use is comparable to the products contained in paragraph (a)(1) of this section; and

* * * * *

§ 1000.40 [Amended]

3. Section 1000.40 is amended by revising paragraphs (b)(2)(iii) and (b)(2)(vi) to read as follows:

* * * * *

(b) * * *

(2) * * *

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, including yogurt containing beverages with more than 20 percent yogurt by weight, Kefir, and any other semi-solid product resembling a Class II product;

* * * * *

(vi) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are sold to the health care industry;

* * * * *

Dated: May 12, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4591 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF29

Small Business Size Standards; Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase the size standard for the Air Traffic Control (North American Classification Systems (NAICS) 488111), Other Airport Operations (NAICS 488119), and Other Support Activities for Air Transportation (NAICS 488190) industries from $6.5 million in average annual receipts to $21 million. The proposed revisions are being made to better define the size of a small business in these industries based on a review of industry characteristics.

DATES: Comments must be received by SBA on or before June 16, 2006.

ADDRESSES: You may submit comments, identified by RIN 3245–AF29, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments; (2) Fax: (202) 205–6390; or (3) Mail/Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

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

SUPPLEMENTARY INFORMATION: SBA has received a request from a Federal agency that contracts for services in the Other Airport Operations Industry to review this industry's existing $6.5 million size standard. This size standard was last revised in 2005 to incorporate an inflation adjustment to receipt-based size standards (70 FR 72577, December 19, 2005). SBA has not conducted a review of this industry's characteristics since the early 1980's. This agency believes that SBA should create a special size standard under NAICS 488119 for Federal contracts consisting of processing passengers and servicing aircraft for long range or international flights. Many of these contracts involve coordinating all aspects of passenger service (including customs clearances, security requirements) as well as aviation services (such as food service, janitorial services, and aircraft fueling services). The agency also pointed some of these activities individually have higher size standards (*i.e.*, the Food Service Contractors Industry and the Janitorial Services Industry have size standards of $19 million and $15 million, respectively, while the Aircraft Fueling Industry carries a 500-employee size standard). Although the Federal agency requested a review of the Air Airport Operations Industry, SBA decided to review also the Air Traffic Control Industry and Other Support Activities for Air Transportation Industries because many firms that perform Other Airport Operation Services also are active in these two industries.

Below is a discussion of the methodology used by SBA to review its size standards, and the analysis leading to the proposal to increase the size standard for the three industries comprising air transportation support activities from $6.5 million to $21 million in average annual receipts.

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*) describes four factors SBA considers 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 Federal 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 proposed 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.

Industry Analysis: Section 3(a)(3) of the Small Business Act (15 U.S.C. 632 (a)(3)) requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics. SBA has two ''base'' or ''anchor'' size standards that apply to most industries—500 employees for manufacturing industries and $6.5 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 has been adjusted periodically for inflation so that, currently, the anchor size standard is $6.5 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. For purposes of this proposed rule, one comparison group comprises industries with the nonmanufacturer anchor size standard of $6.5 million to assess whether the presumed anchor size standard is appropriate for the industry under review. SBA's analysis may also examine a second comparison group to evaluate thoroughly an appropriate size standard for an industry (which is the case for this proposed rule).

If the characteristics of a specific industry are similar to the average characteristics of the nonmanufacturer anchor 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 nonmanufacturer anchor 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 nonmanufacturer anchor 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 include average firm size, distribution of firms by size, start-up costs, and industry competition (13 CFR 121.102 (a) and (b)). SBA 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 were significantly higher than the average firm size of the nonmanufacturer anchor 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 nonmanufacturer anchor comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases, a lower size standard.

2. ''Distribution of firms by size'' is 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 attributable to smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supported for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry.

