SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG91

Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation 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 Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services. Specifically, SBA is increasing the size standards for 46 industries in those sectors, including 27 industries in NAICS Sector 54 (Professional, Scientific and Technical Services), two industries in Sector 55 (Management of Companies and Enterprises), and 17 industries in Sector 56 (Administrative and Support and Waste Management and Remediation Services).

DATES: This rule is effective May 2, 2022.

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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 (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).[1]

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 Sector 54 (Professional, Scientific and Technical Services), Sector 55 (Management of Companies and Enterprises), and Sector 56 (Administrative and Support and Waste Management and Remediation Services) 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 November 13, 2020, issue of the **Federal Register** (85 FR 72584) a proposed rule to increase the size standards for 27 industries in NAICS Sector 54, two industries in Sector 55, and 17 industries in Sector 56. In this final rule, SBA is adopting the proposed size standards from the November 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'' white paper is available on its website at *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 54, 55, and 56, 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

[1] 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 NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

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 November 2020 proposed rule (85 FR 72584), 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 91 industries and three subindustries (*i.e.,* exceptions) reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors supported increasing size standards for 46 industries, decreasing size standards for 40 industries and two subindustries, and maintaining size standards for six remaining industries. 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 maintained
54	Professional, Scientific and Technical Services	48	27	18	3
55	Management of Companies and Enterprises	2	2	0	0
56	Administrative and Support and Waste Management and Remediation Services.	44	17	24	3
All Sectors		94	46	42	6

In the November 2020 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and society in general. Recognizing the wide-ranging economic impact of the pandemic, SBA decided not to lower any size standards notwithstanding analysis that 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 Federal contracting and SBA's loan programs, SBA analyzed FPDS–NG data for fiscal years 2018–2020 and its internal data on its loan programs for fiscal years 2018–2020. The results of that 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 46 industries, and retain the current size standards for the remaining 48 industries or subindustries in Sectors 54, 55, and 56. 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 consideration of the impact of the COVID–19 pandemic on small businesses and overall economy; 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.

Discussion of Comments

SBA received a total of 93 comments to the proposed rule from a wide range of entities, including individuals, businesses/corporations, trade associations, and academic institutions. Of the 93 comments received, ten comments were either invalid (blank) or not relevant to the proposed rule and three comments were submitted twice. Among the remaining 80 unique and pertinent comments, 45 referenced to the size standard for NAICS 541330, six to NAICS 541310, 24 to NAICS 541930, six to other industries, including NAICS 541810, 541611, 541990, and 541350, and six did not specify any 6-digit NAICS code. Of the 80 pertinent comments to the proposed rule, 45 or 56% expressed support for the proposed changes; 16 or 20% opposed the proposed changes; 16 or 20% expressed mixed support or suggested alternatives; and the rest took other positions or raised other issues. Comments also included a submission from SBA detailing a December 17, 2020, meeting that occurred between SBA and a trade association regarding SBA's size standard methodology and its calculations used in deriving the proposed size standard for engineering services. All comments are available at *www.regulations.gov* (RIN 3245–AG91) and are summarized and discussed below.

Comments on Proposed Changes to NAICS 541310—Architectural Services and NAICS 541350—Building Inspection Services

SBA received a total of six comments to its proposal to increase the size standard for NAICS 541310 (Architectural Services) from $8 million to $11 million. All commenters supported an increase to the size standard; however, two commenters recommended that SBA adopt a larger increase while the remaining four commenters supported increasing the size standard to the proposed $11 million level. Of the four comments fully supporting the SBA's proposal, three stated that the SBA's analysis and proposed $11 million size standard appropriately reflect the current industry characteristics and market conditions in NAICS 541310. Three commenters also expressed support for the SBA's proposed increase to the size standard for NAICS 541350 (Building Inspection Services) from $8 million to $10 million but did not provide any specific data or analysis relevant to that industry.

One commenter in support of the SBA's proposed increase to the size standard for NAICS 541310 expressed that the current size standard makes it difficult for small architectural firms to compete in the Federal marketplace upon graduating from the size standard, especially when competing with firms that are tens or hundreds of times larger than they are. The commenter concluded that the SBA's proposed increase would benefit all small companies, providing larger small businesses with an opportunity to successfully graduate from the size standard while still protecting smaller small businesses from competing with dominant firms. Another commenter expressed support for the SBA's proposal based on the impacts on emerging companies, maintaining that the proposed size standard is appropriate, and it will encourage new entrants to the Federal marketplace.

Commenters in support of a size standard higher than the SBA's proposed size standard of $11 million for NAICS 541310 included an anonymous commenter and an architectural and engineering services firm. These commenters recommended that SBA increase the size standard for NAICS 541310 to at least $22.5 million to match the proposed size standard for NAICS 541330 (Engineering Services). One commenter argued that the SBA's proposed size standard does not adequately prepare firms graduating from the size standard to compete with larger and more established firms under full and open competition. This commenter also expressed that a higher size standard is necessary to account for the large volume of subcontracting dollars that flow from architectural firms to engineering firms and suggested that SBA explore ways to modify its definition of receipts to allow for the exclusion of amounts paid to third-party subcontractors. Another commenter expressed similar concerns to those mentioned above and recommended that SBA establish a common size standard between NAICS 541310 (Architectural Services) and NAICS 541330 (Engineering Services) to better reflect the similarities between the two industries.

SBA's Response

SBA agrees with commenters that the proposed $11 million size standard for NAICS 541310 would benefit all small firms. A larger size standard will extend the time that small firms can remain small and increase the number of firms eligible for SBA's assistance intended for small businesses. As a result of this expanded runway, small firms can acquire more experience and technical capabilities to be able to compete with larger firms upon graduation from the size standard. Moreover, with an expanded pool of small businesses, the Federal Government will have more qualified small businesses to choose from, and as a result, will likely set aside more contracts for small businesses, thereby increasing Federal opportunities for all small businesses.

SBA disagrees with commenters that the size standard for Engineering Services should be aligned with other industries, such as Architectural Services, that may perform similar activities. Although Engineering and Architectural Services are often co-dependent business activities, SBA's analysis of these industries, as detailed in Table 4 of the November 2020 proposed rule, demonstrates that the industry structures and economic characteristics of the firms providing architectural and engineering services are markedly different, justifying a unique size standard for each industry. SBA discusses these differences in more detail in the response to comments to NAICS 541330, below.

As discussed in detail in the response to comments on NAICS 541330 (below), as part of the first five-year review of size standards under the Jobs Act, SBA proposed a common $19 million size standard for NAICS 541310, NAICS 541330, and other industries in NAICS Industry Group 5413 (Architectural, Engineering, and Related Services), which was overwhelmingly rejected by commenters on the grounds that these industries are vastly different, and each industry should have a unique size standard.

SBA does not agree with commenters that firms just above the current or proposed size standard are not competitive in the Federal marketplace. SBA analyzed the data from FPDS–NG for fiscal years 2018–2020 to determine the range of Federal contracting opportunities available to architectural firms above the current or proposed size standard. These results are presented in Table 2, Distribution of Contracting Dollars and Industry Receipts by Firm Size in NAICS 541310. SBA's analysis showed that 49.4% of the total dollars obligated to NAICS 541310 went to firms below the proposed $11 million size standard and 56.6% of the total dollars obligated went to firms below the commenters' suggested size standard of $22.5 million. The data shows that there is not a disproportionate share of Federal contracting opportunities available to firms that have exceeded the size standard. For example, based on the FPDS–NG data for fiscal years 2018–20, SBA determined that 15.6% of the total dollars obligated to NAICS 541310 went to firms above the current $8 million size standard but below the $22.5 million size standard suggested by commenters. Using the 2012 Economic Census special tabulation, SBA determined that 18% of total industry receipts in NAICS 541310 went to firms above the current $8 million size standard but below the $22.5 million size standard suggested by commenters. Similarly, 50.6% of total contract dollars and 44.1% of total receipts in NAICS 541310 went to firms above the proposed $11 million size standard.

TABLE 2—DISTRIBUTION OF CONTRACTING DOLLARS AND INDUSTRY RECEIPTS BY FIRM SIZE IN NAICS 541310

Firm size in receipts ($ million)	Total dollars obligated ($ million)	Share of total dollars obligated (%)	Total industry receipts ($ million)	Share of total industry receipts (%)
<= $8.0	361	41.0	14,231	50.6
>$8.0 and <= $11.0	74	8.4	1,490	5.3
>$11.0 and <= $22.5	64	7.2	3,568	12.7
>$22.5	382	43.4	8,840	31.4
Total	882	100	28,129	100

Thus, based on SBA's methodology for evaluating size standards, SBA finds that there are adequate Federal contracting opportunities for small firms at the current or proposed size standard that have graduated from their small business size status because the share of Federal contracting dollars being awarded to small firms in that size range is generally proportionate to their respective share of industry receipts. Table 2 summarizes these results.

Regarding the comment that SBA should modify its definition of receipts to allow for the exclusion of amounts paid to third-party subcontractors (usually referred to as ''pass- throughs''), SBA disagrees. SBA does not allow for the exclusion of pass-throughs because they are part of the usual and customary costs of doing business. SBA acknowledges that the architectural and engineering services industries may have more subcontracting costs than other industries. Accordingly, SBA considers ''pass-throughs,'' and other similar factors, as secondary factors when it establishes small business size standards. Specifically, the Economic Census data that SBA uses in its size standards analysis includes all revenues received by companies, including the values of their subcontracts. If the pass-throughs were allowed to be excluded from the calculation of receipts, SBA would also have to revise its methodology to establish a lower size standard to reflect the size of the industry without them. Thus, SBA does not believe it is reasonable to exclude these costs from the calculation of receipts.

For the reasons stated above, SBA is adopting the proposed $11 million size standard for NAICS 541310 without change. Similarly, in the absence of opposing comments, SBA is also adopting the $10 million size standard for NAICS 541350, as proposed.

Comments on Proposed Changes to NAICS 541330—Engineering Services

SBA received a total of 45 comments on its proposal to increase the size standard for NAICS 541330 (Engineering Services) from $16.5 million to $22.5 million. Of those 45 comments, 24 expressed support for the proposed increase, six opposed the proposal, 14 expressed mixed support for the proposal, and one comment was from SBA. Of the 14 comments expressing mixed support for the SBA's proposed $22.5 million size standard for this industry, 12 comments (which were almost identical) petitioned SBA to further increase the size standard for NAICS 541330 to at least $39.5 million. One of these 12 comments was submitted on behalf of the 12 engineering companies, several of which also submitted their own comment including more or less the same information. The comments also included a submission from SBA detailing a meeting that occurred during the comment period between SBA and an engineering industry trade association regarding SBA's size standard methodology and its calculations used in deriving the proposed size standard for the Engineering Services industry. The same trade association also submitted its own comment detailing its concerns with the data and approach SBA used to analyze the size standard for NAICS 541330. SBA summarizes these comments and provides its responses below.

Comments Supporting the Proposed $22.5 Million Size Standard

Of the 45 comments concerning the size standard for NAICS 541330, 24 fully supported the SBA's proposal to increase that size standard from $16.5 million to $22.5 million. Commenters' support for SBA's proposal focused on four main arguments: (1) Increasing the size standard would allow existing small firms to retain their small business status for an extended period; (2) The proposed increase would allow firms to gain more experience before graduating from the size standard; (3) Increasing the size standard would increase the number of small firms and the number of small business set-aside opportunities; and (4) The proposed increase accurately reflects the changes to industry structure that have occurred since the last review of the size standard. SBA discusses these comments and its responses below.

(1) Increasing the size standard would allow existing small firms to retain their small business status for an extended period.

At least four commenters supported SBA's proposal to increase the size standard for NAICS 541330 to $22.5 million on the grounds that it would allow small firms to retain their small business status for a longer period. These commenters expressed the challenges of competing for contracts under full and open competition against firms many times greater than the size threshold for the industry, and thus, petitioned SBA to adopt the proposed increase so that small firms could retain access to SBA's procurement programs for a longer period. Moreover, some commenters argued that lowering the size standard, and thus, shortening the period that firms could retain their small status, could harm the Federal government by reducing the pool of experienced and qualified small contractors eligible to help Federal agencies carry out their missions.

SBA's Response

SBA agrees with commenters that its proposal to increase the size standard for NAICS 541330 from $16.5 million to $22.5 million will help small businesses in the industry, especially those near the size standard, to retain access to SBA's procurement and financial assistance programs for a longer period. SBA believes that by expanding the period for firms to qualify as small, a higher size standard will likely benefit the Federal government by increasing the number of qualified small businesses eligible for set-aside opportunities. Moreover, SBA also believes that the proposed increase will also benefit all small businesses in the industry as the Federal Government is likely to set aside more contracting opportunities for small businesses because of the availability of an expanded pool of experienced small firms.

(2) The proposed increase would allow firms to gain more experience before graduating from the size standard.

