$$D = \frac{P}{\sum_{i=1}^{N} V_i I_i},$$

For USB–PD adaptive external power supplies, at the lowest nameplate output voltage, limit the contribution from each port to 10W when calculating the derating factor.

(B) If D ≥1, then loading every bus to its nameplate output current does not exceed the overall maximum output power for the power supply. In this case, load each output bus to the percentages of its nameplate output current listed in Table 4 of this section. However, if D <1, it is an indication that loading each bus to its nameplate output current will exceed the overall maximum output power for the power supply. In this case, at each loading condition, load each output bus to the appropriate percentage of its nameplate output current listed in Table 4 of this section, multiplied by the derating factor D.

(v) Minimum output current requirements. Depending on their application, some multiple-voltage adaptive external power supplies may require a minimum output current for each output bus of the power supply for correct operation. In these cases, ensure that the load current for each output at Loading Condition 4 in Table 4 of this section is greater than the minimum output current requirement. Thus, if the test method's calculated load current for a given voltage bus is smaller than the minimum output current requirement, use the minimum output current to load the bus. Record this load current in any test report.

(vi) Efficiency calculation. Calculate and record the efficiency at each loading point by dividing the UUT's measured active output power at that loading condition by the active AC input power measured at that loading condition.

(A) Calculate and record average efficiency of the UUT as the arithmetic mean of the efficiency values calculated at Loading Conditions 1, 2, 3, and 4 in Table 4 of this section.

(B) If, when tested, a UUT cannot sustain the output current at one or more of the loading conditions as specified in Table 4, the average active-mode efficiency is calculated as the average of the loading conditions for which it can sustain output.

(C) If the UUT can only sustain one output current at any of the output busses, test it at the loading condition that allows for the maximum output power on that bus (*i.e.,* the highest output current possible at the highest output voltage on that bus).

(vii) Power consumption calculation. The power consumption of Loading Condition 5 (no-load) is equal to the active AC input power at that loading condition.

(2) Off-mode Measurement—If the UUT incorporates manual on-off switches, place the UUT in off-mode, and measure and record its power consumption at Loading Condition 5 in Table 4 of this section. The measurement of the off-mode energy consumption must conform to the requirements specified in section (6)(b)(1) of this appendix, except that all manual on-off switches must be placed in the ''off'' position for the off-mode measurement. The UUT is considered stable if, over 5 minutes with samples taken at least once every second, the AC input power does not drift from the maximum value observed by more than 1% or 50 milliwatts, whichever is greater. Measure the off-mode power consumption of a multiple-voltage adaptive external power supply twice—once at the highest nameplate output voltage and once at the lowest.

[FR Doc. 2021–23184 Filed 11–1–21; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AH26

Small Business Size Standards: Calculation of Number of Employees for All Programs and of Average Annual Receipts in the Business Loan, Disaster Loan, and Small Business Investment Company Programs

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to use a 24-month average to calculate a business concern's number of employees for eligibility purposes in all of SBA's programs. SBA also proposes to permit business concerns in its Business Loan, Disaster Loan, and Small Business Investment Company (SBIC) Programs to use a 5-year averaging period, in addition to the existing 3-year averaging period, for the purposes of calculating annual average receipts. These proposed changes will allow larger small businesses to retain their small business size status for longer, and some mid-sized businesses to regain small business status.

DATES: SBA must receive comments to this proposed rule on or before December 2, 2021.

ADDRESSES: Identify your comments by RIN 3245–AH26 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *https://www.regulations.gov,* follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, U.S. Small Business Administration, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

SBA will post all comments to this proposed rule on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* you must submit such information to Khem R. Sharma, Ph.D., Chief, Office of Size Standards, U.S. Small Business Administration, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should withhold this information as confidential. SBA will review your information and determine whether it will make it public.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

This proposal seeks to implement two legislative enactments that affect how SBA calculates a business concern's size to determine whether the business qualifies as small for SBA's contracting, loan,[1] and assistance programs. First, section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (''NDAA''), changed the averaging period for SBA's employee-based size standards from 12 months to 24 months. Second, the Small Business Runway Extension Act of 2018, Public Law 115–324 (''SBREA'') amended section 3(a)(2)(C)(ii)(II) of the Small Business Act, 15 U.S.C. 632(a)(2)(C)(ii)(II), to modify the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards.

