers sub-industry and for two comparison groups. The first comparison group is comprised of all industries with a $6 million receipts-based size standard, referred to as the nonmanufacturing anchor group. Since SBA assumes that the $6 million anchor size standard is appropriate for a nonmanufacturing industry, this is the most logical set of industries to group together for the industry analysis to assess whether a size standard at the anchor size standard or higher is appropriate. The second comparison group consists of nonmanufacturing industries which have the highest levels of receipt-based size standards established by SBA, referred to as the nonmanufacturing higher-level size standard group. Size standards for these industries range from $21 million to $29 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to characteristics of the higher-level size standards group. By doing so, SBA can assess if a size standard among its highest receipts-based size standards is appropriate or an intermediate size standard between the anchor size standard and the range of higher size standards.

SBA examined economic data on the comparison group industries taken from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the Census (Census). Data on Job Corps Centers contracts, contractors, and bidders were obtained from DOL and D&B, as described earlier. *Industry Structure Consideration:* Table 4 below examines the size distribution of firms. For this factor, SBA is evaluating the cumulative size of firm that account for predetermined percentages of total industry receipts (40 percent, 50 percent, 60 percent, and 70 percent). The table shows firms up to a specific size that, along with all other smaller firms, account for a specific percentage of total industry receipts. For the Job Corps Center bidders, the percentages reflect the value of awarded Job Corps Center contracts.

TABLE 4.—SIZE DISTRIBUTION OF FIRMS IN THE JOB CORPS CENTER SUB-INDUSTRY, NONMANUFACTURING ANCHOR GROUP AND HIGHER-LEVEL SIZE STANDARD GROUP

[Data in millions of dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Job Corps Centers Bidders	$54.5	$68.6	$900.0	$900.0
Nonmanufacturing Anchor Group	$3.2	$5.8	$11.8	$28.0
Higher-level Size Standards Group	$24.2	$50.4	$135.6	$423.6

These data support a size standard significantly higher than $6 million for the Job Corps Centers industry. At a given coverage level the size of firms in the Job Corps Centers industry is substantially larger than in the two comparison groups. In relation to the nonmanufacturing anchor group, the Job Corp Center firms are 18 to 32 times larger, and almost double that of the higher-level size standard. Because the size distribution of Job Corps Centers firms is significantly higher than that of the nonmanufacturing anchor group, the analysis of this factor supports a size standard significantly above the $6 million nonmanufacturing anchor size standard and at or beyond the size standards of the higher-level size standard group.

Table 5 lists the two other evaluation factors of average firm size and the four-firm concentration ratio for the Job Corps Centers sub-industry and the comparison groups.

TABLE 5.—INDUSTRY CHARACTERISTICS OF THE JOB CORPS CENTER INDUSTRY, NONMANUFACTURING ANCHOR GROUP, AND HIGHER-LEVEL SIZE STANDARDS GROUP

Category	Average firm size		Four firm concentration ratio (percent)
	Receipts (millions)	Employees	
Job Corp Center Bidders	$30.0	400	50.0
Nonmanufacturing Anchor Group	$0.95	10.6	14.4
Higher-level Size Standards Group	$4.6	21.4	26.7

For Job Corps Centers, its average firm size in receipts is over 30 times larger than the average firm size in the nonmanufacturing anchor group and approximately six and one half times that of the higher-level size standards group. Moreover, its average firm size in employees is 19 to 37 times the average sizes of these two comparison groups. This factor is substantially higher than the comparison groups and supports a size standard far above $6 million. Because the size distribution of Job Corps Centers firms is significantly higher than that higher-level size standard group, this factor supports a size standard at or beyond the range of $21 million to $29 million.

The four-firm concentration ratio for Job Corps Center firms is about double that of the higher-level size standards group. This factor supports a size standard at least within the range of the higher-level size standards group.

The start-up costs evaluation factor is not analyzed since no data are not available for Job Corp Centers. However, the following discussion of program considerations addresses the issue of size of contract which indirectly relates to the start-up costs associated with Job Corps Centers.

