

**List of Subjects in 7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–51 is added to read as follows:

**§ 319.56–51 Fresh figs and pomegranates from Chile.**

Fresh figs (*Ficus carica*) and fresh pomegranates (*Punica granatum*) may be imported into the continental United States from Chile under the following conditions:

(a) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. Harvested figs and pomegranates must be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration must be renewed annually.

(b) *Low-prevalence production site certification.* The fruit must originate from a low-prevalence production site to be imported under the conditions in this section. Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of the NPPO of Chile. These samples must undergo a pest detection and evaluation method as follows: The fruit must be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the 200-mesh sieve must then be placed on a petri dish and analyzed for the presence of live *Brevipalpus chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low-prevalence production site. Each production site may have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(c) *Post-harvest processing.* After harvest, all damaged or diseased fruits must be culled at the packinghouse and must be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container in which the fruit is packed must have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

(d) *Phytosanitary inspection.* Fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample must be drawn and examined from each consignment. Figs and pomegranates in any consignment may be shipped to the continental United States under the conditions of this section only if the consignment passes inspection as follows:

(1) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit to specify the production site or sites in which the fruit was produced and the packing shed or sheds in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(2) A biometric sample of the boxes, crates, or other APHIS-approved packing containers from each consignment will be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests. A portion of the fruit must be washed with soapy water and the collected filtrate must be microscopically examined for *B. chilensis*. If a single live *B. chilensis* mite is found during the inspection process, the certified low-prevalence production site where the fruit was grown will lose its certification.

(e) *Phytosanitary certificate.* Each consignment of fresh figs or pomegranates must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis* based on field and packinghouse inspections.

Done in Washington, DC this 9th day of March 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**BILLING CODE 3410–34–P**

**SMALL BUSINESS ADMINISTRATION****13 CFR Part 121**

**RIN 3245–AG07**

**Small Business Size Standards: Professional, Scientific and Technical Services**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated 45 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by an NAICS Sector. SBA has issued a White Paper entitled “Size Standards Methodology” and published in the October 21, 2009 issue of the **Federal Register** a notice that “Size Standards Methodology” is available on its Web site at <http://www.sba.gov/size> 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. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

**DATES:** SBA must receive comments to this proposed rule on or before May 16, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3245–AG07 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments; or

- *Mail/Hand Delivery/Courier:* Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>,

please submit the information by mail to U.S. Small Business Administration, Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or by e-mail to [sizestandards@sba.gov](mailto:sizestandards@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

**FOR FURTHER INFORMATION CONTACT:** Khem R. Sharma, PhD, Chief, Size Standards Division, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** To determine eligibility for Federal government small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for most private sector industries in the U.S. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA's size standards consist of 42 different levels, covering 1,141 NAICS industries and 18 sub-industry activities. Thirty-one of these size levels are based on average annual receipts, eight are based on number of employees and three are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect the changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal

marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary.

In addition, on September 27, 2010 the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach to reviewing a group of related industries within an NAICS Sector. Except for manufacturing, an NAICS Sector generally consists of 25 to 75 industries. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise the size standards for industries whose data support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that was applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule and the impact of the proposed revisions to size standards on Federal small business assistance.

#### Size Standards Methodology

SBA has recently developed a "Size Standards Methodology" that it uses for developing, reviewing and modifying size standards when necessary. SBA has published the document on its Web site at <http://www.sba.gov/size>. SBA does not apply all features of its "Size Standards Methodology" to all industries because not all are appropriate. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 54, the methodology described here mostly applies to establishing receipts based standards. However, SBA makes the methodology available in its entirety for parties who have an interest

in SBA's overall approach to establishing, evaluating and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues regarding its "Size Standards Methodology," such as suggestions on alternative approaches to establishing, reviewing and modifying size standards; whether there are alternative or additional factors or data sources that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's using anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology. Comments on the "Size Standards Methodology" should be submitted via (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; the docket number is SBA-2009-0008. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. As with comments received to this proposed rule, SBA will post all comments on "Size Standards Methodology" on <http://www.regulations.gov>. As of March 16, 2011, SBA has received two comments on "Size Standards Methodology." The comments have been published and are available to the public at <http://www.regulations.gov>. SBA continues to welcome comments on its methodology from interested parties.

Congress has authorized SBA's Administrator to establish small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) states that "\* \* \* the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure, SBA considers

current economic conditions, together with its own mission, program objectives, the Administration's current policies, suggestions from industry groups and Federal Agencies, and public comments on the proposed rule when it establishes small business size standards. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry. Below is a discussion on SBA's analysis of the economic characteristics of each industry reviewed in this proposed rule, the impact of proposed size standards revisions on SBA programs and on Federal procurement programs and whether a revised size standard excludes dominant firms in the industry from being considered small. This proposed rule affords the public an opportunity to review and comment on the data and methodology SBA uses to evaluate and revise a size standard.

### Industry Analysis

For the ongoing comprehensive size standards review, SBA has established three "base" or "anchor" size standards that apply to most industries—\$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade) and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for the manufacturing industries at its inception in 1953. Shortly thereafter SBA established \$1 million in average annual receipts as the anchor size standard for the nonmanufacturing industries. The receipts based anchor size standard has been adjusted periodically for inflation. Over the years, SBA has increased the anchor for inflation, which stands at \$7.0 million today. Since 1986, all industries in the Wholesale Trade Sector have had the 100 employee size standard for non-procurement SBA programs. For Federal procurement purposes, the size standard for all industries in both the Wholesale Trade (NAICS Sector 42) and the Retail Trade (NAICS Sector 44–45) is 500 employees under the SBA's nonmanufacturer rule. 13 CFR 121.406(b).

These long standing anchor size standards have gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a

reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish a unique small business size standard for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries at the 6-digit NAICS level (1,141) for which SBA establishes size standards. The data SBA analyzes are generally static, but the U.S. economy is not. Hence, absolute precision is impossible. Based on historical but static data, therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from those of others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as "anchor comparison group"). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. For industries with receipts based size standards, including those in NAICS Sector 54 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards

for this group of industries range from \$23 million to \$35.5 million in average receipts, with the weighted average size standard for the group being \$29 million. SBA refers to this comparison group as the "higher level receipts based size standard group."

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition and distribution of firms by size. 13 CFR 121.102(a) and (b). As an additional factor, SBA evaluates the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These five factors are generally the most important ones for establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, industry growth trends, SBA financial assistance and other program objectives, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions and the Administration's policies. Public comments on a proposed size standard rule also provide important additional information. SBA thoroughly reviews all public comments on proposed rules and makes adjustments to proposed size standards if necessary before making a final decision on a revised size standard. Below is a brief description of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 54 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the "SBA Size Standard Methodology" White Paper, available on its Web site at <http://www.sba.gov/size>.

1. *Average firm size.* SBA computes two measures of average firm size: Simple average firm size and weighted average firm size. For industries with receipts based size standards the simple average firm size is the total receipts of an industry divided by the total number of firms in that industry. The weighted average firm size is the sum of weighted simple average firm sizes in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average firm size weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weights to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries

in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard or, in rare cases, a standard lower than the anchor.

#### 2. *Startup costs and entry barriers.*

Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this is a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets size as a proxy measure to assess the levels of capital requirements for new entrants to an industry.

SBA begins with the sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009. SBA then applies these ratios to the average receipts size of firms in that industry. An industry with a significantly higher level of average assets than that of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, if the industry has a significantly smaller average assets size compared to the anchor comparison group, the anchor size standard, or in rare cases one lower than the anchor, may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts obtained by firms that are among the largest in an industry. In this proposed rule, SBA evaluates the share of industry receipts generated by the four largest firms in the industry. This is referred to as the "four-firm concentration ratio." SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large firms, SBA will establish a size standard relatively higher than the anchor size standard. The four-firm concentration ratio is not an important factor if its value for an industry under review is less than 40 percent. For industries in which the four largest firms account for 40 percent or more of an industry's total receipts, SBA

examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry receipts accounted for by firms of different receipts and employment size classes in the industry. SBA evaluates this factor in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this indicates that small businesses are competitive in that industry. This supports adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This supports adopting a size standard above the anchor.