A. Changes to Calculation of Number of Employees

Section 863 of the NDAA amended two provisions of section 3(a)(2) of the Small Business Act, which sets forth requirements for an agency that would prescribe a proposed size standard. First, the NDAA provides that those requirements apply to the SBA when the agency acts pursuant to the authority in section 3(a)(2)(A) for SBA to specify small business definitions or size standards. Second, the NDAA amends section 3(a)(2)(C)(ii)(I) such that a proposed size standard for a manufacturing concern must provide for determining the size of the concern based on the employment during each of the concern's pay periods for the preceding 24 months. Previously, the statute specified the use of a 12-month period.

SBA proposes to implement the change to a 24-month period by amending 13 CFR 121.106. Section 121.106 currently provides that the size

[1] These changes do not apply to the Paycheck Protection Program because the authority for that program expired on June 30, 2021.

of a business concern under an employee-based size standard is calculated by averaging the concern's number of employees for each pay period in the preceding completed 12 calendar months. Part-time and temporary employees count as full-time employees, and the concern aggregates the employees of its domestic and foreign affiliates. SBA proposes to change the 12-month period in § 121.106 to a 24-month period. As a result, a concern would average its employees over all pay periods in the preceding completed 24 months. If it has not been in business for 24 months, the concern would average its number of employees for each pay period during which it has been in business.

This change to § 121.106 would apply to all employee-based size standards. Those size standards predominantly apply to manufacturers but not exclusively. Firms also use SBA's employee-based size standards in certain mining, utilities, transportation, publishing, telecommunications, insurance, research and development, and environmental remediation industries. Significant to government contracting, nonmanufacturers also qualify for small business status for government procurement using an employee-based size standard. Though nonmanufacturers and the nonmanufacturing industries are not covered by the NDAA's change to proposed size standards, SBA believes that it would be unworkable to use a 24-month average for manufacturing industries but retain a 12-month average for other industries with employee-based size standards. Firms may participate in multiple industries, and it is burdensome to use different averaging periods for different industries with employee-based size standards. SBA seeks comment on whether to include nonmanufacturers and nonmanufacturing industries in the change to a 24-month average for employee-based standards.

B. Changes to Calculation of Average Annual Receipts

In a final rule published December 5, 2019 (84 FR 66561), SBA implemented the SBREA by making changes to its receipts-based size standards for all SBA programs except the Business Loan and Disaster Loan Programs. The excepted programs include: (i) The 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (collectively, the ''Business Loan Programs''); and (ii) the Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans (collectively, the ''Disaster Loan Programs'').

This proposed rule would extend the changes to SBA's receipts-based size standards to the Business Loan and Disaster Loan Programs. Currently, applicants in those loan programs must calculate their average annual receipts using a 3-year average. Under this proposal, applicants may choose to use either a 3-year average or a 5-year average. Thus, an applicant might be eligible for assistance if its 5-year average is equal to or less than the size standard, even if it would otherwise be ineligible because its 3-year average exceeds that size standard.

SBA also proposes to use the same treatment in SBA's SBIC program by SBIC applicants to choose to use either a 3-year average or a 5-year average. Recipients of SBIC assistance were not specifically identified in the December 2019 rulemaking that applied to all programs. Therefore, interested parties likely were not attuned to the effect that the December 2019 final rule might have on SBIC participants. This proposed rule invites SBICs and their portfolio companies to comment on SBA's proposed changes to the size rules for that program.

Like the changes in the December 2019 final rule, these proposed changes will expand the eligibility for SBA assistance to larger small businesses and some mid-sized businesses. An advanced small business may be able to retain its small business status for a longer period, if it is close to exceeding the size standard. A mid-sized business may be able to regain its small business status, if it would otherwise have exceeded the size standard.

These proposed changes differ in some respects from what SBA implemented in the earlier final rule. In particular, this proposal does not use the ''transition period'' that SBA included with the December 2019 final rule. That rule applied size-standard changes to the SBA government contracting programs and other non-loan programs. Starting on January 6, 2020, those programs began permitting participants to elect whether to use a 3-year average or a 5-year average to calculate average annual receipts. That election will end on January 6, 2022, however, marking the end of the transition period for those changes. After January 6, 2022, all government contractors will use a 5-year average for average annual receipts.

Conversely, the changes here allow for an election but do not have a transition period. SBA intends to make the election available indefinitely. This recognizes the differences between the loan programs and the government contracting programs, where firms are competing against one another. Where there is competition, businesses should be competing on an equal basis; therefore, the December 2019 final rule provided that, after the end of the transition period, government contractors all would use a 5-year averaging period. By contrast, in the loan programs, loan applicants are evaluated on an applicant-by-applicant basis. It is thus unnecessary to ensure that applicants use the same size criteria. As a result, SBA does not believe it is necessary to limit the election in the loan programs to a two-year period.