In this proposed rule, SBA examines the percent of total industry sales cumulatively generated by firms up to a certain level of sales. For example, assume for the industry under review that 30 percent of total industry sales are generated by firms of less than $10 million in sales. This statistic is compared to a comparison group. For the nonmanufacturer anchor comparison group used in this proposed rule, firms of less than $10 million in sales cumulatively generated 49.4 percent of total industry sales. Viewed in isolation, the lower figure for the industry under review indicates a more significant presence of larger-sized firms in this industry than firms in the industries comprising the nonmanufacturing anchor comparison group and, therefore, a higher size standard may be warranted.

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 average firm assets within an industry. Data from the Risk Management Association's Annual Statement Studies, 2000–2001, provide average sales to total assets ratios. These were applied to the average receipts size of firms in an industry to estimate average firm assets. An industry with a significantly higher level of average firm assets than that of the nonmanufacturer anchor 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 level of average firm assets when compared to the nonmanufacturer anchor comparison group, the anchor size standard would be considered the appropriate size standard or in rare cases, a lower 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''—to 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 companies, 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 an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review.

5. ''Impact of a size standard revision 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 contracting receipts, 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's 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.

Evaluation of Industry Size Standard: The two tables below show the industry structure characteristics for the industries of Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation, and for two comparison groups. The first comparison group is comprised of all industries with a $6.5 million receipts-based size standard referred to as the nonmanufacturing anchor group. Because SBA's size standards analysis is assessing whether the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Air Transportation Industries' size standard should be moderately higher, or much higher than the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. In addition, this group includes a sufficient number of firms to afford a meaningful assessment and comparison of industry characteristics. The second comparison group consists of the nonmanufacturing industries with the highest receipt-based size standards established by SBA. SBA refers to this comparison group as the ''nonmanufacturing higher-level size standard group.'' This group's size standards range from $23 million to $32.5 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to the characteristics of the higher-level size standards group. By doing so, SBA can assess whether a size standard should be among the highest size standards or somewhere between the anchor size standard and the highest receipts-based size standards.

SBA examined 2002 industry data prepared for SBA's Office of Advocacy by the U.S. Bureau of the Census (*http://www.sba.gov/advo/research/us_rec02.txt*), data from a U.S. Bureau of the Census report entitled ''U.S. All Industries Data by Receipt: 2002,'' and data from the Risk Management Association's Annual Statement Studies, 2000–2001. SBA also examined Federal contract award data for fiscal years 2003–2004 from the U.S. General Service Administration's Federal Procurement Data Center, and SBA's internal loan database on SBA guaranteed loans.

Industry Structure Considerations: Table 1 shows data on three evaluation factors for the Air Traffic Control Industry, the Other Airport Operations Industry, the Other Support Activities for Air Transportation Industry, and the two comparison groups. These factors are average firm size, average firm assets, and the four-firm concentration ratio.

TABLE 1.—SELECTED INDUSTRY CHARACTERISTICS BY INDUSTRY CATEGORY

Industry category	Average firm size receipts (million)	Average firm assets (millions)	Four-firm concentration ratio (percent)
Air Traffic Control	$2.44	$2.47	88.7
Other Airport Operations	$4.61	$1.49	34.3
Other Support Activities for Air Transportation	$2.97	$0.66	22.4
Nonmanufacturing Anchor Group	$1.29	$0.60	14.4
Higher-level Size Standard Group	$4.73	$2.00	26.4

For the Air Traffic Control Industry, its average firm size in receipts is almost twice that of the average firm size in the nonmanufacturer anchor group, but it is significantly lower than the average firm size in the higher-level size standards group. This factor indicates a size standard within a range of $12 million to $14 million, which is approximately double the $6.5 million anchor size standard, may be warranted. The average firm assets factor is above the higher-level size standard group and provides a basis for increasing the current size standard within the $23 million to $32.5 million range. The four-firm concentration ratio provides support for a change to the current size standard. The factor is appreciably higher than the higher-level size standard group and it is at a sufficient level to suggest that the largest firms in the industry may have the ability to control the industry. To encourage competition, a very substantial increase to the size standard should be considered. In relation to the higher-level size standards group, the four-firm concentration ratio suggests a standard higher than $23 million is reasonable.

