

capabilities than smaller firms. This pattern occurs in most industries. Regardless of where a size standard is established, there will be a variation in firm size and capabilities within the pool of eligible small businesses and this variation will generally favor larger firms in the distribution. However, Federal contract requirements vary from procurement to procurement, and there is no certainty that firms with less than \$6 million in sales will be unable to compete with firms in the \$6 million to \$10 million range for most contracts. The SBA is concerned that small testing laboratories under the current \$6 million size standard need to be able to grow to a larger size to capably handle Federal testing requirements and to develop a stronger competitive base

before they grow beyond the size standard.

The SBA does not agree that subcontract awards to small testing laboratories should be used as a basis to retain the current size standard. Subcontract awards by industry activity on Federal contracts are not reported by large businesses. Without a systematic collection of testing subcontract data, the SBA is unable to adequately assess the implications of Federal subcontracting on the size standard. In addition, the SBA received comments from two large businesses supporting the proposed size standard because they were experiencing difficulty in finding capable small testing laboratories to satisfy their testing requirements. The SBA believes that the industry data offer an alternative to considering Federal subcontracting trends. These data reflect

the amount of revenues obtained by testing laboratories from all sources. As discussed in this rule and the proposed rule, the SBA has concluded that data on the characteristics of testing laboratories support the proposed size standard.

#### Explanation of Revised and Updated Federal Contracting Data

Comments expressed a concern about the accuracy of the Federal procurement data discussed in the proposed rule. In table 3 of the proposed rule, a formatting error occurred that showed the Federal testing contract data in thousands of dollars instead of millions of dollars. The table below shows the correct data as well as the recently available contract data for fiscal years 2001–02.

#### SMALL BUSINESS PRIME CONTRACT AWARDS, FISCAL YEARS 1998–2002

[Data in millions of dollars]

| Category                                    | FY 1998 | FY 1999 | FY 2000 | FY 2001 | FY 2002 |
|---|---------|---------|---------|---------|---------|
| Testing laboratories awards .....           | \$861.6 | \$628.0 | \$84.7  | \$176.7 | \$233.7 |
| Small testing laboratories awards .....     | \$44.1  | \$45.3  | \$42.1  | \$52.5  | \$54.0  |
| Percent to small testing laboratories ..... | 5.1%    | 7.2%    | 49.7%   | 29.7%   | 23.1%   |

Source: Federal Procurement Data Center, U.S. General Services Administration.

Note: Data for FY 2000 for Testing Laboratories are not representative of most years due to deobligations of \$135 million from procurements initiated in previous years.

The concerns regarding the Federal contracting data also questioned the overall quality of the testing contracts reported. While a certain degree of error exists with all large databases, the SBA believes the data collected by the Federal Procurement Data System (FPDS), the official database on Federal contract award information, satisfactorily reports the overall level of Federal testing contracts and the amount of contracting to various organizational categories. FPDS collects detailed information on all Federal contracts with a value of \$25,000 or more. The table above shows data on Federal contracts for testing services as evidenced by the assignment of an industry code for the testing laboratories industry (NAICS 541380 and SIC 8734). For these contracts, testing comprises the predominate activity of the contract. The dollar amounts reported show that amount of funds obligated to a contract within a fiscal year. That is, for a contract that is more than 1 year in duration, the amount of funds spent in a fiscal year are reported rather than the entire anticipated dollar value of the contract in the year awarded. For indefinite delivery/indefinite quantity contracts, only amounts actually awarded through a task order are

reported, not potential amounts. The SBA recognizes that testing may be included within other Federal contracts; however, no method exists to accurately identify those contracts. Further, testing would tend to comprise only a minor part of those contracts. The SBA does not believe that those contracts have a bearing on the size standard for testing laboratories.

#### 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 final 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, however, 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 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 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 Small Business Act is available at <http://www.sba.gov/library/lawroon.html>). The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, and comments received on the proposed rule, the SBA believes