In soliciting comment for the December 2019 final rule, SBA received some comments from participants in the Business Loan programs. SBA has considered those comments in preparing this proposed rule.

Prior commenters asked that SBA use the 5-year average only for calculating average annual receipts, not for other loan application purposes. Accordingly, this proposal only authorizes the 3-or-5-year election for the calculation of receipts, not for any other purpose. Other calculations remain unchanged.

Prior commenters also asked that SBA authorize the Business Loan Programs to continue to use a 3-year average. Accordingly, this proposal uses an election, not a mandate. For the most part, lenders and applicants will continue to be able to use a 3-year average. The only exception will be where the applicant would not qualify as a small business using a 3-year average. In that case, the applicant may use a 5-year average if that would qualify the applicant as small. The applicant also might be able to qualify for loan assistance using the alternative size standard in section 3(a)(5)(B) of the Small Business Act.

II. Section-by-Section Analysis

A. Section 121.104

In paragraphs (c)(1), (c)(2), and (c)(3), SBA proposes to add the SBIC program to the list of programs that are excepted from SBA's current rule on calculating average annual receipts.

In paragraph (c)(4), SBA proposes to amend the calculation of average annual receipts for the Business Loan, Disaster Loan, and SBIC Programs. A business in those programs may calculate its receipts using either a 3-year average or a 5-year average for the purposes of determining its size under a receipts-based size standard. This change does not affect the calculation of any other figures in SBA's programs. In particular, alternative size standards are not affected by this change.

B. Section 121.106

In paragraphs (b)(1) and (b)(3), SBA proposes to amend the current 12-month averaging period to a 24-month averaging period. Businesses that have been in existence for more than 24 months would calculate their number of employees by averaging the number of employees for each pay period for the preceding completed 24 months. Businesses that have been in existence for fewer than 24 months would average their number of employees for each pay period during their existence.

C. Section 121.903

In paragraph (a)(1)(i), SBA proposes to amend the averaging period for size standards proposed by other agencies from a 12-month period to a 24-month averaging period.

III. Request for Comments

SBA invites comments, input, or suggestions from interested parties on its proposal to change the 12-month averaging period for employee-based size standards to a 24-month averaging period.

SBA also invites comments, input, or suggestions from interested parties on its proposal to permit businesses in the Business Loan, Disaster Loan, and SBIC programs to use either a 3-year average or a 5-year average for calculating average annual receipts for the purposes of qualifying as a small business. The comments should address the following specific issues pertaining to the SBA's proposal:

1. SBA invites input on its proposal to allow for a 3-or-5-year election indefinitely, rather than using a transition period that would end the election on a specified date.
2. SBA invites input on the effects that this proposal would have on applicants and lenders in the Business Loan Program.
3. SBA invites input on the effects that this proposal would have on SBICs.
4. SBA invites input on the effects that this proposal would have on the Disaster Loan Program.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, below, SBA provides a benefit-cost analysis of this proposed rule, including: (1) A statement of the need for the proposed action, and (2) an evaluation of the benefits and costs—both quantitative and qualitative—of this regulatory action.

Congressional Review Act

OIRA has determined that this is not a major rule under 5 U.S.C. 804(2).

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Regulatory Impact Analysis

A. Benefit-Cost Analysis

1. What is the need for this regulatory action?

As stated elsewhere, the Small Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (usually referred to as ''size standards''). First, Public Law 116–283 changed the averaging period for SBA's employee-based size standards from 12 months to 24 months. Second, in 2018, Public Law 115–324 modified the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards. Specifically, Public Law 115–324 changed the averaging period for receipts-based size standards for services industries from 3 years to 5 years.

The need of this proposed rule is to carry out the intent of Public Law 116–283 and Public Law 115–324, and to ensure consistency in the calculation of average number of employees and average annual receipts for size standards across the Federal Government. In addition to the averaging requirements, size standards prescribed under section 3(a)(2)(C)(ii) of the Small Business Act must meet two other requirements: (1) Be proposed with an opportunity for public notice and comment, and (2) be approved by the Administrator. Neither Public Law 116–283 nor Public Law 115–324 repeals these 2 requirements, and this proposed rule satisfies these requirements.

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. This regulatory action promotes the Administration's goals and objectives and meets the SBA's statutory responsibility to implement a new law impacting size definitions for small businesses. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through access to capital, Federal Government contracts and purchases, and management, technical and disaster assistance.

2. What are the potential effects of this regulatory action?

i. Potential Effects of Changing the Calculation of Employees

Changing the periods for calculating average number of employees from 12 months to 24 months may enable some mid-size businesses that have just exceeded size standards to regain small business status. Similarly, it could also allow some advanced and larger small businesses about to exceed size standards to retain their small status for a longer period. However, it could also result in some advanced small businesses having the 24-months employee average that happens to be higher than the 12-month employee average, thus ejecting them out of their small business status sooner. Detailed impacts of the proposed change are discussed below.