For the Other Airport Operations Industry, its average firm size is almost that of the higher-level size standards group. This factor indicates a size standard in the lower range of $23 million to $32.5 million may be warranted. The average firm assets factor is above the nonmanufacturing anchor group, but below the higher-level size standard group, and provides a basis for increasing the current size standard to a $14 million to $16 million range. The four-firm concentration ratio provides some support for a change to the current size standard, but is below the 40 percent level that would suggest the size standard should be changed because of this factor (see previous discussion of SBA's ''Size Standards Methodology''). While the factor is appreciably higher than the average industry in the two comparison groups, the level of the size standard, however, should be based on the consideration of the other factors.

For the Other Support Activities for Air Transportation Industry, its average firm size in receipts is more than twice that of the average firm size in the nonmanufacturer anchor. This factor indicates a size standard within a range of $15 to $16 million, which is slightly more than double the $6.5 million anchor size standard, may be warranted. The average firm assets factor is almost equal to the nonmanufacturing anchor group and does not provide a basis for increasing the existing size standard. The four-firm concentration ratio provides some support for a change to the current size standard, but is below the 40 percent level that would suggest the size standard should be changed because of this factor (*see* previous discussion of SBA's ''Size Standards Methodology''). While the factor is appreciably higher than the average industry in the nonmanufacturing anchor group, the level of the size standard, however, should be based on the consideration of the other evaluation factors.

Table 2 below examines the size distribution of firms. For this factor, SBA evaluates the percent of total sales cumulatively generated by firms at or below specific receipts sizes. For example, firms in the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air

Transportation Industries with $10 million or less in receipts cumulatively obtained 24.4 percent, 21.4 percent, and 24.8 percent, respectively, of total industry sales. Within the nonmanufacturing anchor group, these size firms captured 49.4 percent of total industry sales while similar firms in the higher-level size standards group captured 21.1 percent.

TABLE 2.—PERCENTAGE DISTRIBUTION OF FIRMS BY RECEIPTS SIZE

Industry category	Percent of industry sales by firm			
	< $1 million	< $5 million	< $10 million	< $50 million
Air Traffic Control	6.6	13.3	24.4	62.2
Other Airport Operations	3.9	17.5	21.4	33.5
Other Support Activities for Air Transportation	7.5	18.9	24.8	35.8
Nonmanufacturing Anchor Group	16.8	39.9	49.4	63.7
Higher-level Size Standard Group	3.8	13.3	21.1	40.4

Considering the overall distributions across size classes, an appropriate size standard for all three industries appears to be near or just above the higher-level size standards group, such as between $22 million to $24 million. The data for each industry is discussed below.

For the Air Traffic Control Industry, the data for three of the four size classes support a size standard well above the anchor size standard and at the lower range of the higher-level size standards. The size class of less than $50 million size class supports only a size standard at the anchor level. Overall, the size distribution factor supports a size standard in the at or near the lower range of the higher-level size standard group levels of $21 million to $23 million.

For the Other Airport Operations Industry, the data generally support a size standard that is well above the nonmanufacturing anchor group and within the higher-level size standard group. The three size classes, less than $1 million, $10 million, and $50 million, support a size standard around the higher-level size standard group. The less than $5 million size class supports a size standard well above the anchor size standard, but at or below the higher-level size standard. Overall, the size distribution factor supports a size standard between the lower range of the higher size standards group levels of $23 million to $25 million.

For the Other Support Activities for Air Transportation industry, the data for three percentage groups support a size standard that is well above the nonmanufacturing anchor group, but at or slightly below the higher-level size standard group. The data for the size class less than $50 million support a size standard well above the nonmanufacturing anchor group and within the higher-level size standard group. Overall, the size distribution factor supports a size standard at or just below the range of the higher-level size standard group levels of $21 million to $24 million.

