All Other Issues

An association representing firms in NAICS 541360 (Geophysical Surveying and Mapping Services) expressed concern that Federal agencies often use NAICS 541930 (Commercial Photography) for contracts to perform mapping-related aerial photography. The association urged SBA to modify and clarify the distinction between aerial photography for mapping and commercial photography and to promulgate regulations to dissuade or prohibit the use of NAICS 541930 for aerial photography.

SBA does not establish, modify, or clarify NAICS industry definitions. Any comments regarding the NAICS industry definitions should be directed to the Office of Management and Budget, which in partnership with the U.S. Census Bureau, modifies and updates NAICS industry definitions. The Small Business Size Regulations (13 CFR 121) already contain provisions against the use of improper NAICS codes for Federal procurements. First, the regulations require Federal agencies to designate the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. *See* 13 CFR 121.402(b). Second, the regulations provide that any interested party adversely affected by a NAICS code designation may appeal the designation to the Office of Hearings and Appeals. *See* 13 CFR 121.1102–1103.

To increase small business participation in Federal market for mapping and surveying, the association made several policy recommendations, specifically that (1) SBA establish small business contracting and subcontracting goals in each industry category to ensure that small businesses receive a fair proportion of Federal procurements of goods and services in each industry; (2) size and complexity of small business set-aside contracts match with size and capability of small business firms and the ''rule of 2'' be revised to allow the distinction among types and size of contracts; (3) SBA work with the industry to develop policies to account for teaming and pass through subcontracting when determining a firm meets the size standard; (4) SBA work with existing authority, such as OFPP, to reinstate the Small Business Competitiveness Demonstration Program; (5) SBA extend the $300,000 threshold for Department of Defense contracts for architecture and engineering services under 10 U.S.C. 2855(b) to civilian agencies as well; and, (6) the SBA work with the industry to modify FAR part 36–601–4(a)(4) to ensure that the Brooks Act also applies to Federal contracts involving surveying, mapping and geospatial services, pursuant to 40 U.S.C. 1102.

An association representing firms in the engineering industries also provided several policy recommendations to improve participation of small business engineering firms in the Federal market. These relate to improvement in contracting data collection, development of contracts commensurate with capabilities and experience of small firms, expansion of teaming arrangements, setting small business subcontracting goals for larger primes, and targeting more set-aside contracts to truly small firms.

SBA agrees that these are important issues relating to small business participation in the Federal market for engineering, surveying, mapping and geospatial services, but they are outside of the scope of this rule. SBA will work with the industry to find appropriate avenues to address these important issues.

An association commented that SBA failed to account for the number of additional firms that would become eligible for each industry category under the proposed rule. It is not that SBA did not estimate those figures by industry; rather, the Agency did not include all those details in the proposed rule. SBA believes that conducting an impact analysis on an industry-by-industry basis would make the rule too long and complicated. The association also suggested that SBA provide estimates of additional firms that would become eligible in each industry if SBA proposed a size standard one level higher than the current proposed size standard. SBA believes that such information would make the rule much more complex. In addition, SBA finds it useful to receive public comments on its proposal supported by its analysis and other relevant considerations, rather than comments on different hypothetical scenarios. However, if SBA adopts in the final rule a different size standard from that in the proposed rule, SBA will provide the new estimate of firms impacted in its final regulatory flexibility analysis.

All public submissions to the proposed rule are available for public review at *http://www.regulations.gov*.

Conclusion

Based on the reevaluations of relevant industry and program data and the Agency's assessments of public comments it received on the proposed rule, SBA has decided to increase small business size standards for 34 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81. SBA has decided to maintain 11 receipts based size standards in NAICS Sector 54 at their current levels. SBA also is removing Map Drafting (along with its $4.5 million size standard) as the ''exception'' under NAICS 541340, Drafting Services. The following Table—Summary of Size Standards Changes—summarizes SBA's decisions.

