

these two activities into one industry activity may inaccurately merge businesses of two different types together. Two different commenters stated that fuels management firms are more like firms in other forestry services than they are like forest fire suppression firms. The equipment and skill levels for mechanical thinning are unrelated to fire suppression equipment.

The SBA acknowledges that some misinterpretation may have been caused by combining forest fire suppression and fuels management services into a single sub-industry description. Both are separate activities under the Support Activities for Forestry industry. Instead of listing one exemption for both forest fire suppression and fuels management services, the SBA will modify its table of small business size standards by listing two separate exceptions under Support Activities for Forestry—one for forest fire suppression and one for fuels management services.

The SBA does not agree with the comments regarding mechanical thinning, capital costs, training, and skill levels. Mechanical thinning is only one aspect of fuels management services. As stated in the definition of fuels management services in the proposed rule, this activity also involves prescribed fire, establishment of fuel breaks, as well as thinning, pruning, and piling. In addition, contracts for these services include the removal and/or disposal of biomass. The use of prescribed fire for these services requires firms experienced in controlling forest fires. Firms who perform this portion of fuels management have expended capital on fire retardant clothing, fire fighting equipment, and training. These firms also pay higher insurance premiums because of the danger in working with controlled fire. These firms, along with their fire engines, are also certified for controlling fires by the USFS. Firms that establish fuel breaks as part of their fuel management services, require capital investment in heavy equipment such as yarders, and earth moving equipment. Many times, these firms are also involved as excavation contractors and heavy equipment contractors (site preparation contractors have a \$12 million size standard and heavy equipment contractors have a \$28.5 million size standard). In addition, fuels management contracts may include the removal and/or disposal of the biomass (brush removal contractors have a size standard of \$10.5 million size standard). Fuels management services is not limited to mechanical thinning, as suggested by some commenters. The costs, training, and equipment for

various fuels management contractors may be just as high as for forest fire suppression contractors.

Periodic Reviews and Adjustments Aside From Inflationary Adjustments

One commenter recommended that the SBA perform periodic reviews on the Forestry industry aside from inflationary adjustments. The SBA agrees with this comment. As stated in the proposed rule, the SBA would continue to monitor this activity in the future to determine if another increase is warranted. If the review shows that another change in the size standard is needed, the SBA will issue a proposed rule, outlining the reasons for the change.

Use of Receipts Over Number of Employees

One commenter, a contracting officer, supported the SBA's decision to establish this size standard by receipts instead of number of employees because of the great fluctuation in employment which rises and falls throughout the year due to the fire suppression season. During a severe fire season, like 2002, some firms may operate 25 20-person crews for a period of weeks or a few months. The number of employees then drops to the amount needed to conduct fuels management.

As discussed in the proposed rule, the SBA believes that using a number of employees size standard is not appropriate for forest fire suppression and fuels management services, as most firms performing these activities have fluctuating numbers of employees because of the seasonal nature of forest fire suppression. A receipts-based size standard is a more appropriate measure of a firm's operations in these activities.

Contrary to National Fire Plan

Three commenters stated that the SBA's actions would be contrary to the National Fire Plan, which was developed to reduce forest fire hazards and increase preparedness for fire suppression. All three emphasized that Congress' approach was not to create larger businesses but to build new capacity in rural communities near national forests and other public lands, and that they provided authority to direct work to small and micro businesses.

The SBA does not agree with this comment. The SBA believes its actions are aligned with Congress' intent for the National Fire Plan. Because of the devastating fire seasons during the past 5 years, and the establishment of National Fire Plan, funding to firms in forest fire suppression and fuels

management services has dramatically increased. With this rule and because of the National Fire Plan, the SBA is recognizing the effect this dramatic increase in funding has had, and will continue to have, on firms in this industry.

Workers' Health and Safety in Jeopardy

One commenter claimed that increasing the size standard would "allow firms to grow beyond the point where contractors can ensure adequate attention to worker health and safety." This issue does not pertain to factors related to establishing a size standard. Health and safety issues are the function of the administrative contracting officer as they monitor the compliance with the clauses in the contract that regulate these issues.

Negative Environmental Outcome

One commenter stated that the SBA actions would "open the doors to the potentially damaging new industry of removing unsustainable quantities of biomass fuel from the nation's forest." This comment deals with environmental issues and does not relate to the size of a firm in the forest fire suppression and fuels management services.

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 a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. 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. 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. Below is a regulatory impact analysis of this size standard change.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of