SBA Program Considerations: SBA also considers the potential impact of changing a size standard on its programs. Because SBA's review of the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Air Transportation Industries' size standards was prompted by concerns about the application of the size standard to Federal contracting, SBA examines the pattern of Federal contract awards to small businesses as one of the factors in evaluating whether the existing size standard should be revised.

In the case of Federal contracts to firms in the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation Industries, the share of Federal contracts awarded to small businesses provide a basis for revising the size standard. In fiscal years 2003 and 2004, small businesses in the Air Traffic Control industry received 11.5 percent of the total dollar value of Federal contracts, while small business in the Other Airport Operations industry received an average of 12 percent, and the Other Support Activities for Air Transportation industry received 4 percent. In addition, a cumulative average of 25 percent of the award actions went to small businesses in these three industries.

By comparison, the percentage of total industry sales cumulatively generated at or below the existing $6.5 million size standard, is 15.5 percent for the Air Traffic Control industry and 18.3 percent for the Other Airport Operations industry. The respective 11.5 percent and 12 percent of Federal contract dollars to small businesses are relatively low for the Air Traffic Control and Other Airport Operations. For the Other Support Activities for Air Transportation industry, the 4 percent small business Federal contract dollars share is extremely lower than the 20.1 percent of total industry sales cumulative generated by firms at or below the current $6.5 million size standard. These comparisons between industry-wide small business market share and the proportion of Federal contracting dollars to small business indicate that small businesses in these industries may have encountered difficulties in obtaining Federal contracts, and that a size standard much higher than $6.5 million may be warranted.

SBA also reviewed its financial assistance to small businesses in the air transportation support activities industries. In fiscal years 2003, 2004, and 2005, SBA guaranteed no loans for the Air Traffic Control industry; an average of nine loans totaling $2.4 million in the Other Airport Operations industry; and an average of 37 loans totaling $5.1 million for the Other Support Activities for Air Transportation industry. Almost 90 percent of the loans for the Other Airport Operations industry and the Other Support Activities for Air Transportation industry were made to firms less than half the current size standard. It is unlikely that an increase to the size standard would have an appreciable impact on the financial programs, and therefore, this factor is not part of the assessment of this industry's size standard.

SBA's Proposal: The analysis of each evaluation factor supports SBA proposing a $21 million size standard for each industry. SBA believes the presence of larger-sized firms in the industry, as evidenced by the factors of average size firm, the distribution of firms by size, and four-firm concentration ratio, is sufficiently strong to support a substantial change to the existing size standard. For the Air Traffic Control and the Other Airport Operations industries, most of the five evaluation factors support a size standard at or near the lower range of the higher-level size standards. For both industries, one factor supports a size standard about double the $6.5 nonmanufacturer anchor size standard. Accordingly, SBA believes the data support a $21 million size standard that is near the lower range of the higher-level size standards. For the Other Support Activities for Air Transportation Industry, three of the five factors support a size standard significantly higher than the current $6.5 million size standard, with one factor supporting a size standard at or near the range of the lower range of the higher-level size standards. In consideration that many firms operate in each of the three air transportation support activities industries, SBA has decided to also propose a $21 million size standard for this industry to have a common size standard for closely related industries.

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 operations 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 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 major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that for the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Air Transportation industries no firm at or below the proposed size standard would be of a sufficient size to dominate its field of operation. The largest firm within the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Airport Transportation industries at the proposed size standard level generates less than 0.30, 0.25 and 0.20 percent, respectively, of total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard from exerting a controlling effect on this industry.

Alternative Size Standards: SBA considered an alternative size standard based on average number of employees instead of average annual receipts. This approach was considered in a proposed rule of March 19, 2004 (69 FR 13130) as part of proposal to restructure all of SBA's size standards. For the Air Traffic Control industry, a size standard in number of employees would not be appropriate. The average number of employees for this industry is 30, and for all firms with receipts below the proposed $21 million level, the average number of employees is 11. SBA is currently studying how to simplify its size standards. SBA proposed to establish a minimum employee size standard of 50, to reduce the number of size standards from 37 levels to 11, and to establish common size standards for related industries. If SBA had adopted the proposed minimum 50-employee size standard, potentially one or two of the largest four firms might qualify as a small business. If SBA established an employee size standard for the Air Traffic Control industry between 15 and 20 employees, it would be contrary to SBA's measures to simplify its size standards by increasing the number of size standard levels, and not establishing common size standards for related industries. For this reason, SBA has determined that a receipt-based size standard of $21 million for the Air Traffic Control industry is more appropriate.

