

enables a small business to grow to a size to be competitive with other businesses in the industry. Most of the comments supported the position that a \$30 million size standard achieves this result.

Comment Recommending an Alternative Size Standard Between \$12 Million and \$15 Million

One commenter agreed that the \$6 million size standard warranted a change, but believed that increasing the size standard to \$30 million was unrealistic. The commenter proposed that the size standard be increased to a level between \$12 million and \$15 million. The commenter believed the DOL will not seriously consider the commenter's business in competition with companies whose financial earnings are far closer to \$30 million. The commenter argued that once a small business has obtained and operated a Job Corps Center for 3 or more years, it should be well situated to compete with other operators in procuring additional Job Corps Center contracts. The commenter also stated that a \$30 million size standard would allow larger businesses to "grab" business intended for new and developing companies. The commenter believed a size standard between \$12 million and \$15 million is sufficient to allow small businesses to develop economies of scale in their operations that improve efficiencies in internal operations as well as decrease the costs associated with managing a contract. This size standard range would also help small businesses contend with the financing requirements set by the DOL because "as the small business increases in size its ability to secure financing—for larger amounts and at lower rates—increases."

The SBA does not agree with this comment. The SBA agrees with the position of many of the other commenters that the proposed \$30 million size standard will make businesses more competitive by enabling them to achieve economies of scale associated with operating two to three Job Corps Centers. The DOL's experience with the \$20 million size standard that it used before the OHA decision mentioned earlier, resulted in only a limited number of small business Job Corps Center contractors, none of which operate more than one center. The SBA believes that a size standard that is less than the previously used \$20 million sized standard is inadequate for developing small businesses in the Job Corps Center sub-industry.

The SBA does not agree that the proposed size standard will substantially impact other small

businesses ability to compete for Job Corps Center contracts. As discussed in the proposed rule, 87 percent of Job Corp Center contract dollars go to businesses over \$30 million, with only two to four businesses falling within the range between \$15 million and \$30 million. The increased competition from a relatively few number of businesses between \$15 million and \$30 million is unlikely to diminish opportunities from other small businesses. Moreover, as other commenters have noted, businesses with less than \$30 million in size have competitive disadvantages in terms of economics of scale and financial requirements set by the DOL.

Comments Opposing a Change in the Job Corps Center Size Standard

One commenter opposed any change to the current size standard on the ground that having one center run by one contractor constituted contract bundling. This commenter claimed that "the DOL for 30 years has preferred to operate each of its contract-operated Job Corps Centers under one umbrella bundled contract." According to the commenter, by adopting the proposed size standard the SBA and the DOL are denying small businesses in the areas of facilities support, office administration, security guard services, janitorial services, landscaping services, medical and dental care, and food services from participating as Job Corps Center prime contractors.

The SBA does not agree with this commenter. Bundling is the consolidation of two or more contracts into a single procurement that will likely preclude small business participation. Here, the nature of the Job Corps Center contracts do not constitute contract bundling because they were not previously performed under separate smaller contracts and small businesses are not precluded from competing on these contracts. Bundling would occur for example, if the DOL issued one nationwide contract to manage the Job Corps Centers. A contract of that nature and scope would render small business participation unlikely. Additionally, issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see its recently proposed rule on this issue (68 FR 5134, dated January 31, 2003.)

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. This rule also is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry (67 FR 70330, dated November 22, 2002). Based on that analysis, the SBA believes that a \$30 million 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 businesses will obtain small business status and become eligible for these programs. These include Federal procurement