

# Rules and Regulations

Federal Register

Vol. 84, No. 70

Thursday, April 11, 2019

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards: Revised Size Standards Methodology

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

**ACTION:** Notification of availability of white paper.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its size standards methodology white paper explaining how it establishes, reviews, or revises small business size standards. The revised white paper, entitled “SBA’s Size Standards Methodology (April 2019)” (Revised Methodology) is available on the SBA’s website at <http://www.sba.gov/size-standards-methodology> as well as on the Federal rulemaking portal at <http://www.regulations.gov>. SBA intends to apply the Revised Methodology to the ongoing second five-year comprehensive review of size standards required by the Small Business Jobs Act of 2010 (Jobs Act). On April 27, 2018, SBA published a notification seeking comments on proposed revisions to its size standards methodology. This notification discusses the comments SBA received on the proposed Revised Methodology and Agency’s responses, followed by a description of major changes to the methodology and their impacts on size standards.

**DATES:** The Revised Methodology is effective on April 11, 2019.

**FOR FURTHER INFORMATION CONTACT:** Khem R. Sharma, Chief, Office of Size Standards, (202) 205–7189 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

To determine eligibility for Federal small business assistance programs, SBA establishes small business definitions (commonly referred to as

size standards) for all private industries in the United States. SBA’s existing size standards use two primary measures of business size: Average annual receipts and number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, SBA’s Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC/504) Programs determine small business eligibility using either the industry based size standards or net worth and net income based alternative size standards. Presently, there are 27 different industry based size standards, covering 1,023 North American Industry Classification System (NAICS) industries and 13 “exceptions.” Of these, 526 are based on average annual receipts, 505 on number of employees (one of which also includes barrels per day total refining capacity), and five on average assets.

In 2010, Congress passed the Small Business Jobs Act (Jobs Act) (Sec. 1344, Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010) requiring SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. In 2016, SBA completed the first 5-year review of size standards under the Jobs Act and is now conducting the second 5-year review of size standards. SBA also reviews and adjusts, as necessary, all monetary based size standards for inflation every five years. SBA’s latest inflation adjustment to size standards became effective on July 14, 2014 (79 FR 33647 (June 12, 2014)). SBA also updates its size standards, also every five years, to adopt the Office of Management and Budget’s (OMB) 5-year NAICS revisions to its table of small business size standards. SBA adopted OMB’s 2017 NAICS revisions for its size standards, effective October 1, 2017 (82 FR 44886 (September 27, 2017)).

As part of the previous comprehensive size standards review, in 2009 SBA established a detailed size standards methodology (2009 Methodology) explaining how SBA establishes, reviews, or adjusts size standards based on the evaluation of industry and Federal contracting factors. SBA has now revised the 2009 Methodology to incorporate the recent amendments to the Small Business Act (Act) relating to the establishment of size standards, to address public

comments the Agency received on the 2009 Methodology, and to make certain analytical improvements to its size standards analysis based on its own review of the methodology.

On April 27, 2018, SBA published a notification in the **Federal Register** advising the public that the Agency had revised its size standards methodology (Revised Methodology) and made it available on SBA’s website at <http://www.sba.gov/size-standards-methodology> and on the Federal rulemaking portal at <http://www.regulations.gov> for review and comments (83 FR 18468). SBA proposed a number of changes to its size standards methodology, including moving from an “anchor” approach to a “percentile” approach for evaluating industry characteristics, assigning a separate size standard for each NAICS industry instead of selecting a size standard from a limited number of fixed size standards as in the 2009 Methodology, lowering the threshold for selecting industries for the evaluation of the Federal contracting factor to \$20 million in annual Federal contracting dollars from the \$100 million threshold as in the 2009 Methodology, and applying the 4-firm concentration ratio to all industries, as opposed to using it only when the ratio is 40% or more as in the 2009 Methodology.

SBA sought comments on these changes as well as on a number of policy issues/questions that the Agency faces when developing a methodology for establishing, evaluating, or revising its small business size standards, such as: Whether SBA’s size standards should be higher than entry level business size; whether SBA should vary size standards from program to program or geographically; whether SBA should establish a ceiling or cap beyond which a business concern cannot be considered small; whether SBA should apply a single measure of business size for all industries (*i.e.*, employees or annual receipts); and whether SBA should adjust employee based size standards to account for labor productivity, similar to the adjustment of monetary based size standards for inflation. The comment period for the Revised Methodology was from April 27, 2018 to June 26, 2018.

SBA received a total of 14 comments on the proposed Revised Methodology, two of which were not pertinent and

were not considered. The 12 valid comments and SBA's responses thereto are discussed below.

## **B. Comments on the Proposed Revised Methodology**

### *1. Comments on Calculation of Average Annual Receipts*

Five commenters suggested that SBA should revise its method for calculating the average annual receipts for size standards purposes by allowing firms to use the three lowest annual receipts over the preceding five years or, at least, to calculate the average annual receipts over the preceding five years, as opposed to the three preceding years. The commenters argued that the increased use of large contract vehicles (such as governmentwide acquisition vehicles or indefinite-delivery, indefinite-quantity contracts) to award Federal contracts to small businesses can cause very rapid growth in firms' size, thereby resulting in the loss of their small business status. The commenters asserted that small businesses need time to develop infrastructure to be able to compete for unrestricted procurements with large firms after graduating to other-than-small status. Commenters also mentioned that some industries are subject to fluctuating market conditions that may skew average annual receipts calculated over the 3-year period.

Three commenters suggested that SBA should only consider Federal contractor size when determining average firm size within any NAICS industry. They noted that including firms which do not do business with the Federal Government could skew the true size of businesses participating in Federal contracting, resulting in size standards that are not reflective of government buying practices.

One commenter asserted that firms should be allowed to deduct subcontractor costs from annual receipts calculations. The commenter argued that subcontracting services can be very expensive and take up a substantial portion of the total contract value, at least for Advertising Agencies (NAICS 541810).

#### **SBA's Response**

Any consideration to change the rule on how SBA calculates average annual receipts for size standards or any other part of SBA's small business regulations would require formal rulemaking in accordance with the Administrative Procedure Act. The purpose of the size standards methodology white paper is to explain what data sources and factors SBA considers when establishing and

revising size standards, but not to change SBA's small business regulations.