It is difficult to determine the actual number of small and mid-size businesses that would be impacted by Public Law 116–283 and this regulatory action because there is no data on businesses' employment by month or by pay period. The employment data from the Economic Census special tabulation are only available once every 5 years. Similarly, the System for Award Management (SAM) only records the data on the concern's average number of employees for each pay period in the preceding completed 12 calendar months, but not their employee counts for each pay period or each month. For example, the 12-month average employee data for January 2020 is an average of number of employees for each pay period during preceding completed 12 calendar months (*i.e.,* January 2019 to December 2019). Similarly, the 24-month average employee value for January 2020 is an average of number of employees for each pay period during preceding completed 24 calendar months (*i.e.,* January 2018 to December 2019).

Given the lack of employment data for each pay period or each month, SBA approximates a firm's 24-month average number of employees for January 2020 as follows:

$$AvgEmployee_{18-19} = \frac{1}{24} * \left\{(12 * AvgEmployee_{2018\ (SAM)}) + (12 * AvgEmployee_{2019\ (SAM)})\right\}$$

$$= \frac{1}{2} * \left\{(AvgEmployee_{2018\ (SAM)}) + (AvgEmployee_{2019\ (SAM)})\right\}$$

where:

$$AvgEmployee_{2018} = \frac{1}{t}\sum_{k=1}^{t}(Employee_{k,2018})$$

$$AvgEmployee_{2019} = \frac{1}{t}\sum_{k=1}^{t}(Employee_{k,2019})$$

where k = 1, 2, . . . t pay periods.

To estimate the 24-month employee average using the above formula, SBA analyzed the 2019 SAM extracts (as of September 1, 2019) and 2018 SAM extracts (as of September 1, 2018). The 24-month average employee formula would only work for businesses that were present in both 2018 and 2019 SAM extracts. One challenge was that some businesses found in 2019 SAM could not be found in 2018 SAM and vice versa. Excluding entities registered in SAM for purposes other than government contracting and entities ineligible for small business consideration (such as foreign governments and state-controlled institutions of higher learning), there were a total of 152,450 unique business concerns in 2019 SAM subject to at least one employee-based size standard. Of these concerns, 131,295 (or about 86.1 percent) were ''small'' in all North American Industry Classification System (NAICS) industries, 2,663 (or 1.7 percent) were ''small'' in some industries and ''not small'' in other industries, and 18,492 (or 12.1 percent) were ''not small'' in any industry subject to an employee-based size standard.

Excluding entities with ''null'' or ''zero'' employee values, 128,599 firms (or about 84.4 percent) appeared both in 2019 SAM and in 2018 SAM and were included in the 24-month average employee approximation and calculation of number of businesses impacted. Of those 128,599 matched firms subject to an employee-based size standard, 108,541 (or about 84.4 percent) were ''small'' in all NAICS industries, 2,526 (or 2.0 percent) were ''small'' in some industries and other than small (''not small'') in other industries, and 17,532 (or about 13.6 percent) were ''not small'' in any industry. In other words, 133,958 (or 87.9 percent) of 152,450 total concerns in SAM 2019 and 111,067 (or 86.4 percent) of 128,599 total matched firms were small in at least one NAICS industry with an employee-based size standard. These results are summarized in Table 1, ''Size Status of Businesses in Industries Subject to Employee-Based Size Standards,'' below.

TABLE 1—SIZE STATUS OF BUSINESSES IN INDUSTRIES SUBJECT TO EMPLOYEE-BASED SIZE STANDARDS

Size status	Total firms in 2019 SAM subject to least one employee-based size standard		Firms in both 2018 SAM and 2019 SAM (matched)		% matched	Total to matched ratio *
	Number of firms	%	Number of firms	%		
Small in at least one industry	133,958	87.9	111,067	86.4	82.9	1.206
Small in all industries	131,295	86.1	108,541	84.4	82.7	1.210
Small in some and not small in others	2,663	1.7	2,526	2.0	94.9	1.054
Large in all industries	18,492	12.1	17,532	13.6	94.8	1.055
Total	152,450	100.0	128,599	100.0	84.4	1.185

According to Table 2, ''Distribution of Business Concerns Subject to Employee-Based Size Standards by Number of NAICS Codes,'' below, the distribution of firms by the number of NAICS codes in the matched data is very similar to that for the overall 2019 SAM data. About 45 percent of firms were in only one NAICS code that has an employee-based size standard, about 40 percent in 2–5 NAICS codes, about 9 percent in 6–10 NAICS codes, and about 5 percent in more than 10 NAICS codes. In other words, 55 percent of firms were in multiple NAICS codes with employee-based size standards. Thus, it is quite possible that the proposed change may impact a firm's small business status in multiple industries. For purposes of this analysis, an impacted firm is defined as one that would be impacted by the change in terms of gaining, regaining, extending, or losing small business status in at least one industry with an employee-based size standard.

TABLE 2—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO EMPLOYEE-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES

Number of NAICS codes	Total firms in 2019 SAM with at least one employee-based NAICS code		Matched firms between 2019 and 2018 SAM	
	Count	%	Count	%
1 NAICS code	70,200	46.0	57,498	44.7
2 to 5 NAICS codes	61,266	40.2	52,599	40.9
6 to 10 NAICS codes	13,540	8.9	11,798	9.2
>10 NAICS codes	7,444	4.9	6,704	5.2
Total	152,450	100.0	128,599	100.0

Note: A business concern is defined in terms of a unique local (vendor) DUNS number.

A central premise of Public Law 116–283 is that a 24-month employee average (as opposed to a 12-month employee average) would enable some mid-size businesses who have recently exceeded the size standard to regain small business status and some advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. However, this premise would only hold true when businesses' monthly employees are rising. When businesses' monthly employees are declining, due to economic downturns or other factors, the 24-month employee average could be higher than the 12-month employee average, thereby causing small businesses close to their size standards based on the 12-month average to lose their small business status sooner. In some cases where the 24-month employee average could be higher than the size standard, thereby forcing small businesses to lose their small status immediately when the longer 24-month averaging period becomes effective. Additionally, such businesses with declining employees would have to wait longer to regain their small business status.

ii. Potential Effects of Changing the Calculation of Receipts

Changing the periods for calculating average annual receipts from 3 years to 5 years, pursuant to Public Law 115–324, may enable some mid-size businesses that have just exceeded size standards to regain small business status. Similarly, it could also allow some advanced and larger small businesses about to exceed size standards to retain their small business status for a longer period. However, it could also result in some advanced small businesses having a 5-year receipts average that happens to be higher than the 3-year receipts average, thus ejecting them out of their small business status sooner. To mitigate this negative impact, SBA proposes to allow applicants to its Business Loan, Disaster Loan, and SBIC Programs to choose either a 3-year average or a 5-year average. Thus, an applicant might be eligible for assistance if its 5-year average is equal to or less than the size standard, even if it would otherwise be ineligible under the 3-year average. Detailed impacts of the proposed change are discussed below.

It is difficult to determine the actual number of small and mid-size businesses that would be impacted by Public Law 115–324 and this regulatory action because there is no annual data on receipts of businesses. The annual receipts data from the Economic Census special tabulation are only available once every 5 years. Similarly, the System for Award Management (SAM) only records the data on 3-year average annual receipts of businesses over their 3 preceding fiscal years, but not their annual receipts for each fiscal year. For example, the receipts data for year 2019 is an average of annual receipts for 2018, 2017, and 2016. Similarly, the receipts data for 2018 is an average of annual receipts for 2017, 2016, and 2015, and so on. A 5-year receipts average for 2019 would be an average of annual receipts for 2018, 2017, 2016, 2015, and 2014.

Given the lack of annual receipts for each year, SBA approximated a firm's 5-year average annual revenue for 2019 as follows:

$$AvgRevenue_{2014-18} = \frac{1}{5} * \{(2 * AvgRevenue_{2016\,(SAM)}) + (3 * AvgRevenue_{2019\,(SAM)})\}$$

where:

$$AvgRevenue_{2016\,(SAM)} = AvgRevenue_{2013-15} = = \frac{1}{3} * (Revenue_{2013} + Revenue_{2014} + Revenue_{2015})$$

and

$$AvgRevenue_{2019\,(SAM)} = AvgRevenue_{2016-18} = = \frac{1}{3} * (Revenue_{2016} + Revenue_{2017} + Revenue_{2018}).$$

This result may slightly underestimate the 5-year revenue average when annual revenues are rising (*i.e.,* 2015 revenue >2014 revenue >2013 revenue) and overestimate it if annual revenues are declining (*i.e.,* 2015 revenue <2014 revenue <2013 revenue).

