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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AG90

#### Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Transportation and Warehousing, Information, Finance and Insurance, and Real Estate and Rental and Leasing. Specifically, SBA is increasing the size standards for 45 industries in those sectors, including 18 industries in NAICS Sector 48-49 (Transportation and Warehousing), eight industries in NAICS Sector 51 (Information), ten industries in NAICS Sector 52 (Finance and Insurance), and nine industries in NAICS Sector 53 (Real Estate and Rental and Leasing).  
**DATES:** This rule is effective May 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: Average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size

standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB’s 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards, SBA reviewed all receipt-based size standards in NAICS Sectors 48-49, 51, 52, and 53 to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After its review, SBA published in the October 2, 2020, issue of the **Federal Register** (85 FR 62372) a proposed rule

<sup>1</sup> On December 21, 2021, the U. S. Office of Management and Budget (OMB) published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . .” In the near future, SBA will issue a proposed rule to adopt the OMB’s NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

to increase the size standards for 18 industries in NAICS Sector 48-49 (Transportation and Warehousing), eight industries in NAICS Sector 51 (Information), ten industries in NAICS Sector 52 (Finance and Insurance), and nine industries in NAICS Sector 53 (Real Estate and Rental and Leasing). In this final rule, SBA is adopting the proposed size standards from the October 2020 proposed rule without change.

In conjunction with the current comprehensive size standards review, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA’s responses, refer to the SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA’s Size Standards Methodology is available on its website at [www.sba.gov/size](http://www.sba.gov/size).

In evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each receipt-based industry in NAICS Sectors 48-49, 51, 52, and 53, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available). The 2012 special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest

firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association's (RMA) Annual eStatement Studies (<http://www.rmahq.org/estatement-studies/>) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business

level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS-NG) for fiscal years 2016–2018. Table 4 of the proposed rule, Size Standards Supported by Each Factor for Each Industry (Receipts), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (exception) covered by the proposed rule. Of the 124 industries and two subindustries (exceptions) reviewed in the proposed rule, the results from analyses of the latest available data on

the five primary factors from Table 4 of the proposed rule supported increasing size standards for 45 industries, decreasing size standards for 69 industries, and retaining size standards for nine industries and two subindustries. Additionally, SBA retained the size standard for NAICS 491110 (Postal Service) which the Economic Census does not cover. Table 1, Summary of Calculated Size Standards, summarizes the analytical results from the proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards unchanged
48–49	Transportation and Warehousing	43	18	23	2
51	Information	19	8	9	2
52	Finance and Insurance*	39	* 10	24	5
53	Real Estate and Rental and Leasing	25	9	13	3
All Sectors		126	45	69	12

\* Includes five assets-based size industries.

In the October 2020 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all size standards for which the analytical results supported an increase to size standards. To evaluate the impact of the changes to size standards adopted in this final rule on the Federal contracting market and SBA's loan programs, SBA analyzed FPDS-NG data for fiscal years 2018–2020 and internal data on its guaranteed loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule.

In the proposed rule, SBA sought comments on its proposal to increase size standards for 45 industries and retain the current size standards for the remaining 81 industries or subindustries in Sectors 48–49, 51, 52, and 53. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule, whether the decision not to lower any size standards is justified by the COVID–19 pandemic, whether the equal weighting of

individual factors to derive an industry size standard is appropriate, and whether the data sources used were appropriate or sufficient. SBA also sought comments on its proposal to maintain a common size standard for industries within Subsector 525 and assets-based size standards within NAICS Industry Groups 5221 and 5222. SBA also requested comments on its proposal to retain the size standard for the exception to NAICS 488510 (Non-Vessel Owning Common Carriers and Household Good Forwarders) and NAICS 491110 (Postal Service).

**Discussion of Comments**

SBA received a total of four comments to the proposed rule from a wide range of entities including an individual, a business, and two trade associations. Of the four comments received, one comment referenced all sectors covered by the proposed rule, one comment referenced NAICS 531210 (Offices of Real Estate Agents and Brokers), one comment referenced NAICS 522130 (Credit Unions), and one comment referenced Sector 23 (construction) which is not covered under this proposed rule. SBA did not evaluate the comment referencing Sector 23 in this final rule, instead, SBA will evaluate that comment under the final rule covering the construction industry (see RIN 3245-AG90 on [www.regulations.gov](http://www.regulations.gov)). The four comments to the proposed rule are available at [www.regulations.gov](http://www.regulations.gov) (RIN

3245-AG90) and are summarized and discussed below.

*Comments on Proposed Changes to All Sectors*

One commenter maintained that SBA's proposed changes to size standards would allow the entry of large businesses to the SBA's low-interest loan and contracting programs reserved by Congress for small businesses. This commenter further argued that the proposed rule is contrary to the statutory mandate given to the SBA by Congress in this regard. Citing these reasons, the commenter asserted that the proposed rule should be withdrawn.

**SBA Response**

In the proposed rule, SBA proposed to increase size standards for 45 industries, including eighteen (18) industries in NAICS Sector 48–49 (Transportation and Warehousing), eight (8) industries in NAICS Sector 51 (Information), ten (10) industries in NAICS Sector 52 (Finance and Insurance), and nine (9) industries in NAICS Sector 53 (Real Estate and Rental and Leasing). With an expanded pool of small businesses, it is likely that Federal agencies would set aside more contracts for small businesses under the increases to size standards, thereby increasing opportunities for all small businesses, including the smaller small businesses. Also, the Administration's recent decision to increase the Government-wide Small Disadvantaged Business

(SDB) goal from the current 5% to 11% in fiscal year 2021 (increasing to 15% by fiscal year 2025) is likely to drive agencies to set aside more contracts to small businesses in coming years.

SBA does not agree with the comment that the proposed rule is contrary to the Congressional mandate given to SBA and should not be issued. Pursuant to section 1344 of the Small Business Jobs Act of 2010 (the Jobs Act) (Pub. Law 111–240), SBA is statutorily mandated to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. The proposed rule was part of the second five-year review of size standards in accordance with the Jobs Act. SBA believes that proposed size standards revisions for industries being reviewed in this rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace. For the above reasons, SBA is adopting the proposed size standard without change.

*Comments on Proposed Changes to NAICS 531210—Offices of Real Estate Agents and Brokers*

SBA received a comment from a small business concern specializing in providing lease brokerage and other transaction services to Federal agencies. This comment was in full support of the proposed increase to the size standard for NAICS 531210 (Offices of Real Estate Agents and Brokers) from \$8 million to \$13 million in average annual receipts. The commenter believed that such an increase is totally consistent with the Government’s policy of providing maximum practicable opportunities to small businesses.