The Small Business Runway Extension Act of 2018 (Runway Extension Act) (Pub. L. 115–324 (Dec. 17, 2018)) amended section 3(a)(2)(C)(ii)(II) of the Small Business Act by changing the period for calculation of annual average receipts of businesses providing services from three (3) years to five (5) years. This change to the calculation of annual average receipts requires the issuance of a proposed rule and approval by the SBA Administrator. Accordingly, SBA will be initiating a rulemaking to implement the new law into SBA's regulations. Businesses must continue to report their annual receipts based on a 3-year average until SBA amends its regulations.

SBA would not consider the average size of government contractors only as a measure of average firm size in establishing size standards for several reasons. First, SBA's size standards are used not only for Federal procurement purposes, but also for various non-procurement purposes, including establishing eligibility for SBA's loan programs, conducting flexibility regulatory analyses for Federal rulemaking under the Regulatory Flexibility Act, and determining eligibility for small business exemptions from certain Federal reporting and compliance requirements. Second, firms that are government contractors in an industry do not provide an adequate representation of all firms that are interested, willing, or able to perform Federal work in that industry. For example, of about 5.5 million employer firms in the U.S., only about 400,000 firms (or about 7.2 percent) are registered in the System for Award Management (SAM) for Federal contracting purposes, of which about 38 percent have received any Federal contracts during fiscal years 2014–2017. Third, for size standards purposes, SBA considers receipts from all sources (*e.g.*, commercial, Federal, etc.) and the receipts data on government contractors in SAM and the Federal Procurement Data System—Next Generation (FPDS–NG) also include receipts from all sources, not just from Federal work. Fourth, as current size standards are, on average, several times higher than the average size of all firms in the industry, SBA's size standards already reflect that firms that receive Federal contracts are typically larger than all firms in the overall industry. Finally, in accordance with the Jobs Act, every five years, SBA reviews, and adjusts, where necessary, all size standards to ensure that they

reflect current market conditions, including government buying trends.

SBA's regulation in 13 CFR 121.104(a) provides several exclusions from the calculation of receipts for size standards purposes, but subcontracting costs is not one of them, meaning that subcontracting costs are part of receipts and cannot be excluded from the calculation. However, as stated in Footnote 10 to the SBA table of size standards, for certain industries, including Advertising Agencies (NAICS 541810), funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, are excluded from receipts. Subcontracting occurs in most industries (although at varying degrees) and may even vary from firm to firm within the same industry. For example, while some small businesses may want to perform all or most of their Federal work themselves, others may elect to subcontract a large part or most of their work out to others. Allowing businesses to exclude subcontractor costs from receipts would put firms performing most of their work in-house in serious competitive disadvantage relative to those who subcontract a significant portion of their work out to others. This may also encourage businesses to subcontract more of their set-aside contract work to others to maintain their small business status, which would defeat the very intent of the set-aside program, especially if the work is subcontracted out to large businesses. As stated elsewhere in this notification, any consideration to amend the rule on how SBA defines and calculates receipts for size purposes would require formal rulemaking. Additionally, the methodology white paper is not meant to address issues concerning size standards for specific industries. SBA will consider such issues in future rulemakings as part of the ongoing second 5-year review of size standards under the Jobs Act.

### *2. Comment on Data Sources*

One commenter argued that SBA should not use the 2012 Economic Census data for evaluating industry characteristics. The commenter argued that the 2012 Economic Census only reflects industry conditions before 2012 and is, therefore, outdated. The commenter suggested that SBA should look at industry-specific publications that provide richer and more current industry data. To support its argument that the Advertising Agencies size standard should be higher than the current \$15 million, the commenter submitted reports from the two industry associations.

### SBA's Response

While the methodology states that the 2012 Economic Census data is the latest available principal source of industry data that SBA uses for size standards analysis, SBA will consider the 2017 Economic Census data as it becomes available, as well as any other newer data available from other sources, including industry specific publications, provided that such data provides an accurate and comprehensive representation of all firms within the industry. However, many industry publications do not provide a comprehensive picture of the industry they represent. For example, the two industry associations referred to by one of the commenters included about 600–700 advertising agencies, whereas there are more than 12,000 advertising firms in the United States. SBA believes that, for consistency, all industries sharing the same measure of size standards (such as receipts based or employee based) should be evaluated using the single set of industry data. Moreover, the data from industry publications does not usually provide information on all industry factors that SBA examines when establishing size standards. Not all industries have industry publications and, where they do, the information is likely to be incomplete and inconsistent with the Economic Census data SBA uses for size standards analysis. However, SBA will consider any industry specific data submitted as part of the public comments to proposed rulemakings. Despite a time lag for the availability of the Economic Census data, SBA believes that the Economic Census is still the most consistent and comprehensive data available out there for evaluating industry structure to comply with the statutory requirement that the size standards vary from industry to industry in order to reflect differences in characteristics among the various industries.

### 3. Comments on Industry Analysis

One commenter suggested using the median instead of the mean for average firm size calculations. The same commenter also did not see the usefulness of using the “percentile” approach in the Revised Methodology and asked where the “anchor” size standard values came from. Another commenter, however, agreed with SBA's proposal to replace the “anchor” approach in the 2009 Methodology with the “percentile” approach in the Revised Methodology. The commenter stated that the new approach provides a reasonable methodology for

incorporating the economic characteristics of individual industries into SBA's size standards analysis and suggested that, for transparency, SBA should provide the primary factor values and associated size standards supported by each factor for each industry and sub-industry reviewed. This commenter disagreed with the idea to use the median instead of the mean as a measure of the average firm size.

