change, competition among industries, industry growth trends, and impacts on SBA programs.

SBA conducts a statistical analysis of data on the primary factors, and secondary factors as appropriate, to establish a size standard for a specific industry. As a starting point, SBA presumes $7.0 million as an appropriate size standard for the services, retail trade, construction, and other industries with receipts based size standards; 500 employees for the manufacturing, mining and other industries with employee based size standards; and 100 employees for the wholesale trade industries. These three levels, referred to as ''anchor size standards,'' are not minimum size standards, but rather benchmarks or starting points. To the extent an industry displays ''differing industry characteristics,'' a size standard higher, or in some cases lower, than an anchor size standard is supportable. ''Size Standards Methodology'' includes an extensive discussion of the statistical analyses involved in size standards determination.

SBA welcomes comments from the public on a number of issues. SBA is aware that different choices among size standards can involve complex tradeoffs among relevant variables; SBA invites comments on how to identify and weigh those variables. Suggestions are invited on alternative methodologies for determining small businesses; on how these size standards affect competition in general and within the specific industry; on alternative or additional factors that SBA should consider; on whether SBA's approach to small business size standards makes sense in the current economic environment; on whether SBA's using anchor size standards is appropriate in the current economy; on whether there are gaps in SBA's methodology because of the lack of comprehensive data; and on alternative datasets SBA should consider for a specific sector.

The concluding section of ''Size Standards Methodology'' raises a number of policy questions that SBA has to address in developing a robust methodology for establishing, evaluating and revising its small business size standards. Examples include how high of a size standard is too high? Should there be a single basis for all size standards (*i.e.*, employees or annual receipts)? Should there be a fixed number of ''bands'' of size standards or separate standard for each industry? ''Size Standards Methodology'' includes several other issues, including some that tend to be on-going questions.

SBA encourages the public to review ''Size Standards Methodology'' and to comment on it either in whole or in part.

Dated: October 9, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–25196 Filed 10–20–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF70

Small Business Size Standards: Other Services Industries

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase the small business size standards for 18 industries in North American Industry Classification System (NAICS) Sector 81, Other Services, and retain the current standards for the remaining 30 industries in the Sector. As part of its ongoing initiative to review all size standards, SBA has evaluated each industry in 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 industries grouped by an NAICS Sector. As part of this series of proposed rules SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to modify small business size standards in Sector 44–45, Retail Trade and, in Sector 72, Accommodation and Food Services. SBA has established its ''Size Standards Methodology'' and published elsewhere in this issue of the **Federal Register** a notice of its availability on SBA's Web site at *http://www.sba.gov/size*. SBA has applied ''Size Standards Methodology'' to this proposed rule.

DATES: SBA must receive comments to this proposed rule on or before December 21, 2009.

ADDRESSES: You may submit comments, identified by RIN 3245–AF70 by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov*, please submit the information to U.S. Small Business Administration, Khem R. Sharma, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to *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: Carl J. Jordan, Program Analyst, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business definitions (referred to as size standards) for 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 size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five 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 to early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of 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).

The evaluation of the size standards in the Other Services is also necessary to account for changes in the industry classification. The development of NAICS in 1997 included significant changes in the definition of industries compared to the earlier Standard Industrial Classification (SIC) system. The NAICS update used in the 2002 Economic Census included further changes in industry definitions from the 1997 NAICS used in the 1997 Economic Census. These changes in the industry classification have led SBA to evaluate if the existing size standards for the Other Services industries are appropriate. Most of the size standards for industries in Sector 81, Other Services, have not been reviewed since the 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation.

SBA recognizes that industrial changes 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, where necessary, to make revisions to current size standards. 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.

Rather than review all size standards at one time, SBA believes that a more manageable approach would be to examine a group of related industries within an NAICS Sector in phases. Except for manufacturing, an NAICS Sector generally consists of 25 to 75 industries. Once a review of size standards for industries within an NAICS Sector is completed, SBA will issue a proposed rule for those industries in which the analysis of industry data supports a change to the existing size standards. SBA expects to complete a review of all NAICS Sectors in two years.

Below is a discussion of SBA's size standards methodology, including analyses of industry structure, Federal procurement trends and other factors for industries within Sector 81, Other Services, and the impact of the proposed revisions to size standards on Federal small businesses assistance.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' that it uses for developing and modifying size standards when necessary. SBA has published the document which is available at *http://www.sba.gov/size.* SBA does not apply all features of its ''Size Standards Methodology'' to all cases because not all are appropriate. However, SBA does make it available in its entirety for parties with an interest in SBA's overall approach to evaluating, establishing and modifying small business size standards. SBA always explains its analysis in the proposed and final rules that relate to size standards for specific industries. The following discussion is of SBA's size standard analysis applied to industries in Sector 81, Other Services.

SBA welcomes comments from the public on a number of issues. SBA is aware that different choices among size standards can involve complex tradeoffs among relevant variables; SBA invites comments on how to identify and weigh those variables. Suggestions are invited on alternative methodologies for determining small businesses; on how these size standards affect competition in general and within the specific industry; on alternative or additional factors that SBA should consider; on whether SBA's approach to small business size standards makes sense in the current economic environment; on whether SBA's using anchor size standards is appropriate in the current economy; on whether there are gaps in SBA's methodology because of the lack of comprehensive data; and on alternative datasets SBA should consider for a specific sector.