Concentration among firms is a measure of inequality of distribution. To evaluate the degree of inequality of distribution within an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) in the horizontal axis and cumulative percentages of receipts (or other measures of size) in the vertical axis. (For further detail, please refer to SBA's "Size Standards Methodology" White Paper on the SBA Web site at <http://www.sba.gov/size>.) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the degree of inequality of distribution for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher degree of inequality of distribution (*i.e.*, higher Gini coefficient) compared to industries in the anchor comparison industry group this will, all else being equal, warrant a higher size standard than the anchor. Conversely, for industries with similar or more equal distribution (*i.e.*, similar or lower Gini coefficient values) than the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on the level of Federal small business assistance. This assessment primarily focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the share of Federal contracting dollars awarded to

small businesses in an industry that receives a significant amount of Federal contracting dollars is significantly less than the small business share of the industry's total receipts, this will be justification to consider a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide share may have a variety of causes, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required on Federal contracts as compared to typical commercial contracting work and the size of contracting requirements of Federal customers. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts and, hence, the firms receiving such contracts are expected to possess different characteristics than the average characteristics for all firms in that industry. To compare the small business Federal contracting share with the industry-wide small business share, SBA analyzes the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal procurement trends in its size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts and (2) the amount of total Federal contracting averages \$100 million or more during fiscal years 2007–2009 (the latest years for which complete Federal procurement data are available). SBA selected these thresholds because they reflect a significant level of contracting in which a revision to a size standard may have an impact on expanding small business opportunities.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a size standard revision on SBA's loan programs. For this SBA examines the volume of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards reduce financial assistance to small businesses, a higher size standard would be supportable. However, if small businesses have already been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size

standard, consideration of this factor for determining the size standard may not be necessary.

#### Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 County Business Patterns (see <http://www.census.gov/econ/cbp/>) and data from 2007 Economic Census (see <http://www.census.gov/econ/census07/>) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The Census tabulation provided SBA with industry-specific data on the number of firms, number of establishments and number of employees for companies by the size of firm based on the 2007 County Business Patterns and estimated annual payroll and estimated annual receipts of companies by the size of firm based on the 2007 Census. That is, the data are by the size class of the total company; however, the data itself, within a particular size class, represents the company's total data for a specific industry only. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio and distribution of firms by receipts and employment size.

In some cases, where industry data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible.

The data from the Census Bureau's tabulation are limited down only to the 6-digit NAICS industry level and hence do not provide economic characteristics at the sub-industry level. Thus, when establishing, reviewing, or modifying size standards at the sub-industry level (that is, one of the "exceptions" in SBA's table of size standards), SBA evaluates the data from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS-NG) and Central Contractor Registration (CCR) following a two-step procedure. First, using FPDS-NG SBA identifies product service codes (PSCs) that correspond to specific sub-industry activities or "exceptions" and then identifies firms that are active in Federal contracting involving those PSCs. Then, SBA obtains those firms' revenue and employment data from the CCR database. SBA uses that data to evaluate

the actual size of businesses that FPDS-NG identifies for those procurements. In this proposed rule, SBA applied this approach to determine industry and Federal contracting factors for "exceptions" under NAICS 541330, Engineering Services.

To calculate average assets size, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009.

To evaluate Federal contracting trends, SBA examined Federal contract award data for fiscal years 2007–2009 from FPDS-NG.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the "SBA Size Standards Methodology" White Paper, which is available on its Web site at <http://www.sba.gov/size>.

To assess the impact on financial assistance to small businesses SBA examined data on its own guaranteed loan programs for fiscal years 2007–2009.

#### Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm would or could exercise a major controlling influence at the national level in an industry that includes a significant number of business concerns. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from the definition of small.

#### Selection of Size Standards

To simplify size standards, for the ongoing comprehensive size standards review of receipts based size standards, SBA proposes to select size standards for industries from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (see 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). Currently, there are 31 different levels of receipts based

size standards. They range from \$0.75 million to \$35.5 million and many of them apply to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. There will also be greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 54 that has a receipts based standard. In this proposed rule, SBA has not reviewed the six employee based size standards in NAICS Sector 54. Those employee based size standards will remain on effect until SBA reviews industries that have employee based size standards. The eight "fixed" receipts based size standard levels are \$5 million, \$7 million, \$10 million, \$14 million, \$19 million, \$25.5 million, \$30.0 million and \$35.5 million. To establish these eight receipts based size standard levels SBA considered the current minimum, the current maximum and most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following—\$2.5 million to \$4.5 million, \$7 million, \$9.0 million to \$10 million, \$12.5 million to \$14.0 million, \$25.0 million to \$25.5 million, and \$33.5 million to \$35.5 million. SBA selected \$7 million as one of eight fixed levels of receipts based size standards because this is an anchor standard for receipts based standards. The lowest or minimum receipts based size level that SBA is proposing will be \$5 million. Other than the size standards for agriculture and those based on commissions (such as real estate brokers and travel agents), \$5 million will include those industries with the currently lowest receipts based standards, which range from \$2.0 million to \$4.5 million. Among the higher levels size clusters, SBA has selected \$10 million, \$14 million, \$25.5 million, and \$35.5 million as the other four levels of fixed size standards. Because of a large gap between two of the size standard intervals, SBA established intermediate levels of \$19 million between \$14 million and \$25.5 million and \$30 million between \$25.5 million and \$35.5 million. These two intermediate size levels reflect roughly

similar proportional differences between the two successive size standard levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a specific size standard level for each industry, SBA believes that establishing different size standards for closely related industries may not be appropriate. For example, in cases where many of the same businesses operate in the multiple industries, establishing a common size standard might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than establishing separate size standards for each of those industries. This led SBA to establish a common size standard for the Computer Systems Design and Related Services industries (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 and NAICS 811212), even though the industry data might have supported a distinct size standard for each industry. 57 FR 27906 (June 23, 1992). Businesses engaged in computer related services typically perform activities in two or more other related industries. SBA has also established a common size standard for certain architectural and engineering (A&E) services industries (NAICS 541310, NAICS 541330 (excluding the “exceptions”), NAICS 541360, NAICS 541370 and Map Drafting which is an “exception” under NAICS 541340). As

described below in this proposed rule SBA has considered additional common size standards for several related industries within NAICS Sector 54, as alternatives to industry specific separate size standards. Whenever SBA proposes a common size standard for closely related industries it will provide its justification in the proposed rule.

**Evaluation of Industry Structure**

SBA has evaluated the structure of 45 industries and three sub-industries in NAICS Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services, to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry or sub-industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with \$7.0 million size standards and is referred to as the “receipts based anchor comparison group.” Because the goal of SBA’s size review is to assess whether a specific industry’s size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average

characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry’s structure is significantly different from the others in the anchor group, a size standard lower or higher than the anchor size standard might be selected. The level of the new size standard is determined based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from \$23 million to \$35.5 million. The average size standard for the group is \$29 million. SBA refers to this group of industries as the “higher level receipts based size standard comparison group.” Differences in industry structure between an industry under review and the industries in the two comparison groups are determined by comparing data on each of the industry factors, including average firm size, average assets size, four-firm concentration ratio and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

**TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS**

Receipts based comparison group	Avg. firm size (\$ million)		Avg. assets size (\$ million)	Avg. four-firm concentration ratio (%)	Avg. receipts of four largest firms (\$ million) <sup>a</sup>	Gini coefficient
	Simple average	Weighted average				
Anchor Level .....	1.55	28.91	0.94	18.4	249.3	0.740
Higher Level .....	6.22	97.10	2.85	27.0	1,773.5	0.826

<sup>a</sup> To be used for industries with a four-firm concentration ratio of 40% or greater.