A few commenters in support of the proposed increase to the size standard for this industry stated that the proposed action would benefit existing small firms that are presently approaching the size standard by allowing them to gain more qualifications and capabilities before graduating from the size standard. These commenters expressed the importance of the expanded runway as it would allow existing small firms more time to develop their resume, which in turn, would help them compete with larger firms under full and open competition upon graduation from the small business status. Commenters also discussed the impact on small firms of Qualifications-Based Selections (QBS) requirements under the Brooks Act. These commenters expressed that the QBS criteria, established by the Brooks Act of 1972 (Pub. L. 92–582), tend to favor large firms with more qualifications because it requires selection based on qualifications alone, with the price negotiated only after the most qualified firm is selected. These commenters argued that increasing the size standard to $22.5 million would allow existing small firms to obtain more project experience and expand the number of staff with specialized engineering expertise necessary to be more competitive with larger firms under the QBS environment. Other commenters expressed similar reasoning in their support for the SBA's proposed increase to the size standard for NAICS 541330. For example, an engineering firm commented that the SBA's proposal would foster robust competition in the Federal market by making it less onerous for firms to transition from small to the other-than-small status. One architectural firm commented that the current size limits are too small for firms to acquire qualifications and capabilities needed to compete for medium or large contracting opportunities and expressed that the proposed higher size standard would help small businesses survive upon graduating from the size standard.

SBA's Response

SBA agrees with commenters that the proposed size standard would allow small firms to gain more qualifications and capabilities before graduating from the size standard. Due to this expanded runway provided by the higher proposed size standard, firms will be able to acquire more experience and technical capabilities to compete with larger firms upon their graduation from their small business status. SBA recognizes that the Brooks Act is an important factor affecting the competition in the Federal marketplace for this industry. SBA believes that, with the expanded runway provided by the proposed increase to the size standard, small firms will be able to gain more qualifications and experience and become more competitive for contracts covered under the Brooks Act.

(3) Increasing the size standard would increase the number of small firms and the number of small business set-aside opportunities.

Of the 24 comments in support of the proposed increase to the size standard for NAICS 541330, four comments expressed support based on the proposal's impact on set-aside opportunities. One commenter explained that SBA's proposal to increase the size standard for NAICS 541330 would increase the number of qualified small companies competing for contracts in this industry and provide the Government with a more robust selection of small businesses for its set-aside requirements. Another commenter expressed concerns about the potential consequences of not adopting the SBA's proposal and pointed to the current distribution of Federal contracts in this industry, which is dominated by a few large firms as a symptom that could be exacerbated by a failure to adopt the proposed increase to the size standard. Another commenter supported the SBA's proposal because it would allow more small businesses to win prime contracting opportunities. The commenter explained that allowing small businesses to grow to the size that can support agency needs as prime contractors will allow agencies to set aside more contracts for small businesses.

SBA's Response

SBA agrees with commenters that the proposed increase to the size standard for NAICS 541330 will benefit both small businesses and the Federal Government. With an expanded pool of small businesses, the Federal Government will have access to more qualified small businesses to choose from, and as a result, will likely set aside more contracts for small businesses. SBA also agrees with commenters that robust competition within the industry will lead to more set-aside opportunities and that businesses will have a longer runway to gain experience to be able to better compete with large firms upon their graduation from the size standard. The proposed change would also enable some small businesses that have exceeded the current size standard to regain their small business status and qualify for SBA's contracting and financial assistance programs. SBA has quantified these impacts in the Regulatory Impact Analysis section of this final rule.

(4) The proposed increase accurately reflects the changes to industry structure that have occurred since the last comprehensive review of the size standard.

SBA received six comments in support of the proposed size standard expressing that the proposed higher size threshold better reflects the existing industry and current market conditions. Specifically, commenters argued that increasing the size standard for NAICS 541330 to $22.5 million is reflective of increasing the number and size of large firms since the last review of that size standard which likely led to increases in the values of industry factors, such as the weighted average firm size and the Gini coefficient used to calculate the size standard. Other commenters expressed support for a higher size standard for this industry based on the Federal contracting data showing increasing average contract sizes. Finally, one commenter stated that they supported the SBA's proposed increase based on the resiliency of the industry during the COVID–19 induced economic recession. This commenter further explained that they support the proposed increase to the size standards for all industries that have not been adversely impacted by the COVID–19 pandemic because small firms in these industries need to achieve a certain size and level of experience to earn set-aside opportunities. The commenter reasoned that an increase in the size standard is warranted in this industry to support small business growth and promote competition.

SBA's Response

SBA agrees with commenters that the SBA's proposed increase to the size standard for NAICS 541330 better reflects the current economic characteristics of the firms within this industry. SBA also agrees with commenters that industry consolidation and the growth of large firms has the potential to increase the calculated factors for weighted average receipts and the Gini coefficient. As detailed in Table 4 of the November 2020 proposed rule, the size standards supported by the factors for this industry already reflect an industry whose receipts distribution is significantly concentrated at the top. As such, SBA believes that the proposed size standard for this industry accurately reflects the industry structure and economic characteristics of its participant firms. SBA also agrees with the comment regarding the resiliency of engineering services firms during the COVID–19 related economic crisis. Data from FPDS–NG shows that there was an increase in dollars obligated to small businesses in this industry during fiscal years 2018–2020, which suggests that small firms have continued to do well in the Federal marketplace while providing valuable services to the Federal Government during the COVID–19 pandemic. Table 3, Dollars Obligated to Small Businesses in NAICS 541330, shows the dollars obligated to small businesses under NAICS 541330 and the annual growth rate during fiscal years 2018–2020. SBA believes that adopting the proposed $22.5 million size standard will support the resiliency of small businesses in this industry by likely increasing the number of set-aside opportunities available and better directing SBA's resources to their intended beneficiaries.

TABLE 3—DOLLARS OBLIGATED TO SMALL BUSINESSES IN NAICS 541330

Fiscal year	Dollars obligated to small businesses ($ million)	Annual growth rate (%)
2018	8,460	

TABLE 3—DOLLARS OBLIGATED TO SMALL BUSINESSES IN NAICS 541330—Continued

Fiscal year	Dollars obligated to small businesses ($ million)	Annual growth rate (%)
2019	9,417	11.3
2020	9,923	5.4

Comments Opposing the Proposed $22.5 Million Size Standard

Commenters opposed to the SBA's proposal included individuals, engineering firms, and trade associations. Of the 45 comments received regarding the SBA's proposal to increase the size standard for NAICS 541330 from $16.5 million to $22.5 million, SBA received six comments that were totally opposed to the proposed size standard increase. These commenters argued that increasing the size standard beyond the current level would harm smaller small firms.

Of the 45 comments regarding the SBA's proposed size standard increase for NAICS 541330, six comments were opposed to any increase to the size standard. Of these six comments, four supported the current $16.5 million size standard and one recommended that the size standard be lowered instead of increasing it. These commenters expressed concerns that SBA's proposed size standard would harm truly small firms by increasing the number of larger small firms competing for set aside opportunities. One engineering firm with average annual revenues below $6 million expressed that competing against firms with $20 million in average annual receipts and an employee count of 100 or more people would be difficult for smaller small firms because larger firms have experience and resources that smaller small firms do not have. The commenter urged SBA to maintain the current size standard or consider a micro entity category for this NAICS code. Another commenter with 40 employees expressed that although they may be considered a larger small engineering firm, they support maintaining the size threshold at the current level to ensure that smaller small firms continue to benefit from SBA's contracting programs. Commenters to this issue did not provide any data in support of their position.

SBA's Response

SBA's proposed increase to the size standard for Engineering Services may result in some redistributions 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 size standard. 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 of 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 proposed increases to the size standard, 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 proposed increase to the size standard. However, this impact may be offset by a greater number of procurements being set aside for all small businesses. SBA analyzed data from the 2012 Economic Census special tabulation and determined that SBA's proposed size standard would increase the total number of small firms in the industry by only 344 firms, or 0.8% of the 44,074 firms that are currently small. Thus, SBA believes that an increase in firms of the magnitude described above will not significantly disadvantage currently small firms. Moreover, SBA analyzed internal data on 7(a) and 504 loans for fiscal years 2018–2020 and determined that 95.2% of loans were issued to firms one-sixth the size of the employee equivalent of the proposed size standard for this industry, indicating that the majority of firms receiving SBA's financial assistance are much smaller than the current and proposed size standard. Thus, SBA does not anticipate that increasing the size standard to the proposed $22.5 million level will impact the ability of small firms to participate in SBA's financial assistance programs.

Comments Recommending a Higher $39.5 Million Size Standard

Of the 45 comments relating to the SBA's proposed increase of the Engineering Services size standard to $22.5 million, 12 commenters maintained that SBA' proposal to increase the size standard is a step in the right direction, but the proposed increase is not enough to address the challenges small businesses currently face in the Federal market. They petitioned SBA to raise the size standard for NAICS 541330 further to at least $39.5 million, to match the current and proposed $39.5 million size standard for NAICS 236220 (Commercial and Institutional Building Construction). Support for a higher size standard than what SBA proposed focused on four main arguments: (1) The Brooks Act qualifies as a unique characteristic in NAICS 541330 and should be considered for adjusting the size standard to a higher level of $39.5 million; (2) The concentration of Federal contracting dollars among the largest firms makes it difficult for small firms to compete upon graduating from the current size standard; (3) Increasing use of limited competition acquisition vehicles, such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWAC), and Best-In-Class (BIC) contract vehicles favors large businesses; and (4) Increasing the size standard significantly will allow the Government to set aside more requirements for small businesses. SBA discusses the concerns raised by these commenters and its responses, below.

(1) The Brooks Act qualifies as a unique characteristic in the 541330 industry and should be considered for adjusting the size standard to a higher value of at least $39.5 million.

Twelve commenters in favor of a higher size standard for NAICS 541330 recommended that SBA raise the size standard to $39.5 million based on the unique characteristic in the industry created by the Brooks Act. The commenters maintained that the Brooks Act establishes a qualifications-based selection (QBS) process, in which architectural and engineering (A&E) services contracts are negotiated solely on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. One comment submitted on behalf of a group of 12 engineering firms expressed that to be competitive in an environment where the Brooks Act is predominantly used in the acquisition process, the A&E firms must compete solely based on capabilities, which can be directly tied to the number of professionals a firm has and past projects that the firm has successfully completed. Thus, the commenters recommended that SBA should consider the Brooks Act as an additional factor for adjusting the size standard to a higher value to help small firms overcome the bias towards larger firms for contracts subject to the Brooks Act requirement. Along with their comments, the group provided a white paper which included the data showing the dollars obligated to NAICS 541330 relative to other industries, total contract awards by vendor, market concentration of prime contracts, and the distribution of contracts by types and vehicles. Another engineering firm, which expressed agreement with the comments submitted by the group of 12 engineering firms expressed that a size standard of $39.5 million is necessary and proper to establish an environment where small businesses can compete, grow, and successfully transition to other-than-small status.

SBA's Response

SBA appreciates the informed comments submitted by commenters to this issue. SBA has reviewed the data provided by the commenters and determined that the data largely agrees with data that SBA evaluated in determining the proposed size standard for this industry. However, although the data provided to SBA are sufficient to demonstrate the concentration of Federal contracting dollars among a handful of large firms, the data does not demonstrate that SBA's current or proposed size standard for NAICS 541330 would have an adverse impact on the ability of small firms to compete for Federal contracting opportunities in that industry. Moreover, SBA does not agree with commenters' statements that the Brooks Act disadvantages small firms. They did not provide any empirical data supporting their arguments that the QBS process under the Brooks Act favors large businesses to the detriment of small businesses under the current or proposed size standard. SBA believes that the Brooks Act may have the opposite effect, increasing opportunities for smaller firms by removing the emphasis on low price. This leads to increased opportunities for smaller firms that may be able to better compete with larger firms on the grounds of their niche market expertise, knowledge of local rules and regulations, and greater involvement of experienced and specialized staff. SBA's analysis of the Federal contracting factor for this industry supports this conclusion.

As detailed in Table 4 of the November 2020 proposed rule, the size standards associated with the weighted average firm size and the Gini coefficient factors already reflect an industry in which receipts are significantly concentrated at the top of the size distribution. However, regarding the Federal contracting factor, SBA found that, under the current $16.5 million size standard, the small business share of Federal contracting dollars in this industry was greater than the small business share of total industry receipts. Thus, based on its methodology for evaluating size standards and the latest data, SBA determines that the current size standard of $16.5 million is appropriate with respect to the Federal contracting factor. SBA believes that increasing the size standard to the proposed $22.5 million level based on the analysis of all factors may increase the number of set-asides in this industry and further benefit the small firms that are already well-represented in the Federal contracting market at the current size standard. As such, SBA does not believe that it would be appropriate to increase the size standard for this industry based solely on the requirements of the Brooks Act because the latest data does not show that small firms are significantly disadvantaged as a result of the requirements of this law.

(2) The concentration of Federal contracting dollars among the largest firms makes it difficult for small firms to compete upon graduating from the current size standard.