Congress granted SBA's Administrator discretion to establish detailed 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)) requires that size standards vary by industry to the extent necessary to reflect differing characteristics among various industries. Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. By examining data on economic characteristics defining the industry structure (as described below), the small business segment of an industry is identified. In addition to the industry structure, SBA also takes into consideration its program objectives and whether a size standard successfully excludes businesses that are dominant in the industry. Discussed below is SBA's analysis of the economic characteristics of each industry in Sector 81, Other Services, the impact of proposed size standards on SBA programs, and the evaluation of whether a revised size standard would exclude dominant firms in the industry from being considered as small.

Industry Analysis

For the current comprehensive size 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 SBA's inception in 1953 and shortly thereafter established a receipts based anchor size standard of $1 million in average annual receipts for the nonmanufacturing industries. The receipts based anchor size standard has been adjusted periodically for inflation. The inflation adjustment over the years has increased it to $7.0 million today. Since 1986, all industries in the Wholesale Trade Sector have had the 100-employee size standard for all non-procurement SBA programs. For procurement purposes, the size standard for a non-manufacturer is 500 employees.

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 size standard. 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 precise small business size standards for each industry. Otherwise, theoretically, that could require that the number of size standards be as high as the number of industries for which SBA establishes size standards. SBA presumes an anchor size standard is appropriate size standard for a particular industry unless that industry displays significantly different economic characteristics, as compared to the characteristics of industries with the anchor size standard, thereby suggesting a need for revision to an existing size standard.

When evaluating a size standard, the economic characteristics of a specific industry under review are compared to the average characteristics of industries with one of the three anchor size standards (referred to as ''anchor comparison group'') to assess industry structure and to determine whether the industry displays significant differences relative to the industries in the anchor size standard 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 would be considered appropriate for that industry. SBA will consider adopting a size standard below the anchor size standard only 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 considered 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. To determine the level of a size standard above the anchor size standard, the characteristics of a second comparison group are analyzed. For industries with receipts based size standards, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. 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 equaling $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates in 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)). SBA also evaluates the possible impact of both existing and revised size standards on Federal contracting assistance to small businesses as an additional primary factor. SBA generally considers these five factors as 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 relevant to the decision on a size standard for a particular industry (such as technological changes, growth trends, SBA financial assistance and other program factors, *etc.*). Public comments on a proposed size standard rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below is a brief description of each of the five primary evaluation factors. A more detailed description of this analysis is provided in the ''SBA Size Standards Methodology'' paper which is available 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 standards (including Other Services industries), the simple average firm size is calculated as total receipts of an industry divided by the total number of firms in that industry. The weighted average firm size is computed as the sum of weighted simple average firm size 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 would 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 would be a basis to adopt the anchor size standard or, in rare cases, a standard lower than the anchor.

2. *Startup costs.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital to start and maintain a viable business. If firms entering a particular industry have greater capital requirements than firms do in industries in the anchor comparison group, this will form 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 calculates the average assets size within a particular industry by applying the sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2006–2008 to the average receipts size of firms in that industry. An industry with a significantly higher level of average assets size than that of the anchor comparison group is likely to have higher startup costs, which would support a size standard higher than the anchor size standard. 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, would be considered appropriate.

3. *Industry competition.* Industry competition is generally assessed by measuring 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 then 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 companies, SBA would establish a size standard relatively higher than the anchor size standard. SBA would not consider the four-firm concentration ratio as an important factor in assessing a size standard 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 total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor SBA evaluates in assessing competition within an industry. If the preponderance of an industry's economic activity is attributable to smaller firms, this would indicate that small businesses are competitive in that industry and supports adopting the anchor size standard. A size standard higher than the anchor size standard would be supported for an industry in which the distribution of firms indicates that most of the economic activity is concentrated among the larger firms.

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 Gini coefficient values vary between zero and one. If receipts are distributed perfectly equally among all the firms in an industry, the value of the Gini coefficient would equal to zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient would equal to 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 would, 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, would be adopted.

5. *Impact on SBA programs.* SBA examines the possible impact a size standard change may have on the level of Federal small business assistance. This assessment most often 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, a justification would exist for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide share may be attributed to a variety of reasons, 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. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

For this proposed rule, SBA considered Federal procurement trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percentage points 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 2006–2008 (the latest years for which complete Federal procurement data are available). SBA has 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.

Another factor that SBA evaluates is the impact of a proposed size standard on SBA's loan programs, that is, the volume of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This factor is examined to assess whether the existing or the proposed size standard for a particular industry may be restricting the level of financial assistance to small firms in that industry. If the analysis shows a reduction in financial assistance to small businesses, a higher size standard would be supportable. 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 in size than the existing size standard, consideration of this factor for determining the size standard may not be necessary.

Sources of Industry and Program Data

The primary source of data for SBA's industry analysis is a special tabulation of the 2002 Economic Census (see *http://www.census.gov/econ/census02/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The special tabulation provides SBA with industry-specific data on the number of firms, number of establishments, number of employees, annual payroll and annual receipts of companies by the size of firm reporting the data to 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 in that 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 Census data were not available due to disclosure prohibitions, SBA either estimated missing values using available relevant data or, examined data at a higher level of industry aggregation, such as at the 2- or 3-digit NAICS level. In some instances, SBA had to base its analysis only on those factors for which data were available or missing values could be estimated. Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the ''SBA Size Standards Methodology'' paper, which is available at *http://www.sba.gov/size.*

Sales to total assets ratios used to calculate average assets size are from the Risk Management Association's Annual Statement Studies, 2006–2008.