SBA Program Considerations: SBA is proposing this rule to establish a size standard specifically for DOL's Job Corps Centers contracts. SBA's loan programs will be minimally affected as organizations participating in the Job Corps Centers primarily operate in other industries, namely facility support services, general construction, and home health care services.

SBA extensively reviewed the scope of Job Corp Centers and the organizations bidding on and winning these contracts. Since the beginning of the Job Corps Centers program, the Federal Government has relied on the private sector for the operation of most of these centers or parts of the centers. Since the inception of the Job Corps Centers program, DOL has contracted out the entire operation and maintenance of a facility. A Job Corps Center contract requires an organization to provide teachers, counselors, administrators and support personnel, outreach activities, medical and dental facilities; and perform admissions physicals, maintain the facility, and purchase any equipment needed in the teaching of a trade. Over the years the Job Corps program has developed many public-private partnerships with various trade unions, corporations, and organizations. Many trade unions provide teachers and provide opportunities for the participants to apprentice with master tradesmen. Because the mission of these centers prepares students for the job market, many of the functions of the centers are integrated as a teaching tool for the students. As an example, students interested in culinary arts studies will work in the cafeteria alongside chefs, or a student interested in learning the plumbing trade will work with the maintenance crews, gaining ''hands-on'' experience. This approach has been extremely successful in achieving the mission and goals of the Job Corps Center program.

DOL operates 118 Job Corps Centers, of which 88 centers are run by the private sector. All but two of these centers are residential where students are housed. Several centers operate as advanced centers. For example, the San Francisco center runs an advanced culinary institute that prepares participants with skills beyond the high school level. The yearly funding in fiscal year 2001 for these centers ranged from $5 million to more than $44 million for their residential centers, with an average yearly funding amounting to $8.8 million per year per center. Non-residential center contracts range from $4 million to more than $6 million.

Procurement statistics show that in fiscal year 2001, DOL expended $909.5 million in Job Corps Center contracts. There are 21 organizations currently under contract with DOL to operate Job Corps Centers. Seven firms were awarded their contracts under Small Business Set-Aside procedures. (For these set-aside contracts, DOL used the appealed NAICS code of 561210 and applied the previous $20 million size standard for Base Maintenance). These small businesses account for 6 percent of total Job Corps Center contract dollars.

The analysis of Job Corps Center contracts indicates that a size standard of $6 million inadequately identifies the smaller segment of organizations competing for and obtaining these types of contracts. A size standard of at least equal to the current Base Maintenance size standard of $23 million represents a more realistic and effective size standard. The size of winning contractors and the average size of Job Corps Center contracts support this assessment.

As discussed above, there are 21 organizations performing 88 Job Corps Center contracts. Table 6 below summarizes the size of the awardees and bidders on these contracts. Only one of the successful organizations has receipts below $6 million. This organization's contract is for $5.8 million per year. With a contract that is yearly funded just below the current $6 million size standard, this organization will probably outgrow the size standard by the end of its next fiscal year, potentially leaving no currently defined small Job Corps Center contractor eligible for future small business asides. Of four other organizations under $6 million in receipts competing for Job Corps Center contracts, none have been successful offerors.

TABLE 6.—BREAKDOWN ON FIRMS AND ORGANIZATIONS INVOLVED IN JOB CORPS CENTER ACTIVITY

	Number of firms	Industries
Firms and organizations involved or interested in Job Corps Center Activity.	35	
Firms and organizations with Job Corps Center contracts	21	Industries: tribal business, management of youth facilities, vocational rehabilitation, facilities maintenance, home-heal care services, human resource counseling, management consulting, and information retrieval.
Firms under $23 million	11	
Firms under $23 million with Job Corps Center Contracts	7	
Firms under $6 million	5	
Firms under $6 million with Job Corps Center contracts	1	
Firms with revenues under $1 million (none have Job Corps Center contracts).	4	Industries: Temporary help services, construction, investigation services, and engineering and technical services.