### SBA's Response

In response to these opposing comments (*i.e.*, one supporting the median and another supporting the mean), SBA conducted analyses using both the mean (simple average) and the median firm size. In terms of numbers of industries for which size standards would change or remain the same, the results from the two approaches were very similar for a large majority of industries. For most industries where the levels of calculated size standards differed between the two approaches, such differences were generally small. SBA has provided a detailed justification in the Revised Methodology white paper for replacing the old “anchor” approach with the new “percentile” approach. SBA has determined that the “percentile” approach provides a better approach to evaluating differences among industries and varying size standards accordingly. In addition, as stated in the Revised Methodology, the “anchor” approach that entails grouping all industries under a common (so-called “anchor”) size standard (*i.e.*, the size standard shared by most industries) is inconsistent with the statute that such groupings should be limited to the 4-digit NAICS level. For these reasons, SBA will continue to use the simple average (mean) as one of the two measures of firm size (other being the weighted average) and is adopting the “percentile” approach to evaluate industry characteristics, as proposed.

SBA does not provide in the methodology white paper the primary factor values and associated size standards supported for each industry and sub-industry in the methodology as the results are likely to change with the availability of new data. The methodology is intended to explain SBA's approach to establishing, reviewing, or adjusting size standards. SBA will provide such results for the public review and comment on individual proposed rulemakings on reviews of size standards for various NAICS sectors.

### 4. Comments on Number of Size Standards and Rounding

One commenter agreed with SBA's approach to rounding size standards to the nearest \$500,000 for receipts based size standards and to the nearest 50 employees for employee based size standards (or to the nearest 25 employees for employee based size standards in Wholesale Trade and Retail Trade). This commenter believed that the increased number of and reduced increments between size standards would limit the effect of errors, counteract the limitations of the data used by SBA in calculating size standards, and ensure that similar industries are treated in an equitable fashion, and more accurately reflect each industry's economic characteristics. The same commenter disagreed with SBA's policy of capping calculated size standards at some predetermined maximum levels instead of allowing the data to determine what the maximum size standard levels should be. If the agency decides to continue with this policy, the commenter suggested that capping should be applied for the calculation of the aggregated size standard, not for size standard for each factor individually. Another commenter questioned where do the minimum and maximum size standards levels come from, although they were fully explained in the proposed Revised Methodology.

### SBA's Response

The National Defense Authorization Act of Fiscal Year 2013 (NDAA 2013) (Pub. L. 112–239, Section 1661, Jan. 2, 2013) amended the Small Business Act requiring SBA not to impose the limitation on the number of size standards and to establish specific size standards for each NAICS industry. In absence of any adverse comments to this approach, SBA is adopting the number of size standards and the rounding procedure, as proposed.

Allowing the data alone to determine a maximum size standard would lead to very high size standards for some industries, thereby allowing very successful businesses with hundreds of millions in receipts or tens of thousands of employees to qualify as small and be eligible for Federal assistance intended for small businesses. For example, under receipts based size standards, if not capped, about 20 industries (excluding Retail Trade) would end up with a size standard of \$100 million or more (with some being as high as more than \$1 billion) and another 30 industries would have a size standard between \$50 million and \$100 million,

as compared to the proposed receipts based cap of \$40 million and the current maximum of \$38.5 million. Similarly, for employee based size standards, about a dozen industries would end up with having a size standard of 5,000 employees or more (some being as large as 20,000 employees) and another 25 would have a size standard between 2,000 employees and 5,000 employees, as compared to the proposed and current maximum of 1,500 employees. From a policy standpoint, it would be almost impossible for SBA to justify such large businesses as small for Federal small business programs. Additionally, in the absence of caps, the calculated size standards will be very small (in some cases even negative) for some industries such that businesses qualifying as small would not only lack capabilities to meet the Federal Government small business procurement requirements, but also businesses graduating out of such small size standards would not have yet developed enough size to be competitive in the market and would still need Federal support to grow and be competitive on their own. SBA believes that such very high or very low size standards would not enable the Agency to effectively fulfill its critical mission to serve and protect the interests of American small businesses. Accordingly, SBA is adopting its policy of capping calculated size standards, both at the factor level and the aggregate level, at maximum or minimum values, as proposed.

#### *5. Comments on Federal Contracting Factor*

One commenter noted the asymmetry in using the Federal contracting factor to increase size standards when small business Federal contract shares are lower than for their overall market shares while not decreasing them when those shares are higher than the overall market share. Another commenter agreed with the increased utilization of the Federal contracting factor for industries with at least \$20 million in Federal contracting dollars (as opposed to a \$100 million level in the previous methodology). This commenter felt that the adoption of a lower threshold allows for a more detailed analysis of competitive and economic characteristics of relevant industries. However, the commenter disagreed with SBA's use of "maximum size caps" as it would not allow, the commenter argued, the size standard to increase according to the Federal contracting factor.

#### *SBA's Response*

The objective of the Federal contracting factor is to assess how successful small businesses have been in receiving Federal contracts under the current size standards and to adjust them if small businesses are not faring well in the Federal marketplace relative to the overall market, but not to penalize small businesses by lowering size standards where they are doing well. Generally, SBA adjusts size standards upwards for industries where the small business shares in the Federal market are substantially lower (*i.e.*, 10 percent or more) than their shares in the overall market and maintains them at their current levels (instead of lowering them) for industries where those differences are less than 10 percent or where small business shares in the Federal market are higher than the small business shares in the overall market. Lowering size standards, simply because the shares of small businesses in the Federal contracts are higher than their shares in the industry's overall market, would not serve the interests of small businesses or contribute to SBA's mission to ensure that small businesses receive a fair proportion of Federal government contracts. Accordingly, for the Federal contracting factor, SBA will maintain size standards at their current levels where the small business shares of the Federal market are higher than the small business shares in the overall market. Additionally, to be consistent, SBA will apply the same capping procedure for all factors, including the Federal contracting factor.

#### *6. Comments on Industry Competition*

One commenter stated that he did not feel the "industry competition" or "size distribution of firms" were necessary factors for analyzing industry structure. This commenter suggested examining a correlation matrix of all factors, which may result in the need of using only one or two factors to determine size standards. The commenter also insisted that the Herfindahl index is a more generally accepted measure of industry competitive structure and that this is preferable to the four- or eight-firm concentration ratio. A different commenter agreed with the use of a four-firm concentration ratio for all industries in the Revised Methodology, as opposed to using it only for those industries where that ratio was 40 percent or higher in the 2009 Methodology.