At least eight commenters recommended a higher $39.5 million size standard for NAICS 541330 based on the belief that both the current and proposed size standard levels would disadvantage graduating small firms (larger small firms) that would be competing with much larger firms under full and open competition. The commenters added that a firm graduating from the current or proposed size standard cannot be competitive in the full and open marketplace. They maintained that almost 50% of total contract dollars in NAICS 541330 in DOD and more than 70% of the same at NASA and DOT went to the top 10 businesses. The commenters argued that the Brooks Act has caused this industry to be dominated by 10 large firms, making it nearly impossible for small businesses to compete for Federal opportunities upon graduation from the size standard. The comments maintained that that a larger increase to the size standard is warranted to ensure that small firms are able to gain the experience and capabilities necessary to successfully compete with larger firms upon graduation from small business status.

SBA's Response

In response to the comments, SBA analyzed the data from FPDS–NG for fiscal years 2018–2020 to determine the range of Federal contracting opportunities available to firms above the current or proposed size standard. SBA's analysis showed that 18.6% of the total dollars obligated to NAICS 541330 went to firms below the proposed $22.5 million size standard and 25.2% of the total dollars obligated to that industry went to firms below the commenters' suggested size standard of $39.5 million. Moreover, the data shows that there is not a disproportionate share of Federal contracting opportunities available to firms that have exceeded the size standard as compared to their share of total industry receipts. For example, based on the FPDS–NG data for fiscal years 2018–2020, SBA determined that 9.5% of the average annual total dollars obligated to NAICS 541330 went to firms above the current $16.5 million size standard but below the $39.5 million size standard suggested by commenters. Using the special tabulation of the 2012 Economic Census, SBA estimated that 7.9% of total industry receipts in NAICS 541330 was accounted for by firms above the current $16.5 million size standard but below the $39.5 million size standard suggested by commenters. Thus, based on SBA's methodology for evaluating a size standard for the Federal contracting factor, SBA finds that there are adequate Federal contracting opportunities for firms that have recently graduated from the size standard because the share of Federal contracting dollars to firms in that size range is proportionate to their respective share of industry receipts. Table 3, Distribution of Contracting Dollars and Industry Receipts by Firm Size in NAICS 541330, summarizes these results.

TABLE 3—DISTRIBUTION OF CONTRACTING DOLLARS AND INDUSTRY RECEIPTS BY FIRM SIZE IN NAICS 541330

Firm size in receipts ($ million)	Average total dollars obligated (FPDS–NG) ($ million)	Share of total dollars obligated (%)	Industry receipts (2012 economic census) ($ million)	Share of total industry receipts (%)
<= $16.5	5,527	15.70	50,570	24.30
>$16.5 and <= $22.5	1,022	2.90	5,886	2.80
>$22.5 and <= $39.5	2,334	6.60	10,584	5.10
>$39.5	26,377	74.8	141,083	67.8
Total	35,260	100.0	208,124	100.0

Based on the above results, SBA does not agree with commenters that a deviation from the calculated size standard is necessary to ensure that small firms are able to compete once they graduate from the size standard. Moreover, SBA believes that increasing the size standard to $22.5 million will extend the runway for small firms to grow and increase their ability to compete for larger contracts while also maintaining a fair and competitive playing field for the 96.8% of firms in this industry that are small at the proposed $22.5 million size standard.

(3) Increasing use of limited competition acquisition vehicles, such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWAC), and Best-In-Class (BIC) contract vehicles favors large businesses.

Almost all in the group of commenters recommending a higher $39.5 million size standard argued that the increased use of limited competition vehicles, such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWACs), and Best-in-Class (BIC) contracts, by Federal agencies increases the number of opportunities for large Federal contractors to the detriment of small businesses. The commenters maintained that over 70% of the total spend in NAICS 541330 goes through limited competition vehicles, such as IDIQ, GWAC, and BIC vehicles. The commenter added that small businesses graduating from the current size standard cannot be competitive in full and open IDIQ contracts and that the proposed $6 million increase is not adequate to appropriately alleviate this issue, which is why a more significant size standard increase is necessary to allow firms to be successful in capturing IDIQ contracts.

SBA's Response

Consolidated buying strategies—such as relying on GWACs and BIC contracts—favor incumbent and established government vendors, but SBA does not believe that those strategies unequivocally favor large businesses over small businesses. Authority from the Small Business Jobs Act of 2010 permits agencies to issue set-aside orders off of IDIQ contracts, and some court decisions have applied mandatory small-business preferences to those vehicles. Additionally, certain GWACs are available exclusively to small businesses. This includes vehicles that are either entirely set aside for SBA socioeconomic program participants or feature pools exclusively for SBA-certified firms. That said, when agencies consider these limited-competition vehicles, they must continue to prioritize small-business contracting ahead of consolidating their contracts. In its recent Memorandum No. M–22–03 on ''Advancing Equity in Federal Procurement'', the Office of Management and Budget (OMB) emphasized that agencies must not use BIC contracts where doing so might threaten the agency's small business goals or the growth of the small-business supplier base. OMB also reformed the Category Management program—of which GWACs all are a part of—to designate all socioeconomic small businesses as Tier 2. SBA believes that these measures may ameliorate some the challenges small businesses in NAICS 541330 face from increased use of IDIQs, GWACs and BICs.

(4) Increasing size standard will significantly allow the Government to set aside more requirements for small businesses.

The commenters stated that increasing the size standard to the $39.5 million level will allow a significant number of businesses to qualify as small, thereby expanding a pool of qualified small businesses, which would, in turn, encourage the Government to set aside more contracts for small businesses. This will, as the commenters added, spur more competition amongst small businesses, which leads to the improvement in the quality of services being delivered to the Government buyer. The commenters asserted that their proposed significant increase to the size standard would not negatively impact small businesses under the current size standard when competing for Federal opportunities.

SBA's Response

SBA agrees with the commenters' position that increasing the size standard to $39.5 million would allow significant number of businesses above the current or SBA's proposed size standard to qualify as small and become eligible for Federal opportunities intended for small businesses. However, SBA is concerned that, by allowing significantly larger and more qualified and resourced companies above the current or proposed size standard to qualify as small, the commenters' proposed $39.5 million size standard (which is almost 140% increase from the current $16.5 million and more than 75% increase from the SBA's proposed $22.5 million size standard) would likely negatively impact smaller small businesses when competing for Federal opportunities. The commenter argued that increasing the size standard will not hurt small businesses below the current size standard, but they did not provide any data or analysis supporting their argument.

The commenters recommended to increase the size standard for NAICS 541330 to not less than $39.5 million, but they did not provide any specific industry data or analysis justifying why the size standard should be increased to that level, except for suggesting to make it at par with the size standard for NAICS 236220 (Commercial and Institutional Building Construction). The results of the SBA's analysis of the industry and Federal contracting factors, shown in Table 4 of the November 2020 proposed rule, supported a size standard of $25.5 million for NAICS 236220, a decrease from the current $39.5 million size standard. However, in accordance with its policy of not lowering any size standard in the current environment due to the COVID–

19 pandemic, SBA proposed to retain the current $39.5 million for NAICS 236220.

Based on the 2012 Economic Census, 96.8% of all firms in NAICS 541330 would qualify as small under the SBA's proposed $22.5 million size standard, which would provide an adequate and robust pool of qualified and competitive small businesses for the Government to choose from for their se-aside requirements. Increasing the size standard to the commenters' proposed $39.5 million level would add another 400–500 firms as small in the Federal marketplace, thereby increasing competition for SBA's programs and resources which may hurt smaller small businesses under the current size standard. For these reasons, SBA is not adopting the $39.5 million as the size standard for NAICS 541330.

Comments Raising Other Issues

SBA received several comments raising other issues on its proposal to increase the size standard for NAICS 651330 from $16.5 million to $22.5 million. These commenters recommended that SBA establish a common size standard between Engineering Services and other related industries, offered recommendations and submitted questions regarding SBA's analysis of the engineering size standard. SBA discusses these comments and its responses below.

(1) SBA should establish a common size standard between Engineering Services and other related industries.

Nine commenters to the proposed rule suggested that SBA establish a common size standard between Engineering Services and other related industries, namely NAICS 541310 (Architectural Services) and NAICS 236220 (Commercial and Institutional Building Construction). Similarly, SBA received a comment from a group of 12 engineering firms, requesting that SBA increase the size standard for NAICS 541330 to at least $39.5 million to match the size standard for NAICS 236220. Another commenter, an architecture and engineering firm, recommended aligning the size standard for Engineering Services with the size standard for Architectural Services, arguing that these two NAICS codes are intertwined and in effect one and the same industry. This commenter explained that contracting officers may sometimes misclassify contracts due to the similarities and interdependence between the two NAICS codes. Thus, a common size standard would help to eliminate any disparities that may result from an incorrect selection of the NAICS code. The commenter also pointed to the difference in the amounts of dollars obligated between NAICS 541310 and NAICS 541330 as evidence of the incorrect classification of A&E contracts, arguing that the more widespread use of NAICS 541330 with a larger size standard was responsible for that difference.

SBA's Response

SBA does not agree with commenters that the size standard for engineering services should be aligned with the size standards for industries that seem to perform related activities. Although the firms in engineering and architectural services industries may perform co-dependent and related business activities, SBA's analysis of these industries, as detailed in Table 4 of the November 20 proposed rule, demonstrates that their industry structures and the economic characteristics of the respective firms are markedly different, thereby justifying a unique size standard for each industry. For example, engineering firms are significantly larger than architectural firms based on simple and weighted average firm size (engineering firms are roughly three times larger based on the simple average firm size and 25 times larger based on the weighted average firm size). Engineering firms have three times as many average assets and a more top-heavy industry concentration in terms of both receipts and Federal contract dollars. Likewise, the Commercial and Institutional Building Construction industry is also significantly different from Engineering Services industry, particularly with respect to weighted average firm size and industry concentration of Federal contract dollars. Thus, SBA believes that creating a common size standard between Engineering and Architectural Services and between Engineering Services and Commercial and Institutional Building Construction would be inconsistent with differences in industry factors used in evaluating the size standards in those industries.

It is ultimately the responsibility of the contracting officer to designate the proper NAICS code based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). SBA does not believe that the size standard is an appropriate tool to address the issue of an incorrect NAICS code selection in a solicitation. SBA has established a process for interested parties to appeal with SBA's Office of Hearings and Appeal (OHA) a contracting officer's NAICS code designation in its regulations at 13 CFR 121.1101. SBA encourages impacted firms to use this process when they believe that a contracting officer has categorized a solicitation under an improper NAICS code.

As part of the first five-year review of size standards under the 2010 Jobs Act, SBA proposed a common $19 million size standard for all industries within NAICS Industry Group 5413 (Architectural, Engineering, and Related Services), including NAICS 541310 (Architectural Services) and NAICS 541330 (Engineering Services) (76 FR 14323 March 6, 2011)). A vast majority of comments concerning the proposed size standard for NAICS 541310 opposed the establishment of the common size standard between Architectural and Engineering Services industries on the grounds that architectural firms are, on average, much smaller than their engineering counterparts and that the common size standard would hurt the smaller small architectural firms in competing for Federal contracting opportunities. A detailed discussion of these comments can be found in the SBA's final rule (77 FR 7489 (February 10, 2012)).

For the above reasons, SBA is maintaining separate size standards for NAICS 541310, 541330, and 236220, as proposed. Specifically, in this final rule, SBA is adopting the proposed $11 million size standard for NAICS 541310 (Architectural Services) and the proposed $22.5 million size standard for NAICS 541330 (Engineering Services. Similarly, in a separate rulemaking (85 FR 62372 (October 2, 2020)), SBA proposed to retain the current $39.5 million size standard for NAICS 236220, which SBA adopted in the corresponding final rule (RIN 3245–AG90).

(2) Recommendations and questions regarding SBA's analysis of the size standard for NAICS 541330.

Ten commenters raised questions or offered other recommendations regarding SBA's analysis of size standard for NAICS 541330 (Engineering Services). One engineering trade association representing more than 5,500 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide recommended that SBA create additional size standards (in addition to the existing four) under NAICS 541330 to account for the wide spectrum of engineering disciplines (such as civil, electrical, mechanical, environmental, structural, etc.) and services offered by this industry. The association asserted that it is critical to understand the differences between engineering services related to physical infrastructure projects (such as buildings, wells, dams, mines, canals, and roads, etc.) and other engineering activities related to the design, development, and utilization of machines, materials, instruments, processes, and systems. The association further explained that in order to establish a meaningful size standard for the Brooks Act covered engineering industry involved with physical infrastructure projects for Government and public works entities, the sector's data needs to be separated from the manufacturing and management firms and separate size standards be developed. It expressed concerns over the use of combined data gathered from disparate sectors of the engineering services industries and recommended that SBA obtain sufficient information from the Department of Commerce to overcome the issues it raised and propose appropriate size standards for the Brooks Act covered Engineering Services segment and the rest of the industry.