Table 2 above shows that 80 percent of the value of Job Corps Center contracts were awarded to organization with receipts of $50 million or more. All of the awards to small business were made as set-aside awards. Only one percent of Job Corps Center contract dollars go to small businesses using a $6 million size standard. In addition, 49 percent of contract dollars were expended with firms and organizations that have over $100 million in receipts. This shows that a significant proportion of economic activity within the Job Corps Centers industry is concentrated among a few relatively large organizations.

Tables 7 and 8 below illustrate that firms that have been successful in winning Job Corps Center contracts are concentrated in industries that have size standards significantly greater than $6 million, such as general construction, facilities maintenance services, and home health care services. These observations provide further evidence that a size standard greater than $6 million is needed to attract the type of firms capable of performing the broad range of activities of Job Corp Centers.

TABLE 7.—LISTING OF PRIMARY INDUSTRIES OF JOB CORPS CENTER CONTRACTORS

Primary industry	Size standard (million)
General Construction	$28.5
Facilities Maintenance Services	$23.0
Home Health Care Services	$11.5
Vocational Schools	$6.0

TABLE 8.—LISTING OF PRIMARY INDUSTRIES FOR FIRMS THAT HAVE SUBMITTED PROPOSALS AGAINST JOB CORPS CENTER SOLICITATIONS BUT HAVE NOT WON JOB CORPS CENTER CONTRACTS

Primary industry	Size standard (million)
Supply Services	$6.0
Investigation Services	$10.5
Engineering and Technical Services	$4.0
	$6.0
Behavioral Health Services	$6.0

The size of Job Corps Centers contracts explains to a great extent the pattern of awards by size of contractor. For an organization to perform on the average Job Corps Center contract of $8.8 million, it generally must be at least several times that size. Under the current $6 million size standard, if an organization receives an award for just one center, it is close to or over the current $6 million size standard. Those organizations under the current size standard would probably go over $6 million in receipts within a year if they receive any other substantial business. Thus, with a $6 million size standard, the opportunities for small businesses in this activity are severely limited.

Additionally, firms with receipts over $23 million currently handle from four to 22 Job Corps Centers. On average, they operate nine centers. Small businesses must be able to successfully compete with these large organizations, therefore, the size standard needs to be set at a threshold where these businesses can reach a competitive level. In discussions with DOL, an organization can achieve meaningful economies of scale by operating three to four centers. The total operational costs of three centers are $26.4 million (based on an average cost of $8.8 million per center), and indicates support of a size standard at that level as a viable alternative to the $6 million level.

Overview: Based on a review of each evaluation factor, SBA is proposing a $30 million size standard for Job Corps Centers. All of the factors support a size standard comparable to those of the nonmanufacturing higher-level size standard group, which ranges between $21 million to $29 million. Most factors support even a higher size standard. A $30 million size standard takes into consideration that a Job Corps Center organization achieves economics of scales operating three to four centers. This suggests a size standard of $26.4 million or more. Since organizations involved with Job Corps Center contracts have other operations, SBA also needs to take that fact into account in establishing a size standard for Job Corps Centers. A $30 million size standard provides small businesses the ability to compete and grow at 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.

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) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that no organization at or below the proposed size standard in the Job Corps Centers activities would be of a sufficient size to dominate its field of operation. For Job Corps Centers, an organization with $30 million in receipts could obtain about three percent of the total dollar value of Job Corps Center contracts. This level of market share effectively precludes an organization at or below the proposed size standard to exert a controlling effect on Job Corps Center contracts.

Alternative Size Standards: SBA concluded that a single size standard of $6 million was inadequate to define small businesses in the entire Other Technical and Trade Schools industry. The size standard would be too low for Job Corps Centers or too high for all other industry activities, such as job training facilities, marine navigation schools, and truck driving schools. Establishing two size standards for these industries would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA considered restoring the $20 million size standard for Job Corps Centers previously applied by DOL. After reviewing the industry data, in particular procurement data, which show the average Job Corp Center contract is for $8.8 million, SBA concluded that a $20 million size standard would not be adequate for Job Corps Centers. The adoption of this size standard would allow a firm to receive only two Job Corps Center contracts and be at risk of outgrowing its small business status before reaching sufficient economies to be competitive against the larger incumbent Job Corps Center contractors. Therefore, SBA decided against a $20 million size standard for Job Corps Centers since it would not allow sufficient growth and business development.

