

business. The higher size standard would likely encourage more subcontracting with all small businesses since they would be able to remain as small subcontractors for a longer period of time and offer more capabilities to the large business contractor.

The comments received supporting the SBA's actions agree that the increase is reasonable. They endorsed the SBA's findings that firms are quickly outgrowing the current size standard, that costs are high, and that the increase will augment the number of small business set-aside awards, thereby increasing competition in this industry. This increase will add to a small business's maturity and encourage small business growth.

Recommended Alternative Size Standards

One commenter only supported an increase of 50%. However, the commenter did not provide any data to justify this alternative, nor did the commenter indicate whether the 50% increase was appropriate for both the \$6 million and \$23 million size standards. The SBA can only assume that the commenter meant 50% of the \$6 million size standard, which equates to \$9 million, and 50% of the \$23 million which would put the size standard above \$30 million.

One commenter recommended a \$12 million size standard. This commenter stated that \$12 million will enable small businesses additional opportunities within the Facilities Support Services industry without forcing emerging small businesses to compete against larger firms.

The SBA disagrees with both of these alternatives. Neither an increase to \$9 million or \$12 million would be representative of the overall characteristics of firms in the industry, nor would either alternative provide competition and growth for small businesses. In addition, Federal contract award data show that firms under the current \$23 million size standard have only been able to obtain a relatively small share of Facilities Support Services contracts.

Non-Related Comments

One commenter pointed out that the increase in bundled contracts has caused Federal agencies to contract with larger firms. This commenter called for a 12 month moratorium on any changes so that the effect of combining contracts and its impact on small businesses can be further analyzed.

One commenter alleged that all mid-sized businesses are 8(a) firms and alleges that 8(a) certification is being

abused. Another commenter stated that the 8(a) program (13 CFR 124) and the HUBZone program (13 CFR 126) usually serve the same companies and that the success rate of companies after graduating from the 8(a) program will be hampered by this increase.

The issues regarding the SBA's 8(a) and HUBZone programs concern program policy, and the 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 the recently proposed rule on this issue (68 FR 5134, dated January 31, 2003).

One commenter stated that the definition of a small business is causing problems with emerging businesses, as it relates to the current set of NAICS codes for the Information Technology industry, which are "\$6 million and \$21 million." This commenter emphasized that emerging small businesses cannot compete with firms that produce \$21 million in revenues. This commenter recommended that there be a category to identify mid-sized businesses.

This comment does not relate specifically to the SBA's proposal to increase the size standard for Facilities Support Services. The commenter refers to the size standard of \$6 million and \$21 million for the Information Technology industry. With respect to that industry, the SBA published a proposed rule that would create a separate size standard for Information Technology Value Added Resellers (67 FR 48479, July 24, 2002). Additionally, the size standards are intended to define only small businesses, not a separate category of mid-size firms.

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

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866 because 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 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 recordkeeping requirements. 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 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. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is There a Need for This 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 the 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. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to the final rule explains the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, the SBA believes that a change in the Facilities Support Services size standard is needed to better reflect 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 will be eligibility for Federal small business assistance programs. Under this rule, 177 additional firms may obtain small business status and become eligible for these programs. Of these 177, 19 are between the current \$23 million Base Maintenance size standards and the \$30 million proposed size standard. These programs include the SBA's financial assistance programs, economic injury disaster loans (EIDL), and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or SDB price evaluation adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA's size standards for their programs