#### *SBA's Response*

The statute requires that small business definitions vary from industry

to industry to reflect differences among the various industries. For that, in accordance with its regulations in 13 CFR 121.102, SBA evaluates four industry factors, namely average firm size, average assets as a proxy for start-up costs and entry barriers, industry competition, and size distribution of firms. SBA examined correlations among all industry factors and found that using just one or two factors alone would not adequately account for differences among the various industries. To account for industry competition, SBA also tried using the Herfindahl index instead of the four-firm concentration ratio and the results were found to be very similar between the two measures. Because it is simpler and easier to explain to the public and it has long been used for SBA's size standards analyses, in the Revised Methodology, SBA is adopting the four-firm concentration ratio as a measure of industry competition.

#### *7. Comments on Industry-Specific Size Standards*

Several commenters expressed various viewpoints concerning size standards for various industries as well as how NAICS codes should be defined for contracting purposes. One commenter suggested creating a new NAICS code to accommodate firms supplying finished products to the government as "nonmanufacturers" while also performing supply chain management and distribution services. Another commenter argued that the size standards for sale and rental of heavy equipment should be harmonized by changing the receipt based size standard for the equipment rental companies to the one that is employee based. A further commenter proposed adding additional sub-industry categories (or "exceptions") to NAICS codes 541330, 541513, and 236220 to more adequately describe the scope of Federal work in these industries. This commenter also felt that the size standards for some industries in NAICS Sector 54 and Subsector 236 should be raised. Yet another commenter argued that the size standard for NAICS code 561440 should be higher than the current \$15 million level. A final commenter disagreed with SBA's approach in a 2016 final rule to excluding the largest firms in its calculation of the employee based size standard for the Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services). It further argued that no firms at the proposed 1,250-employee size standard would have been dominant in the ERS industry. The same commenter also suggested that SBA should provide

a full description of SBA's approach to evaluating industries with size standards exceptions.

#### SBA's Response

SBA neither defines nor modifies NAICS industry definitions. It simply adopts the NAICS industry definitions and their updates, as published by OMB. Any suggestions for the creation of new NAICS industry categories should be submitted during OMB's notice and comment process of its reviews and revisions of the NAICS definitions. Every five years, OMB (in coordination with government statistical agencies in the U.S., Canada and Mexico) reviews and modifies existing NAICS definitions or creates new ones to ensure that industry definitions reflect changes in the economy.

Some firms may elect to both sell and rent the equipment. However, because firms that are primarily engaged in the equipment rental activity are very different from those primarily engaged in selling equipment (as a manufacturer or a distributor), the industry data does not support the same size standard for the two groups. Accordingly, whereas SBA's size standards for equipment rental industries are based on receipts, those for equipment manufacturers and distributors are based on employees. A firm that sells the equipment that it did not manufacture itself is considered a nonmanufacturer and can qualify as small under the 500-employee nonmanufacturer size standard.

The size standards methodology does not revise any size standards as such. It only explains the methodology on how SBA establishes and reviews size standards. Therefore, with the release of the final Revised Methodology, SBA is not making any changes to any size standards that are currently in effect. However, as part of the ongoing second 5-year comprehensive review of size standards under the Jobs Act, SBA will review all size standards and make necessary adjustments in the coming years to ensure that they reflect current industry and Federal market conditions. The Agency plans to issue proposed rules on all receipts based size standards, including those in NAICS Sector 54 and Subsector 236, in the near future. Depending upon the results from the analysis of the latest data available, some industries may see their size standards adjusted, while others may see no changes. Interested parties will have opportunity to comment on SBA's proposed size standards and suggest alternatives, along with supporting data and analysis, if they believe that the proposed standards are not appropriate.

As the industry data from the Economic Census are limited to the 6-digit NAICS levels, SBA does not have the necessary data to be able to create new sub-industry categories below the 6-digit levels and establish size standards thereto. SBA is already faced with difficulty in reviewing size standards for the existing sub-industry categories ("exceptions") particularly because the industry data from SAM and FPDS-NG used to evaluate these "exceptions" are not consistent with the industry data from the Economic Census that SBA uses to evaluate industry characteristics.

When evaluating the SAM and FPDS-NG data for reviews of size standards under "exceptions," SBA trims the data on firms on both ends of the size distribution to prevent extreme observations (*i.e.*, observations with questionable receipts values given the number employees or vice versa) from distorting the results. Additionally, to make the SAM and FPDS-NG data more consistent with the Economic Census tabulations where an industry's data only includes firms that are primarily engaged in that industry, SBA also removes very large firms for which the contribution of Federal contracts under that "exception" is quite small relative to their overall enterprise revenues. Accordingly, SBA removed from the evaluation of the ERS size standard a few of the largest firms for which Federal contracts received under that "exception" accounted for less than 25 percent of their overall receipts. Additionally, several commenters opposing the proposed size standard also argued that the large, diversified environmental firms for which the Federal environmental remediation work is not their major activity should be excluded in evaluating the ERS size standard. While the law states that a firm qualifying as small should not be dominant in its industry, it does not, however, mean that all non-dominant firms can or should be classified as small. In response to the comment, in the final Revised Methodology, SBA is including a new section describing its general approach to evaluating the size standard for "exceptions."

#### 8. Comments on Policy Issues

Several commenters addressed various policy issues concerning the size standards methodology for which SBA sought comments and suggestions from interested parties. These comments are discussed below.

a. Should SBA establish size standards that are higher than industry's entry-level business size?

One commenter stated that it made sense for size standards to be higher than the industry entry-level size since firms larger than entry-level size could still experience disadvantages in the industry. However, the commenter suggested imposing time limits for participation in SBA programs to disincentivize firms to remain at an inefficient size.

#### SBA's Response

Except for businesses participating in the 8(a) business development program, SBA does not impose time limits for eligibility for small business programs. Doing so would be too complicated as the time to reach an efficient size is likely to vary from industry to industry and firm to firm within an industry, not to mention the complexity time limits would add to determining eligibility for such programs.

b. Should size standards vary from program to program or geographically?

Two commenters agreed with SBA that varying size standards by program or geography would create confusion and be difficult to administer.