To estimate the 5-year receipts average for 2019 using the above formula, SBA analyzed the 2019 SAM extracts (as of September 1, 2019) and 2016 SAM extracts (as of September 1, 2016). The above 5-year average annual receipts formula would only work for businesses that were present in both 2016 and 2018 SAM extracts. One challenge was that some businesses found in 2019 SAM could not be found in 2016 SAM and vice versa. Excluding entities registered in SAM for purposes other than government contracting and entities ineligible for small business consideration (such as foreign governments and state-controlled institutions of higher learning), there were a total of 334,990 unique business concerns in 2019 SAM subject to at least one receipts-based size standard. Of these concerns, 282,671 (or about 84.4 percent) were ''small'' in all North American Industry Classification System (NAICS) industries, 9,783 (or 2.9 percent) were ''small'' in some industries and ''not small'' in other industries, and 42,536 (or 12.7 percent) were ''not small'' in any industry.

Excluding entities with ''null'' or ''zero'' receipts values, 192,295 firms (or about 57.4 percent) appeared both in 2019 SAM and in 2016 SAM and were included in the 5-year average annual receipts approximation and calculation of number of businesses impacted. Of those 192,295 matched firms subject to a receipts-based size standard, 152,040 (or about 79 percent) were ''small'' in all NAICS industries, 8,081 (or 4.2 percent) were ''small'' in some industries and other than small (''not small'') in other industries, and 32,174 (or about 16.7 percent) were ''not small'' in any industry. In other words, 292,454 (or 87.3 percent) of 334,990 total concerns in SAM 2019 and 160,121 (or 83.3 percent) of 192,295 total matched firms were small in at least one NAICS industry with a receipts-based size standard. These results are summarized in Table 3, ''Size Status of Businesses in Industries Subject to Receipts-Based Size Standards,'' below.

TABLE 3—SIZE STATUS OF BUSINESSES IN INDUSTRIES SUBJECT TO RECEIPTS-BASED SIZE STANDARDS

Size status	Total firms in 2019 SAM subject to least one receipts-based standard		Firms in both 2016 SAM and 2019 SAM (matched)		% Matched	Total to matched ratio *
	Number of firms	%	Number of firms	%		
Small in at least one industry	292,454	87.3	160,121	83.3	54.8	1.826
Small in all industries	282,671	84.4	152,040	79.1	53.8	1.859
Small in some and not small in others	9,783	2.9	8,081	4.2	82.6	1.211
Large in all industries	42,536	12.7	32,174	16.7	75.6	1.322
Total	334,990	100.0	192,295	100.0	57.4	1.742

* To be used to translate the results from the matched data to overall 2019 SAM data.

According to Table 4, ''Distribution of Business Concerns Subject to Receipts-Based Size Standards by Number of NAICS Codes,'' below, the distribution of firms by the number of NAICS codes in the matched data is very similar to that for the overall 2019 SAM data. About 41–43 percent of firms were in only one NAICS code that has a receipts-based size standard, about 35 percent in 2–5 NAICS codes, about 12 percent in 6–10 NAICS codes, and about 8–10 percent in more than 10 NAICS codes. In other words, 57–59 percent of firms were in multiple NAICS codes with receipts-based size standards. Thus, it is quite possible that the proposed change may impact a firm's small business status in multiple industries. For purposes of this analysis, an impacted firm is defined as one that would be impacted by the change in terms of gaining, regaining, extending, or losing small business status in at least one industry with a receipts-based size standard.

TABLE 4—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO RECEIPTS-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES

Number of NAICS codes	Total firms in 2019 SAM with at least one receipts-based NAICS code		Matched firms between 2019 and 2016 SAM	
	Count	%	Count	%
1 NAICS code	145,267	43.4	79,701	41.4
2 to 5 NAICS codes	120,078	35.8	68,168	35.4
6 to 10 NAICS codes	40,595	12.1	24,461	12.7
>10 NAICS codes	29,050	8.7	19,965	10.4
Total	334,990	100.0	192,295	100.0

Note: A business concern is defined in terms of a unique local (vendor) DUNS number.

A central premise of Public Law 115–324 is that a 5-year annual receipts average (as opposed to a 3-year annual receipts average) would enable some mid-size businesses who have recently exceeded the size standard to regain small business status and some advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. However, this premise would only hold true when businesses' annual revenues are rising. When businesses' annual revenues are declining, due to economic downturns or other factors, the 5-year annual receipts average could be higher than the 3-year annual receipts average, thereby causing small businesses close to their size standards to lose their small business status sooner. To mitigate such negative impacts on small businesses, SBA proposes, in consideration of public comments on the prior proposed rule and the results from its own analysis, to permit businesses in the Business Loan, Disaster Loan, and SBIC Programs to use either a 3-year average or a 5-year average for calculating average annual receipts for the purposes of qualifying as a small business.