**Derivation of Size Standards Based on Industry Factors**

For each of the industry factors in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the \$7.0 million anchor size standard appropriate for that factor.

An industry factor with a value significantly above or below the anchor comparison group will generally warrant a size standard above or below

the \$7.0 million anchor. The level of the new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry’s simple average receipts is \$4.0 million, that would support a \$19 million size standard. The \$4.0 million level is 52.5 percent between the average firm size of \$1.55 million for the anchor comparison group and \$6.22 million for the higher level comparison group  $((\$4.00 \text{ million} - \$1.55 \text{ million}) \div (\$6.22 \text{ million} - \$1.55 \text{ million}) = 0.525 \text{ or } 52.5\%)$ . This proportional difference is applied to the difference between the \$7.0 million

anchor size standard and average size standard of \$29 million for the higher level size standard group and then added to \$7.0 million to estimate a size standard of \$18.54 million  $(\{ \$29.0 \text{ million} - \$7.0 \text{ million} \} * 0.525 + \$7.0 \text{ million} = \$18.54 \text{ million})$ . The final step is to round the estimated \$18.54 million size standard to the nearest fixed size standard level, in this example to \$19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in “SBA Size Standards Methodology” which is available on its Web site at <http://>

www.sba.gov/size. (However, it should be noted that figures in the “Size Standards Methodology” White Paper

are based on 2002 Economic Census data and are different from those presented in this proposed rule). Table

2 shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size (\$ million)	Or if weighted avg. receipts size (\$ million)	Or if avg. assets size (\$ million)	Or if avg. receipts of largest four firms (\$ million)	Or if gini coefficient	Then size standard is (\$ million)
<1.34	<25.81	<0.85	<180.0	<0.736	5.0
1.34 to 1.87	25.81 to 33.56	0.85 to 1.07	180.0 to 353.2	0.736 to 0.746	7.0
1.88 to 2.61	33.57 to 44.41	1.08 to 1.37	353.3 to 595.7	0.747 to 0.759	10.0
2.62 to 3.57	44.42 to 58.35	1.38 to 1.76	595.8 to 907.5	0.760 to 0.777	14.0
3.58 to 4.79	58.36 to 76.18	1.77 to 2.26	907.6 to 1,305.8	0.778 to 0.799	19.0
4.80 to 5.96	76.19 to 93.22	2.27 to 2.74	1,305.9 to 1,686.9	0.800 to 0.821	25.5
5.97 to 7.02	93.23 to 108.72	2.75 to 3.17	1,687.0 to 2,033.2	0.822 to 0.840	30.0
>7.02	>108.72	>3.17	>2,033.2	>0.840	35.5

**Derivation of Size Standards Based on Federal Contracting Factor**

Besides industry structure, SBA also evaluates Federal contracting data to assess the extent to which small businesses are successful in getting Federal contracts under the existing size standards. However, the available data on Federal contracting are limited to identifying businesses as small or other than small, with no information on exact size of businesses receiving Federal contracts in order to conduct a more precise analysis.

Given the above limitation of Federal contracting data, for the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than their current size standard for industries where the small business share of total Federal contracting dollars is between 10 and 30 percentage points lower than their shares in total industry receipts and at two levels higher than the current size standard if the difference is more than 30 percentage points.

SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. The FPDS-NG data have a number of limitations and there are also complex relationships among a number of variables affecting small business participation in the Federal

marketplace. SBA believes, therefore, that a larger adjustment to size standards based on Federal contracting activity requires a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience to support a different size standard than indicated by this general rule. That would involve SBA’s taking into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comment on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 46 industries reviewed in this proposed rule (including 45 industries in NAICS Sector 54 and one industry in NAICS Sector 81), 26 industries received an average of \$100 million or more annually in Federal contracting dollars during fiscal years 2007–2009. The Federal contracting factor was significant (i.e., the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) and a

separate size standard was derived for that factor in 15 of those 26 industries.

**New Size Standards Based on Industry and Federal Contracting Factors**

Table 3 shows the results of analyses of industry and Federal contracting factors for each of the industries covered by this proposed rule. Each NAICS Industry in columns 2, 3, 4, 6, 7 and 8 shows two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column; the lower number is the size standard supported by that factor. For the four-firm concentration ratio, a size standard is estimated based on the average receipts of the top four firms if its value is 40 percent or more. If the four-firm concentration ratio for an industry (column 5) is less than 40 percent, no size standard is estimated for that factor. Column 9 shows the new size standard for each industry, calculated as the average of size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA “Size Standard Methodology” White Paper which is available on its Web site at <http://www.sba.gov/size>. For comparison, the current size standards are also shown in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY [millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current size standard
541110 Offices of Lawyers .....	\$1.4 7.0	\$105.8 30.0	\$0.3 5.0	2.5	\$1,423.1	0.758 \$10.0	.....	\$10.0	\$7.0
541191 Title Abstract and Settlement Offices.	1.0 5.0	24.2 5.0	0.4 5.0	.....	.....	0.700 \$5.0	.....	5.0	7.0
541199	0.9	18.3	.....	29.0	176.3	0.730	-21.5	7.0	7.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued  
[millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current size standard
All Other Legal Services ..	5.0	5.0	.....	.....	.....	\$5.0	\$10.0		
541211	1.2	116.1	0.4	32.8	5,227.3	0.747	- 11.7	14.0	8.5
Offices of Certified Public Accountants.	5.0	35.5	5.0	.....	.....	\$10.0	\$14.0		
541213	0.5	131.5	.....	.....	.....	0.681	.....	14.0	7.0
Tax Preparation Services	5.0	35.5	.....	.....	.....	\$5.0	.....		
541214	7.7	113.9	6.6	.....	.....	0.886	.....	35.5	8.5
Payroll Services .....	35.5	35.5	35.5	.....	.....	\$35.5	.....		
541219	0.5	6.1	0.2	.....	.....	0.618	- 22.4	7.0	8.5
Other Accounting Services	5.0	5.0	5.0	.....	.....	\$5.0	\$14.0		
541310	1.6	25.1	0.6	5.2	489.3	0.727	- 13.3	7.0	4.5
Architectural Services .....	7.0	5.0	5.0	.....	.....	\$5.0	\$7.0		
541320	0.8	6.3	0.3	6.1	80.6	0.586	.....	5.0	7.0
Landscape Architectural Services.	5.0	5.0	5.0	.....	.....	\$5.0	.....		
541330	4.0	112.0	1.5	.....	.....	0.868	- 0.1	25.5	4.5
Engineering Services .....	19.0	35.5	14.0	.....	.....	\$35.5	.....		
Except Military and Aero- space Equipment and Military Weapons.	3,086.3	9,073.4	1,187.1	36.0	149,375.0	0.660	.....	25.5	27.0
541330	35.5	35.5	35.5	.....	.....	\$5.0	.....		
Except Contracts and Subcontracts for Engi- neering Services Award- ed Under the National Energy Policy Act of 1992.	NA	NA	NA	NA	NA	NA	NA	NA	27.0
541330	NA	NA	NA	NA	NA	NA	NA	NA	NA
Except Marine Engineer- ing and Naval Architec- ture.	4,088.8	12,295.3	1,572.6	38.5	64,100.0	0.668	.....	25.5	18.5
541340	35.5	35.5	35.5	.....	.....	\$25.0	.....		
Drafting Services .....	0.8	68.0	.....	.....	.....	0.752	.....	14.0	7.0
541340	5.0	19.0	.....	.....	.....	\$10.0	.....		
Except Map Drafting .....	NA	NA	NA	NA	NA	NA	NA	NA	4.5
541350	NA	NA	NA	NA	NA	NA	NA	NA	NA
541350	0.4	6.4	.....	13.7	72.8	0.569	- 31.1	7.0	7.0
Building Inspection Serv- ices.	5.0	5.0	.....	.....	.....	\$5.0	\$14.0		
541360	2.7	60.4	.....	37.4	256.1	0.853	.....	25.5	4.5
Geophysical Surveying and Mapping Services.	14.0	19.0	.....	.....	.....	\$35.5	.....		
541370	0.7	6.5	0.3	7.6	120.9	0.554	- 25.4	5.0	4.5
Surveying and Mapping (except Geophysical) Services.	5.0	5.0	5.0	.....	.....	\$5.0	\$7.0		
541380	2.6	19.2	1.2	.....	.....	0.759	1.0	10.0	12.0
Testing Laboratories .....	10.0	5.0	\$10.0	.....	.....	\$10.0	.....		
541410	0.8	5.1	0.2	.....	.....	0.557	.....	5.0	7.0
Interior Design Services ...	5.0	5.0	5.0	.....	.....	\$5.0	.....		
541420	1.3	9.5	.....	.....	.....	0.714	.....	5.0	7.0
Industrial Design Services	5.0	5.0	.....	.....	.....	\$5.0	.....		
541430	0.6	4.1	0.2	3.3	79.7	0.560	.....	5.0	7.0
Graphic Design Services ..	5.0	5.0	5.0	.....	.....	\$5.0	.....		
541490	0.8	6.0	.....	11.1	45.7	0.623	.....	5.0	7.0
Other Specialized Design Services.	5.0	5.0	.....	.....	.....	\$5.0	.....		
541511	2.0	51.0	0.7	7.4	1,862.3	0.839	- 5.2	14.0	25.0
Custom Computer Pro- gramming Services.	10.0	14.0	5.0	.....	.....	\$30.0	.....		
541512	2.9	145.9	1.0	20.0	6,243.2	0.885	- 7.3	25.5	25.0
Computer Systems Design Services.	14.0	35.5	7.0	.....	.....	\$35.5	.....		
541513	7.2	150.6	.....	.....	.....	0.918	23.0	35.5	25.0
Computer Facilities Man- agement Services.	35.5	35.5	.....	.....	.....	\$35.5	.....		
541519	2.6	100.0	0.9	28.6	1,912.1	0.893	15.2	19.0	25.0
Other Computer Related Services.	14.0	30.0	7.0	.....	.....	\$35.5	.....		
Except Information Tech- nology Value Added Re- sellers.	NA	NA	NA	NA	NA	NA	NA	NA	150 employees
541611	NA	NA	NA	NA	NA	NA	NA	NA	NA
Administrative Manage- ment and General Man- agement Consulting Services.	1.4	59.9	0.5	17.2	3,482.1	0.817	- 12.8	14.0	7.0
541612	7.0	19.0	5.0	.....	.....	\$25.5	\$10.0		
Human Resources Con- sulting Services.	1.7	56.3	0.4	23.6	1,365.4	0.803	- 5.3	14.0	7.0
541612	7.0	14.0	5.0	.....	.....	\$25.5	.....		