#### SBA's Response

SBA's methodology provides for establishing a single set of industry specific size standards for both SBA's financial programs and Federal procurement programs. Similarly, as size standards are applied at the national level and market dominance is evaluated nationally, SBA does not vary size standards geographically.

c. Should there be a single basis for size standards—*i.e.*, should SBA apply the number of employees, receipts, or some other basis to establish its size standards for all industries?

One commenter who addressed this issue asserted that receipts are the best measure for determining size, not gross profits. Using gross profits would require, the commenter maintained, SBA to review a concern's balance sheet, possibly with risks of disclosure of the concern's financial records to its competitors.

#### SBA's Response

SBA does not use profits as a measure of business size for any industry nor does it review a concern's balance sheet or financial records for size standards analysis, except for size determination of a company whose small business size status is protested. SBA mostly uses either receipts or number of employees.

As explained in the methodology, SBA uses receipts for most services, retail trade, construction and agricultural enterprises and employees for all manufacturing, most mining and utilities, and a few other industries.

d. Should there be a ceiling beyond which a business concern cannot be considered as small?

One commenter thought a maximum ceiling was a good idea but acknowledged it might be somewhat arbitrary. Another commenter strongly disagreed with placing “caps” on size standards and reasoned that SBA should follow the results from its analysis when establishing size standards and allow natural maximums to develop based on the data. The commenter felt that imposing caps on size standards before conducting the economic data analysis would be arbitrary and non-transparent.

#### SBA’s Response

SBA has addressed this issue elsewhere in this notice, that capping calculated size standards at certain minimum and maximum levels is crucial for fulfilling its mission to serve and protect the interests of American small businesses and ensuring that Federal small business assistance goes to small businesses in need of such assistance the most.

e. Should there be a fixed number of size standard ranges or “bands” as SBA applied for the recently completed comprehensive size standards review?

Two commenters agreed with using “bands” of size standards across related industries. One of them further recommended putting groups of related industries under the same size standards. The use of size standard “bands,” the commenters noted, prevents confusion and could also discourage size protests.

#### SBA’s Response

While SBA agrees that using “bands” or limited number of fixed size standard levels (as under the previous methodology) would simplify size standards, it would run counter to the statute that there shall not be any limitation on the number of size standards and that each NAICS industry be assigned the appropriate size standard. SBA has, in the past, used common size standards for industries within certain NAICS Industry Groups, even if the data suggested different standards for individual industries in the group. However, a 2013 amendment to the statute limits the use of common size standards, except where a justification would exist for establishing

a single size standard for industries within the 4-digit NAICS Industry Group, provided that such size standard is appropriate for each individual industry in the group. Thus, in view of these statutory limitations on the number of size standards and use of common size standards, SBA is adopting the size standards structure, as proposed.

f. Should SBA consider adjusting employee based size standards for labor productivity growth or increased automation?

Three commenters disagreed with the idea of adjusting employee-based size standards for productivity and/or automation. While one commenter thought that this would be arbitrary, another stated that the effects of productivity changes are already captured in the Economic Census data that SBA uses for industry analysis. The third commenter asserted that labor productivity changes are too small to warrant meaningful size standard adjustments and would already be captured in each 5-year comprehensive industry review. This commenter also believed that productivity growth would have to be accounted for on an industry-by-industry basis which would result in a very complicated adjustment process.

#### SBA’s Response

SBA does not quite agree that adjusting employee based size standards for productivity would be arbitrary as there is available data on measures of productivity, both by industry (by NAICS subsector or industry group) and for the overall economy. However, SBA agrees that accounting for productivity changes on an industry-by-industry basis would entail a complicated methodology. SBA concurs with the commenters that the effects of productivity changes are already captured by the Economic Census data and would be reflected in the 5-year size standards reviews. Accordingly, the Revised Methodology does not provide for adjustments to employee based size standards for productivity changes.

g. Should SBA consider lowering its size standards?

One commenter stated that SBA should perhaps consider lowering size standards depending on the goals of its programs. Another commenter opposed lowering size standards in view of the government procurement trend of using larger and longer-term procurements.

#### SBA’s Response

As stated in the Revised Methodology, while the results from SBA’s analysis of

the relevant data would serve as a principal basis for proposing revisions to size standards, other factors (such as public comments, administration’s policies and priorities, the current market conditions, and impacts on small businesses) would also be important when proposing or finalizing size standards revisions. When SBA decides to deviate from the results of its analysis, it would provide in the rule a detailed justification for such decisions.

### C. Changes in the Revised Methodology

The Revised Methodology, entitled “SBA’s Size Standards Methodology (April 2019)”, is available for review and download on the SBA’s website at <http://www.sba.gov/size-standards-methodology> as well as on the Federal rulemaking portal at <http://www.regulations.gov>. It describes in detail how SBA establishes, evaluates, or adjusts its small business size standards pursuant to the Act and related legislative guidelines. Specifically, the document provides a brief review of the legal authority and early legislative and regulatory history of small business size standards, followed by a detailed description of the size standards analysis.

Section 3(a) of the Act (15 U.S.C. 632(a); Pub. L. 85–536, 67 Stat. 232, as amended) provides SBA’s Administrator (Administrator) with authority to establish small business size standards for Federal government programs. The Administrator has discretion to determine precisely how small business size standards should be established. The Act and its legislative history highlight three important considerations for establishing size standards. First, size standards should vary from industry to industry according to differences among industries. 15 U.S.C. 632(a)(3). Second, a firm that qualifies as small shall not be dominant in its field of operation. 15 U.S.C. 632(a)(1). Third, pursuant to 15 U.S.C. 631(a), the policies of the Agency should be to assist small businesses as a means of encouraging and strengthening their competitiveness in the economy. These three considerations continue to form the basis for SBA’s methodology for establishing, reviewing, or revising small business size standards.

#### 1. Industry Analysis

SBA examines the structural characteristics of an industry as a basis to assess differences among the various industries and the overall degree of competitiveness of the industry and of firms therein. As described more fully in the Revised Methodology document, SBA generally evaluates industry

structure by analyzing four primary factors—average firm size (both the simple and weighted average), degree of competition within an industry (the 4-firm concentration ratio), start-up costs and entry barriers (average assets as a proxy), and distribution of firms by size (the Gini coefficient). This approach to assessing industry characteristics that SBA has applied historically remains very much intact in the Revised Methodology. As the fifth primary factor, SBA assesses the ability of small businesses to compete for Federal contracting opportunities under the current size standards. For this, SBA examines the small business share of total Federal contract dollars relative to the small business share of total industry's receipts for each industry. SBA also considers other secondary factors as they relate to specific industries and interests of small businesses, including technological change, competition among industries, industry growth trends, and impacts of the size standards on SBA programs.

While the factors SBA uses to examine industry structure remain intact, its approach to assessing the differences among industries and translating the results to specific size standards has changed in the Revised Methodology. Specifically, in response to the public comments against the “anchor” size standards approach applied in the previous review of size standards, a recent amendment to the Act limiting the use of common size standards (*see* section 3(a)(7) of the Act under NDAA 2013), and SBA's own review of the methodology, in the Revised Methodology, SBA replaces the “anchor” approach with a “percentile” approach as an analytical framework for assessing industry differences and deriving a size standard supported by each factor for each industry.

Under the “anchor” approach, SBA generally compared the characteristics of each industry with the average characteristics of a group of industries associated with the “anchor” size standard. For the recent review of size standards, the \$7 million was the “anchor” for receipts based size standards and 500 employees was the “anchor” for employee based size standards (except for Wholesale Trade and Retail Trade). If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor standard as the appropriate size standard for that industry. If the specific industry's characteristics were significantly higher or lower than those for the anchor

group, SBA assigned a size standard that was higher or lower than the anchor.

In the past, including the recent review of size standards, the anchor size standards applied to a large number of industries, making them a good reference point for evaluating size standards for individual industries. For example, at the start of the recent review of size standards, the \$7 million (now \$7.5 million due to the adjustment for inflation in 2014) anchor standard was the size standard for more than 70 percent of industries that had receipts based size standards. A similar proportion of industries with employee based size standards had the 500-employee anchor standard. However, when the characteristics of those industries were evaluated individually, for a large majority of them the results yielded a size standard different from the applicable anchor. Consequently, now just 24 percent of industries with receipts based size standards and 22 percent of those with employee based size standards have the anchor size standards. Additionally, section 3(a)(7) of the Act limits the SBA's ability to create common size standards by grouping industries below the 4-digit NAICS level. The “anchor” approach would entail grouping industries from different NAICS sectors, thereby making it inconsistent with the statute.

Under the “percentile” approach in the Revised Methodology, SBA ranks each industry within a group of industries with the same measure of size standards using each of the four industry factors. As stated earlier, these four industry factors are average firm size, average assets size as proxy for startup costs and entry barriers, industry competition (the 4-firm concentration ratio), and distribution of firms by size (the Gini coefficient). As detailed in the Revised Methodology, the size standard for an industry for a specific factor is derived based on where the factor of that industry falls relative to other industries sharing the same measure of size standards. If an industry ranks high for a specific factor relative to most other industries, all else remaining the same, a size standard assigned to that industry for that factor is higher than those for most industries. Conversely, if an industry ranks low for a specific factor relative to most industries in the group, a lower size standard is assigned to that industry. Specifically, for each industry factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.*, receipts or employees). Combining that result

with the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry. The Revised Methodology provides detailed illustration of the statistical analyses involved in this approach.

## 2. Number of Size Standards

SBA applied a limited number of fixed size standards in the 2009 Methodology used in the first 5-year review of size standards: Eight revenue based size standards and eight employee based size standards. In response to comments against the fixed size standards approach and section 3(a)(8) of the Act requiring SBA to not limit the number of size standards, in the Revised Methodology, SBA has relaxed the limitation on the number of small business size standards. Specifically, SBA will calculate a separate size standard for each NAICS industry, with a calculated receipts based size standard rounded to the nearest \$500,000, except for industries in NAICS Subsectors 111 (Crop Production) and 112 (Animal Production and Aquaculture) for which the calculated standard is rounded to the nearest \$250,000. Similarly, a calculated employee based size standard is rounded to the nearest 50 employees for the manufacturing and other industries with employee based standards, except those in Wholesale Trade and Retail Trade for which the calculated standard is rounded to the nearest 25 employees.

However, as a policy decision, SBA will continue to maintain the minimum and maximum size standard levels. Accordingly, SBA will not generally propose or adopt a size standard that is either below the minimum or above the maximum level, even though the calculations might yield values below the minimum or above the maximum level. The minimum size standard generally reflects the size a small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts. On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would cause significant competitive disadvantage to smaller businesses when accessing Federal assistance. SBA's minimum and maximum size standards are shown in Table 1, “Minimum and Maximum Receipts and Employee Based Size Standards,” below.



TABLE 1—MINIMUM AND MAXIMUM RECEIPTS AND EMPLOYEE BASED SIZE STANDARDS

Type of size standards	Minimum	Maximum
Receipts based size standards (excluding agricultural industries in Subsectors 111 and 112) .....	\$5 million .....	\$40 million.
Receipts based size standards for agricultural industries in Subsectors 111 and 112 .....	\$1 million .....	\$5 million.
Employee based standards for Manufacturing and other industries (except Wholesale and Retail Trade).	250 employees .....	1,500 employees.
Employee based standards in Wholesale and Retail Trade .....	50 employees .....	250 employees.

With respect to receipts based size standards, SBA is establishing \$5 million and \$40 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in Subsectors 111 and 112). These levels reflect the current minimum receipts-based size standard of \$5.5 million and the current maximum of \$38.5 million, rounded for simplicity. Section 1831 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017) (Pub. L. 114–328, 130 Stat. 2000, December 23, 2016) amended the Act directing SBA to establish and review size standards for agricultural enterprises in the same manner it establishes and reviews size standards for all other industries. The evaluation of the industry data from the 2012 Census of Agriculture (the latest available) seems to suggest that \$5 million minimum and \$40 million maximum size standards would be too high for agricultural industries in Subsectors 111 and 112. Accordingly, SBA is establishing \$1 million as the minimum size standard and \$5 million as the maximum size standard for industries in NAICS Subsector 111 (Crop Production) and Subsector 112 (Animal Production and Aquaculture). Regarding employee based size standards, SBA's minimum and maximum levels for manufacturing and other industries (excluding Wholesale and Retail Trade) reflect the current minimum and maximum size standards among those industries. For employee based size standards for wholesale and retail trade industries, the proposed minimum and maximum values are the same as what SBA used in its 2009 Methodology.

### 3. Evaluation of Federal Contracting Factor

For industries where Federal contracting is significant, SBA considers Federal contracting as one of the primary factors when establishing, reviewing, or revising size standards.

Under the 2009 Methodology that was applied in the previous comprehensive size standards review, SBA evaluated the Federal contracting factor for industries with \$100 million or more in Federal contract dollars annually for the latest three fiscal years. However, the analysis of the FPDS–NG data suggests that the \$100 million threshold is too high, thereby rendering the Federal contracting factor irrelevant for about 73 percent of industries (excluding wholesale trade and retail trade industries that are not used for Federal contracting purposes), including those for which the Federal contracting factor is significant (*i.e.*, the small business share of industry's total receipts exceeding the small business share of industry's total contract dollars by 10 percentage points or more). Thus, SBA determined that the threshold should be lowered. In the Revised Methodology, SBA evaluates the Federal contracting factor for industries with \$20 million or more in Federal contract dollars annually for the latest three fiscal years. Under the \$20 million threshold, excluding wholesale trade and retail trade industries, nearly 50 percent of all industries would be evaluated for the Federal contracting factor as compared to just about 27 percent under the \$100 million threshold. Because NAICS codes in Wholesale Trade and Retail Trade do not apply to Federal procurement, SBA does not consider the Federal contracting factor for evaluating size standards industries in those sectors.

For each industry averaging \$20 million or more in Federal contract dollars annually, SBA compares the small business share of total Federal contract dollars to the share of total industrywide receipts attributed to small businesses. In general, if the share of Federal contract dollars awarded to small businesses in an industry is 10 percentage points or more lower than the small business share of total industry's receipts, keeping everything else the same, a justification would exist

for considering a size standard higher than the current size standard. In cases where that difference is less than 10 percent or the small business share of the Federal market is already higher than the small business share of the overall market, it would generally support the current size standards.

### 4. Evaluation of Industry Competition

For the reasons provided in the Revised Methodology and discussed above with respect to the public comments, SBA continues to use the 4-firm concentration ratio as a measure of industry competition. In the past, SBA did not consider the 4-firm concentration ratio as an important factor in size standards analysis when its value was below 40 percent. If an industry's 4-firm concentration ratio was 40 percent or higher, SBA used the average size of the four largest firms as a primary factor in determining a size standard for that industry. In response to public comments as well as based on its own evaluation of industry factors, in the Revised Methodology SBA applies all values of the 4-firm concentration ratios directly in the analysis, as opposed to using the 40 percent rule. Based on the 2012 Economic Census data, the 40 percent rule applies only to about one-third of industries for which 4-firm ratios are available. For the same reason, SBA is also dropping the average firm size of the four largest firms as an additional factor of industry competition. Moreover, the four-firm average size is found to be highly correlated with the weighted average firm size, which is used as one of the two measures of average firm size.

### 5. Summary of and Reasons for Changes

Table 2, "Summary of and Reasons for Changes," below, summarizes what has changed in the Revised Methodology as compared to the 2009 Methodology and the impetus for such changes, specifically whether the changes are based on statute or discretionary.



TABLE 2—SUMMARY OF AND REASONS FOR CHANGES

Process/factor	Current	Revised	Reason
Industry analysis	“Anchor” approach ..... Average characteristics of industries with so called “anchor” size standards formed the basis for evaluating individual industries.	“Percentile” approach ..... The 20th percentile and 80th percentile values for industry characteristics form the basis for evaluating individual industries.	<ul style="list-style-type: none"> <li>• Section 3(a)(7) of the Small Business Act limits use of common size standards only to the 4-digit NAICS level.</li> <li>• The percentage of industries with “anchor” size standards decreased from more than 70 percent at the start of the recent size standards review to less than 25 percent today.</li> <li>• Some public comments objected to the “anchor” approach as being outdated and not reflective of current industry structure.</li> </ul>
Number of size standards.	The calculated size standards were rounded to one of the predetermined fixed size standards levels. There were eight fixed levels each for receipts based and employee based standards.	Each NAICS industry is assigned a specific size standard, with a calculated receipts based standard rounded to the nearest \$500,000 and a calculated employee-based standard rounded to 50 employees (to 25 employees for Wholesale and Retail Trade).	<ul style="list-style-type: none"> <li>• Section 3(a)(8) of the Small Business Act mandates SBA to not limit the number of size standards and to assign an appropriate size standard for each NAICS industry.</li> <li>• Some public comments also raised concerns with the fixed size standards approach.</li> </ul>
Federal contracting factor.	Evaluated the small business share of Federal contracts vis-à-vis the small business share of total receipts for each industry with \$100 million or more in Federal contracts annually.	Each industry with \$20 million or more in Federal contracts annually is evaluated for the Federal contracting factor.	<ul style="list-style-type: none"> <li>• The \$100 million threshold excludes about 73 percent of industries from the consideration of the Federal contracting factor. Lowering that threshold to \$20 million increases the percentage of industries that will be evaluated for the Federal contracting factor to almost 50 percent.</li> <li>• Evaluating more industries for the Federal contracting factor also improves the analysis of the industry’s competitive environment pursuant to section 3(a)(6) of the Small Business Act.</li> </ul>
Industry competition.	Was considered as significant factor if the 4-firm concentration ratio was 40 percent or more and 4-firm average formed the basis for the size standard calculation for that factor.	Considers all values of the 4-firm concentration ratio and calculates the size standard based directly on the 4-firm ratio. Industries with a higher (lower) 4-firm concentration ratio will be assigned a higher (lower) standard.	<ul style="list-style-type: none"> <li>• Some commenters opposed using the 40 percent threshold and recommended using all values of the 4-firm concentration ratio.</li> <li>• The 4-firm average is highly correlated with the weighted average.</li> </ul>

#### 6. Impacts of Changes in the Methodology

To determine how the above changes in the methodology would generally affect size standards across various industries and sectors, SBA estimated new size standards using both the 2009 Methodology (*i.e.*, “anchor” approach) and the Revised Methodology (*i.e.*, “percentile” approach) for each

industry (except those in Sectors 42 and 44–45, and Subsectors 111 and 112).