B. Impacts on Businesses From Proposed Changes in Calculation of Employees and Receipts for Size Standards

1. Impacts on Businesses From Changing the Averaging Period for Employees From 12 Months to 24 Months

By comparing the approximated 24-month employee average with the current employee-based size standard for each of the 128,599 matched business concerns in each NAICS code subject to an employee-based size standard, SBA identifies the following 4 possible impacts from changing the averaging period for employees from 12 months to 24 months:

i. The number of mid-size businesses that have exceeded the size standard and would regain small business status in at least one NAICS industry with an employee-based size standard (*i.e.,* 12-month average > size standard ≥ 24-month average)—expansive impact;

ii. The number of advanced small businesses within 10 percent below the size standard that would have their small business status extended for a longer period in at least one NAICS industry with an employee-based standard (24-month average < 12-month average ≤ size standard *and* 0.9*size standard < 12-month average ≤ size standard)—expansive impact;

iii. The number of currently small businesses that would lose their small business status in at least one NAICS industry subjected to an employee-based size standard (*i.e.,* 12-month average ≤ size standard < 24-month average)—contractive impact; and

iv. The number of advanced small businesses within 10 percent below the size standard that would have their small status shortened in at least one NAICS industry subject to an employee-based standard (12-month average < 24-month average ≤ size standard *and* 0.9*size standard < 12-month average ≤ size standard)—contractive impact.

In this proposed rule, SBA is changing the period for calculation of average employees for all of its employee-based size standards from 12 months to 24 months. The purpose of Public Law 116–283 is to allow small businesses more time to grow and develop competitiveness and infrastructure so that they are better prepared to succeed under full and open competition once they outgrow the size threshold. However, as stated previously, a longer 24-month averaging period may not always and necessarily provide relief to every small business concern. As discussed previously, when monthly employees are declining, the 24-month average would be higher than the 12-month average, thereby ejecting some advanced small businesses out of their small business status sooner or rendering some small businesses under the 12-month average not small immediately.

As discussed earlier, the change in the averaging period for employees from 12 months to 24 months results in four different types of impacts on small businesses: (i) Enabling current large or mid-size businesses to gain small business status (impact i); (ii) enabling current advanced small businesses to lengthen their small business status (impact ii); (iii) causing current small businesses to lose their small business status (impact iii); and (iv) causing current small businesses to shorten their small business status (impact iv). Table 5, ''Percentage Distribution of Impacted Firms with Employee Based Size Standards by the Number of NAICS Codes,'' below, provides these results based on the 2019 SAM—2018 SAM matched firms.

It is highly notable that the distribution of impacted firms by the number of NAICS codes, as shown in Table 5, is very different as compared to a similar distribution based on the overall matched and total 2019 SAM data (*see* Table 2), especially with respect to firms with only one NAICS code and those with more than 5 NAICS codes. For example, about 45 percent of all firms in the overall data were associated with only one NAICS code, as compared only about 20 percent among impacted firms. Similarly, firms with more than 5 NAICS codes accounted for about 13–14 percent of all firms in the original data, as compared to 30–40 percent among impacted firms. It is also notable that, among the industries with employee-based size standard, NAICS Sectors 31–33 and 42 together accounted for about 90 percent of impacted firms (in terms of both contractive and expansive impacts), with Sector 31–33 (Manufacturing) accounting for about 65 percent and Sector 42 (Wholesale Trade) about 25 percent.

TABLE 5—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS WITH EMPLOYEE BASED SIZE STANDARDS BY THE NUMBER OF NAICS CODES

Impact *	Number of impacted firms	% Distribution of impacted firms by number of NAICS codes				
		1 NAICS code	2–5 NAICS codes	6–10 NAICS codes	>10 NAICS codes	Total
Currently small in all NAICS codes						
Impact (ii)	195	33.3	47.2	10.3	9.2	100
Impact (iii)	178	33.1	44.4	15.7	6.7	100
Impact (iv)	66	19.7	47.0	13.6	19.7	100
Currently large business in all NAICS codes						
Impact (i)	188	39.9	44.1	11.2	4.8	100
Currently small in some NAICS and not small in others						
Impact (i)	182	0	34.1	31.9	34.1	100
Impact (ii)	130	0	36.2	32.3	31.5	100
Impact (iii)	42	0	40.5	40.5	19.0	100
Impact (iv)	20	0	50	15	35	100
Total impact by impact type						
Impact (i)	370	20.3	39.2	21.4	19.2	100
Impact (ii)	325	20.0	42.8	19.1	18.2	100
Impact (iii)	220	18.2	29.5	13.8	6.2	100
Impact (iv)	86	15.1	47.7	14.0	23.3	100
Overall impact						
Expansive	689	20.3	40.8	20.2	18.7	100
Contractive	306	23.5	44.8	18.6	13.1	100
Total	995	21.3	42.0	19.7	17.0	100