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued  
[millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current size standard
541613 Marketing Consulting Services.	1.1 5.0	20.6 5.0	0.4 5.0	7.3 .....	489.1 .....	0.753 \$10.0	-26.1 \$10.0	7.0	7.0
541614 Process, Physical Distribu- tion and Logistics Con- sulting Services.	3.4 14.0	86.6 25.5	0.9 7.0	..... .....	..... .....	0.886 \$35.5	-0.5	19.0	7.0
541618 Other Management Con- sulting Services.	0.8 5.0	19.5 5.0	0.3 5.0	17.5 .....	226.2 .....	0.698 \$5.0	-39.3 \$14.0	7.0	7.0
541620 Environmental Consulting Services.	1.3 5.0	16.5 5.0	0.5 5.0	6.1 .....	160.6 .....	0.727 \$5.0	-8.9	5.0	7.0
541690 Other Scientific and Tech- nical Consulting Serv- ices.	1.1 5.0	54.3 14.0	0.4 5.0	..... .....	..... .....	0.775 \$14.0	-13.6 \$10.0	10.0	7.0
541720 Research and Develop- ment in the Social Sciences and Human- ities.	2.9 14.0	24.5 5.0	1.8 14.0	26.6 .....	451.3 .....	0.811 \$25.5	1.5	19.0	7.0
541810 Advertising Agencies .....	2.5 10.0	53.0 14.0	0.7 5.0	26.5 .....	2,156.7 .....	0.812 \$25.5	-13.4 \$10.0	14.0	7.0
541820 Public Relations Agencies	1.2 5.0	13.7 5.0	0.4 5.0	19.3 .....	403.7 .....	0.698 \$5.0	-21.6 \$10.0	7.0	7.0
541830 Media Buying Agencies ....	4.3 19.0	65.3 19.0	..... .....	36.0 .....	320.1 .....	0.834 \$30.0	.....	25.5	7.0
541840 Media Representatives ....	1.9 10.0	18.2 5.0	0.8 5.0	..... .....	..... .....	0.758 \$10.0	.....	7.0	7.0
541850 Display Advertising .....	3.9 19.0	134.2 35.5	2.2 19.0	44.9 .....	928.8 19.0	0.881 \$35.5	.....	25.5	7.0
541860 Direct Mail Advertising .....	4.0 19.0	45.7 14.0	1.4 14.0	..... .....	..... .....	0.799 \$19.0	.....	19.0	7.0
541870 Advertising Material Dis- tribution Services.	3.2 14.0	52.4 14.0	1.3 10.0	32.7 .....	201.1 .....	0.849 \$35.5	.....	19.0	7.0
541890 Other Services Related to Advertising.	1.6 7.0	26.2 7.0	0.5 5.0	12.5 .....	383.0 .....	0.746 \$10.0	.....	7.0	7.0
541910 Marketing Research and Public Opinion Polling.	3.2 14.0	51.7 14.0	1.1 7.0	..... .....	..... .....	0.832 \$30.0	5.4	19.0	7.0
541921 Photography Studios, Por- trait.	0.5 5.0	50.9 14.0	0.2 5.0	..... .....	..... .....	0.563 \$5.0	.....	7.0	7.0
541922 Commercial Photography	0.5 5.0	3.3 5.0	0.2 5.0	6.5 .....	31.8 .....	0.494 \$5.0	.....	5.0	7.0
541930 Translation and Interpreta- tion Services.	1.0 5.0	23.8 5.0	..... .....	26.9 .....	123.8 .....	0.752 \$10.0	1.6	7.0	7.0
541940 Veterinary Services .....	0.9 5.0	17.4 5.0	0.2 5.0	..... .....	..... .....	0.431 \$5.0	.....	5.0	7.0
541990 All Other Professional, Scientific and Technical Services.	0.9 5.0	24.1 5.0	0.3 5.0	16.7 .....	696.2 .....	0.740 \$7.0	-34.7 \$14.0	7.0	7.0
811212 Computer and Office Re- pair and Maintenance.	1.7 7.0	49.0 14.0	0.5 5.0	..... .....	..... .....	0.832 \$30.0	-11.2 \$30.0	\$19.0	\$25.0

### Common Size Standards

When many of the same businesses operate in multiple industries, SBA believes that a common size standard can be appropriate for these industries even if the industry and relevant program data support different size standards. SBA has established a common size standard for Computer Systems Design and Related Services

industries (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the “exception”), and NAICS 811212.

In response to public comments to its 1998 proposed rule (63 FR 5480), SBA also established a common size standard for certain Architectural, Engineering (A&E) and Related Services industries (NAICS 541310, NAICS 541330

(excluding the “exceptions”), Map Drafting which is identified as “exception” under NAICS 541340, NAICS 541360 and NAICS 541370). It is very likely that firms that have expertise in architectural, engineering and surveying activities are also likely to be capable of performing drafting work. Similarly, general architectural firms are very likely to have expertise in

landscape architectural services. Industry data also show a lot of similarities among architectural, landscape architectural, engineering, drafting and surveying industries. Therefore, in this proposed rule, SBA applies the A&E common size standard to the rest of the industries in the A&E

Industry Group (NAICS 5413), including NAICS 541320, NAICS 541340, NAICS 541350 and NAICS 541380. In addition to Computer Systems Design and Related Services and A&E and Related Services, in this proposed rule, SBA considers, as an alternative to a separate size standard for each industry, common size standards for

industries under several other NAICS Industry Groups as shown in Table 4. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Industry Group using the same method as described above. These results are provided in Table 5.