To evaluate Federal contracting trends, SBA examined Federal contract award data for fiscal years 2006–2008 from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG). SBA's internal data on its guaranteed loan programs for fiscal years 2006–2008 were analyzed to assess the impact on financial assistance to small businesses.

Dominant in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(c)) 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 of a size standard whether a business concern at a proposed size standard would be considered dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard or other factors that may indicate whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged. If SBA's analysis indicates that a proposed size standard would include a dominant firm, a lower size standard would be considered to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive size standards review, SBA has proposed to select a size standard for an industry from a limited number of receipts based size standard 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 32 different levels of receipts based size standards, ranging from $0.75 million to $35.5 million, with many of those levels applying to one or just a few industries only. SBA believes that such a large number of variations with small variations are both unnecessary and difficult to justify analytically. Simplifying the administration of SBA's size standards to a fewer number of size standard levels will produce more common size standards for businesses operating in multiple related industries and greater consistency in the size standards among industries that are similar in their economic characteristics.

This proposed rule, therefore, applies one of eight receipts based size standards to each industry in Sector 81, Other Services. These eight ''fixed'' size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30.0 million and $35.5 million. These eight receipts based size standard levels are established by taking into consideration the minimum, maximum, and the more commonly used receipts based size standards. Currently, the more commonly used receipts based size standards cluster around the following six levels –$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 has selected $7 million as one of eight fixed levels of receipts based size standards because this is also an anchor standard for receipts based standards. A lower or minimum receipts based size level is established at $5 million. Excluding monetary standards for agriculture and those based on net commissions (such as real estate brokers and travel agents), $5 million is in the close neighborhood of the current minimum receipts based standard of $4.5 million. Among the higher levels size clusters, $10 million, $14 million, $25.5 million, and $35.5 million are selected as other four levels of the fixed size standards. Because of a large gap between two of the size standard intervals, SBA has 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.

In a further effort to simplify size standards, SBA may propose a common size standard for certain closely related group of 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 same two industries, establishing the common size standard would better reflect the industry marketplace than establishing separate size standards for each of those industries. This situation has led SBA to establish a common size standard for the information technology (IT) services industries (NAICS 541511, NAICS 541112, NAICS 541513 and NAICS 541519), even though the industry data might support a distinct size standard for each industry. Businesses engaged in IT related services typically perform activities in two or more other related industries. Consequently, SBA has continued to use a common size standard for Computer and Office Machine Repair Maintenance industry in the Other Services Sector (NAICS 811211) and Computer Systems Design and Related Services sector (NAICS 541511–541519). Whenever SBA proposes a common size standard for closely related industries it will provide a justification for that in the proposed rule.

Evaluation of Industry Structure

SBA has evaluated the structure of each industry in the Other Services Sector to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry in that Sector to the average characteristics of industries in two comparison groups. The first comparison group is comprised of all industries with $7.0 million size standards—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 at or different from the anchor size standard, this is the most logical set of industries to group together for the industry analysis. 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 would be considered an appropriate standard for that industry. If an individual industry's structure is significantly different from that of the anchor group, a size standard lower or higher than the anchor size standard would 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, with the average size standard for the group equaling $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) [a]	Gini coefficient
	Simple Average	Weighted Average				
Anchor Level	1.19	17.64	0.71	18.7	189.9	0.599
Higher Level	4.77	52.27	2.05	22.3	639.4	0.725

[a] 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 shown in Table 1, SBA derives a separate size standard based on the amount of differences between their values for an industry under review and those for the two comparison groups. An estimated size standard that is supported by each industry factor is derived by comparing its value for a specific industry under review to the corresponding value for the two comparison groups. If the industry value for a particular factor is near that for the anchor comparison group, the $7.0 million anchor size standard would be considered appropriate for that factor.

If an industry's value for a factor is significantly above or below the anchor comparison group value, a size standard above or below the $7.0 million anchor size would be warranted. The level of the new size standard in these cases is derived 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 size equals $3.0 million, SBA's analysis would support a size standard of $19 million. The $3.0 million level is 50.6 percent between the average firm size of $1.19 million for the anchor comparison group and $4.77 million for the higher level comparison group (($3.00 million − $1.19 million) ÷ ($4.77 million − $1.19 million) = 0.506 or 50.6%). 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 $18.12 million ([{$29.0 million − $7.0 million} * 0.506] + $7.0 million = $18.12 million). The final step rounds the estimated size standard of $18.12 million to the nearest fixed size standard level, in this case to $19 million.

