



April 1, 2005

Mr. Gary M. Jackson, Assistant Administrator
Office of Size Standards
U.S. Small Business Administration
409 Third Street, SW, Mail Code 6500
Washington, DC 20416

Dear Mr. Jackson:

In regards to the Advance Notice of Proposed Rulemaking: Small Business Selected Size Standards Issues; 69 Fed. Reg.70197 (December 3, 2004), the National Small Business Association (NSBA) would like to respectfully submit the following comments. NSBA is the nation's oldest nonpartisan small business advocacy group reaching more than 150,000 small businesses nation-wide.

Initially unveiled for public comment in April of 2004, the proposed SBA size standards rule changes were withdrawn with the intention of restarting the process in early 2005. NSBA would first like to applaud SBA for withdrawing a rule many of NSBA's members had significant concerns over, and we thank you for using the ANPRM process as a means to garner early input from the small business community.

NSBA Concerns With Previously Proposed Rules

As you are aware, there are currently 37 various size levels by which small businesses are classified, and the previously proposed rule would reduce that to 10. Though nearly every industry would be classified as small using employee size, a smattering of industries would have had to use both employee size and receipts as a designation, something NSBA questions using the motivation of simplification.

SBA's rule would have disqualified 34,100 businesses from small business programs and allow 35,200 new businesses into small business programs, a net gain of 1,100 companies. While the net difference is a relatively small number, the overall number of business affected negatively (34,100 disqualified) is something NSBA believes to be significant. Among those impacted,

many businesses are in clusters of industries including restaurants, retail, various services, and tourism. Those companies relying on large part-time and seasonal staffs could have seen significant and potentially damaging effects had this rule been approved.

While there are some NSBA members that would have been less inhibited by the proposed employee-size standard, and thereby supportive of the rule, the majority of NSBA members responding to a NSBA call for comments voiced serious concerns. The rule would have impacted not only those in the process of garnering and those currently serving out government contracts, but it would have also impacted various SBA-run programs such as HUBZone and 8(a), and various access to capital programs such as the 7(a) loan guarantee program.

NSBA also had concerns over the immediate active-date upon approval of the rule-change. There was no grandfather clause to protect small businesses that were no longer defined as small, and the rule offered no assistance to those businesses that would be completely shut-out of any small business programs. Given that SBA estimated 34,100 businesses that would be in such a situation, NSBA members raised serious concerns about a lacking transition clause. The make-up of those businesses is likely to be larger small businesses that employ a significant number of people, the impact of removing those businesses from a government contract that has been built into their business plan could generate even greater economic impacts including job-loss.

The method by which employee size-standards would have been calculated is also problematic. The first concern we have in this area has to do with the fact that this rule accounts for all employees, regardless of hours worked. We believe that many small businesses, particularly those in the services/retail industries, would be harmed due to the large staffs of seasonal and part-time employees. We are concerned that an employee-based size standard could lead to some businesses stalling on hiring new employees and thus stunting job-growth and creation.

The on-going calculations that would have been required by the small business owner are complex and could prove to be time-consuming. According to the rule, the small business would have to calculate per pay-period the number of employees and then average that number over the year. We believe that this process would likely add to the paperwork burden, whereas a small business owner can simply refer to tax forms to determine their revenues.

NSBA Responses to Specific SBA Questions

Approaches to Simplify Size Standards

While NSBA has been a long-time advocate for simplification for small businesses including reduced paperwork and regulatory burden, we must be clear on who the target of that simplification is. NSBA appreciates the complex job federal contracting officers have, but as a small business advocate, we believe the previously proposed rule was designed more as a simplification tool for federal employees than small business owners. A simplified rule would

reduce paperwork, reduce the hours that go into calculating whatever number it is that determines eligibility and provide clear and sensible definitions that are industry-specific. We have heard from the majority of our members that no change would be preferable to the March 2004 proposed rule change.

Calculation of the Number of Employees

As stated above, NSBA members had serious concerns about including all employees, seasonal and part-time, in the same vein as full-time employees. NSBA would urge SBA to consider updating the definition of “employee” to include a part-time and seasonal employees calculation. NSBA members have also outlined the importance of including a company’s affiliates and subsidiaries when calculating employees.

Use of Receipts-Based Size Standards

The majority of NSBA members that responded to the NSBA call for comments stated that receipts-based size standards represent a more accurate depiction of whether or not a business is small within an industry. We also found that the calculation for receipts was seen as an easier figure to come up with and created less paperwork.

Procurement-specific size standards

NSBA is hesitant to support two different size standards within the federal government. We believe that one standard for procurement and another for all other federal programs would create confusion and unintentional mistakes on the part of small businesses.

Participation of VCC-Owned Small Businesses in the SBIR Program

NSBA would strongly oppose any regulation that would enable small businesses controlled by a non-small business venture capital company to be eligible for participation in the Small Business Innovation Research (SBIR) Program. Allowing companies who are controlled and/or owned by a large VCC would create unfair competition for other small businesses that do not have similar financial backing.

As one NSBA member pointed out, the purpose of the SBIR program as designated by the Small Business Innovation Development Act “was and still is, to encourage small business participation in R&D to stimulate the American Economy.” NSBA agrees with that language and believes that allowing participation in the SBIR program by a business that is majority-owned by a VCC would create a conflict of interest with the intent of the SBIDA.

Grandfathering of Small Business Eligibility

As was outlined during NSBA’s 2005 Small Business Congress as one of our priorities, government policies should not only create an environment where small businesses can start and operate, but should create opportunities for growth. We believe that by instituting a

grandfather clause or some type of transitional eligibility for small business, the government would encourage growth of the company and therefore economic growth. The implementation of a strict employee-size standard would certainly cause some businesses to second-guess their plans for hiring more employees, and we believe this isn't and shouldn't be the intent of any SBA policy.

SBA's Analysis of the Proposed Regulations

NSBA would argue that SBA needs to have a more clear and accurate analysis on the impact of their initially proposed rule. We believe that the SBA's analysis of only 1,100 net-affected businesses is somewhat flawed due to the heavy concentration of proposed ineligibility in certain industries compared to the new eligibility of other industries. Were SBA's analysis to conclude that those companies affected were in the same industries then the analysis would hold more weight.

In closing, I would like to again thank you for the opportunity to voice the concerns of NSBA members on the SBA proposed size standard changes. NSBA has been involved in this process since late 2003 and looks forward to continuing our work together with the SBA Office of Size Standards.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Todd O. McCracken", with a long horizontal line extending to the right.

Todd O. McCracken, President
National Small Business Association