Another commenter questioned why SBA proposed to increase the size standard for the general NAICS 541330 industry but decrease the size standard for its Military and Aerospace Equipment and Military Weapons exception. The commenter inquired whether SBA's analysis showed similar pressures on the parameters that impact size standards for the general engineering industry and the exception, and it suggested that the pressures are generally the same between the industries. The commenter requested that SBA provide a more detailed explanation of how the proposed size standards for these industries were determined.

Finally, eight commenters suggested that SBA increase the size standard for this industry to at least $25 million based on SBA's 2011 proposal to increase the size standard for industries in the NAICS Industry Group 5413 to $19 million (76 FR 14323 (March 16, 2011)) and inflation since then. The commenters argued that adjusting the proposed $19 million size standard from 2011 to present day at an annual inflation rate of 3% would suggest that the revised size standard for NAICS 541330 should be at least $25 million.

SBA's Response

In response to the comment that SBA should create additional size standard exceptions under NAICS 541330 to better reflect the differing characteristics and specializations of engineering firms, SBA surveyed the alternative data sources available from the U.S. Census Bureau and determined that the available data was not sufficient to conduct a size standard analysis for the different segments of the engineering industry as suggested by the commenter. As explained in the proposed rule, SBA's primary source of industry data for evaluating industry characteristics and developing size standards is a special tabulation of the latest Economic Census from the Census Bureau. The data from the special tabulations are limited to the 6-digit NAICS industry level, and hence, do not provide separate data to evaluate a size standard at the subindustry level. SBA was not able to find other sources of data detailed enough to accurately capture the economic characteristics and industry composition of engineering firms. To account for different services and specializations that engineering firms provide, SBA has already established three subindustries (or exceptions) under NAICS 541330, in addition to the size standard for the general engineering industry.

The Economic Census is the most comprehensive industry data source that provides information across all industries under its scope, using uniform definitions and measures that allow for consistent industry comparisons at the same moment in time. Because the firm size distribution does not change drastically from one Economic Census to the next, the data retains its usefulness even if it is not produced in a recent year. SBA recently received a preliminary tabulation based on 2017 Economic Census. Comparing with the newer data, SBA found that the industry structure for NAICS 541330 has not drastically changed from the 2012 data. For example, SBA found that based on the 2012 Economic Census, 3% of firms earned receipts more than $25 million, accounting for 71.8% of total industry receipts. Based on the 2017 preliminary tabulation, 3.5% of firms earned receipts more than $25 million, accounting for 70.8% of total industry receipts.

In response to the comment questioning the SBA's rationale for increasing the size standard for the general NAICS 541330 industry but decreasing the size standard for one of the exceptions to that NAICS code, namely the Military and Aerospace Equipment and Military Weapons exception, SBA would like to clarify that while the calculated size standard for this exception was $39 million, a decrease from the current size standard, SBA proposed to retain the current $41.5 million size standard. In view of the effects of the COVID–19 pandemic on small businesses and Federal Government efforts to provide relief to small businesses and the overall economy, SBA proposed to maintain the current size standards for all industries where the analytical results suggested decreases and to increase the size standards for all industries where analytical results suggested increases. Although firms in the general NAICS 541330 industry and those in the exceptions may perform related business activities, SBA's analyses of the industry and exception, as detailed in Table 4 of the November 2020 proposed rule, demonstrates that their industry structures and the economic characteristics of the firms are markedly different. Regarding the exception specifically, the calculated size standard was lower than the current and proposed size standard due to a lower size standard supported by the four-firm ratio which decreased the average of all size standards supported by all factors for this industry exception from $41.5 million to $39 million. Similarly, for the general NAICS 541330, the four-firm ratio supported a size standard of only $12 million, the smallest of all size standards supported by any factor for this industry. As such, SBA's analysis shows that some of the same pressures do exist for the portion of work covered under the exception as in the general industry.

In response to comments that the size standard for this industry should be raised to at least $25 million based on inflation and SBA's 2011 proposal to increase the size standard to $19 million, SBA reviewed the recent history of changes to size standards for NAICS 541330 and found that the size standard for this industry has been adjusted appropriately since 2011. As stated by the commenters, in a March 2011 proposed rule, SBA proposed to establish a $19 million size standard for this industry (76 FR 14323 (March 16, 2011)). However, in a final rule issued in February 2012, SBA adopted a lower size standard of $14 million in response to public comments (77 FR 7489 (February 10, 2012)). Since proposing the $19 million size standard in 2011, SBA has issued two inflation adjustments to its monetary-based size standards, of which both applied to the size standard for this industry as well. Had SBA adopted the $19 million size standard in 2012, the first inflation adjustment, effective in July 2014 and adopted in a final rule in 2016, would have increased the size standard to $20.5 million (81 FR 3949 (January 25, 2016)). The second inflation adjustment effective in August 2019, would have further increased the $20.5 million size standard to $22 million (84 FR 34261 (July 18, 2019)). As such, SBA disagrees with commenters that the proposed size standard found in the March 2011 proposed rule would justify a $25 million size standard today based on inflation since then. SBA also disagrees with the merits of using the $19 million size standard as a basis for inflation adjustment since SBA did not adopt the $19 million size standard in its February 2012 final rule.

SBA also submitted a comment detailing a meeting that occurred between SBA and an engineering trade association regarding SBA's size standard methodology and its calculations involved in deriving the size standard for engineering services. The meeting occurred virtually on December 17, 2020 and was attended by the association's Size Standard Working Group, a senior economist from SBA's Office of Size Standards, and an attorney from SBA's Office of General Counsel. SBA representatives listened to the concerns of the association and addressed four questions the organization forwarded to SBA prior to the meeting on the topic of how the calculations of the proposed size standard for the Engineering Services industry were done. The association asked SBA to provide details on the weighting of primary factors under the SBA's size standard methodology, the impact of the COVID–19 pandemic on the review of size standards, and the status of the 2017 Economic Census special tabulation. Additionally, SBA representatives listened to other questions and concerns related to the current proposed rule, especially concerns related to the skewing of calculations due to possible misclassifications of large firms under NAICS 541330. In response to these questions, SBA explained the formulas used to calculate the proposed size standard, including the weighting of factors, using NAICS 541330 as an example. SBA also explained that in response to the economic impacts of the COVID–19 pandemic, SBA did not make adjustments to the size standard methodology itself, however, in the proposed rule, SBA proposed to maintain current size standards in all industries for which the analysis supported a decrease to size standards to ensure that small businesses would not lose access to SBA assistance during the pandemic. Regarding the status of the special tabulation of the 2017 Economic Census which SBA uses to evaluate size standards, SBA explained that the data were not yet available and thus, SBA is still using the 2012 Economic Census tabulation for the evaluation of size standards. Detailed meeting minutes, including SBA's responses to the questions posed by the association, can be found as one of the comments to the proposed rule at *www.regulations.gov.*

Summary of the Discussion of Comments to NAICS 541330

Based on its analysis of industry data and the comments received, SBA is adopting the size standard of $22.5 million for NAICS 541330, as proposed. SBA believes that the $22.5 million is the appropriate size standard for this industry and will further benefit the small firms that are already well represented in the Federal marketplace at the current size standard by increasing the potential for more set-aside opportunities and expanding the runway to grow and become more competitive under full and open competition upon exceeding the size standard. A higher size standard will also provide the Government with access to better services through robust competition, while fostering growth of small businesses in this industry.

Comments on Proposed Changes to NAICS 541611—Administrative Management and General Management Consulting Services & NAICS 541990—All Other Professional, Scientific and Technical Services

SBA received two nearly identical comments to its proposal to increase the size standards for NAICS 541611 (Administrative Management and General Management Consulting Services) and NAICS 541990 (All Other Professional, Scientific and Technical Services) from $16.5 million to $21.5 million and $17 million in average annual receipts, respectively. One of the comments was submitted on behalf of 12 organizations and the other comment was submitted on behalf of two organizations.

The commenters maintained that the proposed increases to size standards for these NAICS codes are not adequate. They recommended that the size standards for both industries should be increased to $27.5 million, which will allow small businesses in those industries to successfully graduate from the small business programs. They stated that firms graduating at the current size standards do not have the financial resources and other capabilities to successfully compete against the most dominant firms. The commenters explained that Federal spending has trended towards consolidation of procurements, with agencies embracing GWACs and BIC vehicles, a policy that favors large businesses to the detriment of small businesses. Mid-sized or newly graduated firms are not, and cannot be, competitive against the large firms when competing for GWACs or BICs or in the full and open marketplace. In order to be competitive with the largest firms in the full and open marketplace and on GWACs and BICs, as the comments explained, firms need to have significant financial capacity and other resources, none of which can be accomplished at the current or proposed size standards.

The commenters agreed with SBA's proposal to increase the size standards for these industries but argued that SBA should increase both size standards by a larger amount to $27.5 million. The commenters expressed that a common size standard of $27.5 million in those industries is necessary to prevent ''NAICS shopping'' by contracting officers who may sometimes take advantage of ambiguities in NAICS code definitions by choosing to classify a contract under a NAICS code based on their own individual preferences instead of selecting the NAICS code based on the primary purpose of the acquisition, as required by law. The commenters expressed that increasing the size standard in those industries would also increase the competitiveness of small firms participating in the Federal marketplace, specifically for opportunities with a place of performance Outside of the Continental United States (OCONUS). The commenters explained that small business set-asides in these industries are rare and full and open awards are dominated by the largest firms. The commenters noted that OCONUS contracts have continued to grow larger and larger, causing firms to prematurely outgrow their size standards, and this ''early graduation'' does not allow the newly graduated firm to be competitive in the full and open marketplace, which is dominated by the largest companies. The commenters expressed that less than 10% of OCONUS work is awarded to small businesses.

The commenters maintained that higher size standards will extend the runway for firms to expand their resources and build capacity in order to be more competitive upon graduation from the small business size status. To achieve Congress' intent to maximize small business participation in the Federal marketplace, a significantly higher size standard of $27.5 million is needed for both NAICS 541611 and NAICS 541990, the comment added. Increasing the size standards substantially will increase the portfolio of firms that are available to the government buyer for set-aside opportunities. This will, the commenter added, in turn increase competition, increase the number of set-asides, expand opportunities for all small firms, and provide better services to the Government.

In support of their positions, the commenters provided data showing OCONUS contract awards classified under NAICS 541611 and NAICS 541990, and the distribution of OCONUS contracts by type of contracts and agency.

SBA Response

Generally, SBA believes that it is not always appropriate to evaluate industries under a common size standard even when the business activities of the industries are similar or co-dependent. Section 3(a)(7) of the Small Business Act restricts the establishment of a common size standard beyond a grouping of industries at the four-digit NAICS level. Here, NAICS 541611 and NAICS 541990 belong to different four-digit NAICS industry groups and thus are ineligible for a common size standard. Specifically, NAICS 541611 belongs to NAICS Industry Group 5416 (Management, Scientific, and Technical Consulting Services) and NAICS 541990 falls under NAICS Industry Group 5419 (Other Professional, Scientific, and Technical Services). Moreover, in establishing or approving a common size standard for a grouping of 4-digit NAICS codes, the law requires SBA to make publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

Furthermore, SBA's analysis of industry factors often shows important distinctions between industries which, based on SBA's size standards methodology, may produce different size standards for industries, which seem to represent similar or related business activities. NAICS 541611 and NAICS 541990 exemplify this point well. Although there may be some overlap in the work performed under these industries, there are also significant differences between the two. For example, as shown in Table 4 of the November 2020 proposed rule, the weighted average firm size for NAICS 541611 is $2.5 billion which supports a size standard of $41.5 million, whereas the weighted average firm size for NAICS 541990 is only $194 million which supports a size standard of $14 million. Also, the Gini coefficient for NAICS 541611 is 0.824, which supports a size standard of $33 million, whereas the Gini coefficient for NAICS 541990 is 0.784, which supports a size standard of $26 million. The results of these factors alone show that these industries have differing economic characteristics; thus, SBA believes that it is appropriate to evaluate the size standards for these industries separately. Moreover, under the Small Business 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.

SBA also reviewed the System for Award Management (SAM) data for fiscal year 2020 and found that only about 26% of firms registered under NAICS 541611 as the primary industry were registered under NAICS 541990 as one of their secondary NAICS codes. Similarly, only 23% of firms registered under NAICS 541990 as the primary industry were registered under NAICS 541611 as a secondary industry. Although these percentages demonstrate that there is some overlap between the two industries, they also show that most firms do not report participation in both industries. For the reasons detailed above, SBA does not agree with commenters that there should be a common size standard between these two industries.

SBA's regulations require contracting officers to designate the proper NAICS code for a solicitation based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). As stated previously, SBA's regulations in 13 CFR 121.1101 allow interested parties to appeal with the SBA's Office of Hearings and Appeal (OHA) a NAICS code designation made by a contracting officer. SBA encourages the impacted firms to follow the procedures outlined in the SBA's regulations when they believe that a contracting officer has categorized a solicitation under an improper NAICS code. As stated previously, the size standard is not an appropriate tool for addressing the issue of misclassifying a solicitation using an incorrect NAICS code.