SBA applies the above method of 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 at *http://www.sba.gov/size.* 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)
<1.03	<16.07	<0.65	<169.4	<0.593	5.0
1.03 to1.43	16.07 to 20.00	0.65 to 0.80	169.4 to 220.5	0.593 to 0.608	7.0
1.44 to 2.00	20.01 to 25.51	0.81 to 1.02	220.6 to 292.0	0.609 to 0.628	10.0
2.01 to 2.74	25.52 to 32.59	1.03 to 1.29	292.1 to 384.0	0.629 to 0.653	14.0
2.75 to 3.67	32.60 to 41.65	1.30 to 1.64	384.1 to 501.5	0.654 to 0.686	19.0
3.68 to 4.57	41.66 to 50.30	1.65 to 1.97	501.6 to 613.8	0.687 to 0.718	25.5
4.58 to 5.38	50.31 to 58.17	1.98 to 2.28	613.9 to 716.1	0.719 to 0.746	30.0
>5.38	>58.17	>2.28	>716.1	>0.746	35.5

Table 3 shows the results of analyses of industry data and latest Federal contracting trends for each industry in Sector 81, Other Services. Each NAICS industry row in columns 2, 3, 4, 6, 7, and 8 shows two numbers. The upper number is the value for the industry factor shown on the top of the column, while 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 is less than 40 percent, no size standard is estimated for that factor and column 5 is left blank. The value for Federal contracting factor in column 8 is shown only for industries that averaged $100 million or more annually in Federal contracting dollars during fiscal years 2006–2008. A size standard for that factor is derived only if the small business share of total Federal contracting dollars is 10 percentage points less than the small business share of industry's total receipts. Otherwise column 8 is also left blank. Column 9 shows the proposed or revised size standard for each industry in the Other Services Sector, calculated as the average of size standards supported by each industry factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA ''Size Standards Methodology'' paper which is available at *http://www.sba.gov/size.* For comparison, the current size standards for industries in Sector 81 are also shown in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH INDUSTRY FACTOR

[In millions of dollars]

(1) NAICS	(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) Revised size standard	(10) Current size standard
811111	$0.4	$1.3	$0.1	1.9	$150.8	0.154	....	$5.0	$7.0
General Automotive Repair	$5.0	$5.0	$5.0	....	....	$5.0	....	....	....
811112	$0.4	$1.4	$0.1	4.6	$14.3	0.142	....	$5.0	$7.0
Automotive Exhaust System Repair	$5.0	$5.0	$5.0	....	....	$5.0	....	....	....
811113	$0.4	$1.0				0.066		$5.0	$7.0
Automotive Transmission Repair	$5.0	$5.0				$5.0			
811118	$0.4	$2.0	$0.1	5.8	$39.5	0.210	−86.6	$7.0	$7.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH INDUSTRY FACTOR—Continued

[In millions of dollars]

(1) NAICS	(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) Revised size standard	(10) Current size standard
Other Automotive Mechanical and Electrical Repair and Maintenance	$5.0	$5.0	$5.0			$5.0	$14.0		
811121	$0.7	$2.3	$0.2	2.5	$142.2	0.252		$5.0	$7.0
Automotive Body, Paint, and Interior Repair and Maintenance	$5.0	$5.0	$5.0			$5.0			
811122	$0.8	$51.3	$0.3	27.6	$260.8	0.533		$10.0	$7.0
Automotive Glass Replacement Shops	$5.0	$30.0	$5.0			$5.0			
811191	$0.8	$13.2		17.3	$169.5	0.473		$5.0	$7.0
Automotive Oil Change and Lubrication Shops	$5.0	$5.0				$5.0			
811192	$0.4	$2.0	$0.5	6.1	$78.2	0.262		$5.0	$7.0
Car Washes	$5.0	$5.0	$5.0			$5.0			
811198	$0.7	$11.8	$0.2	24.0	$95.6	0.535	−18.5	$7.0	$7.0
All Other Automotive Repair and Maintenance	$5.0	$5.0	$5.0			$5.0	$10.0		
811211	$0.4	$6.9		27.4	$101.7	0.482		$5.0	$7.0
Consumer Electronics Repair and Maintenance	$5.0	$5.0				$5.0			
811212	$1.2	$18.1	$0.4	22.4	$356.8	0.678	−25	$14.0	$25.0
Computer and Office Machine Repair and Maintenance	$7.0	$7.0	$5.0			$19.0	$30.0		
811213	$1.3	$11.5				0.587	−38.0	$10.0	$7.0
Communication Equipment Repair and Maintenance	$7.0	$5.0		23.8	$120.5	$5.0	$14.0		
811219	$1.9	$30.6	$0.8	42.4	$540.1	0.731	−11.6	$19.0	$7.0
Other Electronic and Precision Equipment Repair and Maintenance	$10.0	$14.0	$7.0		$25.5	$30.0	$10.0		
811310	$0.8	$6.5	$0.3	4.8	$233.8	0.494	−27.4	$7.0	$7.0
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	$5.0	$5.0	$5.0			$5.0	10.0		
811411	$0.3	$0.6		3.7	$6.0	0.064		$5.0	$7.0
Home and Garden Equipment Repair and Maintenance	$5.0	$5.0				$5.0			
811412	$0.8	$52.4	$0.2	0.0	$0.0	0.646		$14.0	$7.0
Appliance Repair and Maintenance	$5.0	$30.0	$5.0			$14.0			
811420	$0.2	$0.7		2.1	$6.8	0.067		$5.0	$7.0
Reupholstery and Furniture Repair	$5.0	$5.0				$5.0			
811430	$0.1	$0.5		7.7	$3.6	0.044		$5.0	$7.0
Footwear and Leather Goods Repair	$5.0	$5.0				$5.0			
811490	$0.3	$1.6	$0.1	0.0	$0.0	0.263		$5.0	$7.0
Other Personal and Household Goods Repair and Maintenance	$5.0	$5.0				$5.0			
812111	$0.1	$7.7		16.2	$20.4	0.207		$5.0	$7.0
Barber Shops	$5.0	$5.0				$5.0			
812112	$0.2	$23.0	$0.1	10.4	$391.6	0.246		$5.0	$7.0
Beauty Salons	$5.0	$10.0	$5.0			$5.0			
812113	$0.1	$0.3		1.9	$4.2	0.019		$5.0	$7.0
Nail Salons	$5.0	$5.0				$5.0			
812191	$1.3	$101.0		60.2	$253.9	0.802		$19.0	$7.0
Diet and Weight Reducing Centers	$7.0	$35.5			$10.0	35.5			
812199	$0.2	$1.8		5.5	$27.5	0.175		$5.0	$7.0
Other Personal Care Services	$5.0	$5.0				$5.0			
812210	$1.0	$48.9	$0.6	19.4	$536.7	0.353		$7.0	$7.0
Funeral Homes and Funeral Services	$5.0	$25.5	$5.0			$5.0			
812220	$0.7	$54.8	$1.4	36.6	$295.8	0.668		$19.0	$7.0
Cemeteries and Crematories	$5.0	$30.0	$19.0			$19.0			