The commenter argued that the proposed increase to the size standard

for NAICS 531210 would ensure that small businesses would be able to retain access to the Federal small business assistance programs. It would also ensure that Federal agencies have a larger pool of small businesses from which to draw for their small business procurement programs, thereby increasing competition and lowering prices to the Government. Finally, the commenter believed that the proposed increase would make the size standard for NAICS 531210 more consistent with the growth of the industry in recent years.

*SBA Response*

SBA agrees with the commenter that the proposed size standard will help to provide maximum practicable opportunities to small businesses in this industry while also expanding the pool of small businesses from which the Federal Government can draw from for their small business procurement programs. Given the expressed support for SBA’s proposed increase to the size standard for NAICS 531210 and the absence of any significant adverse comments opposing the increase, SBA is adopting \$13 million in average annual receipts as the size standard for this NAICS code.

*Comments on Proposed Changes to NAICS 522130—Credit Unions*

SBA received one comment, on behalf of the National Association of Federally Insured Credit Unions (NAFCU), supporting SBA’s proposed increase to all size standards generally, and in particular the size standard for NAICS 522130 (Credit Unions) increasing from \$600 million to \$750 million in average assets. This comment is in support of SBA’s proposed size standard increase. As the commenter maintained, although credit unions are not-for-profit entities

and do not qualify for the SBA’s lending programs, the proposed increases to size standards would provide credit unions that are SBA lenders with an opportunity to provide lending to more newly-qualified small businesses, thereby helping local communities to thrive, promote innovation, and provide jobs.

*SBA Response*

SBA agrees with the commenter that the proposed changes to size standards will increase the number of businesses eligible to participate in SBA’s financial assistance programs. SBA also agrees with the commenter that SBA’s financial assistance programs can have wide-ranging positive impacts to individuals, businesses, and communities. Given the expressed support for SBA’s proposed increase to the size standard for NAICS 522130 and the absence of any significant adverse comments opposing the increase, SBA is adopting, as proposed, 750 million in average assets as the size standard for NAICS 522130.

**Summary of Adopted Revisions to Size Standards**

Based on the evaluation of public comments it received on the proposed rule and on its analyses of industry and Federal contracting factors using the latest available data when the proposed rule was prepared, SBA is adopting the size standards, as proposed in the October 2020 proposed rule. Thus, SBA is increasing 45 size standards, including 18 in NAICS Sector 48–49, eight in NAICS Sector 51, ten in NAICS Sector 52, and nine in NAICS Sector 53. A summary of SBA’s size standards revisions in this rule can be found below in Table 2, Summary of Size Standards Revisions in NAICS Sectors 48–49, 51, 52, and 53.

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
481219 .....	Other Nonscheduled Air Transportation .....	16.5 .....	22.0 .....	22.0
484110 .....	General Freight Trucking, Local .....	30.0 .....	9.0 .....	30.0
484121 .....	General Freight Trucking, Long-Distance, Truckload.	30.0 .....	22.0 .....	30.0
484122 .....	General Freight Trucking, Long-Distance, Less Than Truckload.	30.0 .....	38.0 .....	38.0
484210 .....	Used Household and Office Goods Moving	30.0 .....	21.0 .....	30.0
484220 .....	Specialized Freight (except Used Goods) Trucking, Local.	30.0 .....	15.0 .....	30.0
484230 .....	Specialized Freight (except Used Goods) Trucking, Long-Distance.	30.0 .....	22.0 .....	30.0
485111 .....	Mixed Mode Transit Systems .....	16.5 .....	25.5 .....	25.5
485112 .....	Commuter Rail Systems .....	16.5 .....	41.5 .....	41.5
485113 .....	Bus and Other Motor Vehicle Transit Systems.	16.5 .....	28.5 .....	28.5
485119 .....	Other Urban Transit Systems .....	16.5 .....	33.0 .....	33.0

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
485210	Interurban and Rural Bus Transportation	16.5	28.0	28.0
485310	Taxi Service	16.5	13.0	16.5
485320	Limousine Service	16.5	12.5	16.5
485410	School and Employee Bus Transportation	16.5	26.5	26.5
485510	Charter Bus Industry	16.5	13.0	16.5
485991	Special Needs Transportation	16.5	13.0	16.5
485999	All Other Transit and Ground Passenger Transportation.	16.5	16.0	16.5
486210	Pipeline Transportation of Natural Gas	30.0	36.5	36.5
486990	All Other Pipeline Transportation	40.5	31.5	40.5
487110	Scenic and Sightseeing Transportation Land	8.0	18.0	18.0
487210	Scenic and Sightseeing Transportation Water	8.0	12.5	12.5
487990	Scenic and Sightseeing Transportation Other.	8.0	22.0	22.0
488111	Air Traffic Control	35.0	30.5	35.0
488119	Other Airport Operations	35.0	25.5	35.0
488190	Other Support Activities for Air Transportation.	35.0	27.5	35.0
488210	Support Activities for Rail Transportation	16.5	30.0	30.0
488310	Port and Harbor Operations	41.5	38.0	41.5
488320	Marine Cargo Handling	41.5	39.0	41.5
488330	Navigational Services to Shipping	41.5	26.5	41.5
488390	Other Support Activities for Water Transportation.	41.5	23.5	41.5
488410	Motor Vehicle Towing	8.0	7.0	8.0
488490	Other Support Activities for Road Transportation.	8.0	16.0	16.0
488510	Freight Transportation Arrangement	16.5	17.5	17.5
488510	Non-Vessel Owning Common Carriers and Household Goods Forwarders. (Exception).	30.0	30.0	30.0
488991	Packing and Crating	30.0	17.5	30.0
488999	All Other Support Activities for Transportation.	8.0	22.0	22.0
491110	Postal Services	8.0	8.0	8.0
492210	Local Messengers and Local Delivery	30.0	10.5	30.0
493110	General Warehousing and Storage	30.0	25.0	30.0
493120	Refrigerated Warehousing and Storage	30.0	32.0	32.0
493130	Farm Product Warehousing and Storage	30.0	13.5	30.0
493190	Other Warehousing and Storage	30.0	32.0	32.0
511210	Software Publishers	41.5	40.0	41.5
512110	Motion Picture and Video Production	35.0	33.0	35.0
512120	Motion Picture and Video Distribution	34.5	26.0	34.5
512131	Motion Picture Theaters (except Drive-Ins)	41.5	39.5	41.5
512132	Drive-In Motion Picture Theaters	8.0	11.0	11.0
512191	Teleproduction and Other Postproduction Services.	34.5	19.5	34.5
512199	Other Motion Picture and Video Industries	22.0	25.0	25.0
512240	Sound Recording Studios	8.0	9.5	9.5
512290	Other Sound Recording Industries	12.0	20.0	20.0
515111	Radio Networks	35.0	41.5	41.5
515112	Radio Stations	41.5	36.0	41.5
515120	Television Broadcasting	41.5	41.5	41.5
515210	Cable and Other Subscription Programming	41.5	41.5	41.5
517410	Satellite Telecommunications	35.0	38.5	38.5
517919	All Other Telecommunications	35.0	33.0	35.0
518210	Data Processing, Hosting, and Related Services.	35.0	33.0	35.0
519110	News Syndicates	30.0	32.0	32.0
519120	Libraries and Archives	16.5	18.5	18.5
519190	All Other Information Services	30.0	26.5	30.0
522110	Commercial Banking	600 million in assets	750 million in assets	750 million in assets.
522120	Savings Institutions	600 million in assets	750 million in assets	750 million in assets.
522130	Credit Unions	600 million in assets	750 million in assets	750 million in assets.
522190	Other Depository Credit Intermediation	600 million in assets	750 million in assets	750 million in assets.
522210	Credit Card Issuing	600 million in assets	750 million in assets	750 million in assets.
522220	Sales Financing	41.5	38.0	41.5
522291	Consumer Lending	41.5	41.5	41.5
522292	Real Estate Credit	41.5	40.0	41.5
522293	International Trade Financing	41.5	31.0	41.5

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
522294 .....	Secondary Market Financing .....	41.5 .....	41.5 .....	41.5
522298 .....	All Other Nondepository Credit Intermediation.	41.5 .....	35.5 .....	41.5
522310 .....	Mortgage and Nonmortgage Loan Brokers ..	8.0 .....	13.0 .....	13.0
522320 .....	Financial Transactions Processing, Reserve, and Clearinghouse Activities.	41.5 .....	39.5 .....	41.5
522390 .....	Other Activities Related to Credit Intermediation.	22.0 .....	25.0 .....	25.0
523110 .....	Investment Banking and Securities Dealing	41.5 .....	41.0 .....	41.5
523120 .....	Securities Brokerage .....	41.5 .....	37.0 .....	41.5
523130 .....	Commodity Contracts Dealing .....	41.5 .....	32.5 .....	41.5
523140 .....	Commodity Contracts Brokerage .....	41.5 .....	26.5 .....	41.5
523210 .....	Securities and Commodity Exchanges .....	41.5 .....	33.0 .....	41.5
523910 .....	Miscellaneous Intermediation .....	41.5 .....	27.0 .....	41.5
523920 .....	Portfolio Management .....	41.5 .....	35.5 .....	41.5
523930 .....	Investment Advice .....	41.5 .....	27.5 .....	41.5
523991 .....	Trust, Fiduciary, and Custody Activities .....	41.5 .....	41.5 .....	41.5
523999 .....	Miscellaneous Financial Investment Activities.	41.5 .....	41.5 .....	41.5
524113 .....	Direct Life Insurance Carriers .....	41.5 .....	37.5 .....	41.5
524114 .....	Direct Health and Medical Insurance Carriers.	41.5 .....	38.5 .....	41.5
524127 .....	Direct Title Insurance Carriers .....	41.5 .....	41.5 .....	41.5
524128 .....	Other Direct Insurance (except Life, Health, and Medical) Carriers.	41.5 .....	39.0 .....	41.5
524130 .....	Reinsurance Carriers .....	41.5 .....	39.5 .....	41.5
524210 .....	Insurance Agencies and Brokerages .....	8.0 .....	13.0 .....	13.0
524291 .....	Claims Adjusting .....	22.0 .....	18.0 .....	22.0
524292 .....	Third Party Administration of Insurance and Pension Funds.	35.0 .....	40.0 .....	40.0
524298 .....	All Other Insurance Related Activities .....	16.5 .....	27.0 .....	27.0
525110 .....	Pension Funds .....	35.0 .....	32.5 .....	35.0
525120 .....	Health and Welfare Funds .....	35.0 .....	32.5 .....	35.0
525190 .....	Other Insurance Funds .....	35.0 .....	32.5 .....	35.0
525910 .....	Open-End Investment Funds .....	35.0 .....	31.5 .....	35.0
525920 .....	Trusts, Estates, and Agency Accounts .....	35.0 .....	32.5 .....	35.0
525990 .....	Other Financial Vehicles .....	35.0 .....	32.5 .....	35.0
531110* .....	Lessors of Residential Buildings and Dwellings.	30.0 .....	23.5 .....	30.0
531120* .....	Lessors of Nonresidential Buildings (except Miniwarehouses).	30.0 .....	28.0 .....	30.0
531130* .....	Lessors of Miniwarehouses and Self-Storage Units.	30.0 .....	20.5 .....	30.0
531190* .....	Lessors of Other Real Estate Property .....	30.0 .....	16.0 .....	30.0
531210 .....	Offices of Real Estate Agents and Brokers ..	8.0 .....	13.0 .....	13.0
531311 .....	Residential Property Managers .....	8.0 .....	11.0 .....	11.0
531312 .....	Nonresidential Property Managers .....	8.0 .....	17.0 .....	17.0
531320 .....	Offices of Real Estate Appraisers .....	8.0 .....	8.5 .....	8.5
531390 .....	Other Activities Related to Real Estate .....	8.0 .....	17.0 .....	17.0
532111 .....	Passenger Car Rental .....	41.5 .....	41.5 .....	41.5
532112 .....	Passenger Car Leasing .....	41.5 .....	41.0 .....	41.5
532120 .....	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing.	41.5 .....	41.5 .....	41.5
532210 .....	Consumer Electronics and Appliances Rental.	41.5 .....	40.5 .....	41.5
532281 .....	Formal Wear and Costume Rental .....	22.0 .....	12.5 .....	22.0
532282 .....	Video Tape and Disc Rental .....	30.0 .....	31.0 .....	31.0
532283 .....	Home Health Equipment Rental .....	35.0 .....	36.0 .....	36.0
532284 .....	Recreational Goods Rental .....	8.0 .....	7.5 .....	8.0
532289 .....	All Other Consumer Goods Rental .....	8.0 .....	11.0 .....	11.0
532310 .....	General Rental Centers .....	8.0 .....	7.5 .....	8.0
532411 .....	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	35.0 .....	40.0 .....	40.0
532412 .....	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing.	35.0 .....	34.0 .....	35.0
532420 .....	Office Machinery and Equipment Rental and Leasing.	35.0 .....	32.5 .....	35.0
532490 .....	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.	35.0 .....	30.0 .....	35.0

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
533110 .....	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	41.5 .....	35.0 .....	41.5

NAICS codes 531110, 531120, 531130, and 531190—Leasing of Building Space to the Federal Government by Owners: For Government procurement, a size standard of \$41.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent. See Footnote 9 to the SBA’s Table of Size Standards.

Table 3, Summary of Adopted Size Standards Revisions by Sector, below, summarizes the adopted changes to size standards by NAICS sector.

TABLE 3—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
48–49 .....	Transportation and Warehousing .....	43	18	0	25
51 .....	Information .....	19	8	0	11
52 * .....	Finance and Insurance .....	39	10	0	29
53 .....	Real Estate and Rental and Leasing .....	25	9	0	16
All Sectors .....	.....	126	45	0	81

**Evaluation of Dominance in Field of Operation**

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the adopted size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.4%, varying from 0.005% to 4.8%. These market shares effectively preclude a firm at or below the adopted size standards from exerting control on any of the industries.

**Alternatives Considered**

In response to the unprecedented economic impacts of the ongoing COVID–19 pandemic on small businesses and Government response, SBA is adopting increases to size standards where the data suggests increases are warranted, and retaining all current size standards where the data suggested lowering of size standards is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current size standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 45 industries, decreasing them for 69 industries, and retaining them at their

current levels for 12 industries.

Alternative Option Two was to retain all current size standards.

SBA did not adopt Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA’s financial assistance in some cases. Lowering size standards in the current environment would also run counter to various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing COVID–19 pandemic. Considering the impacts of the Great Recession and Government actions that followed to support small businesses and the overall economy, SBA also adopted a policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

Under Alternative Option Two, given the current COVID–19 pandemic, SBA considered retaining the current level of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because the results discussed in the Regulatory Impact Analysis section,

below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 45 and retaining 81 size standards. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA’s loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

**Compliance With Executive Orders 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including (1) A statement of the need for the regulatory action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the regulatory action and the alternatives considered.

### Regulatory Impact Analysis

#### 1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small.

Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace.

The revisions to the existing size standards for 45 industries in NAICS Sectors 48–49, 51, 52, and 53 are consistent with SBA's statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal

small business programs that are designed to assist them to become competitive and create jobs.

#### 2. What are the potential benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

#### Changes to Size Standards

Based on the results from the analyses of the latest industry and Federal contracting data, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small firms and the overall economy, of the total of 126 industries in Sectors 48–49, 51, 52, and 53 that have receipts-based size standards, SBA is adopting increases to size standards for 45 industries and maintaining current size standards for the remaining 81 industries.

#### The Baseline

For purposes of this regulatory action, the baseline represents maintaining the "status quo," *i.e.*, making no changes to the current size standards. Using the number of small businesses and levels of small business benefits (such as set-aside contracts, SBA's loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available when the proposed rule was prepared), of a total of about 700,544 firms in industries in Sectors 48–49, 51, 52 (except assets-based size standards), and 53 for which SBA evaluated their receipt-based size standards, 97.2% are considered small under the current size standards. That percentage varies from 95.8% in Sector 51 to 97.9% in Sector 53. Based on the data from Federal Deposit Insurance Corporation (FDIC) and National Credit

Union Administration (NCUA), from a total of about 5,415 depository institutions 77.3% are small and from a total of 5,492 credit unions, 91.2% are small under the current asset-based size standards. Based on the data from FPDS–NG for fiscal years 2018–2020, about 11,939 unique firms in those industries with receipt-based size standards, received at least one Federal contract during that period, of which 73.5% were small under the current size standards. For these sectors, of \$20.3 billion in total average annual contract dollars awarded to businesses during that period, 21.4% went to small businesses. From the total small business contract dollars awarded during the period considered, 43.8% were awarded through various set-aside programs and 56.2% were awarded through non-set aside contracts. Based on the FDIC data, of a total of \$18,034 billion in assets, 4.6% are owned by small depository institutions. With respect to Credit Unions, from a total of \$1,471 billion in assets, 25.7% are owned by small credit unions.

Based on the SBA's internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 6,570 7(a) and 504 loans in that period, totaling about \$2.7 billion, of which 83% was issued through the 7(a) program and 17% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 749 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about \$19.2 million on an annual basis.<sup>2</sup> Table 4, Baseline for All Industries, provides these baseline results by NAICS sector.

#### Increases to Size Standards

As stated above, of 126 receipts-based size standards in NAICS Sectors 48–49, 51, 52, and 53 reviewed, based on the results from analyses of latest industry

<sup>2</sup> The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

and Federal market data, impacts of size standards changes on small businesses, and considerations of the impacts of the COVID-19 pandemic and public comments to the proposed rule, SBA is adopting increases to size standards for 45 industries and maintaining size standards for 79 industries and two

subindustries (exceptions). Below are descriptions of the benefits, costs, and transfer impacts of the increases to size standards adopted in this final rule.

The results of regulatory impact analyses SBA provided in the October 2020 proposed rule were based on the FPDS-NG and SBA loan data for fiscal years 2016-2018. In this final rule, SBA

is updating the impact analysis results by using the FPDS-NG and SBA loan data for fiscal years 2018-2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on Federal contracts and SBA loans.

TABLE 4—BASELINE FOR ALL INDUSTRIES

	Sector 48-49	Sector 51	Sector 52	Sector 53	Total
Baseline All Industries (current size standards) .....	43	19	39	25	126
Total firms (2012 Economic Census) .....	162,147	45,821	220,860	271,716	700,544
Total small firms under current size standards (2012 Economic Census) .....	156,173	43,915	214,790	265,977	680,855
Small firms as % of total firms .....	96.3%	95.8%	97.3%	97.9%	97.2%
Total contract dollars (\$ million) (FPDS-NG FY2018-2020) .....	\$8,205	\$8,103	\$3,012	\$986	\$20,306
Total small business contract dollars under current standards (\$ million) (FPDS-NG FY2020-2018) .....	\$1,492	\$1,926	\$410	\$520	\$4,348
Small business dollars as % of total dollars (FPDS-NG FY2018-2020) .....	18.2%	23.8%	13.6%	52.7%	21.4%
Total no. of unique firms getting contracts (FPDS-NG FY2018-2020) .....	3,378	5,119	500	3,351	11,939
Total no. of unique small firms getting small business contracts (FPDS-NG FY2018-2020) .....	2,558	3,555	258	2,591	8,777
Small business firms as % of total firms .....	75.7%	69.4%	51.6%	77.3%	73.5%
No. of 7(a) and 504/CDC loans (FY 2018-2020) .....	3,406	402	1,165	1,597	6,570
Amount of 7(a) and 504 loans (\$ million) (FY 2018-2020) .....	\$933	\$190	\$547	\$1,079	\$2,749
No. of EIDL loans (FY 2018-2020) * .....	87	19	45	598	749
Amount of EIDL loans (\$ million) (FY 2018-2020) * .....	\$3.9	\$0.5	\$1.6	\$13.2	\$19.2
Total Number of Depository Institutions (FDIC, SDI) (2018) .....			5,415		
Number of Small Depository Institutions (FDIC, SDI) (2018) .....			4,188		
Small firms as % of total Depository Institutions (2018) .....			77.3%		
Total Assets of Depository Institutions (\$ million) (FDIC, SDI) (2018) .....			\$18,034,372		
Total Assets of Small Depository Institutions (\$ million) (FDIC, SDI) (2018) .....			\$837,836		
SB Assets as % of Total Assets .....			4.6%		
Total Number of Credit Unions (NCUA) (2018) .....			5,492		
Number of small Credit Unions (NCUA) (2018) .....			5,010		
Small firms as % of total Depository Institutions .....			91.2%		
Total Assets of Credit Unions (\$ million) (NCUA) (2018) .....			\$1,470,839		
Total Assets of Small Credit Unions (\$ million) (NCUA) (2018) .....			\$377,619		
SB Assets as % of Total Assets of Credit Unions .....			25.7%		

\* Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Benefits of Increasing Size Standards

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining eligibility for a longer period. These include SBA's business loan programs, Economic Injury Disaster Loan (EIDL) program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/

Business Development (BD) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are

available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available), SBA estimates that in 45 industries in NAICS Sectors 48-49, 51, 52, and 53 for which it is increasing size standards, about 1,790 firms not small under the current size standards, will become small under the adopted size standards increases and therefore become eligible for these programs. That represents about 0.6% of all firms classified as small under the current

size standards in industries for which SBA is adopting increases to size standards. When adopted, SBA’s size standards would result in an increase to the small business share of total receipts in those industries from 29.9% to 32.7%. Table 5, Impacts of Increasing Size Standards, provides impacts of increasing 45 industries by NAICS sector.

With more businesses qualifying as small under the adopted increases to size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards

will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

As shown in Table 5, based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 53 firms that are active in Federal contracting in those industries would gain small business status under the adopted size standards. Based on the same data, SBA estimates that those newly-qualified small businesses under the increases to 45 size standards could receive Federal small business contracts totaling about \$20 million annually. That represents a

2.3% increase to small business dollars from the baseline.

Based on the FDIC data for fiscal year 2018, SBA estimates that about 200 depository institutions would gain small institution status under the adopted increases to asset-based size standards with an additional \$132 billion or 15.8% increase in small depository institutions’ assets. Also, based on the NCUA data for fiscal year 2018, SBA estimates that about 85 credit unions would gain small business status under the adopted increases to size standards, with an additional \$56 billion in assets or 14.9% increase for small credit unions (see Table 5).

TABLE 5—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
No. of industries with increases to size standards .....	18	8	10	9	45
Total current small businesses in industries with increases to size standards (2012 Economic Census) ..	27,255	5,368	135,774	150,404	318,800
Additional firms qualifying as small under standards (2012 Economic Census) .....	184	13	623	970	1,790
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards .....	0.7%	0.2%	0.5%	0.6%	0.6%
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG FY2018–2020) <sup>1</sup> .....	419	267	93	1173	1,943
Additional small business firms getting small business status (FPDS–NG FY2018–2020) <sup>1</sup> .....	23	4	5	22	53
% increase to small businesses relative to current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG FY2018–2020) .....	5.5%	1.5%	5.4%	1.9%	2.7%
Total small business contract dollars under current standards in industries with increases to size standards (\$ million) (FPDS–NG FY2018–2020) .....	\$331.4	\$132.1	\$178.3	\$245.6	\$887.3
Estimated additional small business dollars available to newly-qualified small firms (using avg. dollars obligated to small businesses) (\$ million) (FPDS–NG FY 2018–2020) <sup>2</sup> .....	\$5.9	\$2.1	\$3.5	\$8.7	\$20.3
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards .....	1.8%	1.6%	2.0%	3.6%	2.3%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY 2018–2020) .....	360	49	761	703	1,873
Total 7(a) and 504 loan amounts to small businesses in industries with increases to size standards (\$ million) (FY 2018–2020) .....	\$150.6	\$21.7	\$301.5	\$249.8	\$723.6
Estimated no. of 7(a) and 504 loans to newly-qualified small firms .....	4	1	4	5	14
Estimated 7(a) and 504 loan amounts to newly-qualified small firms (\$ million) .....	\$2.5	\$0.4	\$1.6	\$1.8	\$6.3
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards .....	0.3%	0.2%	0.3%	0.2%	0.2%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY 2018–2020) <sup>3</sup> .....	59	8	0	98	165
Total amount of EIDL loans to small businesses in industries with increases to size standards (\$ million) (FY 2018–2020) <sup>3</sup> .....	\$2.7	\$0.2	\$1.5	\$4.3	\$8.6
Estimated no. of EIDL loans to newly-qualified small firms <sup>3</sup> .....	2	1	1	1	5
Estimated EIDL loan amount to newly-qualified small firms (\$ million) <sup>3</sup> .....	\$0.05	\$0.02	\$0.04	\$0.04	\$0.2

TABLE 5—IMPACTS OF INCREASING SIZE STANDARDS—Continued

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
% increase to EIDL loan amount relative to the total amount of disaster loans in industries with increases to size standards <sup>3</sup> .....	2.0%	12.5%	2.4%	1.0%	1.8%
Total current small businesses in industries with increases to size standards (FDIC) (2018) .....			4,188		
Additional firms qualifying as small under adopted standards (FDIC) .....			198		
% Increase small institutions with increases to size standards .....			4.7%		
Total Assets of Small Depository Institutions (\$ million) (FDIC, SDI) (2018) .....			\$837,836		
Estimated increase in total assets of Small Depository Institutions (\$ million) .....			\$132,440		
% increase in total assets of small depository institutions .....			15.8%		
Number of small Credit Unions (NCUA) (2018) .....			5,010		
Additional small Credit Unions (NCUA) .....			84		
% Increase small institutions with increases to size standards .....			1.7%		
Total Assets of Small Credit Unions (\$ million) (NCUA) (2018) .....			\$377,619		
Estimated increase in total assets of Small Credit Unions (\$ million) .....			\$56,327		
% increase in total assets of small Credit Unions .....			14.9%		

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

The added competition from more businesses qualifying as small can result in lower prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the adopted increases to size standards, HUBZone firms might receive more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. SBA cannot estimate such costs savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates up to about 14 SBA 7(a) and 504 loans totaling about \$6.3 million could be made to these newly-qualified small businesses in those industries under the

adopted size standards. That represents a 0.2% increase to the loan amount compared to the group baseline (see Table 5).