In addition, concerns in the Other Airport Operations Industry perform their services with the use of subcontractors and part-time employees, i.e., janitorial, aircraft fueling, and food services. Because of the large proportion of part-time employees in this industry, SBA has decided to retain average annual receipts as the size standard measure. A receipts-based size standard will treat firms more equitably since firms will vary on the use of part-time employees and subcontractors. An employee-based size standard could unintentionally influence decisions of some firms to alter the use of part-time employees and subcontractors to remain eligible as small businesses.

Firms in the Other Support Activities for Air Transportation Industry provide specialized services for the air transportation industry, such as aircraft testing, repair, maintenance, and inspection. SBA considered converting this size standard from receipts to employees as activities in this industry tend to have a more stable workforce. A comparable size standard for this industry would be in the range of 100 to 125 employees. However, SBA decided to keep the size standard as one based on receipts because the emphasis on its restructuring effort is simplification. Many firms in this industry are also active in the Other Airport Operations industry, which does not lend itself to an employee-based size standard. If SBA decided to establish an employee-based size standard for Other Support Activities for Air Transportation, firms that are active in both industries could find themselves small in the Other Support Activities for Air Transportation industry, yet large in the Other Airport Operations industry, or vice-a-versa. The analysis provided above indicates that both industries require a similar receipts-based size standard.

SBA welcomes public comments on its proposed size standard for the Air Traffic Control, Other Airport Operations, and Other Support Activities for Aircraft Industries. Comments on alternatives, including the option of retaining the size standards at $6.5 million or establishing employee-based size standards as discussed above, should explain why the alternative would be preferable to the proposed size standards.

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 this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

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.

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 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, other than those required of SBA.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively the 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 SBA's

Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry. Based on that analysis, SBA believes that an adjustment in the size standard of the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation Industries is needed to better reflect the economic characteristics of small businesses in this industry.

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, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses, such as 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses. HUBZone and SDB small businesses are also for Federal contracts awarded through full and open competition after application of the HUBZone or SDB price evaluation preference or adjustment. Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable, and competitive businesses. Under this proposed rule, 150 additional firms generating an average of 8 percent of sales in the three industries will obtain small business status and become eligible for these programs.

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 higher size standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $129 million per year under the small business set-aside program, the 8(a) and HUBZone Programs, or unrestricted procurements. This represents 8 percent of the $1.6 billion in average Federal contracts awarded under NAICS 488111, 488119, 488190 during fiscal years 2003 and 2004. The added competition for many of these procurements also would likely result in a lower price to the Government for procurements reserved for small businesses, but SBA is not able to quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that one or two additional loans totaling $500,000 to $600,000 in new Federal loan guarantees could be made to these newly defined small businesses. This assumes that only one to two percent of the newly eligible small businesses will seek SBA financial assistance. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to businesses in this industry, if any.

The newly defined small businesses would also benefit from 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 for future disasters.

To the extent that up to 150 additional firms could become active in Federal small business 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, additional firms eligible for enrollment in Central Contractor Registration's Dynamic Small Business Search database, and additional firms seeking certification as 8(a), SDB, or HUBZone firms. Among businesses in this group seeking SBA assistance, there could 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 administrative costs because mechanisms are currently in place to handle these additional administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. In addition, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or reserved for the 8(a) or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

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, there will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for a price evaluation adjustment 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 number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses, without regard to the exact size of the business.