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH INDUSTRY FACTOR—Continued

[In millions of dollars]

(1) NAICS	(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) Revised size standard	(10) Current size standard
812310	$0.3	$36.3	$0.2	28.6	$247.6	0.427		$7.0	$7.0
Coin-Operated Laundries and Drycleaners	$5.0	$19.0	$5.0			$5.0			
812320	$0.3	$1.7	$0.1	2.6	$50.9	0.187		$5.0	$4.5
Drycleaning and Laundry Services (except Coin-Operated)	$5.0	$5.0	$5.0			$5.0			
812331	$3.9	$38.3	$1.9	31.6	$243.8	0.768		$30.0	$14.0
Linen Supply	$25.5	$19.0	$25.5			$35.5			
812332	$9.7	$157.3	$5.7	61.1	$938.1	0.864		$35.5	$14.0
Industrial Launderers	$35.5	$35.5	$35.5		$35.5	$35.5			
812910	$0.2	$2.0		6.3	$23.3	0.118		$5.0	$7.0
Pet Care (except Veterinary) Services	$5.0	$5.0				$5.0			
812921	$1.7	$103.5	$0.7	45.3	$354.3	0.725		$19.0	$7.0
Photo Finishing Laboratories (except One-Hour)	$10.0	$35.5	$7.0		$14.0	$30.0			
812922	$0.5	$74.5		34.0	$61.3	0.391		$14.0	$7.0
One-Hour Photo Finishing	$5.0	$35.5				$5.0			
812930	$2.8	$122.2	$2.7	47.4	$819.1	0.833		$35.5	$7.0
Parking Lots and Garages	$19.0	$35.5	$35.5		$35.5	$35.5			
812990	$0.4	$11.8	$0.2	19.7	$248.3	0.422		$5.0	$7.0
All Other Personal Services	$5.0	$5.0	$5.0			$5.0			
813211	$3.5	$47.6	$15.0	15.3	$1,021.8	0.795		$30.0	$7.0
Grantmaking Foundations	$19.0	$25.5	$35.5			$35.5			
813212	$3.1	$18.4	$2.3	24.0	$464.2	0.730		$25.5	$7.0
Voluntary Health Organizations	$19.0	$7.0	$35.5			$30.0			
813219	$4.7	$84.5		14.6	$432.8	0.821		$35.5	$7.0
Other Grant Making and Giving Services	$30.0	$35.5				35.5			
813311	$2.3	$189.8		46.5	$460.7	0.794		$25.5	$7.0
Human Rights Organizations	$14.0	$35.5			$19.0	35.5			
813312	$1.1	$43.6	$1.5	22.8	$249.5	0.644		$14.0	$7.0
Environment, Conservation and Wildlife Organizations	$7.0	$25.5	$19.0			14.0			
813319	$0.8	$8.2	$0.7	11.8	$109.9	0.537		$5.0	$7.0
Other Social Advocacy Organizations	$5.0	$5.0	$7.0			$5.0			
813410	$0.5	$5.7	$0.7	2.6	$96.4	0.393		$5.0	$7.0
Civic and Social Organizations	$5.0	$5.0	$7.0			$5.0			
813910	$1.0	$13.8	$0.9	3.9	$168.7	0.601		$7.0	$7.0
Business Associations	$7.0	$5.0	$10.0			$7.0			
813920	$1.6	$17.2	$1.6	6.4	$176.6	0.672		$14.0	$7.0
Professional Organizations	$10.0	$7.0	$19.0			$19.0			
813990	$0.7	$19.0	$0.8	8.3	$315.6	0.465		$7.0	$7.0
Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$5.0	$7.0	$10.0			$5.0			

As can be seen in Table 3, the results of SBA analyses of industry and Federal contracting data would support reducing the current size standards for 20 of 48 industries in the Other Services Sector. However, SBA believes that lowering size standard for those industries would not be in the best interests of small businesses in these difficult times when the economy is in a deep recession.

Aiming to promote economic recovery and to preserve and create jobs the U.S. Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act). The purposes and goals of the Recovery Act are to promote economic recovery and to preserve and create jobs.