Newly-qualified small businesses will also benefit from the SBA's EIDL program. Because the benefits provided through this program are contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the disaster loan program data, SBA estimates that, on an annual basis, the newly-defined small businesses under the increases to 45 size standards could receive 5 disaster loans (except physical disaster loans), totaling about \$0.2 million. Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

**Costs Increasing Size Standards**

Aside from taking time to register in *sam.gov* to be eligible to participate in Federal contracting, and update the System for Award Management (SAM) profile annually, small businesses incur no direct costs to gain or retain their small business status as a result of increases to size standards. All

businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. This final rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly-qualified small businesses could become active in Federal procurement, the adopted increases to size standards, if adopted, may entail some additional administrative costs to the Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*, more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, SDB, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD mentor-protégé program. With an expanded pool of small businesses, it is likely that

Federal agencies would set-aside more contracts for small businesses under the adopted increases to size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number of size protests processed shows that the number of size protests decreased following the increases to receipts-based size standards as part of the first five-year review of size standards.

Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013), as compared to about 500 during fiscal years 2018–2020 when size standard increases were in effect. That represents a 17% decline.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the adopted increases to size standards, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the adopted size standards. However, the additional costs associated with fewer bidders are expected to be minor because, by law, procurements may be set aside for small businesses under the 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the adopted increases to size standards,

HUBZone firms might receive fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

#### Transfer Impacts of Increasing Size Standards

The increases to 45 size standards that are adopted in this final rule may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will not change with changes to size standards. Although SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the adopted increases to size standards, some unrestricted Federal contracts that would otherwise be awarded to large businesses may be set-aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from larger businesses qualifying as small under the adopted increases to size standards. This impact may be offset by a greater number of procurements being set-aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

#### 3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider regulatory alternatives to the adopted changes in this final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative to the adopted change, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 45 industries for which the analytical results, as presented in Table 4 of the October 2020 proposed rule, suggest

raising them would be raised. However, the size standards of 69 industries for which the analytical results suggest lowering them would be lowered. For the 12 remaining industries, size standards would be maintained at their current levels based on the results. Alternative Option Two would propose retaining size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses benefits, costs, and the net impacts of each option.

#### Alternative Option One: Adopting All Calculated Size Standards

As discussed previously in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-year comprehensive size standards review as well.

The primary benefits of adopting Alternative Option One would include: (1) SBA's procurement, management, technical and financial assistance resources would be targeted to the most appropriate beneficiaries of such programs according to the analytical results; (2) Adopting the size standards based on the analytical results would also promote consistency and predictability in SBA's implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set-aside opportunities. Specifically, SBA sought public comment on the impact of adopting the size standards based on the analytical results.

As explained in the "Size Standards Methodology" white paper, in addition to adopting all results of the primary

analysis, SBA evaluates other relevant factors as needed such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

We have discussed already the benefits, costs, and transfer impacts of increasing 45 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 69 size standards based on the analytical results.

**Benefits of Decreasing Size Standards Under Alternative Option One**

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA's business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide

targeted, set-aside opportunities for small businesses under SBA's business development programs, such as small business, SDB, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of calculated size standards diminishes the risk of awarding contracts to firms that are not small anymore.

Decreasing size standards may reduce the administrative costs of the Government, because the risk of awarding set-aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also diminish the risks of providing SBA's loans to firms that do not need them the most. This may provide a better chance for smaller small firms to grow and benefit from the opportunities available on the Federal marketplace, and strengthen the small business industrial base for the Federal Government.

**Costs of Decreasing Size Standards Under Alternative Option One**

Table 6, Impacts of Decreasing Size Standards Under Alternative Option

One, below, shows the various impacts of lowering size standards in 69 industries based solely on the analytical results. Based on the 2012 Economic Census, about 5,500 (0.9%) firms would lose their small business status under Alternative Option One. Similarly, based on the FPDS-NG data for fiscal years 2018-2020, nearly 500 (5.0%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts. With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business procurement programs. For example, during fiscal years 2018-2020, agencies awarded, on an annual basis, about \$3,338 million in small business contracts in those 69 industries for which SBA considered decreasing size standards under Alternative Option One. Lowering size standards in 69 industries would reduce Federal contract dollars awarded to small businesses by \$87 million or about 2.6% relative to the baseline level.

**TABLE 6—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE**

	Sector 48-49	Sector 51	Sector 52	Sector 53	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census) .....	23	9	24	13	69
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	133,032	39,030	76,036	114,495	510,777
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) .....	1,086	72	246	234	1,738
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards .....	0.50%	0.19%	0.34%	0.21%	0.92%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY2018-2020) <sup>1</sup>	2,188	3,200	131	1,339	6,744
Estimated number of small business firms that would have lost small business status for Federal contracting in the decreases that SBA considered <sup>1</sup> .....	110	17	5	28	155
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY2018-2020) .....	5.0%	0.5%	0.0%	2.1%	2.3%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (\$ million) (FPDS-NG FY2018-2020) .....	\$1,157	\$1,776	\$145	\$260	\$3,338
Estimated small business dollars not available to firms that would have lost business status (Using avg dollars obligated to SBs) (\$ million) <sup>2</sup> (FPDS-NG FY 2018-2020) .....	\$64.7	\$11.2	\$4.0	\$6.8	\$86.6
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing to size standards .....	5.6%	0.6%	0.0%	2.6%	2.6%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018-2020) .....	3,046	346	372	846	4,610

TABLE 6—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) .....	\$782	\$165	\$232	\$807	\$1,986
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status .....	5	1	1	1	8
Estimated 7(a) and 504 loan amounts not available to firms that would have small status (\$ million) .....	\$1.6	\$0.5	\$0.6	\$1.0	\$3.6
% decrease to 7(a) and 504 loan amounts relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards .....	0.2%	0.3%	0.1%	0.1%	0.3%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) <sup>3</sup> .....	110	19	22	868	1,019
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) <sup>3</sup> .....	\$4.6	\$1.0	\$0.8	\$11.6	\$18.0
Estimated no. of EIDL loans not available to firms that would have lost small business status <sup>3</sup> .....	2	1	1	1	5
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) <sup>3</sup> .....	\$0.08	\$0.05	\$0.04	\$0.01	\$0.18
% decrease to EIDL loan amount relative to the baseline <sup>3</sup> .....	2.0%	10.7%	2.4%	0.1%	1.4%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Because of the importance of these sectors for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact under the assumptions of Alternative Option One. SBA could adopt one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results, (2) Decrease size standards by a smaller amount than the calculated threshold, and (3) Retain the size standards at their current levels.

Nevertheless, because Federal agencies are still required to meet the statutory small business contracting goal of 23%, actual impacts on the overall set-aside activity is likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Government for procurements set-aside or reserved for small businesses, but SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies' small business procurement goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 6, decreasing size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about 8 of SBA's 7(a) and 504 loans with total amounts of \$3.6 million could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents about 0.3% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted by way of access to loans through SBA's EIDL loan program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. For example, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about 5 EIDL loans with total amounts of \$0.2 million could not be made to those small businesses that would lose

eligibility under the reduced size standards (before mitigation). That represents about 1.4% decrease of the loan amounts compared to the baseline. Because this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a more meaningful estimate of this impact.