The revision to the current size standards for the Air Traffic Control, Other Airport Operations, and Other Support for Air Transportation Industries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities engaged in Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Impact Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation industries 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, recordkeeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

The revision to the size standard for the Air Traffic Control, Other Airport Operations, and Other Support for Air Transportation Industries more appropriately defines the size of businesses in this industry that SBA believes should be eligible for Federal small business assistance programs. SBA reviewed the structure of these industries using five factors that were compared with averages for two groups of industries. A review of the latest available data supports a change to the existing size standard.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that 150 additional firms out of 3,607 firms in all three industries would be considered small because of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided that they meet other program requirements. Firms becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate $1 billion in this industry out of a total of $12.7 billion in annual receipts. The small business coverage in this industry would increase by approximately eight percent of total receipts.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which 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 rule?

This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. 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 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

The size standard may also affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, however, SBA cannot estimate the impact of a size standard change on each Federal program that uses its size standards. 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 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)).

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

SBA considered an alternative size standards based on average number of employees instead of average annual receipts. This approach was considered in a proposed rule of March 19, 2004 (69 FR 13130) as part of restructuring of size standards. For the Air Traffic Control industry, a size standard in number of employees would not be appropriate. The average number of employees for this industry is 30, and for all firms with receipts below the proposed $21 million level, the average number of employees is 11. SBA is currently studying how to simplify its size standards. In its March 19, 2004 rule, SBA proposed to establish a minimum employee size standard of 50, to reduce the number of size standards from 37 levels to 11, and to establish common size standards for related industries. If SBA had adopted the proposed minimum 50-employee size standard, potentially one or two of the largest four firms might qualify as a small business. If SBA established an employee size standard for the Air Traffic Control industry between 15 and 20 employees, it would be contrary to SBA's measures to simplify its size standards by increasing the number of size standard levels, and not establishing common size standards for related industries. For this reason, SBA has determined that a receipt based size standard of $21 million for the Air Traffic Control industry is more appropriate.

In addition, concerns in the Other Airport Operations industry perform their services with the use of subcontractors and part-time employees, i.e., janitorial, aircraft fueling, and food services. Because of the large proportion of part-time employees in this industry, SBA has decided to retain average annual receipts as the size standard measure. A receipts-based size standard will treat firms more equitably since firms will vary on the use of part-time employees and subcontractors. An employee size standard could unintentionally influence decisions of some firms to alter the use of part-time employees and subcontractors to remain as small businesses.

Firms in the Other Support Activities for Air Transportation industry provide specialized services for the air transportation industry like aircraft testing, repair, maintenance, and inspection. SBA considered converting this size standard from receipts to employees as activities in this industry tend to have a more stable workforce. A comparable size standard for this industry would be in the range of 100 to 125 employees. However, SBA decided to keep the size standard receipts-based because of its emphasis on its restructuring effort is simplification. Many firms in this industry are also active in the Other Airport Operations industry, which does not lend itself to an employee-based size standard. If SBA decided to establish an employee-based size standard for Other Support Activities for Air Transportation, firms that are active in both industries could find themselves small in the Other Support Activities for Air Transportation industry, yet large in the Other Airport Operations industry, or vice-a-versa. The analysis provided above indicates that both industries require a similar receipts-based size standard.

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

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

2. In § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' under the heading ''Subsector 488'Support Activities for Transportation,'' revise the entries for 488111, 488119, and 488190 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

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 488—Support Activities for Transportation		
488111	Air Traffic Control	$21.0	
488119	Other Airport Operations	21.0	
488190	Other Support Activities for Air Transportation	21.0	
* * *	* *	*	*

Dated: March 17, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. 06–4619 Filed 5–16–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24779; Directorate Identifier 2006–NM–044–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes; Model A310 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A300 airplanes and Model A310 airplanes and for certain Airbus Model A300–600 series airplanes. This proposed AD would require an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary. This proposed AD also would require an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary. This proposed AD also would require installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

DATES: We must receive comments on this proposed AD by June 16, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France,