SBA welcomes public comments on its proposed size standard for Job Corps Centers. SBA is concerned with how the proposed size standards may negatively impact those qualified under the current size standard. Comments supporting an alternative to the proposal, including the $20 million, or the option of retaining the size standard at $6 million discussed above, should explain why the alternative would be preferable to the proposed size standard, and how the alternative impacts current small businesses.

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 not a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

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, 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 SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a size standard for Job Corps Centers is needed to better define small businesses engaged in these activities.

ii. 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 10 additional firms will obtain small business status and become eligible for these programs. These include Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those for contracts awarded through full and open competition after application of the HUBZone or SDB price evaluation preference or adjustment. They may also become eligible for SBA financial assistance programs. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses sufficient to evaluate the impact of size standards changes. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

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 may benefit from SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program SBA estimates that $700,000 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 10 additional businesses may result in only one or two small business guaranteed loans to businesses in this industry. As a guaranteed loan for larger firms averages $350,000 for firms in the Other Technical and Trade Schools industry and the Facilities Support Services industry, if two of the 10 business applied for a loan, SBA could expect to guarantee $700,000 in loans. However, most firms involved in Job Corps Centers are in other industries; thus their eligibility for SBA loan assistance would be under their primary NAICS industry. The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $53 million per year 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 larger base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Other than small businesses 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 10 additional firms could become active in 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 SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net small business database. Among businesses in this group seeking 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 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, 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. In addition, the use of small business set-asides may encourage more competitors since small businesses would not have to compete against the major businesses in the industry.

The proposed 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 SDB or HUBZone 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 contacts due to the increased competition from more businesses defined as small. As currently there is only one small business that has a contract for a Job Corps Center, this transfer will be offset by initiating a number of Federal procurements than can now be set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers could result in up to $53 million or 5.8 percent of total contract dollars of $909 million being transferred from large businesses to small businesses. SBA based this estimate on the per year funding of the firms that currently have Job Corps Center contracts, which would gain small business status if this proposed rule is adopted.

The revision to current size standard for Job Corps Centers is consistent with SBA's statutory mandate to assist small businesses. This regulatory action is 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. 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 SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in Job Corps Center activities. As described in the above Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses interested in competing for Federal Job Corps Centers procurements reserved for small businesses, and SDB and HUBZone businesses eligible for price preferences, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for the operation and management of Job Corps Centers may be set aside for small business as the pool of eligible small businesses expands. As discussed in the preamble, SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $53 million.

As Job Corps Center activity is limited to Federal procurements within DOL, SBA cannot guarantee that the proposed size standard will affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with DOL regarding a possible increase to the Job Corps Centers size standard. In cases where an SBA size standard is not appropriate, the Small Business Act and 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 SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Job Corps Centers industry addressing the following questions: (1) what is the need for and objective of the rule; (2) what is SBA's description and estimate of the number of small entities to which the rule will apply; (3) what is the projected reporting, record keeping, and other compliance requirements of the rule; (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

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

A separate size standard for Job Corps Centers more appropriately defines the size of businesses in this industry activity that SBA believes should be eligible for Federal small business assistance programs. Currently, there are five firms in the Job Corps Centers activity that have revenues below $6 million size standard, however, only one of these firms has a contract for a Job Corps Center. This firm is likely to outgrow the current size standard within the next year as its current contract is for $5.8 million per year. This will leave only four firms below the size standard, all having revenues below $1 million. None of these firms have been successful in winning a Job Corps Center contract. This, along with the facts that the average contract funding is $8.8 million and the minimal funding for a Job Corps Center is $5 million for a residential center and $4 million for a non-residential center, indicates that the size standard for Job Corps Centers needs to be greater than the current $6 million.