Under the Recovery Act, SBA has changed its various programs to assist small businesses, including the following: (1) Temporary reduction or elimination of fees in the 7(a) and 504 loan guarantee programs; (2) creation of a temporary 90 percent guarantee loan program; (3) creation of a temporary Secondary Market Guarantee Authority to provide a Federal guarantee for pools of first lien 504 loans that are to be sold to third-party investors; (4) new authority for refinancing community development loans under the 504 program; (5) revision of the job creation goals of the 504 program; (6) simplification of the maximum leverage limits and aggregate investment limits required of Small Business Investment Companies; (7) temporary authority to provide loans on a deferred basis to viable small business concerns that have a qualifying small business loan and are experiencing immediate financial hardship; (8) temporary increase in the surety bond maximum amount; (9)

establishment of a Secondary Market Lending Authority to make loans to systemically important broker dealers in SBA's 7(a) secondary market; and 10) application of SBA's Certified Development Company (CDC) alternative size standard to its 7(a) Business Loan Program (see 13 CFR 121.301).

SBA believes that to reduce size standards and thereby reduce eligibility for those programs, or to reduce the number of firms that can participate in financial and Federal contracting assistance programs would run counter to what it is trying to do for small businesses. Reducing size eligibility for Federal contracting opportunities 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 for those industries. Further, SBA does not anticipate that it will propose to lower size standards after the Recovery Act terminates on September 30, 2010. 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.

Evaluation of Federal Contracting and SBA Loan Data

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 limited data, for the current comprehensive size 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 higher 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 because doing so would result in most cases of designating a size standard more than twice the current size standard. Given the limitations of the FPDS data, and the complex relationships among a number of variables affecting small business participation in the Federal marketplace, SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on 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 to take 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.

Five industries in Sector 81, Other Services, received an average of $100 million or more annually in Federal contracting dollars during fiscal years 2006–2008. These industries include NAICS 811118, NAICS 811198, NAICS 811213, NAICS 811219, and NAICS 811310. Those are the industries that have a Federal contracting factor in column 8 of Table 3. In each of these five industries, the small business share of Federal contracting dollars was more than 10 percentage points lower than small business share of industry's total receipts. Therefore, as shown in Table 3, a separate size standard was estimated for the Federal contracting factor for industries. In all cases, the estimated size standard for the Federal contracting market was higher than the current standard. The latest data show that Federal contracting activity is insignificant for most of the industries in Sector 81 and, for a few industries where it is significant, small businesses seem to be struggling in the Federal marketplace relative to their share in industry's total sales.

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) Loan Program data for fiscal years 2006–2008 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses though that program. For the Other Services industries, primarily small businesses that are much smaller than the current size standards use the 7(a) Loan Program. Based on that analysis and SBA's decision not to reduce any size standards in the proposed rule under the current economic conditions, no size standard needs an adjustment.

Other Considerations

SBA has decided not to review the size standard for NAICS 811212, the Computer and Office Machine Repair and Maintenance industry, at this time and will continue to apply the current $25 million size standard. The history of the Computer and Office Machine Repair industry explains the reasons for this decision. Under the former Standard Industrial Classification (SIC) System, SBA had established a common size standard for all industries in Sector 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, the NAICS replaced the SIC System and moved most of the industries in Sector 737 industry to the Sector 54, ''Professional, Scientific, and Technical Services.'' However, the Computer Maintenance and Repair activity was moved to Sector 81 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.

SBA plans to analyze the industries within the NAICS Sector 54 in the near future and will examine at that time whether to retain the current $25 million size standard for the Computer Services related industries (NAICS 541511–541519) or to propose a different size standard. 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.

SBA does not have industry data for three industries in Sector 81—Religious Organizations (NAICS 813110), Labor Unions and Similar Labor Organizations (NAICS 813930), and Political Organizations (NAICS 813940). SBA's primary source of industry data is a special tabulation of 2002 Economic Census obtained from the Census Bureau. However, the Census Bureau does not collect data on these industries as part of the Economic Census (See ''Religious, Grantmaking, Civic, Professional, and Similar Organizations, 2002'', Other Services (Except Public

Administration), Industry Series, EC02–811–03, November 2004). In the absence of relevant industry data on organizations operating in these industries, SBA is proposing to retain the $7 million current size standard. Although entities in these industries are not-for-profit concerns, a need exists for a numerical size standard for purposes of the Regulatory Flexibility Act. SBA welcomes comments on the suitability of continuing the $7 million size standard for these industries and possible sources of alternative data.

Summary of size standards changes

Based on the analyses of currently available data industry structure and Federal contracting data, SBA proposes to increase size standards for 18 of 47 industries in Sector 81, Other Services, reviewed in this proposed rule. These industries and their proposed size standards are shown in Table 4. The analyses supported retaining the existing standards for 10 industries in that Sector.

SBA's analyses supported a decrease to the current size standard for 19 industries in Other Services. However, as discussed above, SBA feels that proposing to lower small business size standards would be inconsistent with its ongoing effort to promote small business assistance under the Recovery Act. Therefore, SBA proposes to retain the current size standards for those industries. 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.