TABLE 4—INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Industry group: NAICS codes	Industry group title	Industries: 6-digit NAICS codes
5411 .....	Legal Services .....	541110, 451191, 541199.
5412 .....	Accounting, Tax Preparation, Bookkeeping and Payroll Services.	541211, 541213, 541214, 541219.
5413 .....	Architectural, Engineering and Related Services .....	541310, 541320, 541330 (excluding “exceptions”), 541340, 541350, 541360, 541370, 541380.
5414 .....	Specialized Design Services .....	541410, 541420, 541430, 541490.
5415, 811212 .....	Computer Systems Design and Related Services + Computer and Office Machine Repair and Maintenance.	541511, 541512, 541513, 541519 (excluding “exception”), 811212.
5416 .....	Management, Scientific and Technical Consulting Services.	541611, 541612, 541613, 541614, 541618, 541620, 541690.
5418 .....	Advertising and Related Services .....	541810, 541820, 541830, 541840, 541850, 541860, 541870, 541890.
5419 .....	Other Professional, Scientific, and Technical Services ..	541910, 541921, 541922, 541930, 541940, 541990.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY GROUP (MILLIONS OF DOLLARS)

(1) NAICS code/Industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard
5411 .....	\$1.3	\$90.0	\$0.3	2.4%	\$1,423.1	0.755	-14.6%	10.0
Legal Services .....	5.0	25.5	5.0	.....	.....	\$10.0	\$10.0	.....
5412 .....	1.1	66.1	0.5	20.3%	6,033.6	0.781	-1.6%	14.0
Accounting, Tax Preparation, Bookkeeping and Payroll Services .....	5.0	19.0	5.0	.....	.....	\$19.0	.....	.....
5413 .....	2.5	84.3	1.0	.....	.....	0.837	-6.0%	19.0
Architectural, Engineering and Related Services .....	10.0	25.5	7.0	.....	.....	\$30.0	.....	.....
5414 .....	0.7	5.0	0.2	2.2%	130.0	0.583	-40.3%	7.0
Specialized Design Services .....	5.0	5.0	5.0	.....	.....	\$5.0	\$14.0	.....
5415 + 811212 .....	2.6	122.3	0.9	.....	.....	0.876	1.3%	25.5
Computer Systems Design and Related Services + Computer and Office Machine Repair and Maintenance .....	10.0	35.5	7.0	.....	.....	\$35.5	.....	.....
5416 .....	1.4	57.1	0.4	.....	.....	0.805	-14.8%	14.0
Management, Scientific and Technical Consulting Services .....	7.0	14.0	5.0	.....	.....	\$25.5	\$10.0	.....
5418 .....	2.3	51.5	0.7	13.7%	2,854.1	0.806	-5.3%	14.0
Advertising and Related Services .....	10.0	14.0	5.0	.....	.....	\$25.5	.....	.....
5419 .....	1.0	25.1	0.3	6.7%	1,085.4	0.650	-44.9%	7.0
Other Professional, Scientific, and Technical Services .....	5.0	5.0	5.0	.....	.....	\$5.0	\$14.0	.....

**Special Considerations**

*1. Three Sub-Industry Categories (or “exceptions”) under NAICS 541330, Engineering Services*

Currently, NAICS 541330 has four size standards that apply to Federal contracts for different types of engineering services. The \$4.5 million size standard is for general engineering services, while the other three (i.e., “exceptions”) apply to specialized types of engineering services that the Federal

government procures. They apply only to Federal contracts for those services. The lack of relevant data at the sub-industry level is a challenge to determine whether these size standards (“exceptions”) should be revised or left unchanged. Because of that, SBA did not review those exceptions in the February 3, 1998 proposed rule (63 FR 5480) and SBA did not change these size standards in the May 14, 1999 final rule (64 FR 26275). However, SBA has increased these size standards over the

years for inflation. The latest inflation adjustment was effective August 18, 2008 (73 FR 41237 (July 18, 2008)).

As noted previously, the data from the Economic Census special tabulation are limited down to the 6-digit NAICS industry level and hence do not provide data to assess economic characteristics at the sub-industry level. For example, the Economic Census data for NAICS 541330 are aggregates of both general engineering services and specialized engineering services under the three

“exceptions.” Thus, the results based on the Economic Census data may not accurately reflect the characteristics of businesses providing specialized services included under those “exceptions.”

To determine whether the Agency should propose revising the three exceptions under NAICS 541330, SBA evaluated the data from FPDS-NG and CCR. From FPDS-NG, SBA first identified PSCs that correspond to each specific sub-industry activity or “exception” under that NAICS code and then identified firms that are active in Federal contracting involving those PSCs. The data for fiscal year 2008 (the latest year for which the detailed CCR data are available) showed numerous firms doing contracts under Military and Aerospace Equipment and Military Weapons and Marine Engineering and Naval Architecture. SBA analyzed those firms’ revenue and employment data from CCR and contract dollars from FPDS-NG to evaluate industry and Federal procurement factors. These results in Table 3 support a size standard of \$25.5 million for both Military and Aerospace Equipment and Military Weapons and Marine Engineering and Naval Architecture. However, SBA proposes to retain the current standard of \$27.0 million for Military and Aerospace Equipment and Military Weapons as SBA is not proposing to lower any size standards in view of the current economic conditions. The FPDS-NG showed very few actions involving Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992. This made it difficult to evaluate industry and Federal contracting factors and to derive a separate size standard for that sub-industry category. Currently, both Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992 and contracts for Military and Aerospace Equipment and Military Weapons both have the same \$27.0 million size standard. Thus, SBA proposes to retain the current \$27.0 million size standard for Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992. SBA proposes to increase the size standard for Marine Engineering and Naval Architecture to \$25.5 million as supported by the data. SBA invites comments along with supporting information on this proposal.

## 2. Map Drafting Services

Map Drafting Services is currently identified as an “exception” under

NAICS 541340, Drafting Services. Prior to adopting NAICS for its size standards, SBA had established separate but common size standards for Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services as exceptions under Standard Industrial Classification (SIC) code 7389, Business Services, N.E.C. (Not Elsewhere Classified). Size standards at the sub-industry levels (“exceptions”) are primarily intended for Federal government procurement purposes. However, for NAICS 541340 (which includes Map Drafting Services), there were less than \$10 million total contracting dollars annually during fiscal years 2007–2009, as compared to more than \$2 billion in total revenue for the industry. Therefore, SBA feels that there is no need for a separate size standard for Map Drafting Services for Federal procurement and proposes to remove it as an exception to NAICS 541340. The proposed \$14.0 million common A&E size standard will apply to Drafting Services, including Map Drafting Services. SBA invites comments along with supporting information on this proposal.

## 3. Information Technology Value Added Resellers

On July 24, 2002 SBA proposed establishing a 500 employee size standard for Information Technology Value Added Resellers (ITVAR) as a new sub-industry (“exception”) under NAICS 541519 (67 FR 48419). This was to better reflect the Federal government’s acquisition of computer hardware and software services. In response to public comments and the results from further analyses of relevant industry data, on December 29, 2003, SBA published the final rule adopting 150 employee size standard for ITVAR (68 FR 74833). In this proposed rule, SBA proposes to retain the current 150 employee size standard for ITVAR. SBA invites comments along with supporting information on this proposal.