In response to the comment that SBA should further increase the size standards for both NAICS 541611 and NAICS 541990 to help small businesses compete for OCONUS contract opportunities, SBA reviewed the data provided by the commenters and performed its own analysis of OCONUS awards to these industries using the FPDS–NG data for fiscal years 2018–2020. SBA found that, for NAICS 541611, the average annual total dollars obligated to firms through OCONUS awards are not a substantial portion of the overall total dollars obligated to that industry, with only 6% of the $11.8 billion in average annual total dollars being obligated to OCONUS awards. Similarly, for NAICS 541990, about 22% of the $9.9 billion in average annual total dollars obligated were classified as OCONUS awards. SBA found that small businesses did not receive a large share of OCONUS awards under these industries. For example, only 22.5% of OCONUS awards in NAICS 541611 and only 9.3% of OCONUS awards in NAICS 541990 were awarded to small businesses. By comparing these results to the small business share of industry receipts for these industries, (35.8% for NAICS 541611 and 52.3% for NAICS 541990), SBA determined that small businesses are underrepresented in this particular segment (OCONUS contracts) of the Federal contracting market within these industries. This underrepresentation is also reflected in the broader contracting data in NAICS 541990, but not in NAICS 541611. For example, SBA calculated a Federal contracting factor of 4.8% for NAICS 541611 and −34.1% for NAICS 541990, which support the size standards of $16.5 million and $23.0 million, respectively. Thus, SBA agrees with commenters that based solely on the Federal contracting factor, a higher size standard is supported for NAICS 541990 compared to the SBA's proposed $17 million size standard. However, SBA's ''Size Standards Methodology'' does not provide for the weighting of a specific factor more than others. In other words, the methodology establishes that SBA will give equal weight to all five primary factors that are considered in the evaluation of an industry size standard. Thus, SBA believes that the proposed size standards for these industries, which are based on SBA's evaluation of industry and Federal contracting factors, already reflect the commenters' concerns regarding the issue of a low small business participation in the Federal marketplace in these industries.

SBA agrees with commenters that increasing the size standards for these industries will extend the runway for small firms to grow and increase their ability to compete for larger contracts while also maintaining a fair and competitive playing field for firms that are small under the current size standards for these industries. Based on the 2012 Economic Census data, 98.4% of firms in NAICS 541611 and 98.6% of firms are already small under the current $16.5 million size standard. At the proposed size standards of $21.5

million for NAICS 541611 and $17 million for NAICS 541990, those percentages increase to 98.7% and 98.9%, respectively. SBA is concerned that increasing these size standards further may hurt smaller small businesses when competing for Federal set-aside opportunities.

For the reasons presented above, SBA accepts the analytical results for these industries and is adopting the size standards of $21.5 million for NAICS 541611 and of $17 million for NAICS 541990, as proposed.

Comments on Proposed Changes to NAICS 541810—Advertising Agencies

SBA received one comment to its proposal to increase the size standard for NAICS 541810 (Advertising Agencies) from $16.5 million to $22.5 million. The comment, submitted on behalf of a coalition of advertising agencies, expressed support for the proposed increase to the size standard for this industry, but urged SBA to consider adopting a higher size standard between $28.5 million and $30 million based on increased demand for digital marketing services, which requires small firms to invest more heavily in information technology (IT) infrastructure and resources. The commenter explained that the increase in digital marketing services has transformed the industry and forced small advertising agencies to provide services outside of their primary area of expertise or resource bandwidths. The coalition maintained that the advertising industry is inequitably concentrated, with the top 4 advertising agencies or their networks accounting for more than 50% of Federal Government revenue in 2019, which supports a higher size standard for NAICS 541810. It also noted that advertising contracts are requiring increasingly sophisticated IT infrastructure, Customer Relations Management (CRM)/marketing automation platforms, IT storage and hosting, and greater cybersecurity and compliance services, all of which add significant costs beyond the financial capabilities of many small businesses under the current size standard. The coalition of firms further recommended that SBA consider other data sources in order to obtain a fuller and more accurate understanding of the economic characteristics of the industry and recommended that SBA increase the size standard for NAICS 541810 to match the SBA proposed size standards for NAICS 541830 (Media Buying Agencies—$28.5 million), NAICS 541511 (Custom Computer Programing Services—$30 million), and NAICS 541512 (Computer Systems Design Services—$30 million) based on their relevance and similarities to Advertising Agencies. The commenter also contended that the 2012 Economic Census data, instead of the more recent and comprehensive industry data beyond the Economic Census, that SBA used in the proposed rule is outdated and does not accurately reflect the current structure of the advertising agencies industry. Finally, the coalition urged SBA to allow advertising agencies to exclude subcontractor costs from the calculation of receipts for the size standard. The coalition provided SBA with a copy of the executive summary of the Ad Age Datacenter Agency Report 2020 and data showing total advertising agency revenue by year and by firm size for the top 250 advertising agencies in the U.S.

SBA's Response

In response to the comment that the 2012 Economic Census data SBA used to develop the proposed size standard for NAICS 541810 (Advertising Agencies) are outdated and may not reflect the current industry structure and that SBA should use alternative data beyond the Economic Census data, SBA reviewed the data provided by the commenter. Due to the limited sample size, SBA determined that the data provided by the commenter are not comprehensive enough for evaluating this industry's size standard using the ''SBA's Size Standards Methodology.'' Specifically, according to the Economic Census, there are more than 12,000 firms operating in the U.S. in NAICS 541810, as compared to about 400 firms in comment's Exhibit A and just 250 firms in its Exhibit C. Moreover, the Economic Census only includes the revenue data for the U.S. based companies; however, the data provided by the commenter appears to include the revenue data for the non-U.S. advertising companies as well. The data might have even included the companies for which advertising is not their primary activity. SBA surveyed other available industry data sources and determined that the special tabulation of the 2012 Economic Census was still the latest (when the November 2020 proposed rule was drafted) and most comprehensive data source available for evaluating all industries consistently and on the same terms. The Economic Census provides information across all industries under its scope, using uniform definitions and measures, which allow for consistent industry comparisons at the same moment in time. Because the firm size distribution does not change drastically from one Economic Census to the next, the data retains its usefulness even if it is not produced in a recent year. SBA recently received a preliminary special tabulation based on the 2017 Economic Census. SBA found that the industry structure for NAICS 541810 has not drastically changed in the 2017 tabulation as compared to the 2012 tabulation. For example, SBA found that under the SBA's $22.5 million proposed size standard for NAICS 541810, 98% of firms are classified as small based on the 2012 Economic Census tabulation, as compared to 97.3% of firms that would qualify as small under the proposed size standard based on the 2017 Economic Census data tabulation.

Moreover, as explained in the methodology section of the November 2020 proposed rule, SBA did not rely solely on 2012 Economic Census data to evaluate all industry factors. For example, SBA used the RMA data (*http://www.rmahq.org/estatement-studies/*) for fiscal years 2016–18 to determine the sales (receipts) to total assets ratio for an industry which is then used to calculate the ''average assets'' factor (proxy for start-up costs and entry barriers) by applying the ratio to the average receipts of firms in an industry. An industry with average assets that are significantly higher than most other industries is likely to have higher startup costs; this in turn will support a higher size standard. Conversely, an industry with average assets that are lower than most other industries is likely to have lower startup costs; this will support either lowering or maintaining the size standard. Regarding NAICS 541810, specifically, SBA used the recent data to calculate an average asset size of $0.9 million which supported a size standard of $11 million.

Similarly, SBA used FPDS–NG data from fiscal years 2016–2018 to evaluate the Federal contracting factor, which measures small business participation in the Federal market in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of an industry's total receipts. In general, if the share of Federal contract dollars awarded to small businesses in an industry is significantly smaller than the small business share of total industry's receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with respect to the Federal contracting factor. Regarding NAICS 541810, specifically, using the FPDS–NG data for fiscal years 2016–2018 (the latest available when the proposed rule was drafted), SBA calculated a Federal contracting factor of −20.8% which supported a size standard of $20 million.

In response to the commenter's suggestion that SBA should allow advertising agencies to exclude subcontractor costs (usually referred to as ''pass-throughs''), SBA reviewed its current definition of receipts and its prior rulemakings where it has received similar comments on this issue. SBA found that this suggestion is not new, nor is it unique to NAICS 541810. SBA's definition of receipts states the following: ''Receipts means 'total income' (or in the case of a sole proprietorship, 'gross income') plus 'cost of goods sold' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms . . . .'' 13 CFR 121.104. The definition of receipts provides for several exclusions, including amounts collected for another by an advertising agent. 13 CFR 121.104(a). In calculating the revenue of an advertising agent, SBA excludes funds received in trust for an unaffiliated third party (such as bookings or sales subject to commissions), but includes the commissions received as revenue (see Footnote 10 to the SBA's Table of Size Standards in 13 CFR 121.201). The exclusions do not apply to subcontracting, materials, or related costs. SBA recognizes that subcontracting and material costs can be more substantial for some businesses and industries than for others. The Economic Census data that SBA uses in its size standards analysis includes all sources of revenues received by companies, including the values of their subcontracts. If the agency excluded the value of ''pass-throughs'' or subcontracting revenues from the calculation of receipts, SBA would have to adjust its methodology to establish a lower size standard to reflect the size of the industry without the subcontracting or ''pass-through'' costs.

Generally, SBA includes all revenues in its calculation of receipts—first, because Economic Census data includes them, as stated above, and second, because SBA's existing definitions of receipts and employees provide a consistent approach to measuring business size for establishing eligibility for small business programs for all industries. If SBA were to exclude certain costs from revenue calculation for one or a few industries, the participants in other industries could raise the same issue. This would create a ''slippery slope'' leading toward widespread inconsistency in how businesses calculate their receipts to determine if they are small. The better solution would be to have higher size standards than otherwise supported by industry and Federal contracting factors for industries with high ''pass-through'' costs, so that the size standards reflect the realities of how such firms conduct their business. Again, SBA's current definition of receipts is consistent with how businesses report their revenues for the Economic Census. The current definition is also consistent with the Small Business Act, which provides that size standards are to be established based on '' * * * annual average gross receipts of the business concern . . . .'' (15 U.S.C. 632(a)(2)(C)(ii)(II) [emphasis added]).

SBA also disagrees with the comment that SBA should establish a higher size standard for NAICS 541810 to match the proposed size standards for other industries, namely NAICS 541830 (Media Buying Agencies—$28.5 million), NAICS 541511 (Custom Computer Programing Services—$30 million), and NAICS 541512 (Computer Systems Design Services—$30 million). Although these industries may have related or co-dependent business activities with Advertising Agencies, SBA's analysis of these industries, as detailed in Table 4 of the November 2020 proposed rule, demonstrates that their industry structures and the economic characteristics of the firms providing services under these industries are markedly different, justifying a unique size standard for each industry.

According to the NAICS manual, the Advertising Agencies industry comprises establishments primarily engaged in creating advertising campaigns and placing such advertising in periodicals, newspapers, radio and television, or other media. These establishments are organized to provide a full range of services (*i.e.,* through in-house capabilities or subcontracting), including advice, creative services, account management, production of advertising material, media planning, and buying (*i.e.,* placing advertising). NAICS 541511 and 541512, on the other hand, comprise of establishments primarily focused on planning and designing software and computer systems, and NAICS 541830 comprises establishments primarily engaged in purchasing advertising time or space from media outlets and reselling it to advertising agencies or individual companies directly. Among the three industries identified by the commenter as a basis for recommending a higher size standard of $28.5 million or $30 million for NAICS 541810, because of being in the same NAICS Industry Group 5418 (Advertising, Public Relations, and Related Services), NAICS 541830 is the closest to NAICS 541810. Yet, there are significant differences between the two industries, as shown in Table 5, Comparison of Primary Factors Between NAICS 541810 and NAICS 541830.

TABLE 5—COMPARISON OF PRIMARY FACTORS BETWEEN NAICS 541810 AND NAICS 541830

Primary factor/size standard	541810 Adverting agencies		541830 Media buying agencies	
	Factor	Size std.	Factor	Size std.
Simple average firm size ($million)	$2.9	$16.0	$8.4	$38.5
Weighted average firm size ($million)	896.3	37.0	283.3	17.0
Average assets size ($million)	0.9	11.0	2.6	20.5
Four-firm ratio (%)	30.1%	25.5	35.7%	30.0
Gini coefficient	0.801	29.0	0.838	35.5
Federal contracting factor (%)	−20.8%	20.0		
Calculated size standard ($million)		22.5		28.5
Proposed size standard ($million)		22.5		28.5
Current size standard ($million)		16.5		16.5

As can be seen from Table 5, there are significant differences with respect to factor values and supported size standards between NAICS 541810 and NAICS 541830. For example, with a value of −20.8% the Federal contracting factor is significant for NAICS 541810 supporting a size standard of $20 million, but it is not significant for NAICS 541830. With respect to industry factors, only the weighted average firm size supports a higher size standard for NAICS 541810. All other industry factors support higher size standards for NAICS 541830, producing a higher $28.5 million calculated size standard for the industry, as compared to a $22.5 million size standard for NAICS 541810. Thus, SBA believes that the differences in the primary business activity of the firms participating in each industry justifies maintaining a separate size standard for each of the aforementioned NAICS industries.

Therefore, for the reasons presented above, SBA accepts the analytical results and, in this final rule, and adopts the $22.5 million size standard for NAICS 541810 (Advertising Agencies), as proposed. Based on the 2012 Economic Census tabulation, 98% of firms would qualify as small, thereby providing a robust pool of qualified small businesses for Federal set-aside opportunities.

Comments on Proposed Changes to NAICS 541930—Translation and Interpretation Services

SBA received a total of 24 comments concerning its proposal to increase the size standard for NAICS 541930 (Translation and Interpretation Services) from $8 million to $20 million in average annual receipts. Of the 24 comments received, 17 comments expressed support for the SBA's proposed increase, while seven comments opposed the increase. These comments and SBA's responses are discussed below.

Comments Supporting the Proposed $20 Million Size Standard

Fourteen of the seventeen comments supporting SBA's proposal were nearly identical and cited rapid industry growth and increased competitiveness of small firms as the basis for their support for the SBA's proposed $20 million size standard. These commenters, which comprised of individuals, companies, and a university, expressed that the SBA's proposed increase would match the rapid growth in the language industry, and would allow more companies to grow and stay competitive as small businesses. Other commenters in support of the proposed increase expressed similar reasons for their support, citing increased demand for translation services in recent years and the increased capital requirements for translation services providers. For example, a firm providing sign language interpreting services expressed that the $20 million size standard was appropriate because larger investments are needed by firms in the industry to meet the growing demands of technology, security provisions and other compliance standards required by customers.

One commenter noted that Federal contract values for language services continue to grow, and that the proposed increase to the size standard will increase set-aside opportunities for small businesses and ensure that the Federal Government has an adequate pool of small businesses to meet its growing needs for language and interpretation services. The same commenter also stated that increasing the size standard would also promote small business subcontracting by allowing small business subcontractors to remain small and continue to operate under prime contracts. One commenter mentioned that Government contracts have become larger and larger and a single contract can easily reach the size threshold.

SBA's Response

SBA agrees with the commenters that the higher $20 million size standard reflects current market conditions in the language and interpretation services industry, will allow small businesses to grow remain small for an extended period, expand Federal opportunities for small businesses, and provide the Government with an expanded pool of qualified small businesses to meet their growing translation and interpretation services needs.

Comments Opposing the Proposed $20 Million Size Standard

Commenters opposed to SBA's proposed increase to the size standard for NAICS 541930 included six language interpretation firms and one individual, of which six proposed to leave the size standard unchanged at $8 million and one suggested lowering it to $4 million. One commenter maintained that considering the unprecedented impact of the COVID–19 pandemic on small businesses, SBA should not be increasing the size standard in the current environment. All commenters opposed the proposed increase to the size standard over concerns that it would unfairly disadvantage the population of currently small firms, especially the smallest of small firms. One commenter expressed that SBA's proposed size standard would lead to buyouts and mergers initiated by larger firms that would ultimately put small companies out of business. Another argued that a company with a $20 million revenue does not need Government assistance. Three commenters suggested that SBA create multiple size classifications within the industry to identify and target resources towards firms that are ''truly'' small and ensure that very large businesses are not able to access resources intended for small businesses. One commenter recommended that SBA define the size classifications in this industry as follows: Below $8 million as ''small''; from $8 million to $20 million as ''medium''; from $20 million to $100 million as ''large''; and above $100 million as ''extra-large.'' Another commenter recommended that SBA adopt an employee-based size standard for this industry to provide a more even playing field but did not provide additional data or information to support this recommendation.

SBA's Response

Although SBA recognizes the challenges that both very small and mid-sized businesses face in the Federal market, SBA believes that suggested tiered size standards would add significant complexity to size standards, which many believe are already too complex. For the tiered size standards approach to work as envisioned by its proponents, small business contracting goals would need to be established at each tier to ensure that small businesses at different tiers have fair access to Federal small business contracts. Moreover, the Small Business Act gives SBA's Administrator the authority to determine what constitutes a small business concern for Federal Government programs, but the Act does not provide for definitions of other than small businesses. As such, SBA does not agree with commenters that it should create multiple size classifications within the industry. SBA also disagrees with the comment that number of employees is a better measure of business size than the level of receipts for this industry. The Small Business Act requires that the size of businesses in services industries be based on average annual gross receipts. Additionally, for industries where subcontracting is widespread, such as many professional services industries, including Translation and Interpretation Services, SBA is concerned that an employee-based size standard may encourage businesses to excessively outsource Federal work to other businesses to remain within the size standard. Under the receipts-based size standard, businesses are not allowed to deduct value of work outsourced, and therefore cannot reduce their size by outsourcing a higher proportion of work.

Regarding commenters' concern that raising the size standard will disadvantage the smallest of small firms in this industry, SBA notes that increasing size standards does not necessarily put firms that are small under the current size standard at a competitive disadvantage. In fact, increasing size standards can have an opposite impact. With higher size standards and a larger pool of businesses qualifying as small, Federal agencies are likely to utilize more small business set-asides, thereby increasing opportunities for all small businesses. As stated above, most of the comments received to the proposed rule regarding the size standard for NAICS 541930 supported the proposed $20 million size standard, contending, in part, that this increase will enable firms below that level to develop and become competitively viable. SBA agrees with these commenters that the proposed increase to size standard for NAICS 541930 will benefit all small businesses and better reflect the economic characteristics of the industry.

For the above reasons, SBA is adopting the $20 million size standard for NAICS 541930, as proposed.

Comments on Proposed Changes to All Sectors

SBA received six comments to the proposed rule that did not discuss SBA's proposed changes to size standards for any particular industry or sector, but instead, focused on broader issues applicable to all sectors. Of the six comments received, four comments were opposed to SBA's proposed changes and two comments were in favor. Three commenters opposed to SBA's proposed changes expressed that the general levels of size standards are already too high. One opposing commenter suggested that a possible small business definition of 50 employees or less and receipts of $1 million or less may be more appropriate. Another commenter expressed similar concerns and suggested that SBA create a micro small business designation. Another commenter opposed SBA's proposed size standards based on the level of fraudulent activity that occurred during the execution of the Paycheck Protection Program (PPP). This commenter argued that SBA's resources should be used to curtail fraud in the PPP prior to developing a rule adjusting size standards. Comments in favor of SBA's proposed rule expressed that SBA's proposed size standards better reflected the current industry composition for the industries covered by this rulemaking. One commenter also supported proposed changes based on SBA's policy decision to not lower size standards at this time considering the impact from the COVID–19 induced economic recession.

SBA's Response

SBA does not agree with commenters that the general level of size standards is too high and that the maximum thresholds should be set at $1 million or 50 employees. SBA's size standards methodology has established minimum and maximum limits for receipts-based and employee-based size standards (84 FR 14587 (April 11, 2019)). Prior to finalizing the 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 cited above. With respect to receipts-based size standards, SBA has established $6 million and $41.5 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in NAICS Subsectors 111 and 112 for which $1 million and $5 million are the minimum and maximum levels, respectively). Under this rule, SBA is not considering comments pertaining to its size standards methodology, which was already finalized through notice and comment process prior to this review. SBA also disagrees with the comment that SBA's resources should be wholly devoted to preventing abuse of PPP loans at the expense of completing the comprehensive review of size standards. As discussed earlier in this rule, in accordance with the Jobs Act, SBA is mandated to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. SBA does not have the authority to suspend this requirement, nor does it believe that it would be in the public's best interest to suspend or terminate this review. SBA agrees with commenters that the size standards contained in the proposed rule better reflect the composition and economic characteristics of the underlying industries. SBA also agrees that its policy to not lower size standards at this time based on the analytical results is appropriate and reduces the level of uncertainty for small businesses as the wider economy continues to improve.

Conclusion

Based on the results of the analysis of industry and Federal contracting factors in Table 4 of the November 2020 proposed rule, evaluation of public comments to the proposed rule discussed above, and consideration of the impact of the COVID–19 pandemic on small businesses and Government response, in this final rule, SBA is adopting its proposal to increase 46 and retain 48 receipts-based size standards in Sectors 54, 55, and 56 without change.

Summary of Adopted Revisions to Size Standards

Based on the evaluation of public comments it received on the proposed rule and on the results of analyses of its industry and Federal contracting factors using the latest available data and considerations of the impact of the COVID–19 pandemic on small businesses and Government response, SBA is adopting the size standards as proposed in the November 2020 proposed rule. Thus, SBA is increasing the size standards for 46 industries in Sectors 54, 55, and 56, including 27 industries in NAICS Sector 54 (Professional, Scientific and Technical Services), 2 industries in Sector 55 (Management of Companies and Enterprises), and 17 industries in Sector 56 (Administrative and Support and Waste Management and Remediation Services). A summary of SBA's size standards revisions in this rule can be found below in Table 6, Summary of Size Standards Revisions in NAICS Sectors 54, 55, and 56.

TABLE 6—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 54, 55, AND 56

NAICS code	NAICS U.S. industry title	Current size standard ($ million)	Calculated size standard ($ million)	Adopted size standard ($ million)
541110	Offices of Lawyers	12.0	13.5	13.5
541191	Title Abstract and Settlement Offices	12.0	17.0	17.0
541199	All Other Legal Services	12.0	18.0	18.0
541211	Offices of Certified Public Accountants	22.0	23.5	23.5
541213	Tax Preparation Services	22.0	12.0	22.0
541214	Payroll Services	22.0	34.5	34.5
541219	Other Accounting Services	22.0	17.5	22.0
541310	Architectural Services	8.0	11.0	11.0
541320	Landscape Architectural Services	8.0	6.5	8.0
541330	Engineering Services	16.5	22.5	22.5
541330 (Exception 1)	Military and Aerospace Equipment and Military Weapons	41.50	39.00	41.50
541330 (Exception 2)	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	41.50	39.00	41.50
541330 (Exception 3)	Marine Engineering and Naval Architecture	41.50	41.50	41.50
541340	Drafting Services	8.0	7.0	8.0
541350	Building Inspection Services	8.0	10.0	10.0
541360	Geophysical Surveying and Mapping Services	16.5	25.0	25.0
541370	Surveying and Mapping (except Geophysical) Services	16.5	14.0	16.5
541380	Testing Laboratories	16.5	16.5	16.5
541410	Interior Design Services	8.0	6.5	8.0
541420	Industrial Design Services	8.0	15.0	15.0
541430	Graphic Design Services	8.0	7.5	8.0
541490	Other Specialized Design Services	8.0	12.0	12.0
541511	Custom Computer Programming Services	30.0	20.5	30.0
541512	Computer Systems Design Services	30.0	27.0	30.0
541513	Computer Facilities Management Services	30.0	32.5	32.5
541519	Other Computer Related Services	30.0	21.0	30.0
541611	Administrative Management and General Management Consulting Services.	16.5	21.5	21.5
541612	Human Resources Consulting Services	16.5	25.5	25.5
541613	Marketing Consulting Services	16.5	14.5	16.5
541614	Process, Physical Distribution, and Logistics Consulting Services.	16.5	17.5	17.5
541618	Other Management Consulting Services	16.5	13.0	16.5
541620	Environmental Consulting Services	16.5	13.5	16.5
541690	Other Scientific and Technical Consulting Services	16.5	15.5	16.5
541720	Research and Development in the Social Sciences and Humanities.	22.0	24.5	24.5
541810	Advertising Agencies	16.5	22.5	22.5
541820	Public Relations Agencies	16.5	15.0	16.5
541830	Media Buying Agencies	16.5	28.5	28.5
541840	Media Representatives	16.5	18.5	18.5
541850	Outdoor Advertising	16.5	30.5	30.5
541860	Direct Mail Advertising	16.5	19.5	19.5
541870	Advertising Material Distribution Services	16.5	25.0	25.0
541890	Other Services Related to Advertising	16.5	16.0	16.5
541910	Marketing Research and Public Opinion Polling	16.5	20.0	20.0
541921	Photography Studios, Portrait	8.0	14.0	14.0
541922	Commercial Photography	8.0	8.0	8.0
541930	Translation and Interpretation Services	8.0	20.0	20.0
541940	Veterinary Services	8.0	9.0	9.0
541990	All Other Professional, Scientific and Technical Services	16.5	17.0	17.0
551111	Offices of Bank Holding Companies	22.0	34.0	34.0
551112	Offices of Other Holding Companies	22.0	40.0	40.0
561110	Office Administrative Services	8.0	11.0	11.0
561210	Facilities Support Services	41.5	32.5	41.5
561311	Employment Placement Agencies	30.0	21.0	30.0
561312	Executive Search Services	30.0	12.0	30.0
561320	Temporary Help Services	30.0	26.5	30.0
561330	Professional Employer Organizations	30.0	36.5	36.5
561410	Document Preparation Services	16.5	16.5	16.5
561421	Telephone Answering Services	16.5	14.5	16.5
561422	Telemarketing Bureaus and Other Contact Centers	16.5	22.5	22.5
561431	Private Mail Centers	16.5	8.5	16.5
561439	Other Business Service Centers (including Copy Shops)	16.5	23.5	23.5
561440	Collection Agencies	16.5	17.0	17.0
561450	Credit Bureaus	16.5	36.0	36.0
561491	Repossession Services	16.5	9.0	16.5
561492	Court Reporting and Stenotype Services	16.5	14.0	16.5
561499	All Other Business Support Services	16.5	19.0	19.0