TABLE 4—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS	Current size standard ($million)	Revised size standard (million)
811122—Automotive Glass Replacement Shops	$7.0	$10.0
811213—Communication Equipment Repair and Maintenance	$7.0	$10.0
811219—Other Electronic and Precision Equipment Repair and Maintenance	$7.0	$19.0
811412—Appliance Repair and Maintenance	$7.0	$14.0
812191—Diet and Weight Reducing Centers	$7.0	$19.0
812220—Cemeteries and Crematories	$7.0	$19.0
812320—Dry-cleaning and Laundry Services (except Coin-Operated)	$4.5	$5.0
812331—Linen Supply	$14.0	$30.0
812332—Industrial Launderers	$14.0	$35.5
812921—Photo Finishing Laboratories (except One-Hour)	$7.0	$19.0
812922—One-Hour Photo Finishing	$7.0	$14.0
812930—Parking Lots and Garages	$7.0	$35.5
813211—Grantmaking Foundations	$7.0	$30.0
813212—Voluntary Health Organizations	$7.0	$25.5
813219—Other Grant Making and Giving Services	$7.0	$35.5
813311—Human Rights Organizations	$7.0	$25.5
813312—Environment, Conservation and Wildlife Organizations	$7.0	$14.0
813920—Professional Organizations	$7.0	$14.0

Evaluation of Dominance in Field of Operation

SBA has determined that for each industry in Sector 81, Other Services, no firm at or below the proposed size standard would be large enough to dominate its field of operation. A firm at the proposed size standard in each of these industries generates less than one 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 this industry.

Request for Comments

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

1. In an effort to simplify size standards, for this proposed rule, SBA has proposed a set of 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. For industries in Sector 81, Other Services, SBA has proposed receipts based size standards ranging from $5 million to $35.5 million. SBA seeks feedback on whether the levels of size standards it proposes seem right given the economic characteristics of each 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 is a more suitable measure of size, and what that employee level should be.

3. SBA's proposed standards are based on its evaluation of five primary factors—average firm size, average assets size (as 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 and other factors that interested parties believe are important to consider for describing industry characteristics when SBA evaluates its size standards. Please provide relevant data sources, if available.

4. SBA derives its proposed standards by applying equal weights to each of the five primary factors in all industries. Should SBA continue with the equal weighting of each factor or should it give more weight to one or more factors in size standard determination of certain industries? If it is more appropriate to weigh some factors more than others, SBA welcomes suggestions on specific weights for each factor along with supporting information.

5. For some industries, SBA proposes to increase the existing size standards by a large amount, while for others the proposed increase is less. Should SBA, as a policy, limit the amount of increase or decrease to a size standard? Also should SBA, as a policy, establish certain minimum or maximum values for its size standards? SBA seeks suggestions on appropriate levels of change to size standards and on their minimum or maximum levels.

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

Public comments on above issues are very critical for SBA to validate its size standard methodology and move forward in a timely manner with review of size standards of other industry groups under the two-year comprehensive size review.

Compliance With Executive Orders 12866, 12988, and 13132, 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 adjustments to certain size standards in Sector 81, Other Services, are needed to better reflect the economic characteristics of small businesses in those industries. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively 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 as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses. Federal procurement provides 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, and service disabled veteran owned small businesses (SDVOSB). 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 businesses.

Of 18 industries in Sector 81 for which SBA has proposed to increase their size standards, 12 are for-profit industries and six are non-profits. In the 12 for-profit industries for which SBA has proposed to increase their size standards, about 325 additional firms are estimated to obtain small business status and become eligible for these programs. That represents 0.6 percent of total firms and 5.6 percent of total sales in those industries. In the six non-profit industries, about 1,175 additional firms, representing 4.2 percent of total firms and 16.9 percent of total sales in those industries, are estimated to qualify as small organizations (a non-profit cannot qualify as a small business). 13 CFR 121.105. In the 19 industries (including non-profits) for which SBA's analyses indicated a lower size standard is appropriate, about 1,850 firms, representing 0.6 percent of total firms and 5.1 percent of total sales in those industries, might have lost their small business status, had SBA proposed lowering their size standards. Thus, the net impact for the Sector as a whole is about 1,400 additional firms gaining and none losing small business status under the proposed rule. This will increase the small business share of total industry receipts for the Sector from 59.0 percent under the current size standards to 63.5 percent under the proposed standards.

The benefits of increasing certain size standards to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

More than 40 percent of total Federal contracting dollars received by industries in Sector 81 (excluding NAICS 811212 and those in Subsector 813)) during fiscal years 2006–2008 was accounted for by two of the 18 industries for which size standards have been proposed to increase, namely NAICS 811213 and NAICS 811219. SBA estimates that additional firms gaining small business status in those two and other industries in Subsectors 811 and 812 under the proposed size standards could potentially obtain Federal contracts totaling up to between $25 million and $30 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements. The added competition for many of these procurements also would likely result in a lower price to the Government for procurements reserved for small businesses, but SBA is not able to quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that approximately 10 additional loans totaling between $4 million and $5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. Moreover, under the Recovery Act, effective February 17, 2009, SBA is temporarily raising guarantees on its SBA 7(a) loan program and also temporarily eliminating fees for borrowers on SBA 7(a) loans and for both borrowers and lenders on 504 Certified Development Company loans, through calendar year 2009, or until the funds are exhausted. The fee elimination is retroactive to February 17, 2009, the day the Recovery Act was signed. Furthermore, SBA is developing a mechanism for refunding fees paid on loans since then. In addition, since SBA has applied its CDC alternative size standard to its 7(a) Business Loan Program, more capital is available to small businesses. Thus, 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 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 325 additional firms in Subsectors 811 and 812 that become small under the proposed size standards 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 Central Contractor Registration's Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for 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 additional costs are likely to be minimal because mechanisms are already in place to handle these additional 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 set-aside contracting is likely to result in competition among fewer bidders. In addition, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses because of a price evaluation preference. 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) or HUBZone 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 the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several likely impacts can be identified. 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. Also, 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 competed 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. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of businesses receiving a Federal contract are limited to identifying small or other than small businesses, without regard to the exact size of the business.