SUMMARY OF SIZE STANDARDS CHANGES

NAICS Codes	NAICS industry title	Current size standard ($ millions)	Proposed size standard ($ millions)	Revised size standard ($ millions)
541110	Offices of Lawyers	$7.0	$10.0	$10.0
541191	Title Abstract and Settlement Offices	7.0	10.0	10.0
541199	All Other Legal Services	7.0	10.0	10.0
541211	Offices of Certified Public Accountants	8.5	14.0	19.0
541213	Tax Preparation Services	7.0	14.0	19.0
541214	Payroll Services	8.5	14.0	19.0
541219	Other Accounting Services	8.5	14.0	19.0
541310	Architectural Services	4.5	19.0	7.0
541320	Landscape Architectural Services	7.0	19.0	7.0
541330	Engineering Services	4.5	19.0	14.0
Except	Military and Aerospace Equipment and Military Weapons	27.0	27.0	35.0
Except	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	27.0	27.0	35.5

SUMMARY OF SIZE STANDARDS CHANGES—Continued

NAICS Codes	NAICS industry title	Current size standard ($ millions)	Proposed size standard ($ millions)	Revised size standard ($ millions)
Except,	Marine Engineering and Naval Architecture	18.5	25.5	35.5
541340	Drafting Services	7.0	19.0	7.0
Except,	Map Drafting	4.5	[1]	[1]
541350	Building Inspection Services	7.0	19.0	7.0
541360	Geophysical Surveying and Mapping Services	4.5	19.0	14.0
541370	Surveying and Mapping (except Geophysical) Services	4.5	19.0	14.0
541380	Testing Laboratories	12.0	19.0	14.0
541410	Interior Design Services	7.0	7.0	7.0
541420	Industrial Design Services	7.0	7.0	7.0
541430	Graphic Design Services	7.0	7.0	7.0
541490	Other Specialized Design Services	7.0	7.0	7.0
541511	Custom Computer Programming Services	25.0	25.5	25.5
541512	Computer Systems Design Services	25.0	25.5	25.5
541513	Computer Facilities Management Services	25.0	25.5	25.5
541519	Other Computer Related Services	25.0	25.5	25.5
541611	Administrative Management and General Management Consulting Services.	7.0	14.0	14.0
541612	Human Resources Consulting Services	7.0	14.0	14.0
541613	Marketing Consulting Services	7.0	14.0	14.0
541614	Process, Physical Distribution and Logistics Consulting Services.	7.0	14.0	14.0
541618	Other Management Consulting Services	7.0	14.0	14.0
541620	Environmental Consulting Services	7.0	14.0	14.0
541690	Other Scientific and Technical Consulting Services	7.0	14.0	14.0
541720	Research and Development in the Social Sciences and Humanities.	7.0	19.0	19.0
541810	Advertising Agencies	7.0	14.0	14.0
541820	Public Relations Agencies	7.0	14.0	14.0
541830	Media Buying Agencies	7.0	14.0	14.0
541840	Media Representatives	7.0	14.0	14.0
541850	Display Advertising	7.0	14.0	14.0
541860	Direct Mail Advertising	7.0	14.0	14.0
541870	Advertising Material Distribution Services	7.0	14.0	14.0
541890	Other Services Related to Advertising	7.0	14.0	14.0
541910	Marketing Research and Public Opinion Polling	7.0	7.0	14.0
541921	Photography Studios, Portrait	7.0	7.0	7.0
541922	Commercial Photography	7.0	7.0	7.0
541930	Translation and Interpretation Services	7.0	7.0	7.0
541940	Veterinary Services	7.0	7.0	7.0
541990	All Other Professional, Scientific and Technical Services	7.0	7.0	14.0
811212	Computer and Office Repair and Maintenance	25.0	25.5	25.5

[1] Eliminate.

Compliance With Executive Orders 12866, 13563, 12988, 13132, and 13272 the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final 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).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 34 industries and three sub-industries within NAICS Sector 54, Professional, Technical, and Scientific Services, and one industry in NAICS Sector 81, Other Services, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegated to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. In addition, the Jobs Act requires the Administrator to review one-third of all size standards during each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The supplementary information sections of the March 16, 2011 proposed rule and this final rule explained in detail SBA's methodology for analyzing a size standard for a particular 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 gaining or regaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities