Lone Star College System
McLennan Community College
Northeast Texas Community College
Odessa College
Palo Alto College
Richland College
Saint Edward's University
San Antonio College
South Plains College
Southwest Texas Junior College
St. Mary's University
Sul Ross State University
Tarrant County College District
Texas A & M University—Corpus Christi
Texas A & M University—Kingsville
Texas State Technical College
Texas State University
Texas Tech University
Texas Woman's University
The University of Texas at Arlington
The University of Texas at Austin
The University of Texas at El Paso
The University of Texas at San Antonio
The University of Texas Health Science Center at Houston
The University of Texas Rio Grande Valley
University of Houston
University of Houston—Clear Lake
University of North Texas
University of St Thomas
University of the Incarnate Word
Vernon College
Wayland Baptist University
West Texas A & M University
Western Texas College

Washington (4)

Big Bend Community College
Heritage University
Wenatchee Valley College
Yakima Valley College

Wisconsin (1)

Mount Mary University

Done at Washington, DC, this day of March 24, 2022.

Carrie L. Castille,

Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG89

Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction

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 Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; and Construction. Specifically, SBA is increasing size standards for 68 industries in those sectors, including 58 industries and two subindustries (''exceptions'') in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), three industries in Sector 21 (Quarrying, and Oil and Gas Extraction), three industries in Sector 22 (Utilities), and one industry and one subindustry (''exception'') in Sector 23 (Construction).

DATES: This rule is effective May 2, 2022.

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

SUPPLEMENTARY INFORMATION:

Discussion of Size Standards

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

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

Section 1831 of the National Defense Authorization Act for Fiscal Year 2017 (''NDAA 2017''), Public Law 114–328 (December 23, 2016) directed SBA to establish size standards for all agricultural enterprises in the same manner as for other industries and to include them in the five-year rolling review procedures established under section 1344(a) of the Jobs Act. Accordingly, in this final rule, SBA has evaluated the size standards for all agricultural industries, including 46 industries that are being reviewed for the first time. As stated above, historically, the size standards for most agricultural industries were established by statute.

In addition to the comprehensive review of size standards, 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 second five-year review of size standards under the Jobs Act, SBA reviewed all receipt-based size standards in NAICS Sectors 11, 21, 22, and 23 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 a proposed rule in the October 2, 2020 issue of the **Federal Register** (85 FR 62239) which proposed to increase the size standards for 68 industries in the above sectors, including 58 industries and two

[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.

subindustries (''exceptions'') in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), three industries in Sector 21 (Quarrying, and Oil and Gas Extraction), three industries in Sector 22 (Utilities), and one industry and one subindustry (''exception'') in Sector 23 (Construction). In this final rule, SBA is adopting the proposed size standards from the October 2020 proposed rule without change, except for a further increase to the size standard for the Forest Fire Suppression and Fuel Management Services exceptions to NAICS 115310 based on public comments and the latest available data. For these exceptions, SBA is adopting a higher size standard of $30 million instead of the proposed $25 million.

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 Standard Methodology 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 and entry barriers, 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 11 (except industries under Subsectors 111 and 112), 21, 22, and 23, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available). The 2012 Economic Census special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings. To evaluate industries under Subsectors 111 and 112, SBA used the special tabulation of the 2012 Census of Agriculture obtained from the USDA's National Agricultural Statistics Service (NASS). 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 October 2020 proposed rule, Size Standards Supported by Each Factor for Each Industry (Receipts), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (exception) covered by the proposed rule. Of the 100 industries and three subindustries (exceptions) reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors from Table 4 of the proposed rule supported increasing size standards for 65 industries and three subindustries, and decreasing size standards for 35 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 unchanged
11	Agriculture, Forestry, Fishing and Hunting	64	60	4	0
21	Mining, Quarrying, and Oil and Gas Extraction	4	3	1	0
22	Utilities	3	3	0	0
23	Construction	32	2	30	0
All Sectors		103	68	35	0

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

In the proposed rule, SBA sought comments on its proposal to increase size standards for 68 industries and subindustries and retain the current size standards for the remaining 35 industries in NAICS Sectors 11, 21, 22 and 23. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule, whether the decision not to lower any size standards is justified by the COVID–19 pandemic, whether the equal weighting of individual factors to derive an industry size standard is appropriate, and whether the data sources used were appropriate or sufficient.

Discussion of Comments

SBA received a total of 1,021 comments to the proposed rule from a wide range of entities, including individuals, businesses, organizations, and trade associations. Of the 1,021 comments received, 1,013 comments pertained to Sector 11—including 942 comments that pertained to the animal production industries and 71 comments that pertained to the Agricultural (Sector 11) industry generally. SBA also received three comments on NAICS 115310 (Support Activities for Forestry) and its two exceptions, and one comment each on NAICS codes 237990 (the dredging exception), 236220 and NAICS Sector 23. SBA received one comment that was not relevant to the proposed rule and 1 comment that voiced a general objection to the proposed rule without providing any rationale. The comments to the proposed rule are available at *www.regulations.gov* (RIN 3245–AG89) and are summarized and discussed below.

Comments on Proposed Changes to Sector 11—Agriculture, Forestry, Fishing and Hunting

SBA received a total of 1,013 comments to its proposed changes to size standards for industries in Sector 11. Of the 1,013 comments received, 942 comments, many of which were nearly identical, objected to the proposed rule on the grounds that it would result in Federal funding for corporate animal agribusiness, including concentrated animal feeding operations (CAFOs). These commenters stated that the increase of certain agricultural size standards would result in large corporate agricultural concerns with potentially abusive animal practices qualifying as small for SBA's financial assistance programs. Most of these commenters did not identify a particular NAICS code or set of NAICS codes, but the SBA assumes they most likely referred to NAICS codes 112111 through 112519, which correspond to the animal production industries. The remaining 71 comments objected to the proposed changes to the size standards on the grounds that it would unfairly benefit larger businesses and farms. These comments emphasized the historical consolidation in the agricultural sector as well as larger farms receiving the majority of Federal assistance and subsidies. One commenter also cited the difficulty for smaller farms to enter the market and the prevalence of vertical integration for concentrated animal feeding operations (CAFOs) as reasons not to raise agricultural size standards.

SBA Response

SBA disagrees with commenters that the proposed regulations will allow a significant number of large firms to qualify as small in the animal production industries, namely NAICS codes 112111, 112112, 112120, 112310, 112320, 112330, 112340, 112390, 112410, 112420, 112511, 112512 and 112519. Based on data from the 2012 Agricultural Census, SBA determined that if the proposed size standards were adopted, the number of small firms in these industries would increase from 801,603 to 821,632, an increase of 20,029 firms or 2.5%. The percentage of small firms in these industries would increase from 96.5% under current size standards to 98.9% under the proposed size standards. SBA also analyzed its internal data on 7(a) and 504 loans to determine the impact of increases to size standards on SBA's financial assistance programs for these industries.

As discussed in the proposed rule, the majority of the animal production industries previously had a $750,000 receipts-based size standard, which was established directly by Congress in section 806 of the Small Business Reauthorization Act of 2000, Appendix I, Public Law 106–554, 114 Stat. 2763, (December 21, 2000). In 2016, Congress passed NDAA 2017, directing SBA to establish size standards for these industries in the same manner that the agency establishes the size standards for other industries and to include them in the five-year rolling review under the Jobs Act. Effective August 19, 2019, SBA raised the $750,000 receipts-based size standard for these industries to $1 million in an interim final rule, adjusting all monetary size standards for inflation (84 FR 34261 (July 18, 2019)).

Based on the data for fiscal years 2019–2020, the time period when the higher $1 million size standard was effective, SBA did not see any increase to the total number of firms receiving loans in the animal production industries identified above. Recognizing that firms may have qualified for SBA's financial assistance programs under the tangible net worth and net income based alternative size standard, and thus, may have exceeded the industry size standard, SBA also analyzed the distribution of loans by revenue and determined that there was not an increase in the number of loans to firms with revenues between $0.75 million and $1 million during fiscal years 2019–2020. SBA found that the average firm size of businesses receiving loans was much smaller than the current $1 million industry size standard, indicating that larger small firms are not the primary beneficiaries of SBA's financial assistance programs.

Generally, the majority of loans guaranteed by SBA through its 7(a) and CDC/504 loan programs are disbursed to firms that are much smaller than the industry size standard, in part due to the SBA's ''credit elsewhere'' test (13 CFR 120.101). This test requires lenders to certify that an applicant to the SBA's loan program is unable to obtain a loan on reasonable terms without a Federal Government guaranty, and that some or all of the loan is not available from the resources of the applicant business or the personal resources of the principals of the applicant business. SBA's proposed changes to size standards do not impact this requirement; thus, smaller small firms are more likely to remain the primary beneficiaries of SBA's financial assistance programs as firms at the margin of SBA's industry size standards are more likely to be able to obtain credit elsewhere.

For the above reasons, SBA does not anticipate that a 2.5% increase to the total number of small firms in the animal production industries will unfairly favor larger small firms in those industries, particularly those that may be classified as CAFOs, to the detriment of smaller small firms in accessing SBA's financial assistance. Therefore, SBA is adopting the size standards for the animal production industries identified above, as proposed.

Comments on Proposed Changes to NAICS 115310—Support Activities for Forestry and Its Forest Fire Suppression and Fuel Management Services Exceptions

SBA received three comments generally supporting the proposed increase to the size standard for NAICS 115310 and its two exceptions. SBA proposed to increase the size standard for the overall NAICS 115310 (Support Activities for Forestry) from $8 million to $10 million and the size standard for the Forest Fire Suppression and Fuel Management Services exceptions to that NAICS code from $20.5 million to $25 million. These comments listed a number of factors in support of the proposed increases, including increased costs, increased size of Federal contracts, increased length, frequency and severity of wildfires, and Government's encouragement to use wood biproducts to generate further receipts. The commenters stressed that if the size standard is not raised, they would be forced to cut back on growth to stay small and possibly lay off employees. Two of these commenters petitioned SBA to raise the size standard for the two exceptions to between $35 million and $41.5 million, with one commenter requesting that SBA immediately increase the size standard to at least $22 million until a final determination can be made.

SBA Response

SBA agrees with commenters that a higher size standard better reflects the economic characteristics of the firms within NAICS 115310 and its two exceptions. In the proposed rule, SBA's calculated size standard for the Forest Fire Suppression and Fuel Management Services exceptions was $23.5 million. However, in view of the inherent uncertainty of occurrences of forest fires and recent surges in forest fire incidents and extended fire seasons, SBA believes that contracting officers need to have better flexibility to be able to hire enough small businesses, especially in the worst-case scenario. In the proposed rule, SBA estimated that in a very busy fire season, it is not implausible to assume the length of fire season to be 120 days with 14 hours work shifts of fire crews. Based on a review of the latest available data, SBA determined that the length of the average fire season has increased in recent years as well as the severity of fires in terms of total acreage burned. For example, based on data from the National Interagency Fire Center (*https://www.nifc.gov/fire-information/statistics/wildfires*), SBA determined that two of the three fire seasons with total acres burned above ten million have occurred in the past five years, and all of them within the past seven years. Based on recent data, SBA estimates that a very busy fire season could last as long as seven months. Assuming an average price of $43 dollars per person per hour, a total amount of about $9 million could be awarded to a firm with an average number of four crews (one crew comprises 20 firefighters) during a longer, more severe fire season. In the case of the largest firms with 15–20 crews, the amount could reach up to $43 million. Both figures include only payments to firefighters for direct fire suppression activities and do not cover additional payments, such as payments for fire engines, water tenders, etc. With the reality of a longer and more severe average fire season in mind, in the proposed rule, SBA proposed to increase the size standard for the Forest Fire Suppression and Fuels Management Services exceptions to $25 million, above the current size standard of $20.5 million and the calculated size standard of $23.5 million. However, in light of public comments and more recent data demonstrating the increasing severity and length of wildfires and the growing costs to suppress them, in this final rule, SBA is adopting a higher size standard of $30 million. In addition to the comprehensive review of size standards, SBA also adjusts its monetary-based size standards for inflation at least once every five years but may choose to adjust them more frequently if economic conditions warrant an increase during the five-year period.

SBA reviewed the arguments and data provided by commenters requesting that SBA establish an even higher size standard for the Forest Fire Suppression and Fuel Management Services exceptions in the range of $35 million to $41.5 million. SBA believes that the arguments and data provided by commenters were not sufficient to support a size standard higher than $30 million because the economic characteristics of firms in this industry do not support a size standard near the SBA's maximum receipts-based size standard. Specifically, while two commenters maintained that increased operational costs, longer fire seasons and the almost exclusive use of set-asides by the Federal government in the industry exceptions have caused many firms to cut back on growth to stay small, SBA determined that only a very few firms providing services under the industry exceptions may face a scenario where they would need to downsize or reject work in order to remain small. The average firm size of firms participating in the Forest Fire Suppression and Fuel Management Services is $3.7 million, far below SBA's proposed size standard of $25 million and much lower than the adopted size standard of $30 million. Generally, SBA would expect to see a larger average firm size for the industry if a large number of firms were approaching the size standard and having to downsize or reject work in order to remain small.

Based on SBA's analysis of the five primary factors for the Forest Fire Suppression and Fuel Management Services exceptions, provided in Table 4 of the October 2020 proposed rule, a size standard in the range of $35 million to $41.5 million recommended by the commenters would be supported by only one factor. Only the Gini coefficient factor supported a $41 million size standard for these exceptions. All other factors supported $23.5 million or less. SBA's decision to adopt a higher $30 million size standard was influenced by information submitted by three commenters, our communications with Forest Service officials, and review of updated information on firms involved in forest fire suppression. All these indicated that forest fire seasons have become longer and more severe and fire suppression (including wages to fire crews) and equipment costs have increased from the time when the $25 million size standard was proposed. Thus, SBA believes that a size standard of $30 million is appropriate for this industry and will benefit small businesses of all sizes as well as the Federal Government in terms of access to an expanded pool of small businesses to draw from for small business set-asides in case of unexpected surges in forest fires. The inherent uncertainty of occurrences of forest fires and recent surges in forest fire incidents and extended fire seasons and the contracting officers' need to have flexibility to be able to hire enough small businesses, especially in the worst case scenario, also supports a higher $30 million size standard. SBA believes that competition within the industry will improve as more set-aside opportunities are created, and businesses have a longer runway to gain experience and compete with larger firms whose primary services are outside of NAICS 115310. Given the above reasons, SBA is adopting $10 million as the size standard for NAICS 115310 and $30 million as the size standard for Forest Fire Suppression and Fuel Management Services exceptions under that NAICS industry.

Comments on Proposed Changes to the Dredging and Surface Cleanup Activities Exception to NAICS 237990—Other Heavy and Civil Engineering Construction

SBA received one comment expressing support for SBA's approach to calculating the size standard for the Dredging and Surface Cleanup Activities (Dredging) exception under NAICS 237990 (Other Heavy and Civil Engineering Construction). Specifically, the commenter supported the SBA's proposal to increase the size standard for Dredging from $30 million to $32.5 million in average annual receipts. This comment also supported keeping the 40% equipment requirement for this exception as outlined in Footnote 2 under the SBA's Table of Size Standards, or perhaps even raising it to higher than 40%. The commenter expressed that any alternative to the equipment requirement found in footnote 2, such as basing the requirement on contract dollar value or the number of personnel involved, would not be as effective at preventing large firms from accessing small business set-aside opportunities.

SBA Response

SBA agrees with the commenter that SBA's proposed size standard better reflects the economic characteristics of the firms within the Dredging industry. SBA believes that the proposed size standard will benefit all small firms as a larger size standard extends the time that small firms can remain small and compete for larger Dredging contracts. As a result of this expanded runway, small firms will be able to acquire more experience and technical capabilities in order to compete with larger firms once they exceed 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, likely will set aside more contracts for all small businesses. SBA agrees with the commenter that the 40% equipment requirement for this exception as outlined in footnote 2 of the SBA's Table of Size Standards is appropriate. Given the expressed support for SBA's proposed increase to the size standard for the Dredging exception to NAICS 237990 and the absence of any significant adverse comments opposing the increase, SBA is adopting $32.5 million as the size standard for Dredging, as proposed.

Comments on Proposed Changes to NAICS 236220—Commercial and Institutional Building Construction

SBA received one comment regarding SBA's proposal to maintain the size standard for NAICS 236220 (Commercial and Institutional Building Construction) at $39.5 million. The analytical results supported a lower $25.5 million size standard for NAICS 236220, but considering the impact of the COVID–19 pandemic and Government response, SBA proposed to retain the current $39.5 million size standard. The commenter argued that the size standard for NAICS 236220 should be increased to help small firms overcome the government's overly restrictive contracting practices in this industry which results in disadvantages to truly small firms. The commenter cited such practices as excessive and high threshold past performance requirements as well as a general rise in overall project size requirements. The commenter also emphasized that the COVID–19 pandemic has resulted in a contraction of the pool of small businesses able to contract with the government. The commenter believes that the result of these circumstances is that only mentor-protégé firms will be able to qualify under these very restrictive contracting opportunities.

SBA Response

In response to comments that the Federal government's contracting practices in NAICS 236220 disadvantage small firms and that the COVID–19 pandemic has resulted in a contraction of the pool of small businesses able to contract with the Government SBA analyzed data from FPDS–NG during fiscal years 2018–2020 to evaluate the number and size of Federal contracting opportunities available to small firms. Based on an analysis of this data, SBA determined that there was an increase in dollars obligated to small businesses 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 related economic crisis. Table 2, Dollars Obligated to Small Businesses under NAICS 236220, shows the count of small business contracts under this NAICS code, the dollars obligated to small businesses, and the annual growth rate in small business dollars obligated during fiscal years 2018–2020.

TABLE 2—DOLLARS OBLIGATED TO SMALL BUSINESSES UNDER NAICS 236220

Fiscal year	Count of small businesses contracts	Dollars obligated to small businesses ($ million)	Annual growth rate in dollars obligated to small businesses
2018	38,498	$9,444.9	
2019	38,702	9,883.4	4.6%
2020	40,888	10,088.9	2.1%

In the proposed rule, SBA used FPDS–NG data from fiscal years 2016–2018 to evaluate small business participation in the Federal contracting 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 the 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 the 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 236220 specifically, SBA calculated a Federal contracting factor of 9.4%, which indicates that the small business share of federal contracting dollars is higher than the small business share of industry receipts. Thus, the Federal contracting factor supports maintaining the size standard at the current $39.5 million level. Using the FPDS–NG data from fiscal years 2018–2020, SBA found that the small business share of federal contracting dollars is still higher than the share of industry receipts. As such, SBA disagrees with the commenter that the Federal government's contracting practices in this industry disadvantage small firms and that the COVID–19 pandemic has resulted in a contracted pool of small businesses able to contract with the government and is adopting $39.5 million as the size standard for NAICS 236220, as proposed.

Comments on Proposed Changes to Sector 23—Construction

SBA received one comment to the proposed rule that petitioned SBA to change the measure of size for construction industries from average annual receipts to full time equivalent (FTE) employees. This comment argued that receipts is a misleading measure of size for these industries due to increasing costs for materials, supplies, and labor.

SBA Response

SBA disagrees that receipts-based standards do not properly reflect the size of companies in the construction industry. SBA believes that receipts, which represent the value of a company's entire portfolio of completed work in a given period of time, is a better measure of the size of a construction company to determine its eligibility for Federal contracts set aside for small businesses than the number of employees. Moreover, under SBA's prime contractor performance requirements (see 13 CFR 125.6, limitations on subcontracting), a general construction company must perform as little as 15% of value of work with its own resources, and a specialty trade contractor may perform as little as 25% of work with its own resources. SBA is concerned that employee-based size standards for construction industries could encourage a construction company near the size standard to subcontract more work to others to bypass the limitations on subcontracting and remain technically a small business. Regardless of the amount of work a company subcontracts, it is part of its annual revenue, because the company is responsible for the entire project. In other words, under a receipts-based size standard, the company is not allowed to deduct subcontracting costs from the average annual receipts-based calculation. Under the employee-based size standard, companies would not count their subcontractors' employees to calculate their total number of employees. A company that subcontracts a great deal can have a considerably fewer employees than one that performs more of its work in-house.

Furthermore, in 2004, SBA proposed to replace annual receipts with number of employees as the basis for size standards for most industries, including construction (see 69 FR 11129 (March 19, 2004)). Commenters in the construction industry generally opposed SBA's proposal for a number of reasons, such as those SBA provides above. In addition, because employee-based size standards represent the average number of employees per pay period for the firm's immediately preceding 12 calendar months, businesses would have to recalculate their size on a monthly basis. Receipts, on the other hand, are calculated over the last five fiscal years for all SBA's programs, except for the loan programs for which receipts are calculated over the last three years. This allows for changes in the construction industry as well as fluctuations in sales due to economic conditions.

Employment data by industry from Economic Census and County Business Patterns and Federal statistical agencies (such Bureaus of Economic Analysis and Labor Statistics) that SBA uses in its size standards analysis are based on total head counts of part-time, temporary, and full-time employees, not based on FTEs. In other words, part-time employees are counted the same as full-time employees. In addition, using FTEs as a basis of size measure may increase reporting and record keeping requirements for small businesses to qualify for Federal programs. For the reasons outlined above, in this final rule, SBA is not adopting employee-based size standards for the construction sector.

Summary of Adopted Revisions to Size Standards

Based on the evaluation of public comments it received on the proposed rule and given the expressed support for SBA's proposed increases and the absence of any significant adverse comments opposing the proposed increases, SBA is adopting the size standards as proposed in the October 2020 proposed rule, except for the Forest Fire Suppression and Fuel Management exceptions under NAICS 115310. For these exceptions, SBA is adopting a higher size standard of $30.0 million based on public comments and evaluation of newly available information regarding the industry and firms participating in the fire suppression and related activities. Thus, SBA is increasing size standards for 68 industries in NAICS sectors 11, 21, 22, and 23. This includes 58 industries and two subindustries (''exceptions'') in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), three industries in Sector 21 (Quarrying, and Oil and Gas Extraction), three industries in Sector 22 (Utilities), and one industry and one subindustry (''exception'') in Sector 23 (Construction). A summary of SBA's size standards revisions in this rule can be found below in Table 3, Summary of Size Standards Revisions in NAICS Sectors 11, 21, 22, and 23.

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 11, 21, 22, AND 23

NAICS code	NAICS U.S. industry title	Current size standard ($ million)	Calculated size standard ($ million)	Adopted size standard ($ million)
111110	Soybean Farming	$1.0	$2.0	$2.0
111120	Oilseed (except Soybean) Farming	1.0	2.0	2.0
111130	Dry Pea and Bean Farming	1.0	2.5	2.5
111140	Wheat Farming	1.0	2.0	2.0
111150	Corn Farming	1.0	2.25	2.25
111160	Rice Farming	1.0	2.25	2.25
111191	Oilseed and Grain Combination Farming	1.0	2.0	2.0
111199	All Other Grain Farming	1.0	2.0	2.0
111211	Potato Farming	1.0	3.75	3.75
111219	Other Vegetable (except Potato) and Melon Farming	1.0	3.25	3.25
111310	Orange Groves	1.0	3.5	3.5
111320	Citrus (except Orange) Groves	1.0	3.75	3.75
111331	Apple Orchards	1.0	4.0	4.0
111332	Grape Vineyards	1.0	3.5	3.5
111333	Strawberry Farming	1.0	4.75	4.75
111334	Berry (except Strawberry) Farming	1.0	3.25	3.25
111335	Tree Nut Farming	1.0	3.25	3.25
111336	Fruit and Tree Nut Combination Farming	1.0	4.5	4.5
111339	Other Noncitrus Fruit Farming	1.0	3.0	3.0
111411	Mushroom Production	1.0	4.0	4.0
111419	Other Food Crops Grown Under Cover	1.0	4.0	4.0
111421	Nursery and Tree Production	1.0	2.75	2.75
111422	Floriculture Production	1.0	3.25	3.25
111910	Tobacco Farming	1.0	2.25	2.25
111920	Cotton Farming	1.0	2.75	2.75

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 11, 21, 22, AND 23—Continued

NAICS code	NAICS U.S. industry title	Current size standard ($ million)	Calculated size standard ($ million)	Adopted size standard ($ million)
111930	Sugarcane Farming	1.0	4.5	4.5
111940	Hay Farming	1.0	2.25	2.25
111991	Sugar Beet Farming	1.0	2.25	2.25
111992	Peanut Farming	1.0	2.25	2.25
111998	All Other Miscellaneous Crop Farming	1.0	2.25	2.25
112111	Beef Cattle Ranching and Farming	1.0	2.25	2.25
112112	Cattle Feedlots	8.0	19.5	19.5
112120	Dairy Cattle and Milk Production	1.0	3.25	3.25
112210	Hog and Pig Farming	1.0	3.5	3.5
112310	Chicken Egg Production	16.5	15.5	16.5
112320	Broilers and Other Meat Type Chicken Production	1.0	3.0	3.0
112330	Turkey Production	1.0	3.25	3.25
112340	Poultry Hatcheries	1.0	3.5	3.5
112390	Other Poultry Production	1.0	3.25	3.25
112410	Sheep Farming	1.0	3.0	3.0
112420	Goat Farming	1.0	2.25	2.25
112511	Finfish Farming and Fish Hatcheries	1.0	3.25	3.25
112512	Shellfish Farming	1.0	3.25	3.25
112519	Other Aquaculture	1.0	3.25	3.25
112910	Apiculture	1.0	2.75	2.75
112920	Horses and Other Equine Production	1.0	2.5	2.5
112930	Fur-Bearing Animal and Rabbit Production	1.0	3.25	3.25
112990	All Other Animal Production	1.0	2.5	2.5
113110	Timber Tract Operations	12.0	16.5	16.5
113210	Forest Nurseries and Gathering of Forest Products	12.0	18.0	18.0
114111	Finfish Fishing	22.0	20.5	22.0
114112	Shellfish Fishing	6.0	12.5	12.5
114119	Other Marine Fishing	8.0	10.0	10.0
114210	Hunting and Trapping	6.0	7.5	7.5
115111	Cotton Ginning	12.0	14.0	14.0
115112	Soil Preparation, Planting, and Cultivating	8.0	8.5	8.5
115113	Crop Harvesting, Primarily by Machine	8.0	12.0	12.0
115114	Postharvest Crop Activities (except Cotton Ginning)	30.0	27.5	30.0
115115	Farm Labor Contractors and Crew Leaders	16.50	12.5	16.5
115116	Farm Management Services	8.0	13.5	13.5
115210	Support Activities for Animal Production	8.0	9.5	9.5
115310	Support Activities for Forestry	8.0	10.0	10.0
115310 (Exception 1)	Forest Fire Suppression Services	20.5	23.5	30.0
115310 (Exception 2)	Fuels Management Services	20.5	23.5	30.0
213112	Support Activities for Oil and Gas Operations	41.5	38.0	41.5
213113	Support Activities for Coal Mining	22.0	24.0	24.0
213114	Support Activities for Metal Mining	22.0	36.0	36.0
213115	Support Activities for Nonmetallic Minerals (except Fuels) Mining.	8.0	18.0	18.0
221310	Water Supply and Irrigation Systems	30.0	36.0	36.0
221320	Sewage Treatment Facilities	22.0	31.0	31.0
221330	Steam and Air-Conditioning Supply	16.5	26.5	26.5
236115	New Single-Family Housing Construction (except For-Sale Builders).	39.5	8.0	39.5
236116	New Multifamily Housing Construction (except For-Sale Builders).	39.5	25.5	39.5
236117	New Housing For-Sale Builders	39.5	27.5	39.5
236118	Residential Remodelers	39.5	13.5	39.5
236210	Industrial Building Construction	39.5	29.0	39.5
236220	Commercial and Institutional Building Construction	39.5	25.5	39.5
237110	Water and Sewer Line and Related Structures Construction	39.5	20.0	39.5
237120	Oil and Gas Pipeline and Related Structures Construction	39.5	33.0	39.5
237130	Power and Communication Line and Related Structures Construction.	39.5	31.0	39.5
237210	Land Subdivision	30.0	22.0	30.0
237310	Highway, Street, and Bridge Construction	39.5	28.5	39.5
237990	Other Heavy and Civil Engineering Construction	39.5	29.5	39.5
237990 (Exception)	Dredging and Surface Clean-Up Activities	30.0	32.5	32.5
238110	Poured Concrete Foundation and Structure Contractors	16.5	12.5	16.5
238120	Structural Steel and Precast Concrete Contractors	16.5	13.0	16.5
238130	Framing Contractors	16.5	8.5	16.5
238140	Masonry Contractors	16.5	10.5	16.5
238150	Glass and Glazing Contractors	16.5	8.0	16.5
238160	Roofing Contractors	16.5	10.0	16.5
238170	Siding Contractors	16.5	7.0	16.5

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 11, 21, 22, AND 23—Continued

NAICS code	NAICS U.S. industry title	Current size standard ($ million)	Calculated size standard ($ million)	Adopted size standard ($ million)
238190	Other Foundation, Structure, and Building Exterior Contractors.	16.5	13.0	16.5
238210	Electrical Contractors and Other Wiring Installation Contractors.	16.5	13.5	16.5
238220	Plumbing, Heating, and Air-Conditioning Contractors	16.5	12.0	16.5
238290	Other Building Equipment Contractors	16.5	19.5	19.5
238310	Drywall and Insulation Contractors	16.5	11.5	16.5
238320	Painting and Wall Covering Contractors	16.5	10.0	16.5
238330	Flooring Contractors	16.5	10.5	16.5
238340	Tile and Terrazzo Contractors	16.5	7.5	16.5
238350	Finish Carpentry Contractors	16.5	7.5	16.5
238390	Other Building Finishing Contractors	16.5	11.0	16.5
238910	Site Preparation Contractors	16.5	12.0	16.5
238990	All Other Specialty Trade Contractors	16.5	11.5	16.5

Table 4, Summary of Adopted Size Standards Revisions by Sector, below, summarizes the adopted changes to size standards by NAICS sector.

TABLE 4—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
11	Agriculture, Forestry, Fishing and Hunting	64	60	0	4
21	Mining, Quarrying, and Oil and Gas Extraction	4	3	0	1
22	Utilities	3	3	0	0
23	Construction	32	2	0	30
All Sectors		103	68	0	35

Evaluation of Dominance in Field of Operation

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the adopted size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.63%, varying from 0.003% to 22.3%. These market shares effectively preclude a firm at or below the adopted size standards from exerting control on any of the industries.

Alternatives Considered

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

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 68 industries and subindustries and decreasing them for 35 industries. Alternative Option Two was to retain all current size standards.

SBA did not adopt Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. Lowering size standards in the current environment would 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 the current level of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two either because the results discussed in the Regulatory Impact Analysis section, below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 68 and retaining 35 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 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 action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the action and the alternatives considered.

Regulatory Impact Analysis

1. What is a 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 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 size standards revisions for industries being adopted in this rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace.

The revisions to the existing size standards for 68 industries in NAICS Sectors 11, 21, 22, and 23 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, evaluation of public comments and input to the proposed rule, as well as consideration of 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 103 industries in Sectors 11, 21, 22, and 23 that have receipts-based size standards, SBA is increasing size standards for 68 industries (including exceptions), and maintaining current size standards for the remaining 35 industries.

The Baseline

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

Based on the 2012 Economic Census (the latest available when this rulemaking was developed), of a total of about 2.7 million businesses in industries in Sectors 11, 21, 22, and 23 for which SBA is increasing their receipts-based size standards, 96.9% are considered small under the current size standards. That percentage varies from 95.5% in Sector 21 to 98.5% in Sector 23. Based on the data from FPDS–NG for fiscal years 2018–2020, about 15,567 unique firms in those industries received at least one Federal contract during that period, of which 85% were small under the current size standards. A total of about $39 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 45.3% 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, 81.8% were awarded through various small business set-aside programs and 18.2% were awarded through non-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 nearly 7,250 7(a) and 504 loans in that period, totaling about $2.3 billion, of which 84.8% was issued through the 7(a) program and 15.2% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 174 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about $8 million on an annual basis.[2] Table 5, Baseline for All

[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 presented here pertains to the regular EIDL loans only.

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

Continued

Industries, provides these baseline results by NAICS sector.

TABLE 5—BASELINE FOR ALL INDUSTRIES

	Sector 11	Sector 21	Sector 22	Sector 23	Total
Baseline All Industries (current size standards)	64	4	3	32	103
Total firms (2012 Economic Census)	2,122,631	8,196	3,673	587,173	2,721,673
Total small firms under current size standards (2012 Economic Census)	2,046,316	7,828	3,586	578,430	2,636,160
Small firms as % of total firms	96.4%	95.5%	97.6%	98.5%	96.9%
Total contract dollars ($ million) (FPDS–NG, FY2018–2020)	$675	$111	$401	$37,913	$39,099
Total small business contract dollars under current standards ($ million) (FPDS–NG, FY2018–2020)	$478	$25	$75	$17,119	$17,698
Small business dollars as % of total dollars (FPDS–NG, FY2018–2020)	70.9%	22.5%	18.7%	45.2%	45.3%
Total no. of unique firms getting contracts (FPDS–NG, FY2018–2020)	3,259	266	591	11,901	15,567
Total no. of unique small firms getting small business contracts (FPDS–NG, FY2018–2020)	2,883	188	447	10,063	13,231
Small business firms as % of total firms (FPDS–NG, FY2018–2020)	88.5%	70.7%	75.6%	84.6%	85.0%
No. of 7(a) and 504/CDC loans (FY2018–2020)	563	70	35	6,579	7,247
Amount of 7(a) and 504 loans ($ million) (FY2018–2020)	$350	$42	$11	$1,944	$2,347
No. of EIDL loans (FY2018–2020) *	48	2	1	123	174
Amount of EIDL loans ($ million) (FY2018–2020) *	$1.2	$0.1	$0.1	$6.6	$8.0

* 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 103 receipts-based size standards in NAICS Sectors 11, 21, 22, and 23 that are reviewed in this rule, based on the results from analyses of latest industry and Federal market data, impacts of size standards changes on small businesses as well as considerations of the impacts of the COVID–19 pandemic and public comments to the proposed rule, SBA is increasing 68 and maintaining 35 size standards. Below are descriptions of the benefits, costs, and transfer impacts of these increases to size standards adopted in this final rule.

The results of regulatory impact analyses SBA provided in the October 2020 proposed rule were based on the FPDS–NG and SBA loan data for fiscal years 2016–2018. In this final rule, SBA is updating the impact analysis results by using the FPDS–NG and SBA loan data for fiscal years 2018–2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on Federal contracts and SBA loans.

Benefits of Increasing Size Standards

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining eligibility for a longer period. These include SBA's business loan programs, Economic Injury Disaster Loan (EIDL) program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/ Business Development (BD) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available), SBA estimates that in 68 industries in NAICS Sectors 11, 21, 22, and 23 for which it is increasing size standards, more than 49,400 firms (see Table 6, below) not small under the current size standards will become small under the revised size standards and therefore become eligible for these programs. That represents about 2.4% of all firms classified as small under the current size standards in industries for which SBA is increasing size standards. The revised size standards will result in an increase to the small business share of total receipts in those industries from 35.6% to 55.2%.

With more businesses qualifying as small under the revised size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs. Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 90 firms that are active in Federal contracting in those industries will 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 68 size standards could receive Federal small business contracts totaling about $13 million annually. That represents a 1.9% increase to small

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.

business dollars from the baseline. Table 6, Impacts of Increasing Size Standards, provides these results by NAICS sector.

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 revised 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 15 7(a) and 504 loans totaling about $8.6 million could be made to these newly qualified small businesses in those industries under the revised size standards. That represents a 2.3% increase to the loan amount compared to the baseline.

TABLE 6—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 11	Sector 21	Sector 22	Sector 23	Total
No. of industries with increases to size standards	60	3	3	2	68
Total current small businesses in industries with increases to size standards (2012 Economic Census)	2,016,066	536	3,586	5,413	2,025,601
Additional firms qualifying as small under revised standards (2012 Economic Census)	49,352	21	9	34	49,415
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards	2.4%	3.9%	0.2%	0.6%	2.4%
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG, FY2018–2020) [1]	2,866	141	447	501	3,919
Additional small business firms getting small business status (FPDS–NG, FY2018–2020) [1]	64	1	13	14	90
% 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)	2.2%	0.7%	2.9%	2.8%	2.3%
Total small business contract dollars under current standards in industries with increases to size standards ($ million) (FPDS–NG, FY2018–2020)	$475.8	$4.7	$75.0	$113.4	$668.9
Estimated small business dollars available to newly qualified small firms (Using avg dollars obligated to SBs) ($ million) FPDS–NG, FY 2018–2020) [2]	$6.5	$0.0	$3.3	$3.0	$12.8
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards	1.4%	0.4%	4.5%	2.6%	1.9%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY2018–2020)	512	5	35	84	636
Total amount of 7(a) and 504 loans to small businesses in industries with increases to size standards ($ million) (FY2018–2020)	$317.9	$2.0	$11.3	$33.7	$364.9
Estimated no. of 7(a) and 504 loans to newly qualified small firms	12	1	1	1	15
Estimated 7(a) and 504 loan amount to newly qualified small firms ($ million)	$7.5	$0.4	$0.3	$0.4	$8.6
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards	2.3%	20.0%	2.9%	1.2%	2.3%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY2018–2020) [3]	45	0	1	4	50
Total amount of EIDL loans to small businesses in industries with increases to size standards ($ million) (FY2018–2020) [3]	$1.5	$0.0	$0.1	$0.2	$1.8
Estimated no. of EIDL loans to newly qualified small firms [3]	1	0	1	1	3
Estimated EIDL loan amount to newly qualified small firms ($ million) [3]	$0.01	$0	$0.1	$0.01	$0.1
% increase to EIDL loan amount relative to the total amount of EIDL loan amount in industries with increases to size standards [3]	2.2%	0.0%	100.0%	25.0%	8.1%

[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.

Newly qualified small businesses will also benefit from the SBA's EIDL program. 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, on an annual basis, the newly defined small businesses under the increases of 68 size standards could receive three EIDL loans, totaling about $0.1 million. Additionally, the newly defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

Costs of Increasing 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 rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly qualified small businesses could become active in Federal procurement, the 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 mentor-protégé program. With an expanded pool of small businesses, it is likely that Federal agencies would set aside more contracts for small businesses under the revised size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number of size protests processed shows that the number of size protests decreased following the increases to receipts-based size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013), as compared to about 500 during fiscal years 2018–2020 when the 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 revised 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 revised 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 revised 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 68 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 revised size standards, some unrestricted Federal contracts which 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 more advanced businesses qualifying as small under the revised 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 this rule. In this section, SBA describes and analyzes two such alternatives to the changes in this rule. Alternative Option One to the changes in this rule, a more stringent alternative, would adopt size standards based solely on the analytical results. In other words, the size standards of 68 industries or subindustries (''exceptions'') for which the analytical results, as presented in Table 4 of the October 2020 proposed rule, suggest raising them would be raised. However, the size standards of 35 industries for which the analytical results suggest lowering them would be lowered. Alternative Option Two would 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: Adopting All Calculated Size Standards

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

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

As explained in the ''Size Standards Methodology'' white paper, in addition to adopting all results of the primary analysis, SBA evaluates other relevant factors, as needed, such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

We discussed already the benefits, costs, and transfer impacts of increasing 68 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 35 size standards based on the analytical results.

Benefits of Decreasing Size Standards Under Alternative Option One

The most significant benefit to businesses from decreases to size standards when the 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, SDB, HUBZone, WOSB, EDWOSB, and SDVOSB Programs. The adoption of calculated size standards diminishes the risk of awarding contracts to firms which are not small anymore.

Decreasing size standards may reduce the administrative costs of the Federal Government, because the risks 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 7, Impacts of Decreasing Size Standards Under Alternative Option One, below, shows the various impacts of lowering size standards in 35 industries based solely on the analytical results. Based on the 2012 Economic Census, about 5,500 (0.9%) firms would lose their small business status under this option. Similarly, based on the FPDS–NG data for fiscal years 2018–2020, nearly 500 (5.0%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts.

With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business programs. For example, during fiscal years 2018–2020, agencies awarded, on an annual basis, about $17 billion in small business contracts in those 35 industries for which SBA considered decreasing size standards. Lowering size standards in those industries could reduce Federal contract dollars awarded to small businesses by about $1 billion or 6% relative to the baseline level, of which 99% was accounted for by the industries in the construction sector (NAICS 23).

TABLE 7—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 11	Sector 21	Sector 22	Sector 23	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census)	4	1	0	30	35
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census)	30,250	7,292	0	573,017	610,559
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census)	17	16	0	5,479	5,512

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

	Sector 11	Sector 21	Sector 22	Sector 23	Total
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census)	0.1%	0.2%	0.0%	1.0%	0.9%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG, FY2018–2020) [1]	20	48	0	9,787	9,842
Estimated number of small business firms that would have lost small business status in the decreases that SBA considered (FPDS–NG, FY2018–2020) [1]	0	0	0	491	491
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG, FY2018–2020)	0.0%	0.0%	0.0%	5.0%	5.0%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards ($ million) (FPDS–NG FY2018–2020)	$2.4	$20.2	$0.0	$17,006	$17,029
Estimated small business dollars not available to firms losing small business status (Using avg dollars obligated to SBs) ($ million) [1] (FPDS–NG FY 2018–2020) [2]	$0.0	$0.0	$0.0	$1,019	$1,019
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020)	0.0%	0.0%	0.0%	6.0%	6.0%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY2018–2020)	51	65	0	6,495	6,611
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY2018–2020)	$32.0	$40.8	$0.0	$1,910	$1,982
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status	1	0	0	4	5
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status ($ million)	$0.6	$0.0	$0.0	$1.2	$1.8
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards	0.2%	0.0%	0.0%	0.1%	0.1%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY2018–2020) [3]	21	3	0	193	217
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY2018–2020) [3]	$0.5	$0.2	$0.0	$9.7	$10.4
Estimated no. of EIDL loans not available to firms that would have lost small business status [3]	1	1	0	1	3
Estimated EIDL loan amount not available to firms that would have lost small business status ($ million) [3]	$0.02	$0.1	$0.0	$0.1	$0.1
% decrease to EIDL loan amount relative to the total EIDL loan amount in industries with decreases to size standards [3]	4.8%	33.3%	0.0%	0.5%	1.3%

[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.

Because of the importance of the construction sector for Federal procurement and the immediate impact on businesses that will see their status as small changed relatively fast, SBA would 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 is likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards.

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

As shown in Table 7, 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, under Alternative Option One, about 5 7(a) and 504 loans with total amounts of $1.8 million could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents about 0.1% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry based size standards could still qualify for SBA's loans under the tangible net worth and net income based alternative size standard.

Businesses losing small business status would also be impacted by way of access to loans through SBA's EIDL loan program. However, SBA expects such impact to be minimal. For example, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about 3 EIDL loans with total amounts of $0.1 million could not be made to those small businesses that would lose eligibility under the reduced size standards (before mitigation). That represents about 1.3% 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 the immediate impact.

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

Transfer Impacts of Decreasing Size Standards Under Alternative Option One

If the size standards were decreased under Alternative Option One, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the increases to size standards, it would have no impact on the overall economic activity because 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 firms may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer firms 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 such impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA used the same methodology used to evaluate the impacts of increasing size standards (Table 6). However, under Alternative Option One, SBA used the calculated size standards instead of the revised size standards to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 6. Table 7 and Table 8, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impacts 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 103 industries in NAICS Sectors 11, 21, 22, and 23 for which the analytical results suggested to change size standards, in aggregate, about 43,900 firms (see Table 8), would become small under the Alternative Option One. That represents about 1.7% of all firms classified as small under the current size standards. That is about 5,500 fewer firms qualifying as small under Alternative Option One, which represents an 11.0% reduction from about 49,400 firms that would qualify as small (see Table 6) under the proposal being adopted in this final rule (*i.e.,* increasing 68 and retaining 35 size standards).

TABLE 8—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 11	Sector 21	Sector 22	Sector 23	Total
No. of industries with changes to size standards	64	4	3	32	103
Total no. of small business under the current size standards (2012 Economic Census)	2,046,316	7,828	3,586	578,430	2,636,160
Additional firms qualifying as small under revised size standards (2012 Economic Census)	49,335	5	9	−5,445	43,902
% of additional firms qualifying as small relative to total current small businesses	2.4%	0.1%	0.2%	−0.9%	1.7%
No. of current unique small firms getting small business contracts (FPDS–NG, FY2018–2020) [1]	2,883	188	447	10,063	13,231
Additional small firms getting small business status (FPDS–NG, FY2018–2020) [1]	63	1	13	−479	−407
% increase to small firms relative to current unique small firms getting small business contracts (FPDS–NG, FY2018–2020)	2.2%	0.5%	2.9%	−4.8%	−3.1%

TABLE 8—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 11	Sector 21	Sector 22	Sector 23	Total
Total small business contract dollars under current size standards ($ million) (FPDS–NG, FY 2018–2020)	$478	$25	$75	$17,119	$17,698
Estimated small business dollars available to newly qualified small firms ($ million) (FPDS–NG, FY 2018–2020) [2]	$6.5	$0.0	$3.3	−$1,016	−$1,006
% increase to dollars relative to total small business contract dollars under current size standards	1.4%	0.1%	4.5%	−5.9%	−5.7%
Total no. of 7(a) and 504 loans to small businesses (FY2018–2020)	563	70	35	6,579	7,247
Total amount of 7(a) and 504 loans to small businesses (FY2018–2020)	$350	$42	$11	$1,944	$2,347
Estimated no. of additional 7(a) and 504 loans to newly qualified small firms	11	1	1	−3	10
Estimated additional 7(a) and 504 loan amount to newly qualified small firms ($ million)	$6.8	$0.4	$0.3	−$0.8	$6.8
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses	2.2%	20.0%	2.9%	1.1%	2.3%
Total no. of EIDL loans to small businesses (FY2018–2020) [3]	48	2	1	123	174
Total amount of EIDL loans to small businesses ($ million) (FY2018–2020) [3]	$1.2	$0.1	$0.1	$6.6	$8.0
Estimated no. of additional EIDL loans to newly qualified small firms [3]	0	−1	1	0	0
Estimated additional EIDL loan amount to newly qualified small firms ($ million) [3]	$0.01	−$0.06	$0.07	−$0.01	$0.01
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses in industries with changes in size standards [3]	0.8%	−79.8%	100.0%	−0.1%	0.1%

[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 400 active firms in Federal contracting in those industries would lose small business status under Alternative Option One, most of them from the construction sector. This represents a decrease of about 3.1% 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 $1.0 billion of Federal procurement dollars would not be available to firms losing their small status. This represents a decrease of 5.7% from the baseline. Again, a large amount of the loses are accounted for by the construction sector.

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 10 loans, and the loan amounts by about $6.8 million (see Table 8). This represents a 2.3% increase to the loan amount 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 there will be no change to the total number of EIDL loans, while the total loan amount will increase by about $.01 million. This represents a 0.1% increase of the loan amounts relative to the baseline. Table 8 provides these results by NAICS sector.

Alternative Option Two: Retaining All Current Size Standards

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.,* zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.,* access to set-aside contracts and capital) that become available to them under the option of increasing 68 and retaining 35 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 may have a significant impact on a substantial number of small businesses in the industries covered by this rule. As described above, this 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 rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What are 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 industries covered by this 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 revised standards in this 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 are 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 2.02 million small firms covered by this rulemaking under industries with revised size standards. SBA estimates that an additional 49,415 businesses will become small under this rulemaking.

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

The revised size standards 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. There are no 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, which 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 68 and maintaining 35 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 68 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 35 industries for which the analytical results suggest lowering them would be lowered. This would cause a significant number of small businesses to lose their small business status, especially in the construction sector. 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 68 and decreasing 35 size standards. Retaining all size standards at their current levels would be more onerous for the small businesses than the option of increasing 68 and retaining 35 size standards. Additionally, for the first time, SBA evaluated 46 agricultural industries and, based on analytical results presented in Table 4 of the October 2020 proposed rule, proposed to increase the size standards for all of them. 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 rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs

Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in early 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled ''Size Standards Methodology'' and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review 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 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 rule will not have substantial, direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, SBA has determined that this 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 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. Section 121.201 is amended in the table ''Small Business Size Standards by NAICS Industry'' as follows:

■ a. Revise subsector 111;

■ b. In subsector 112, revise the entries for ''112111'', ''112112'', ''112120'', ''112210'', ''112320'' through ''112340'', ''112390'', ''112410'', ''112420'', ''112511'', ''112512'', ''112519'', ''112910'' through ''112930'', and ''112990'';

■ c. In subsector 113, revise the entries for ''113110'' and ''113210'';

■ d. In subsector 114, revise the entries for ''114112'', ''114119'', and ''114210'';

■ e. In subsector 115, revise the entries for ''115111'' through ''115113'', ''115116'', ''115210'' ''115310'', ''115310 (Exception 1)'', and ''115310 (Exception 2)'';

■ f. In subsector 213, revise the entries for ''213113'' through ''213115'';,

■ g. In subsector 221, revise the entries for ''221310'' through ''221330'';

■ h. In subsector 237, revise the entries for ''237990'' and ''237990 (Exception)'';

■ i. In subsector 238, revise the entry for ''238290'';

■ j. In subsector 511, revise the entry for ''511210'';

■ k. Revise the entry for ''Sector 92'' at the end of the table;

■ l. Redesignate footnote 17 as footnote 1 and revise it;

■ m. Revise footnote 2;

■ n. Redesignate footnote 20 as footnote 15; and

■ o. Redesignate footnote 19 as footnote 17.

The revisions read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Sector 11—Agriculture, Forestry, Fishing and Hunting Subsector 111—Crop Production			
111110	Soybean Farming	$2.0	
111120	Oilseed (except Soybean) Farming	2.0	
111130	Dry Pea and Bean Farming	2.5	
111140	Wheat Farming	2.0	
111150	Corn Farming	2.25	
111160	Rice Farming	2.25	
111191	Oilseed and Grain Combination Farming	2.0	
111199	All Other Grain Farming	2.0	
111211	Potato Farming	3.75	
111219	Other Vegetable (except Potato) and Melon Farming	3.25	
111310	Orange Groves	3.5	
111320	Citrus (except Orange) Groves	3.75	
111331	Apple Orchards	4.0	
111332	Grape Vineyards	3.5	
111333	Strawberry Farming	4.75	
111334	Berry (except Strawberry) Farming	3.25	

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
111335	Tree Nut Farming	3.25	
111336	Fruit and Tree Nut Combination Farming	4.5	
111339	Other Noncitrus Fruit Farming	3.0	
111411	Mushroom Production	4.0	
111419	Other Food Crops Grown Under Cover	4.0	
111421	Nursery and Tree Production	2.75	
111422	Floriculture Production	3.25	
111910	Tobacco Farming	2.25	
111920	Cotton Farming	2.75	
111930	Sugarcane Farming	4.5	
111940	Hay Farming	2.25	
111991	Sugar Beet Farming	2.25	
111992	Peanut Farming	2.25	
111998	All Other Miscellaneous Crop Farming	2.25	
	Subsector 112—Animal Production and Aquaculture		
112111	Beef Cattle Ranching and Farming	2.25	
112112	Cattle Feedlots	19.5	
112120	Dairy Cattle and Milk Production	3.25	
112210	Hog and Pig Farming	3.5	
* * *	* * *	*	*
112320	Broilers and Other Meat Type Chicken Production	3.0	
112330	Turkey Production	3.25	
112340	Poultry Hatcheries	3.5	
112390	Other Poultry Production	3.25	
112410	Sheep Farming	3.0	
112420	Goat Farming	2.25	
112511	Finfish Farming and Fish Hatcheries	3.25	
112512	Shellfish Farming	3.25	
112519	Other Aquaculture	3.25	
112910	Apiculture	2.75	
112920	Horses and Other Equine Production	2.5	
112930	Fur-Bearing Animal and Rabbit Production	3.25	
112990	All Other Animal Production	2.5	
	Subsector 113—Forestry and Logging		
113110	Timber Tract Operations	16.5	
113210	Forest Nurseries and Gathering of Forest Products	18.0	
* * *	* * *	*	*
	Subsector 114—Fishing, Hunting and Trapping		
* * *	* * *	*	*
114112	Shellfish Fishing	12.5	
114119	Other Marine Fishing	10.0	
114210	Hunting and Trapping	7.5	
	Subsector 115—Support Activities for Agriculture and Forestry		
115111	Cotton Ginning	14.0	
115112	Soil Preparation, Planting, and Cultivating	8.5	
115113	Crop Harvesting, Primarily by Machine	12.0	
* * *	* * *	*	*
115116	Farm Management Services	13.5	
115210	Support Activities for Animal Production	9.5	
115310	Support Activities for Forestry	10.0	
115310 (Exception 1)	Forest Fire Suppression [1]	[1] 30.0	
115310 (Exception 2)	Fuels Management Services [1]	[1] 30.0	
	Sector 21—Mining, Quarrying, and Oil and Gas Extraction		

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
* * * * * * *			
Subsector 213—Support Activities for Mining			
* * * * * * *			
213113	Support Activities for Coal Mining	24.0	
213114	Support Activities for Metal Mining	36.0	
213115	Support Activities for Nonmetallic Minerals (except Fuels) Mining	18.0	
Sector 22—Utilities Subsector 221—Utilities			
* * * * * * *			
221310	Water Supply and Irrigation Systems	36.0	
221320	Sewage Treatment Facilities	31.0	
221330	Steam and Air-Conditioning Supply	26.5	
Sector 23—Construction			
* * * * * * *			
Subsector 237—Heavy and Civil Engineering Construction			
* * * * * * *			
237990	Other Heavy and Civil Engineering Construction	39.5	
237990 (Exception)	Dredging and Surface Cleanup Activities [2]	[2] 33.0	
Subsector 238—Specialty Trade Contractors			
* * * * * * *			
238290	Other Building Equipment Contractors	19.5	
* * * * * * *			
Subsector 511—Publishing Industries (except Internet)			
* * * * * * *			
511210	Software Publishers [15]	[15] 41.5	
* * * * * * *			
	Sector 92—Public Administration [17]		
* * * * * * *			

Footnotes

[1] *NAICS code 115310*—Support Activities for Forestry: Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

[2] *NAICS code 237990*—Dredging: To be considered small for purposes of Government procurement, a firm or its similarly situated subcontractors must perform at least 40 percent of the volume dredged with their own equipment or equipment owned by another small dredging concern.

* * * * * * *

[15] *NAICS code 511210*—For purposes of Government procurement, the purchase of software subject to potential waiver of the nonmanufacturer rule pursuant to § 121.1203(d) should be classified under this NAICS code.

* * * * * * *

[17] *NAICS Sector 92*—Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, State, and local Government agencies which administer and oversee Government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a Government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a Government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS industry codes under NAICS industry 56161, Investigation, Guard, and Armored Car Services.

* * * * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–06604 Filed 3–30–22; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG90

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

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

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

DATES: This rule is effective May 2, 2022.

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

SUPPLEMENTARY INFORMATION:

Discussion of Size Standards

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

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (''Jobs Act''), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA's latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget's (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB's 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).[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 Sectors 48–49, 51, 52, and 53 to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After its review, SBA published in the October 2, 2020, issue of the **Federal Register** (85 FR 62372) a proposed rule to increase the size standards for 18 industries in NAICS Sector 48–49 (Transportation and Warehousing), eight industries in NAICS Sector 51 (Information), ten industries in NAICS Sector 52 (Finance and Insurance), and nine industries in NAICS Sector 53 (Real Estate and Rental and Leasing). In this final rule, SBA is adopting the proposed size standards from the October 2020 proposed rule without change.

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

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

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