## 4. Computer and Office Machine Repair and Maintenance (NAICS 811212)

The Computer and Office Machine Repair and Maintenance industry (NAICS 811212) currently has the same size standard as the Computer Design and Related Services Industry Group (NAICS 5415). Therefore, in its October 21, 2009 proposed rule for Other Services Sector (74 FR 53941), SBA did not review the size standard for NAICS 811212 and proposed to retain the current \$25 million size standard until it reviews the Computer Design and Related Services Industries in NAICS Sector 54. The history of the Computer

and Office Machine Repair industry supports this decision. Under the SIC System, SBA had established a common size standard for all industries in SIC Industry Group 737, “Computer Programming, Data Processing and Other Computer Related Services” (56 FR 38364 (August 13, 1991) and 57 FR 27907 (June 23, 1992)). In 1997, SBA replaced the SIC System with the NAICS and moved most of the industries in SIC Sector 737 to NAICS Sector 54, Professional, Scientific and Technical Services. However, the Computer Maintenance and Repair activity was moved to NAICS Sector 81, Other Services, and was combined with Computer and Office Machine Repair Maintenance services to form NAICS 811212. Because Computer Maintenance and Repair was the largest component of the new industry, SBA continued to apply the size standard for computer services (64 FR 57188 (October 22, 1999) and 65 FR 30836 (May 15, 2000)). SBA continues to believe that a common size standard should apply to all of the computer services related industries, including NAICS 811212. SBA welcomes comments on whether it should continue to apply the same size standard for computer services to the Computer and Office Machine Repair Maintenance industry or consider a different size standard based on its industry characteristics.

## 5. Research and Development (R&D) in Biotechnology (NAICS 541711) and R&D in the Physical, Engineering and Life Sciences (Except Biotechnology) (NAICS 541712)

The current size standards for NAICS 541711 and NAICS 541712 (including three sub-industry groups or “exceptions”) are based on number of employees. Moreover, footnote #11 to SBA’s Table of Size Standards states that for R&D contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry. For example, the size standard for aircraft related R&D contracts under NAICS 541712 is 1,500 employees, the same as that for Aircraft Manufacturing (NAICS 336411). Therefore, SBA plans to review the size standards for NAICS 541711 and NAICS 541712 when it reviews the size standards for the Manufacturing Sector (NAICS Sector 31–33). SBA proposes, therefore, to leave the size standards for those two industries at their current levels until it reviews NAICS Sector 31–33.

## Evaluation of SBA Loan Data

Before deciding on an industry’s size standard, SBA also considers the impact

of new or revised standards on SBA’s loan programs. SBA examined 7(a) Business Loan Program data for fiscal years 2007–2009 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through that program. For the industries reviewed in this proposed rule, users of SBA’s 7(a) Business Loan Program are mostly much smaller than the current size standards. Based on that analysis, none of the size standards for these industries needs an adjustment based on this factor.

**Proposed Changes to Size Standards**

The results of SBA analyses of industry specific size standards from Table 3 and results for common size standards from Table 5 are summarized in Table 6. In terms of industry specific size standards, the results support increases in size standards in 22

industries and one sub-industry, decreases in 14 industries and one sub-industry and no changes in 10 industries. Similarly based on common size standards, the results would support increases in 36 industries and one sub-industry, decreases in two sub-industries and no changes in 10 industries.

SBA believes that lowering small business size standards is not in the best interests of small businesses under current economic conditions. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost a total of nearly 8.5 million non-farm jobs during 2008–2009. In response, Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although

the recession officially ended in June 2009, the unemployment rate has been 9.4 percent or higher since May 2009 and is forecast to remain above 9 percent through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses’ ability to compete for contracts, including recommendations from the President’s Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President’s National Export Initiative; expands training and counseling; and provides \$12 billion in tax relief to help small businesses invest in their firms and create jobs.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS codes	NAICS industry title	Calculated industry specific size standard (\$ million)	Calculated common size standard (\$ million)	Current size standard (\$ million)
541110 .....	Offices of Lawyers .....	\$10.0	\$10.0	\$7.0
541191 .....	Title Abstract and Settlement Offices .....	5.0	10.0	7.0
541199 .....	All Other Legal Services .....	7.0	10.0	7.0
541211 .....	Offices of Certified Public Accountants .....	14.0	14.0	8.5
541213 .....	Tax Preparation Services .....	14.0	14.0	7.0
541214 .....	Payroll Services .....	35.5	14.0	8.5
541219 .....	Other Accounting Services .....	7.0	14.0	8.5
541310 .....	Architectural Services .....	7.0	19.0	4.5
541320 .....	Landscape Architectural Services .....	5.0	19.0	7.0
541330 .....	Engineering Services .....	25.5	19.0	4.5
Except .....	Military and Aerospace Equipment and Military Weapons .....	25.5	.....	27.0
Except .....	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	NA	.....	27.0
Except .....	Marine Engineering and Naval Architecture .....	25.5	.....	18.5
541340 .....	Drafting Services .....	14.0	19.0	7.0
Except .....	Map Drafting .....	NA	.....	4.5
541350 .....	Building Inspection Services .....	7.0	19.0	7.0
541360 .....	Geophysical Surveying and Mapping Services .....	25.5	19.0	4.5
541370 .....	Surveying and Mapping (except Geophysical) Services .....	5.0	19.0	4.5
541380 .....	Testing Laboratories .....	10.0	19.0	12.0
541410 .....	Interior Design Services .....	5.0	7.0	7.0
541420 .....	Industrial Design Services .....	5.0	7.0	7.0
541430 .....	Graphic Design Services .....	5.0	7.0	7.0
541490 .....	Other Specialized Design Services .....	5.0	7.0	7.0
541511 .....	Custom Computer Programming Services .....	14.0	25.5	25.0
541512 .....	Computer Systems Design Services .....	25.5	25.5	25.0
541513 .....	Computer Facilities Management Services .....	35.5	25.5	25.0
541519 .....	Other Computer Related Services .....	19.0	25.5	25.0
Except .....	Information Technology Value Added Resellers .....	NA	.....	150 employees
541611 .....	Administrative Management and General Management Consulting Services.	14.0	14.0	7.0
541612 .....	Human Resources Consulting Services .....	14.0	14.0	7.0
541613 .....	Marketing Consulting Services .....	7.0	14.0	7.0
541614 .....	Process, Physical Distribution and Logistics Consulting Services .....	19.0	14.0	7.0
541618 .....	Other Management Consulting Services .....	7.0	14.0	7.0
541620 .....	Environmental Consulting Services .....	5.0	14.0	7.0
541690 .....	Other Scientific and Technical Consulting Services .....	10.0	14.0	7.0
541720 .....	Research and Development in the Social Sciences and Humanities .....	19.0	.....	7.0
541810 .....	Advertising Agencies .....	14.0	14.0	7.0
541820 .....	Public Relations Agencies .....	7.0	14.0	7.0
541830 .....	Media Buying Agencies .....	25.5	14.0	7.0
541840 .....	Media Representatives .....	7.0	14.0	7.0

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS codes	NAICS industry title	Calculated industry specific size standard (\$ million)	Calculated common size standard (\$ million)	Current size standard (\$ million)
541850	Display Advertising	25.5	14.0	7.0
541860	Direct Mail Advertising	19.0	14.0	7.0
541870	Advertising Material Distribution Services	19.0	14.0	7.0
541890	Other Services Related to Advertising	7.0	14.0	7.0
541910	Marketing Research and Public Opinion Polling	19.0	7.0	7.0
541921	Photography Studios, Portrait	7.0	7.0	7.0
541922	Commercial Photography	5.0	7.0	7.0
541930	Translation and Interpretation Services	7.0	7.0	7.0
541940	Veterinary Services	5.0	7.0	7.0
541990	All Other Professional, Scientific and Technical Services	7.0	7.0	7.0
811212	Computer and Office Repair and Maintenance	19.0	25.5	25.0

Reducing size standards would decrease the number of firms that can participate in Federal financial and procurement assistance. Furthermore, lowering size standards for those 14 industries would cut off nearly 1,200 currently eligible small business firms from those very programs, which would run counter to what the Federal government is trying to do for small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, SBA has decided not to propose to reduce the size standards for those industries. SBA has decided to retain the current size standards in this proposed rule. SBA invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions. SBA intends for the proposed size standards, if adopted, to remain in effect unless and until it receives information or data that suggests a change is needed.