TABLE 6—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 54, 55, AND 56—Continued

NAICS code	NAICS U.S. industry title	Current size standard ($ million)	Calculated size standard ($ million)	Adopted size standard ($ million)
561510	Travel Agencies	22.0	19.0	22.0
561520	Tour Operators	22.0	13.5	22.0
561591	Convention and Visitors Bureaus	22.0	13.5	22.0
561599	All Other Travel Arrangement and Reservation Services	22.0	28.5	28.5
561611	Investigation Services	22.0	21.5	22.0
561612	Security Guards and Patrol Services	22.0	25.5	25.5
561613	Armored Car Services	22.0	38.0	38.0
561621	Security Systems Services (except Locksmiths)	22.0	20.5	22.0
561622	Locksmiths	22.0	7.0	22.0
561710	Exterminating and Pest Control Services	12.0	15.5	15.5
561720	Janitorial Services	19.5	15.0	19.5
561730	Landscaping Services	8.0	8.5	8.5
561740	Carpet and Upholstery Cleaning Services	6.0	7.5	7.5
561790	Other Services to Buildings and Dwellings	8.0	8.0	8.0
561910	Packaging and Labeling Services	12.0	17.0	17.0
561920	Convention and Trade Show Organizers	12.0	17.5	17.5
561990	All Other Support Services	12.0	14.5	14.5
562111	Solid Waste Collection	41.5	34.0	41.5
562112	Hazardous Waste Collection	41.5	31.0	41.5
562119	Other Waste Collection	41.5	25.0	41.5
562211	Hazardous Waste Treatment and Disposal	41.5	39.0	41.5
562212	Solid Waste Landfill	41.5	39.0	41.5
562213	Solid Waste Combustors and Incinerators	41.5	41.0	41.5
562219	Other Nonhazardous Waste Treatment and Disposal	41.5	24.5	41.5
562910	Remediation Services	22.0	18.5	22.0
562920	Materials Recovery Facilities	22.0	21.5	22.0
562991	Septic Tank and Related Services	8.0	8.0	8.0
562998	All Other Miscellaneous Waste Management Services	8.0	14.5	14.5

Table 7, Summary of Revised Size Standards by Sector, summarizes the adopted changes to size standards by NAICS sector.

TABLE 7—SUMMARY OF REVISED SIZE STANDARDS 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
54	Professional, Scientific and Technical Services	48	27	0	21
55	Management of Companies and Enterprises	2	2	0	0
56	Administrative and Support, Waste Management and Remediation Services.	44	17	0	27
All Sectors		94	46	0	48

Evaluation of Dominance in Field of Operation

SBA determined that for the industries evaluated under the under this final rule, no individual firm at or below the revised 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 revised size standards from exerting control on any of the industries.

Alternatives Considered

In response to the unprecedented economic impacts of the COVID–19 pandemic on small businesses, 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 or retaining is appropriate.

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 46 industries, decreasing them for 42 industries, and retaining them at their current levels for 6 industries. Alternative Option Two was to retain all current size standards at their current levels.

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 run counter to various measures the Federal Government has implemented to help U.S. 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 similar policy of not decreasing size standards during the first five-year review of size standards, even though the data suggested decreases.

Under Alternative Option Two, given the current COVID–19 pandemic, SBA considered retaining all size standards at their current levels even though the analysis of relevant data 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 either because the results discussed in the Regulatory Impact Analysis section, below, shows 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 46 and retaining 48 size standards adopted in this final rule. 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 this 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 Federal marketplace.

The revisions to the existing size standards for 46 industries in NAICS Sectors 54, 55, and 56 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 can 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 analysis 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 businesses and the overall economic activity, of the total of 94 industries in Sectors 54, 55, and 56 that have receipts-based size standards, SBA is adopting increases to size standards for 46 industries and maintaining current size standards for the remaining 48 industries (including exceptions).

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 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), of a total of about 1,096,800 businesses in industries in Sectors 54, 55, and 56, 97.9% are considered small under the current size standards. That percentage varies from 65.3% in Sector 55 to 98.4% in Sector 54. Based on the data from FPDS–NG for fiscal years 2018–2020, about 36,685 unique firms in those industries received at least one Federal contract during that period, of which 80.1% were small under the current size standards. A total of $154 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 33.9% of the dollars awarded went to small businesses. For these sectors, providing contract dollars to small business through set-asides is quite important. From the total small business contract dollars awarded during the period considered, 71.9%

were awarded through various small business set-aside programs and 28.1% were awarded through non-set set-aside contracts. 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 7,955 7(a) and 504 loans in that period, totaling about $2.9 billion, of which 83.4% was issued through the 7(a) program and 16.6% was issued through the 504/CDC program. During fiscal years 2018–2020, small businesses in those industries also received 527 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about $23.8 million on an annual basis.[2] Table 8, Baseline for All Industries, below, provides these baseline results by sector.

TABLE 8—BASELINE FOR ALL INDUSTRIES

	Sector 54	Sector 55	Sector 56	Total
Baseline All Industries (current size standards)	48	2	44	94
Total firms (Economic Census)	760,701	7,544	328,522	1,096,767
Total small firms under current size standards (Economic Census)	748,170	4,926	320,672	1,073,769
Small firms as % of total firms	98.3%	65.3%	97.6%	97.9%
Total contract dollars ($ million) (FPDS–NG FY2018–2020)	$113,299	$0.1	$40,300	$153,600
Total small business contract dollars under current standards ($ million) (FPDS–NG FY2018–2020)	$41,227	$0.0	$10,810	$52,037
Small business dollars as % of total dollars (FPDS–NG FY2016–2020)	36.4%	1.1%	26.8%	33.9%
Total no. of unique firms getting contracts (FPDS–NG FY2018–2020)	25,173	3	13,887	36,685
Total no. of unique small firms getting small business contracts (FPDS–NG FY2018–2020)	19,476	1	11,479	29,374
Small business firms as % of total firms	77.4%	33.3%	82.7%	80.1%
No. of 7(a) and 504/CDC loans (FY 2018–2020)	5,120	43	2,792	7,955
Amount of 7(a) and 504 loans ($ million) (FY 2018–2020)	$1,979	$30	$871	$2,881
No. of EIDL loans (FY 2018–2020) *	364	1	162	527
Amount of EIDL loans ($ million) (FY 2018–2020) *	$16.5	$0.02	$7.3	$23.8

* 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.

Increases to Size Standards

As stated above, of 94 receipts-based size standards in Sectors 54, 55, and 56 reviewed, based on the results from analyses of latest industry and Federal market data as well as impacts of size standards changes on small businesses and the considerations of the impact of the COVID–19 pandemic and public comments to the proposed rule, in this final rule, SBA is increasing the size standards for 46 industries and retaining the size standards for 48 industries. Below are descriptions of the benefits, costs, and transfer impacts of these increases to size standards.

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.

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)/BD (Business Development) 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.

As shown in Table 9, Benefits of Increasing Size Standards, based on the 2012 Economic Census (latest available), SBA estimates that in 46 industries in NAICS Sectors 54, 55, and 56 for which it has decided to increase size standards, about 2,600 firms, not small under the current size standards, will become small under the revised size standards and therefore become eligible for above programs. That represents about 0.4% of all firms classified as small under the current size standards in industries for which SBA is increasing size standards. The revised size standards would result in an increase to the small business share of total receipts in those industries from 34.7% to 37%.

With more businesses qualifying as small under the higher 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

[2] 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 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.

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.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 463 firms that are active in Federal contracting in those industries would gain small business status under the revised size standards. Based on the same data, SBA estimates that those newly qualified small businesses under the increases to 46 size standards could receive Federal small business contracts totaling about $915 million annually. That represents a 4.1% increase to small business dollars from the baseline.

TABLE 9—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 54	Sector 55	Sector 56	Total
No. of industries with increases to size standards	27	2	17	46
Total current small businesses in industries with Proposed increases to size standards (Economic Census 2012)	462,890	4,926	176,504	644,321
Additional firms qualifying as small under standards (2012 Economic Census)	1,345	527	710	2,582
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards	0.3%	10.7%	0.4%	0.4%
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG FY2018–2020) [1]	11,920	1	3,717	15,092
Additional small business firms getting small business status (FPDS–NG FY2018–2020) [1]	400	....	122	463
% 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)	3.4%	0.0%	3.3%	3.1%
Total small business contract dollars under current standards in industries with increases to size standards ($ million) (FPDS–NG FY2018–2020)	$19,108	$0.0	$3,044	$22,152
Estimated small business dollars available to newly-qualified small firms (Using avg dollars obligated to SBs) ($ million) FPDS–NG FY 2018–2020) [2]	$799	$0.0	$116	$915
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards	4.2%	0.0%	3.8%	4.1%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY 2018–2020)	2,982	43	1,446	4,471
Total amount of 7(a) and 504 loans to small businesses in industries with increases to size standards ($ million) (FY 2018–2020)	$1,302	$30	$436	$1,769
Estimated no. of 7(a) and 504 loans to newly-qualified small firms	9	5	6	20
Estimated 7(a) and 504 loan amount to newly qualified small firms ($ million)	$3.9	$3.5	$1.8	$9.3
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards	0.3%	11.6%	0.4%	0.5%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY 2018–2020) [3]	222	1	87	310
Total amount of EIDL loans to small businesses in industries with increases to size standards ($ million) (FY 2018–2020) [3]	$10.8	$0.02	$3.8	$14.6
Estimated no. of EIDL loans to newly-qualified small firms [3]	1	1	1	3
Estimated EIDL loan amount to newly-qualified small firms ($ million) [3]	$0.05	$0.02	$0.04	0.11
% increase to EIDL loan amount relative to the total amount of EIDL loans in industries with increases to size standards [3]	0.5%	100.0%	1.1%	0.8%

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

[2] 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.

[3] 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 higher size standards, HUBZone firms might end up getting 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 20 SBA 7(a) and 504 loans totaling about $9.3 million could be made to these newly-qualified small businesses in those industries under the revised size standards. That represents a 0.5% increase to the loan amount compared to the baseline (see Table 9).

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 EIDL program data, SBA estimates that, on an annual basis, the newly defined small businesses under the increases of 46 size standards could receive three EIDL loans, totaling about $0.11 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 (see Table 9)

Costs of Increases to Size Standards

Besides having to register in *sam.gov* to be able to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status because 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 modifies 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 increases to size standards may entail some additional administrative costs to the Federal 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 and mentor-protégé programs. 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 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 FY 2013), as compared to about 500 during fiscal years 2018–2020 when increases to size standards 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 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 higher 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 higher size standards, HUBZone firms might actually end up getting 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 46 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 higher 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 higher 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 changes in the final rule. In this section, SBA describes and analyzes two such alternatives.. Alternative Option One to the final rule, a more stringent alternative, would be to adopt size standards based solely on the analytical results. In other words, the size standards of 46 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 42 industries for which the analytical results, as presented in Table 4 of the November 2020 proposed rule, suggest lowering them would be lowered. For the six remaining industries, size standards would be maintained at their current levels. Alternative Option Two would be to retain all size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses and presents the net impacts of each option.

Alternative Option One: Consider Adopting All Calculated Size Standards

As discussed 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 benefit 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 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 in or increases to 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 discussed already the benefits, costs, and transfer impacts of increasing 46 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 42 size standards.

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, 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 Federal 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 10, Impacts of Decreasing Size Standards Under Alternative Option One, below, shows the various impacts of lowering size standards in 42 industries based solely on the analytical results. Based on the 2012 Economic Census, about 1,050 (0.3%) firms would lose their small business status under this option. Similarly, based on the FPDS–NG data for fiscal years 2018–2020, about 400 (2.5%) 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 $29.6 billion in small business contracts in those 42 industries for which SBA considered decreasing size standards.

TABLE 10—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 54	Sector 55	Sector 56	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census)	18	0	24	42
Total current small businesses in industries for which SBA considered decreasing size standards (EC 2012)	276,751	0	125,106	401,857
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census)	676	0	375	1,051
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census)	0.2%	0%	0.3%	0.3%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	9,334	....	7,526	16,242
Estimated number of small business firms that would have lost small business status in the decreases that SBA considered (FPDS–NG, FY2018–2020) [1]	306	0	138	407
% 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 FY 2018–2020)	3.3%	0.0%	1.8%	2.5%

TABLE 10—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 54	Sector 55	Sector 56	Total
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards ($ million) (FPDS–NG FY 2018–2020)	$21,980	$0	$7,631	$29,611
Estimated small business dollars not available to firms losing small business status (Using avg dollars obligated to SBs) ($ million) [2] (FPDS–NG FY 2018–2020) [2]	$1,056	$0	$216	$1,272
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020)	4.8%	0.0%	2.8%	4.3%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020)	2,053	....	1,119	3,172
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2018–2020)	$639	$0	$357	$996
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status	6	0	4	10
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status ($ million)	$1.9	$0.0	$1.3	$3.1
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards	0.3%	0.0%	0.4%	0.3%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020)	134	0	65	199
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2018–2020)	$5.2	$0.0	$3.2	$8.5
Estimated no. of EIDL loans not available to firms that would have lost small business status	1	0	1	2
Estimated EIDL loan amount not available to firms that would have lost small business status ($ million)	$0.04	$0.00	$0.05	$0.09
% decrease to EIDL loan amount relative to the baseline	0.7%	0.0%	1.5%	1.0%

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

[2] 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.

[3] 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 10, lowering size standards in 42 industries would reduce Federal contract dollars awarded to small businesses by $1.3 billion or about 4.3% relative to the baseline level. Because of the importance of these sectors for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact under this option. 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 are 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 10, decreases to 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 ten of SBA's 7(a) and 504 loans with total amounts of $3.1 million could not be made to those small businesses that would lose eligibility under the reduced size standards (before mitigation). 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 the 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, two EIDL loans with total amounts of $0.09 million could not be made to those small businesses that would lose eligibility under the reduced size standards (before mitigation). That represents about 1.0% 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 (see Table 10).

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 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 remaining small 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 increases to size standards (see Table 9). However, under Alternative Option One, SBA used the calculated size standards instead of the revised ones to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 9. Table 10 and Table 11, Net Impacts of Size Standards Changes under Alternative Option One, 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 88 industries in NAICS Sectors 54, 55, and 56 for which the analytical results suggested to change size standards, about 1,530 firms (see Table 10), would become small under Alternative Option One. That represents about 0.1% of all firms classified as small under the current size standards. That is about 1,050 fewer firms qualifying as small under Alternative Option One, which represents a more than 40% reduction from about 2,585 firms that would qualify as small (see Table 8) under the proposal being adopted in this final rule (*i.e.,* increasing 46 and retaining 48 size standards).

TABLE 11—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 54	Sector 55	Sector 56	Total
No. of industries with changes to size standards	45	2	41	88
Total no. of small business under the current size standards (2012 Economic Census)	739,641	4,926	301,609	1,046,177
Additional firms qualifying as small under Alternative Option One (2012 Economic Census)	670	527	334	1,531
% of additional firms qualifying as small relative to total current small businesses	0.1%	10.7%	0.1%	0.1%
No. of current unique small firms getting small business contracts (FPDS–NG FY 2018–2020) [1]	18,820	1	10,612	27,922
Additional small firms getting small business status (FPDS–NG FY 2018–2020) [1]	16	0	−58	−75
% increase to small firms relative to current unique small firms getting small business contracts (FPDS–NG FY 2018–2020)	0.1%	0.0%	-0.5%	-0.3%
Total small business small business contract dollars under current size standards ($ million) (FPDS–NG FY 2018–2020)	$41,089	$0	$10,675	$51,764
Estimated small business dollars available to newly-qualified small firms ($ million) FPDS–NG FY 2018–2020) [2]	-$256	$0	-$100	-$357
% increase to dollars relative to total small business contract dollars under current size standards	−0.6%	0.0%	−0.9%	−0.7%
Total no. of 7(a) and 504 loans to small businesses (FY 2018–2020)	5,120	43	2,792	7,955
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020)	$1,979	$30	$871	$2,881
Estimated no. of additional 7(a) and 504 loans to newly-qualified small firms	3	5	2	10
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms ($ million)	$2.1	$3.5	$0.5	$6.1
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses	0.1%	11.6%	0.1%	0.2%
Total no. of EIDL loans to small businesses (FY 2018–2020) [3]	364	1	162	527
Total amount of EIDL loans to small businesses (FY 2018–2020) [3]	$16.5	$0.02	$7.3	$23.8
Estimated no. of additional EIDL r loans to newly-qualified small firms [3]	0	1	0	1
Estimated additional EIDL r loan amount to newly-qualified small firms ($ million) [3]	$0.01	$0.02	$0.01	$0.02

TABLE 11—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 54	Sector 55	Sector 56	Total
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses [3]	0.1%	100.0%	0.2%	0.2%

[1] Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.
[2] 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.
[3] 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.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 75 active firms in Federal contracting in those industries would lose small business status under Alternative Option One, most of them from Sector 56. This represents a decrease of about 0.3% 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 $357.0 million of Federal procurement dollars would not be available to firms losing their small status. This represents a decrease of 0.7% from the baseline. A large amount of the losses are accounted for by Sector 54 (see Table 11).

Based on the SBA's loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans may increase by about ten loans, and the loan amounts by about $6.1 million. This represents a 0.2% increase 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 data, SBA estimates that the total number of disaster loans may increase by about one loan, and the loan amount by about $.02 million. This represents a 0.2% increase of the loan amounts relative to the group baseline.

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 46 and retaining 48 size standards adopted in this final rule. Moreover, retaining all size standards under Alternative Option Two 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 businesses 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, if adopted, 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 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 1.05 million small firms covered by this rulemaking under industries with increases to size standards. As a result of this final rule, SBA estimates that an additional 1,530 businesses will be defined as small under the revised size standards.

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 46 and maintaining 48 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 46 industries for which the analytical results suggest raising them would be raised. However, the size standards of 42 industries for which the analytical results suggest lowering size standards would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in sectors 54 and 56 (see Table 9). 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 46 and decreasing 42 size standards. Retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 46 and retaining the remaining 48 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses within those industries 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 5 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 several 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 and comments. 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 93 comments to the proposed rule from a wide range of entities including individuals, corporations, trade associations and an academic institution. In the Summary 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 Federal 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 by revising the entries for ''541110,'' ''541191,'' ''541199,'' ''541211,'' ''541214,'' ''541310,'' ''541330,'' ''541330 (Exception 1),'' ''541330 (Exception 2),'' ''541330 (Exception 3),'' ''541350,'' ''541360,'' ''541420,'' ''541490,'' ''541513,'' ''541611,'' ''541612,'' ''541614,'' ''541720,'' ''541810,'' ''541830,'' ''541840,'' ''541850,'' ''541860,'' ''541870,'' ''541910,'' ''541921,'' ''541930,'' ''541940,'' ''541990,'' ''551111,'' 551112,'' the Sector 56 heading, and the entries for ''561110,'' ''561330,'' ''561422,'' ''561439,'' ''561440,'' ''561450,'' ''561499,'' ''561599,'' ''561612,'' ''561613,'' ''561710,'' ''561730,'' ''561740,'' ''561910,'' ''561920,'' ''561990,'' and ''562998'' to 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
* *	* * *	*	*
	Sector 54—Professional, Scientific and Technical Services **Subsector 541—Professional, Scientific and Technical Services**		
541110	Offices of Lawyers	$13.5	
541191	Title Abstract and Settlement Offices	17.0	
541199	All Other Legal Services	18.0	
541211	Offices of Certified Public Accountants	23.5	
* *	* * *	*	*
541214	Payroll Services	34.5	
* *	* * *	*	*
541310	Architectural Services	11.0	
* *	* * *	*	*
541330	Engineering Services	22.5	
541330 (Exception 1)	Military and Aerospace Equipment and Military Weapons	41.50	
541330 (Exception 2)	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	41.50	
541330 (Exception 3)	Marine Engineering and Naval Architecture	41.50	
* *	* * *	*	*
541350	Building Inspection Services	10.0	
541360	Geophysical Surveying and Mapping Services	25.0	
* *	* * *	*	*
541420	Industrial Design Services	15.0	
* *	* * *	*	*
541490	Other Specialized Design Services	12.0	
* *	* * *	*	*
541513	Computer Facilities Management Services	32.5	
* *	* * *	*	*
541611	Administrative Management and General Management Consulting Services	21.5	
541612	Human Resources Consulting Services	25.5	
* *	* * *	*	*
541614	Process, Physical Distribution, and Logistics Consulting Services	17.5	
* *	* * *	*	*
541720	Research and Development in the Social Sciences and Humanities	24.5	

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
541810	Advertising Agencies [10]	[10] 22.5	
*	* * * *	*	*
541830	Media Buying Agencies	28.5	
541840	Media Representatives	18.5	
541850	Outdoor Advertising	30.5	
541860	Direct Mail Advertising	19.5	
541870	Advertising Material Distribution Services	25.0	
*	* * * *	*	*
541910	Marketing Research and Public Opinion Polling	20.0	
541921	Photography Studios, Portrait	14.0	
*	* * * *	*	*
541930	Translation and Interpretation Services	20.0	
541940	Veterinary Services	9.0	
541990	All Other Professional, Scientific and Technical Services	17.0	
	Sector 55—Management of Companies and Enterprises **Subsector 551—Management of Companies and Enterprises**		
551111	Offices of Bank Holding Companies	34.0	
551112	Offices of Other Holding Companies	40.0	
	Sector 56—Administrative and Support and Waste Management and Remediation Services **Subsector 561—Administrative and Support Services**		
561110	Office Administrative Services	11.0	
*	* * * *	*	*
561330	Professional Employer Organizations	36.5	
*	* * * *	*	*
561422	Telemarketing Bureaus and Other Contact Centers	22.5	
*	* * * *	*	*
561439	Other Business Service Centers (including Copy Shops)	23.5	
561440	Collection Agencies	17.0	
561450	Credit Bureaus	36.0	
*	* * * *	*	*
561499	All Other Business Support Services	19.0	
*	* * * *	*	*
561599	All Other Travel Arrangement and Reservation Services	28.5	
*	* * * *	*	*
561612	Security Guards and Patrol Services	25.5	
561613	Armored Car Services	38.0	
*	* * * *	*	*
561710	Exterminating and Pest Control Services	15.5	
*	* * * *	*	*
561730	Landscaping Services	8.5	
561740	Carpet and Upholstery Cleaning Services	7.5	
*	* * * *	*	*
561910	Packaging and Labeling Services	17.0	
561920	Convention and Trade Show Organizers [10]	[10] 17.5	
561990	All Other Support Services	14.5	
	Subsector 562—Waste Management and Remediation Services		
*	* * * *	*	*
562998	All Other Miscellaneous Waste Management Services	14.5	
*	* * * *	*	*

Footnotes

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[10] *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 revenue.

* * * * * * *

Isabella Casillas Guzman,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0024; Project Identifier MCAI–2021–00994–R; Amendment 39–21999; AD 2022–07–11]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–17–18, which applied to all Leonardo S.p.a. Model A109C, A109K2, A109E, A109S, and AW109SP helicopters. AD 2021–17–18 required an inspection of certain tail rotor (TR) sleeve assemblies for discrepancies, an inspection of certain TR shaft assemblies for discrepancies, a repetitive measurement of the position of the bushing of the TR sleeve assembly in relation to the pitch change slider assembly, and corrective actions if necessary. This AD retains the requirements of AD 2021–17–18, and also requires repetitive inspections of the TR sleeve assemblies, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that additional actions are required to address the unsafe condition. This AD was also prompted by a report of a crack on the TR mast. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 5, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 7, 2021 (86 FR 46766, August 20, 2021).

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0024.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0024; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0144, dated June 17, 2021 (EASA AD 2021–0144). (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Leonardo S.p.a. (formerly Finmeccanica S.p.A, AgustaWestland S.p.A., Agusta S.p.A.) Model A109C, A109K2, A109E, A109S, and AW109SP helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–17–18, Amendment 39–21701 (86 FR 46766, August 20, 2021) (AD 2021–17–18). AD 2021–17–18 applied to all Leonardo S.p.a. Model A109C, A109K2, A109E, A109S, and AW109SP helicopters. The NPRM published in the **Federal Register** on February 3, 2022 (87 FR 6091). The NPRM was prompted by a determination that additional actions are required to address the unsafe condition. The NPRM was also prompted by a report of a crack on the TR mast. The NPRM proposed to continue to require an inspection of certain TR sleeve assemblies for discrepancies, an inspection of certain TR shaft assemblies for discrepancies, a repetitive measurement of the position of the bushing of the TR sleeve assembly in relation to the pitch change slider assembly, and corrective actions if necessary, as specified in an EASA AD. The NPRM also proposed to require repetitive inspections of the TR sleeve assemblies, and corrective actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address cracking on the TR mast, which could lead to failure of the TR mast, with consequent loss of control of the helicopter. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

This AD requires EASA AD 2021–0144, which the Director of the Federal Register approved for incorporation by reference as of September 7, 2021 (86 FR 46766, August 20, 2021). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.