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

SBA estimates that 35 organizations are engaged in the Job Corps Center industry, of which approximately 14 percent are small businesses currently at or just below the $6 million threshold. If this rule were adopted, 10 additional businesses would be considered small. Although this may not represent a substantial number of small businesses, SBA is preparing an IRFA to ensure that the impact on small businesses of higher size standards are known and being 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 SBA's knowledge of contracting in this area, SBA estimates that small business coverage could increase by $53.1 million or 5.8 percent of total revenues in this activity. SBA based this estimate on the per year funding of the firms that currently have Job Corps Center contracts, which would gain small business status if this proposed rule is adopted.

(3) What Are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. 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, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

(5) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

As discussed in the preamble, SBA considered several alternative size standards and their implications on small businesses. First, SBA considered retaining a single size standard of $6 million for the Other Technical and Trade Schools industry. In researching firms engaged in the operation and maintenance of Job Corps Centers, SBA concluded that no single size standard could adequately define small business in the whole industry. The size standard would be either too low for Job Corps Centers or too high for other industry activities, such as graphics arts schools, real estate schools, and broadcasting schools. Establishing two size standards for this industry would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA also considered restoring the $20 million size standard for Job Corps Centers. However, as discussed in the preamble, this size standard would not allow for sufficient growth and development of a small Job Corps Center contractor. A firm would be at risk of losing its small business status if it received two average-size contracts.

By establishing the size standard at $30 million, SBA will create opportunities for the small businesses in an industry where only five firms are below the size standard. Of these five firms, four have revenues below $1 million and only one firm has a Job Corps Center contract. If SBA retains the current $6 million size standard, it will not accurately reflect the smaller segment of businesses that participate in operating and maintaining Job Corps Centers.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs—business. Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to 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 611—Educational Services,'' revise the entry for 611519 to read as follows; and

b. Add footnote 17 to 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 million of dollars	Size standards in number of employees
* *	* * *	*	*
Subsector 611—Educational Services			
* *	* * *	*	*
611519....	Other Technical and Trade Corps	$6.0	....
EXCEPT	Job Corps Centers	[16] $30.0	....
* *	* * *	*	*

Footnotes:

* * * * *

[16] *NAICS codes 611519*—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, lift skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

Dated: November 15, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–29647 Filed 11–21–02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 134

RIN: 3245–AE92

Small Business Size Regulations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its small business size regulations and the regulations applying to appeals of size determinations. The proposed rule would amend the definitions of affiliation, annual receipts, and employees. It would also make procedural and technical changes to cover new programs such as SBA's HUBZone program and the government-wide Small Disadvantaged Business program. The proposed rule would codify several long-standing precedents of SBA's Office of Hearings and Appeals and would clarify the jurisdiction of that office.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Written comments should be addressed to John W. Klein, Associate General Counsel for Procurement Law, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Laura M. Eyester, Office of General Counsel, (202) 619–1801.

SUPPLEMENTARY INFORMATION: SBA's small business size regulations (13 CFR part 121) are used to determine eligibility for all SBA and Federal programs that require an entity to be a small business concern. In the past, to be considered small, concerns were required to qualify under a particular size standard that corresponded to a four-digit Standard Industrial Classification (SIC) code. Effective October 1, 2000, to be considered small, concerns are required to qualify under a particular size standard that corresponds to the six-digit North American Industrial Classification System (NAICS) code. SBA published its final rule setting forth the various NAICS codes and corresponding size standards at 65 FR 30836 (May 15, 2000). SBA published a technical correction to the final at 65 FR 53533 (September 5, 2000). That final rule changed all references to SIC codes in part 121 to NAICS codes. This proposed rule would not change any size standards currently corresponding to specific NAICS codes.

With a few exceptions, SBA size standards are based on either average annual receipts or number of employees, depending on the industry. When measuring a concern's size, the receipts or employees of affiliated concerns are included. The proposed rule would modify the definitions of affiliation, annual receipts, and number of employees. The proposed changes to part 134 would clarify the jurisdiction of SBA's Office of Hearings and Appeals (OHA) and make certain technical amendments.

Section-by-Section Analysis

SBA proposes to amend § 121.102 by adding a new paragraph (d) that would recognize that there currently exists an internal Size Policy Board at SBA that is responsible for making recommendations to the Administrator