Based on comparisons between industry specific size standards and common size standards within each Industry Group, SBA finds that common size standards are more appropriate for several reasons. First, analyzing industries at a more aggregated Industry Group level simplifies size standards analysis and the results are more consistent among related industries. Second, in most cases, industries within each Industry Group currently have the same size standards and it is better to keep the revised size standards also the same. Third, within each Industry Group many of the same businesses tend to operate in the same multiple industries. Establishing the common size standard would, therefore, better reflect the Federal marketplace in those industries than establishing different size standards for each industry. Fourth, industry specific size standards and common size standards are mostly within a reasonably close range.

For industries where both industry specific size standards and common size standards have been derived, SBA, for the above reasons, proposes to apply common size standards. For industries

(including sub-industries) where common size standards have not been estimated, SBA proposes to apply industry specific size standards.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and Jobs Act. Therefore, SBA proposes to retain the current size standards for those industries for which its analyses suggested decreasing their size standards. Thus, of the 45 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81 that were reviewed in this proposed rule, SBA proposes to increase size standards for 36 industries and one sub-industry and retain current standards for 10 industries and two sub-industries. As discussed above, SBA also proposes to eliminate Map Drafting Services as an “exception” to NAICS 541340, Drafting Services. Industries and their proposed size standards are shown in Table 7.

TABLE 7—SUMMARY OF PROPOSED REVISIONS TO SIZE STANDARDS

NAICS codes	NAICS industry title	Proposed size standard (\$ million)	Current size standard (\$ million)
541110	Offices of Lawyers	\$10.0	\$7.0
541191	Title Abstract and Settlement Offices	10.0	7.0
541199	All Other Legal Services	10.0	7.0
541211	Offices of Certified Public Accountants	14.0	8.5
541213	Tax Preparation Services	14.0	7.0
541214	Payroll Services	14.0	8.5
541219	Other Accounting Services	14.0	8.5
541310	Architectural Services	19.0	4.5
541320	Landscape Architectural Services	19.0	7.0
541330	Engineering Services	19.0	4.5
Except	Marine Engineering and Naval Architecture	25.5	18.5
541340	Drafting Services	19.0	7.0
541350	Building Inspection Services	19.0	7.0
541360	Geophysical Surveying and Mapping Services	19.0	4.5
541370	Surveying and Mapping (except Geophysical) Services	19.0	4.5

TABLE 7—SUMMARY OF PROPOSED REVISIONS TO SIZE STANDARDS—Continued

NAICS codes	NAICS industry title	Proposed size standard (\$ million)	Current size standard (\$ million)
541380	Testing Laboratories .....	19.0	12.0
541511	Custom Computer Programming Services .....	25.5	25.0
541512	Computer Systems Design Services .....	25.5	25.0
541513	Computer Facilities Management Services .....	25.5	25.0
541519	Other Computer Related Services .....	25.5	25.0
541611	Administrative Management and General Management Consulting Services .....	14.0	7.0
541612	Human Resources Consulting Services .....	14.0	7.0
541613	Marketing Consulting Services .....	14.0	7.0
541614	Process, Physical Distribution and Logistics Consulting Services .....	14.0	7.0
541618	Other Management Consulting Services .....	14.0	7.0
541620	Environmental Consulting Services .....	14.0	7.0
541690	Other Scientific and Technical Consulting Services .....	14.0	7.0
541720	Research and Development in the Social Sciences and Humanities .....	19.0	7.0
541810	Advertising Agencies .....	14.0	7.0
541820	Public Relations Agencies .....	14.0	7.0
541830	Media Buying Agencies .....	14.0	7.0
541840	Media Representatives .....	14.0	7.0
541850	Display Advertising .....	14.0	7.0
541860	Direct Mail Advertising .....	14.0	7.0
541870	Advertising Material Distribution Services .....	14.0	7.0
541890	Other Services Related to Advertising .....	14.0	7.0
811212	Computer and Office Repair and Maintenance .....	25.5	25.0

### Evaluation of Dominance in Field of Operation

In the industries and sub-industries for which SBA proposes to revise size standards, there are no individual firms at or below the proposed size standard large enough to dominate their field of operation. A firm at the proposed size standard in each of these industries generates less than two percent of total industry receipts. This level of market share effectively precludes a firm at or below the proposed size standard from exerting a controlling effect on the industry.

### Request for Comments

SBA invites public comments on the proposed rule, especially on the following areas.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: \$5.0 million, \$7.0 million, \$10.0 million, \$14.0 million, \$19.0 million, \$25.5 million, \$30.0 million and \$35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate, or suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry or sub-industry. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether an employee based

standard for certain industries or sub-industries is a more suitable measure of size and what that employee level should be.

3. For industries within several Industry Groups, including Legal Services (NAICS 5411), Accounting and Related Services (NAICS 5412), A&E and Related Services (NAICS 5413, except for the exceptions), Specialized Design Services (NAICS 5414), Computer Related Services (NAICS 5415 and NAICS 811212), Consulting Services (NAICS 5416), Advertising and Related Services (NAICS 5418) and Other Professional, Scientific, and Technical Services (NAICS 5419), SBA proposes a common size standard. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt a common size standard for those industries or establish a separate size standard for each industry.

b. Whether the proposed common size standards for those industries are at the correct levels or what are more appropriate size standards if the proposed standards are not suitable.

4. SBA proposes to increase the size standard for Marine Engineering and Naval Architecture, one of the three exceptions under NAICS 541330, to \$25.5 million from \$18.5 million. For the other two exceptions under NAICS 541330, namely Military and Aerospace Equipment and Military Weapons and the Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992,

SBA proposes to retain the current \$27.0 million size standard. SBA requests comments, along with supporting information, on whether the proposed size standards are appropriate or suggestions on alternative size standards if the proposed standards are inappropriate.

5. SBA feels that there is no need for a separate size standard for Map Drafting Services for Federal procurement and proposes to remove it as an exception to NAICS 541340. As stated above, there were less than \$10 million in total contracting dollars annually during fiscal years 2007–2009, as compared to more than \$2 billion in total revenue for the industry in this NAICS code. Given this relatively insignificant level of Federal contracting for Map Drafting Services (an “exception” under NAICS 541340, Drafting Services), SBA proposes to eliminate this exception. SBA invites comments on whether SBA should remove or retain the Map Drafting Services as an exception under NAICS 541340.

6. SBA’s proposed size standards are based on its evaluation of five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and the level and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider for assessing industry characteristics when evaluating or revising size standards.

SBA also seeks information on relevant data sources, if available.

7. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

8. For some industries, SBA proposes to increase the existing size standards by a large amount (e.g., for certain A&E industries, proposed size standards are more than three times the current size standards) while for others the proposed increases are modest. SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

9. SBA requests comments on whether it should lower size standards. SBA has proposed not to reduce small business size standards where applying its "Size Standards Methodology," might suggest lowering them. Rather, SBA opted to retain the current standards for those industries. SBA explained its reasons for this in the Supplementary Information above. SBA seeks comments, as it does in its "Size Standards Methodology" (see Policy Issue i on page 47) on whether it should reduce size standards at all. Because this is a policy issue, please provide documentation to reinforce your comments either in support of or opposition to this issue.

10. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal

procurement programs, SBA suggests that commenters provide information on the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services and the degree to which contractors can mark up those costs.