For receipts based size standards, the anchor group consisted of industries with the \$7.5 million size standard, and the higher size standard group included industries with the size standard of \$25 million or higher, with the weighted average size standard of \$33.2 million for the group. Similarly, for employee based size standards the anchor group comprised industries with the 500-

employee size standard, and higher size standard group comprised industries with size standard of 1,000 employees or above, with the weighted average size standard of 1,180 employees. These and 20th percentile and 80th percentile values for receipts-based and employee-based size standards are shown, below, in Table 3, “Reference Size Standards under Anchor and Percentile Approaches.”

TABLE 3—REFERENCE SIZE STANDARDS UNDER ANCHOR AND PERCENTILE APPROACHES

	Anchor approach		Percentile approach	
	Anchor level	Higher level	20th percentile	80th percentile
Receipts standard (\$ million) .....	\$7.5	\$33.2	\$7.5	\$32.5
Employee standard (no. of employees) .....	500	1,180	500	1,250

Under the anchor approach, SBA derived the average value of each industry factor for industries in the anchor industry groups as well as those in the higher size standard groups. In

the percentile approach, the 20th percentile and 80th percentile values were computed for each industry factor. These results are presented, below, in Table 4, “Industry Factors under

Anchor and Percentile Approaches.” As shown in the table, generally, the anchor values are comparable with the 20th percentile values and higher level

values are comparable with the 80th percentile values.

TABLE 4—INDUSTRY FACTORS UNDER ANCHOR AND PERCENTILE APPROACHES

	Anchor approach		Percentile approach	
	Anchor	Higher level	20th percentile	80th percentile
<b>Industry factors for receipts based size standards, excluding Subsectors 111 and 112</b>				
Simple average receipts size (\$ million) .....	0.78	6.99	0.83	7.52
Weighted average receipts size (\$ million) .....	18.10	685.87	19.42	830.65
Average assets size (\$ million) .....	0.35	5.08	0.34	5.22
Four-firm concentration ratio (%) .....	10.4	34.4	7.9	42.4
Gini coefficient .....	0.678	0.829	0.686	0.834
<b>Industry factors for employee based size standards, excluding Sectors 42 and 44–45</b>				
Simple average firm size (no. of employees) .....	33.4	96.8	29.5	118.3
Weighted average firm size (no. of employees) .....	232.2	1,371.3	250.7	1,629.0
Average assets size (\$ million) .....	4.79	23.34	4.14	40.54
Four-firm concentration ratio (%) .....	24.8	50.2	24.7	61.3
Gini coefficient .....	0.770	0.842	0.760	0.853

Under the anchor approach, using the anchor size standard and average size standard for the higher size standard group, SBA computed a size standard for an industry's characteristic (factor) based on that industry's position for that factor relative to the average values of the same factor for industries in the anchor and higher size standard groups. Similarly, for the percentile approach, combining the factor value for an industry with the 20th percentile and 80th percentile values of size standards and industry factors among the industries with the same measure of size standards, SBA computed a size standard supported by each industry factor for each industry. Under both approaches, a calculated receipts based size standard was rounded to the nearest \$500,000 and a calculated employee based size standard was rounded to the nearest 50 employees.

With respect to the Federal contracting factor, for each industry averaging \$20 million or more in Federal contracts annually, SBA considered under both approaches the difference between the small business share of total industry receipts and that of Federal contract dollars under the current size standards. Specifically, under the Revised Methodology, the existing size standards would increase by certain percentages when the small business share of total industry receipts exceeds the small business share of total Federal contract dollars by 10 percentage points or more. Those percentage increases, detailed in the Revised Methodology, to existing size standards generally reflect receipts and employee levels needed to bring the small business share of Federal

contracts at par with the small business share of industry receipts.

The results were generally similar between the two approaches in terms of changes to the existing size standards, with size standards increasing for some industries and decreasing for others under both approaches. The sector that was most impacted was NAICS Sector 23 (Construction), with a majority of industries experiencing decreases to the current size standard affecting about 1 percent of all firms in that sector under both approaches. Other negatively impacted sectors under both approaches were Sector 31–33 (Manufacturing), Sector 48–49 (Transportation and Warehousing), and Sector 51 (Information), affecting, respectively, 0.1 percent, 0.6 percent, and less than 0.1 percent of total firms in those sectors, with slightly higher impacts under the percentile approach. All other sectors would see moderate positive impacts under both approaches, impacting 0.1–0.2 percent of all firms in most of those sectors. Overall, the changes to size standards as the result of the changes in the methodology, if adopted, would have a minimal impact on number businesses that qualify as small under the existing size standards. Excluding NAICS Sectors 42 and 44–45 and Subsectors 111 and 112, 97.75 percent of businesses would qualify as small under the new calculated size standards using the “anchor” approach vs. 97.70 percent qualifying under the “percentile” approach in the Revised Methodology. Under the current size standards, 97.73 percent of businesses are classified as small.

## D. Conclusion

After considerations of all relevant comments, SBA is adopting the Revised Methodology, as proposed for comments, except that the Agency has now included a new section on the evaluation of size standards at sub-industry levels (usually referred to as “exceptions”) in response to comment. The Revised Methodology, entitled “SBA’s Size Standards Methodology (April 2019),” is available for review/download on the SBA website at <http://www.sba.gov/size-standards-methodology> as well as on the Federal rulemaking portal at <http://www.regulations.gov>. SBA will apply the Revised Methodology in the ongoing, second five-year review of size standards as required by the Jobs Act.

Dated: April 4, 2019.

**Linda M. McMahon,**  
Administrator.

[FR Doc. 2019–07130 Filed 4–10–19; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2017–0839; Product Identifier 2017–NE–31–AD; Amendment 39–19614; AD 2019–07–03]

RIN 2120–AA64

### Airworthiness Directives; Zodiac Seats France Cabin Attendant Seats

AGENCY: Federal Aviation Administration (FAA), DOT.