As mentioned above, in addition to the estimated 325 businesses that may qualify as small if this proposed rule is adopted, an additional 1,175 non-profit organizations may also be designated as small organizations within the industries in Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations. Non-profit organizations do not qualify for SBA small business programs or for Federal contracts reserved for small business (13 CFR 121.105). However, Federal agencies pursuant to the Regulatory Flexibility Act must consider the impact of their regulations on small entities, which by definition include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(b)). SBA's Office of Advocacy advises Federal agencies to use SBA's numerical size standards by NAICS industry when assessing the impact of a regulation on small organizations.

The proposed revisions to the existing size standards for the Other Services industries are 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 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 recordkeeping 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 Sector 81, Other 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, recordkeeping, 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?

Most of SBA's size standards for the Other Services industries have not been reviewed since the early 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an 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 this rule is adopted in its present form, SBA estimates that approximately 1,400 additional firms will become small because of proposed increases in size standards in the 18 industries within Sector 81. That represents about 1.8 percent of approximately 75,500 total firms in those industries. This will result in an increase in the small business share of total industry receipts for that Sector from 59.0 percent under the current size standards to 63.5 percent under the proposed standards.

(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?

A new size standard does not impose any additional reporting, recordkeeping or compliance requirements on small entities. Revising 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?

This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. 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 57988–57991, dated 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). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

SBA is required to develop numerical size standards for identifying businesses eligible for Federal small business programs. Other than varying the size standards, no viable 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 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. Amend the table in § 121.201 by revising all entries under Sector 81 to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sector 81—Other Services (Except Public Administration)		
Subsector 811—Repair and Maintenance			
811111	General Automotive Repair	$7.0	
811112	Automotive Exhaust System Repair	$7.0	
811113	Automotive Transmission Repair	$7.0	
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$7.0	
811121	Automotive Body, Paint and Interior Repair and Maintenance	$7.0	
811122	Automotive Glass Replacement Shops	$10.0	
811191	Automotive Oil Change and Lubrication Shops	$7.0	
811192	Car Washes	$7.0	
811198	All Other Automotive Repair and Maintenance	$7.0	
811211	Consumer Electronics Repair and Maintenance	$7.0	
811212	Computer and Office Machine Repair and Maintenance	$25.0	
811213	Communication Equipment Repair and Maintenance	$10.0	
811219	Other Electronic and Precision Equipment Repair and Maintenance	$19.0	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	$7.0	
811411	Home and Garden Equipment Repair and Maintenance	$7.0	
811412	Appliance Repair and Maintenance	$14.0	
811420	Reupholstery and Furniture Repair	$7.0	
811430	Footwear and Leather Goods Repair	$7.0	
811490	Other Personal and Household Goods Repair and Maintenance	$7.0	
Subsector 812—Personal and Laundry Services			
812111	Barber Shops	$7.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
812112	Beauty Salons	$7.0	
812113	Nail Salons	$7.0	
812191	Diet and Weight Reducing Centers	$19.0	
812199	Other Personal Care Services	$7.0	
812210	Funeral Homes and Funeral Services	$7.0	
812220	Cemeteries and Crematories	$19.0	
812310	Coin-Operated Laundries and Drycleaners	$7.0	
812320	Drycleaning and Laundry Services (except Coin-Operated)	$5.0	
812331	Linen Supply	$30.0	
812332	Industrial Launderers	$35.5	
812910	Pet Care (except Veterinary) Services	$7.0	
812921	Photo Finishing Laboratories (except One-Hour)	$19.0	
812922	One-Hour Photo Finishing	$14.0	
812930	Parking Lots and Garages	$35.5	
812990	All Other Personal Services	$7.0	
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations		
813110	Religious Organizations	$7.0	
813211	Grantmaking Foundations	$30.0	
813212	Voluntary Health Organizations	$25.5	
813219	Other Grantmaking and Giving Services	$35.5	
813311	Human Rights Organizations	$25.5	
813312	Environment, Conservation and Wildlife Organizations	$14.0	
813319	Other Social Advocacy Organizations	$7.0	
813410	Civic and Social Organizations	$7.0	
813910	Business Associations	$7.0	
813920	Professional Organizations	$14.0	
813930	Labor Unions and Similar Labor Organizations	$7.0	
813940	Political Organizations	$7.0	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	$7.0	

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Dated October 9, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–25199 Filed 10–20–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–9073; 34–60825; IC–28946; File No. S7–22–09]

RIN 3235–AK25

Amendments to Rules Requiring Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing changes to the proxy rules under the Securities Exchange Act of 1934 to improve the notice and access model for furnishing proxy materials to shareholders. Specifically, we are proposing revisions to our rules to provide additional flexibility regarding the format of the Notice of Internet Availability of Proxy Materials that is sent to shareholders. We are also providing guidance about the current requirement for the Notice to identify the matters intended to be acted on at the shareholders' meeting. In addition to the proposed changes and guidance regarding the format of the Notice, we are proposing a new rule that will permit issuers and soliciting shareholders to include explanatory materials regarding the process of receiving and reviewing proxy materials and voting. Finally, we are proposing revisions to the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option.

DATES: Comments should be received on or before November 20, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–22–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–22–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.