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

The Office of Management and Budget (OMB) has determined that this proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

**Regulatory Impact Analysis**

*1. Is there a need for the regulatory action?*

SBA believes that proposed size standards for a number of industries in NAICS Sector 54, Professional, Scientific and Technical Services, will better reflect the economic characteristics of small businesses and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans and Federal procurement programs intended

for small businesses. Federal procurement provides targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive. In 36 industries and one sub-industry for which SBA has proposed increasing size standards, SBA estimates that about 9,450 additional firms will obtain small business status and become eligible for these programs. That number is 1.2 percent of the total number of firms in those industries defined as small under the current standards. If adopted as proposed, this would increase the small business share of total industry receipts in those industries from about 35.0 percent under the current size standards to 41.0 percent.

The benefits of SBA's proposed increased size standards will accrue to three groups: (1) Businesses that are above the current size standards will gain small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

During fiscal years 2007–2009, nearly 90 percent of Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 36 industries for which SBA has proposed to increase size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could potentially obtain Federal contracts totaling up to \$650 million per year under SBA's small business, 8(a), HUBZone, WOSB, and SDVO SBC Programs and other unrestricted procurements. The added competition for many of these procurements also could result in lower prices to the Government for procurements reserved for small

businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, SBA estimates 75–100 additional loans totaling \$15 million to \$20 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in an increase in small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly the extent of their number and the total amount loaned.

The newly defined small businesses would also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

To the extent that 9,450 additional firms could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database and additional firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, and SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone and SDB businesses that receive price evaluation preferences. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law,

procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standards may have distributional effects among large and small businesses. Although SBA cannot estimate the actual outcome of the gains and losses among small and large businesses with certainty, it can identify several likely impacts. There will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS-NG data only identify the size of businesses receiving Federal contracts as small business or other than small businesses; FPDS-NG does not provide the exact size of the business.

The proposed revisions to the existing size standards for Professional, Scientific and Technical Services industries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

#### **Executive Order 13563**

A description of the need for this regulatory action and benefits and costs

associated with this action including possible distributions impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups, representing various industry Sectors including Professional Scientific and Technical Services. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. Several of these groups expressed concerns and suggestions for size standards for a number of industries in NAICS Sector 54.

Also, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) and a several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of NAICS Sector 54, Professional, Scientific and Technical Services, is consistent with Sector 6 of EO 13653, 6. calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010 the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed

review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

#### Executive Order 12988

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

#### Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the 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 would not impose new reporting or record keeping requirements, other than those required of SBA.

#### Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in NAICS Sector 54, Professional, Scientific and Technical Services. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans and other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA's description and estimate of the number of small entities 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 which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

*(1) What is the need for and objective of the rule?*

As described above in the supplementary section, SBA reviewed and modified size standards for NAICS 541310, NAICS 541330, NAICS 541340, NAICS 541360 and NAICS 541370 in 1998 and 1999. Most of the remaining size standards in NAICS Sector 54, Professional, Scientific and Technical

Services, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

*(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?*

If the proposed rule is adopted in its present form, SBA estimates that about 9,450 additional firms will become small because of increases in size standards in 36 industries and one sub-industry. That represents 1.2 percent of total firms in those industries and sub-industries. This will result in an increase in the small business share of total industry receipts for this Sector from about 35.0 percent under the current size standard to 41.0 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries because businesses in this Sector have been requesting SBA to increase these standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

*(3) What are the projected reporting, record keeping and other compliance requirements of the rule and an estimate of the classes of small entities, which will be subject to the requirements?*

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the CCR database and certify at least annually that they are small in the Online Representations and

Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

*(4) What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?*

Under § 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. 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 the Agency 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.

#### 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 proposes to amend part 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(b), 637(a), 644 and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

2. In § 121.201, in the table, revise the entries for “541110”, “541191”, “541199”, “541211”, “541213”, “541214”, “541219”, “541310”, “541320”, “541330 introductory entry and third sub-entry”, “541340”, “541350”, “541360”, “541370”, “541380”, “541511”, “541512”, “541513”, “541519 introductory entry”, “541611”, “541612”, “541613”, “541614”, “541618”,

“541620”, “541690”, “541720”, “541810”, “541820”, “541830”, “541840”, “541850”, “541860”, “541870”, “541890”, and “811212” to read as follows:

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

\* \* \* \* \*

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
541110	Offices of Lawyers	\$10.0	
541191	Title Abstract and Settlement Offices	10.0	
541199	All Other Legal Services	10.0	
541211	Offices of Certified Public Accountants	14.0	
541213	Tax Preparation Services	14.0	
541214	Payroll Services	14.0	
541219	Other Accounting Services	14.0	
541310	Architectural Services	19.0	
541320	Landscape Architectural Services	19.0	
541330	Engineering Services	19.0	
* * * * *			
Except, 541340	Marine Engineering and Naval Architecture	25.5	
541340	Drafting Services	19.0	
541350	Building Inspection Services	19.0	
541360	Geophysical Surveying and Mapping Services	19.0	
541370	Surveying and Mapping (except Geophysical) Services	19.0	
541380	Testing Laboratories	19.0	
* * * * *			
541511	Custom Computer Programming Services	25.5	
541512	Computer Systems Design Services	25.5	
541513	Computer Facilities Management Services	25.5	
541519	Other Computer Related Services	25.5	
* * * * *			
541611	Administrative Management and General Management Consulting Services	14.0	
541612	Human Resources Consulting Services	14.0	
541613	Marketing Consulting Services	14.0	
541614	Process, Physical Distribution and Logistics Consulting Services	14.0	
541618	Other Management Consulting Services	14.0	
541620	Environmental Consulting Services	14.0	
541690	Other Scientific and Technical Consulting Services	14.0	
* * * * *			
541720	Research and Development in the Social Sciences and Humanities	19.0	
541810	Advertising Agencies <sup>10</sup>	14.0	
541820	Public Relations Agencies	14.0	
541830	Media Buying Agencies	14.0	
541840	Media Representatives	14.0	
541850	Display Advertising	14.0	
541860	Direct Mail Advertising	14.0	
541870	Advertising Material Distribution Services	14.0	
541890	Other Services Related to Advertising	14.0	
* * * * *			
811212	Computer and Office Repair and Maintenance	25.5	
* * * * *			

Dated: March 9, 2011.

**Karen G. Mills,**  
Administrator.

[FR Doc. 2011-5876 Filed 3-15-11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM400 Special Conditions No. 25-11-09-SC]

#### Special Conditions: Boeing Model 747-8/-8F Airplanes, Interaction of Systems and Structures

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes to amend Special Conditions No. 25-388-SC for the Boeing Model 747-8/-8F airplanes. These special conditions were previously issued July 29, 2009, and became effective September 10, 2009. These special conditions are being amended to include additional criteria addressing the Outboard Aileron Modal Suppression System. The 747-8/-8F will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include their effects on the structural performance. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the 747-8/-8F airplanes.

**DATES:** Comments must be received on or before April 15, 2011.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM400, 1601 Lind Avenue SW., Renton, Washington 98057-3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM400. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Carl Niedermeyer, FAA, Airframe & Cabin

Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2279; e-mail [Carl.Niedermeyer@faa.gov](mailto:Carl.Niedermeyer@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

##### Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747-8 passenger airplane and the new Model 747-8F freighter airplane. The Model 747-8 and the Model 747-8F are derivatives of the 747-400 and the 747-400F, respectively. Both the Model 747-8 and the Model 747-8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GENx-2B67 engines. The Model 747-8 will have two flight crew and the capacity to carry 605 passengers. The Model 747-8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

These special conditions were originally issued July 29, 2009, and published in the **Federal Register** on August 12, 2009 (74 FR 40479).

##### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that Model 747-8 and 747-8F airplanes (hereafter referred as 747-8/-8F) meet the applicable provisions of part 25, as amended by Amendments 25-1 through 25-117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747-8/-8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these model airplanes.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747-8/-8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the 747-8/-8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

##### Novel or Unusual Design Features

The Boeing Model 747-8/-8F is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the