Small businesses becoming other than small if size standards were decreased might lose benefits through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

Transfer Impacts of Decreasing Size Standards Under Alternative Option One

If the size standards were decreased under Alternative Option One, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the adopted

increases to size standards, it would have no impact on the overall economic activity because the total Federal contract dollars available for businesses to compete for will stay the same. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses

under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate the impacts of the increasing size standards (see Table 5). However, under Alternative Option One, SBA used the calculated size standards instead of the adopted ones to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 5. Table 6

and Table 7, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impact of the decreases of size standards and the net impact of adopting the calculated results under Alternative Option One, respectively.

Based on the 2012 Economic Census, SBA estimates that in 114 industries in NAICS Sectors 48–49, 51, 52 and 53 for which the analytical results suggested to change size standards, about 50 firms (see Table 7), would become small under Alternative Option One. That represents about 0.01% of all firms classified as small under the current size standards in those industries. That is about 1,740 fewer firms qualifying as small under Alternative Option One, which represents a 97.0% reduction from about 1,790 firms that would qualify as small (see Table 5) under the proposal being adopted in this final rule (i.e., increasing 45 and retaining 81 size standards).

TABLE 7—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
No. of industries with changes to size standards .....	41	17	34	22	114
Total no. of small business under the current size standards (2012 Economic Census) .....	156,173	42,803.4	208,456	265,559	669,991
Additional firms qualifying as small under size standards (2012 Economic Census) .....	–1,002	–60	377	736	52
% of additional firms qualifying as small relative to total current small businesses .....	–0.6%	–0.1%	0.2%	0.3%	0.01%
No. of current unique small firms getting small business contracts (FPDS–NG FY2018–2020) <sup>1</sup> .....	2,538	3428	218	2,481	8,504
Additional small firms getting small business status (FPDS–NG FY2018–2020) <sup>1</sup> .....	–88	–14	0	–7	–109
% increase to small firms relative to current unique small firms getting small business contracts (FPDS–NG FY2018–2020) .....	–3.5%	–0.4%	0.0%	–0.3%	–1.3%
Total small business contract dollars under current size standards (\$ million) (FPDS–NG FY2018–2020) .....	\$1,488	\$1,908	\$324	\$505	\$4,225
Estimated small business dollars available to newly-qualified small firms (\$ million) (FPDS–NG FY 2018–2020) <sup>2</sup> .....	–\$59	–\$9	–\$0.5	–\$2	–\$66
% increase to dollars relative to total small business contract dollars under current size standards .....	–3.9%	–0.5%	–0.1%	0.4%	–1.6%
Total no. of 7(a) and 504 loans to small businesses (FY 2018–2020) .....	3,406	402	1,165	1,597	6,570
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020) .....	\$933	\$190	\$547	\$1,079	\$2,749
Estimated no. of additional 7(a) and 504 loans to newly-qualified small firms .....	–1	0	3	4	6
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms (\$ million) .....	\$0.9	\$0.0	\$1.0	\$0.8	\$2.6
% increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses .....	0.1%	0.0%	0.18%	0.08%	0.08%
Total no. of EIDL loans to small businesses (FY 2018–2020) <sup>3</sup> .....	87	19	45	598	749
Total amount of EIDL loans to small businesses (FY 2018–2020) <sup>3</sup> .....	\$3.9	\$0.5	\$1.6	\$13.2	\$19.2
Estimated no. of additional EIDL loans to newly-qualified small firms <sup>3</sup> .....	0	0	0	0	0
Estimated additional EIDL loan amount to newly-qualified small firms (\$ million) <sup>3</sup> .....	–\$0.02	–\$0.03	\$0.01	\$0.03	–\$0.03
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses <sup>3</sup> .....	–0.6%	–5.9%	–0.1%	0.2%	–0.1%

TABLE 7—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
Total current small businesses in industries with proposed increases to size standards (FDIC) (2018) .....			4,188		
Additional firms qualifying as small under adopted standards (FDIC) .....			198		
% increase small institutions with increases to size standards .....			4.7%		
Total Assets of Small Depository Institutions (FDIC, SDI) (2018) .....			\$837,836		
Estimated increase in total assets of Small Depository Institutions .....			\$132,440		
% increase in total assets of small depository institutions .....			15.8%		
Number of small Credit Unions (NCUA) (2018) .....			5,010		
Additional small Credit Unions (NCUA) .....			84		
% increase small institutions with increases to size standards .....			1.7%		
Total Assets of Small Credit Unions (NCUA) (2018) .....			\$377,619		
Estimated increase in total assets of Small Credit Unions .....			\$56,327		
% increase in total assets of small Credit Unions .....			14.9%		

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

As shown in Table 7, based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that, in aggregate, about 109 active firms in Federal contracting in those industries would lose small business status under Alternative Option One, most of them from Sector 48–49. This represents a decrease of about 1.3% of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about \$660 million of Federal procurement dollars would not be available to firms losing their small status. That is a decrease of 1.6% from the baseline. A large portion of these losses is accounted for by Sector 48–49.

Based on the SBA's loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans will increase by six loans, while the total loan amount will increase by about \$2.6 million. This is a 0.08% rise of the loan amounts relative to the baseline. Firms' participation under the SBA's EIDL loan program will be affected as well. Because the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL loan program data, SBA estimates that there will be no change to the total number of EIDL loans, while the total loan amount will be reduced by about \$.03 million. This represents a

0.1% decrease of the loan amounts relative to the baseline. Table 7 provides these results by NAICS sector.

Alternative Option Two: Retaining All Current Size Standards

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.*, zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.*, access to set-aside contracts and capital) that become available to them under the option of increasing 45 and retaining 81 size standards adopted in this final rule. Moreover, retaining all size standards under this option would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Final Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. This final rule may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and disaster loan programs,

and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many of the industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on data from the 2012 Economic Census, SBA estimates that there are about 319,000 small firms covered by this rulemaking under industries with changes to size standards. Under this final rule, SBA estimates that an additional 1,790 businesses will be defined as small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The size standard changes in this final rule impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–

28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. Changes in small business size standards do not result in additional costs associated with SAM registration or certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal Rules that may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to increasing 45 and maintaining 81 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results. In other words, the size standards of 45

industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 69 industries for which the analytical results suggest lowering them would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in Sector 48–49 (see Table 6). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 45 and decreasing 69 size standards. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 45 and retaining 35 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

#### *Executive Order 13563*

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this final rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act, which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a

number of industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in early 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled "Size Standards Methodology" and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review. The "Size Standards Methodology" white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this final rule. SBA received a total of four comments to the proposed rule. In the Discussion of Comments section of this final rule, SBA summarizes and provides responses to the comments received on the proposed rule.

*Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table "Small Business Size Standards by NAICS Industry" as follows:

- a. Revise the entries for "481219", "484122", "485111" through "485113", "485119", "485210", "485410", "486210", "487110", "487210", "487990", "488210", "488490", "488510", "488510 (Exception)", "488999", "493120", "493190", "512132", "512199", "512240", "512290", "515111", "517410", "519110", "519120", "522110", "522120", "522130", "522190", "522210", "522310", "522390", "524210", "524292", "524298", "531210", "531311", "531312", "531320", "531390", "532282", "532283", "532289", and "532411", and
- b. Revise footnote 10.

The revisions read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

**SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY**

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *	<b>Sectors 48–49—Transportation and Warehousing</b>		
	<b>Subsector 481—Air Transportation</b>		
481219	Other Nonscheduled Air Transportation	\$22.0	
* * * * *	<b>Subsector 484—Truck Transportation</b>		
484122	General Freight Trucking, Long-Distance, Less Than Truckload	38.0	
* * * * *	<b>Subsector 485—Transit and Ground Passenger Transportation</b>		
485111	Mixed Mode Transit Systems	25.5	
485112	Commuter Rail Systems	41.5	
485113	Bus and Other Motor Vehicle Transit Systems	28.5	
485119	Other Urban Transit Systems	33.0	
485210	Interurban and Rural Bus Transportation	28.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *		*	*
485410	School and Employee Bus Transportation	26.5	
* * * * *		*	*
<b>Subsector 486—Pipeline Transportation</b>			
* * * * *		*	*
486210	Pipeline Transportation of Natural Gas	36.5	
* * * * *		*	*
<b>Subsector 487—Scenic and Sightseeing Transportation</b>			
487110	Scenic and Sightseeing Transportation, Land	18.0	
487210	Scenic and Sightseeing Transportation, Water	12.5	
487990	Scenic and Sightseeing Transportation, Other	22.0	
<b>Subsector 488—Support Activities for Transportation</b>			
* * * * *		*	*
488210	Support Activities for Rail Transportation	30.0	
* * * * *		*	*
488490	Other Support Activities for Road Transportation	16.0	
488510	Freight Transportation Arrangement <sup>10</sup>	<sup>10</sup> 17.5	
488510 (Exception)	Non-Vessel Owning Common Carriers and Household Goods Forwarders	30.0	
* * * * *		*	*
488999	All Other Support Activities for Transportation	22.0	
* * * * *		*	*
<b>Subsector 493—Warehousing and Storage</b>			
* * * * *		*	*
493120	Refrigerated Warehousing and Storage	32.0	
* * * * *		*	*
493190	Other Warehousing and Storage	32.0	
<b>Sector 51—Information</b>			
* * * * *		*	*
<b>Subsector 512—Motion Picture and Sound Recording Industries</b>			
* * * * *		*	*
512132	Drive-In Motion Picture Theaters	11.0	
* * * * *		*	*
512199	Other Motion Picture and Video Industries	25.0	
* * * * *		*	*
512240	Sound Recording Studios	9.5	
* * * * *		*	*
512290	Other Sound Recording Industries	20.0	
<b>Subsector 515—Broadcasting (except Internet)</b>			
515111	Radio Networks	41.5	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
<b>Subsector 517—Telecommunications</b>			
517410	Satellite Telecommunications	38.5	
*	*	*	*
<b>Subsector 519—Other Information Services</b>			
519110	News Syndicates	32.0	
519120	Libraries and Archives	18.5	
*	*	*	*
<b>Sector 52—Finance and Insurance</b>			
<b>Subsector 522—Credit Intermediation and Related Activities</b>			
522110	Commercial Banking <sup>8</sup>	750 million in assets <sup>8</sup> .	
522120	Savings Institutions <sup>8</sup>	750 million in assets <sup>8</sup> .	
522130	Credit Unions <sup>8</sup>	750 million in assets <sup>8</sup> .	
522190	Other Depository Credit Intermediation <sup>8</sup>	750 million in assets <sup>8</sup> .	
522210	Credit Card Issuing <sup>8</sup>	750 million in assets <sup>8</sup> .	
*	*	*	*
522310	Mortgage and Nonmortgage Loan Brokers	13.0	
*	*	*	*
522390	Other Activities Related to Credit Intermediation	25.0	
*	*	*	*
<b>Subsector 524—Insurance Carriers and Related Activities</b>			
524210	Insurance Agencies and Brokerages	13.0	
*	*	*	*
524292	Third Party Administration of Insurance and Pension Funds	40.0	
524298	All Other Insurance Related Activities	27.0	
*	*	*	*
<b>Sector 53—Real Estate and Rental and Leasing</b>			
<b>Subsector 531—Real Estate</b>			
531210	Offices of Real Estate Agents and Brokers <sup>10</sup>	<sup>10</sup> 13.0	
531311	Residential Property Managers	11.0	
531312	Nonresidential Property Managers	17.0	
531320	Offices of Real Estate Appraisers	8.5	
531390	Other Activities Related to Real Estate	17.0	
<b>Subsector 532—Rental and Leasing Services</b>			
532282	Video Tape and Disc Rental	31.0	
532283	Home Health Equipment Rental	36.0	
*	*	*	*
532289	All Other Consumer Goods Rental	11.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	40.0	

Footnotes

<sup>8</sup> NAICS Codes 522110, 522120, 522130, 522190, and 522210—A financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. “Assets” for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS Codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

<sup>10</sup> NAICS codes 488510 (excluding the exception), 531210, 541810, 561510, 561520 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

Isabella Casillas Guzman,  
Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG88

Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; and Other Services. Specifically, SBA is increasing the size standards for 70 industries in those sectors, including 14 industries in NAICS Sector 61 (Education Services), 18 industries in Sector 62 (Health Care and Social Assistance), 11 industries in Sector 71 (Arts, Entertainment and Recreation), four industries in Sector 72 (Accommodation and Food Services), and 23 industries in Sector 81 (Other Services).

**DATES:** This rule is effective May 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205–6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion of Size Standards**

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions.

SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB’s 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards under the Jobs Act, SBA reviewed all receipt-based size standards in NAICS Sectors 61, 62, 71, 72, and 81 to determine whether the existing size standards should be retained or revised based on the current

<sup>1</sup> On December 21, 2021, the U. S. Office of Management and Budget (OMB) published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . .” In the near future, SBA will issue a proposed rule to adopt the OMB’s NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.