* Impact (i) = Current large businesses gaining small status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

Each of these impacts was then multiplied by an applicable factor or ratio, as shown in the last column of Table 1, to obtain the respective impacts corresponding to all firms in 2019 SAM subject to at least one employee-based size standard. These results are presented below in Table 6, ''Impacts from Changing the Averaging Period for Employees from 12 Months to 24 Months.'' The last column of the table shows the percent of firms impacted relative to all business concerns in 2019 SAM. Because the SAM data only captures businesses that are primarily interested in Federal procurement opportunities, the SAM-based results do not fully capture the impacts the proposed change may have on businesses participating in various non-procurement programs that apply to SBA's employee-based size standards, such as SBA loan programs and exemptions from compliance with paperwork and other regulatory requirements.

The Economic Census, combined with the Census of Agriculture and County Business Patterns Reports, provides for each NAICS code information on the number of total small and large businesses subjected to an employee-based size standard. Based on the matched SAM data, SBA computed percentages of businesses impacted under each impact category for each NAICS industry subject to an employee-based size standard. By applying such percentages to the 2012 Economic Census tabulation (the latest available), SBA estimated the number of all businesses impacted under each impact type for each NAICS code subject to an employee-based size standard. These results are presented in Table 7, ''Impacts from Changing the Averaging Period for Employees from 12 Months to 24 Months (2012 Economic Census),'' below.

TABLE 6—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

Impact [1]	Firms impacted in matched dataset	Total to matched ratio	Total firms impacted in 2019 SAM	Total firms in 2019 SAM	% Impacted
Entities only small under all NAICS code(s)					
Impact (ii)	195	1.210	236	131,295	0.2
Impact (iii)	178	1.210	215	131,295	0.2
Impact (iv)	66	1.210	80	131,295	0.1
Entities other than small under all NAICS code(s)					
Impact (i)	188	1.055	198	18,492	1.1
Entities small in some NAICS code(s) and other than small in other(s)					
Impact (i)	182	1.054	192	2,663	7.2
Impact (ii)	130	1.054	137	2,663	5.1
Impact (iii)	42	1.054	44	2,663	1.7
Impact (iv)	20	1.054	21	2,663	0.8
Total impact by impact type					
Impact (i)	370		390	21,155	1.8
Impact (ii)	325		373	133,958	0.3
Impact (iii)	220		260	133,958	0.2
Impact (iv)	86		101	133,958	0.1
Overall total by expansive or contractive impact [2]					
Expansive *[impact (i) or impact (ii)]*	689	1.098	757	152,450	0.5
Contractive *[impact (iii) or impact (iv)]*	306	1.178	361	152,450	0.2
Total impact	995		1,117	152,450	0.7

[1] Impact (i) = Current large businesses gaining small business status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

[2] Number of firms under overall positive, negative and total impacts refer to the number of unique firms. Some firms could appear in multiple impact types and hence individual impacts may not add up to overall impact.

TABLE 7—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

[2012 Economic census]

Impact [1]	Total firms (in million)	Estimate of impacted firms	% Impacted
Impact (i)	22,324	281	1.3
Impact (ii)	657,942	1,203	0.2
Impact (iii)	657,942	763	0.1
Impact (iv)	657,942	287	0.04
Overall impact			
Expansive *[impact (i) or impact (ii)]*	680,266	1,484	0.2
Contractive *[impact (iii) or impact (iv)]*	657,942	1,050	0.2
Total impact	680,266	2,534	0.4

[1] Impact (i) = Current large businesses gaining small status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

Currently large or mid-size businesses regaining small business status would become eligible for various benefits as small business concerns, including access to Federal set-aside contracts, SBA's guaranteed loans and disaster assistance, reduced patent fees, and exemptions from various compliance and paperwork requirements. With their small business status extended, advanced small businesses would continue to receive such benefits for a longer period. However, the proposed change may also cause some small businesses to lose their small business status in at least one employee-based size standard and access to small business assistance, especially Federal set-aside opportunities.

2. Impacts on Businesses From Changing the Averaging Period for Receipts From 3 Years to 5 Years

By comparing the approximated 5-year annual receipts average with the current receipts-based size standard for each of the 192,295 matched business concerns in each NAICS code subject to a receipts-based size standard, in this proposed rule, SBA identifies the following 4 possible impacts from changing the averaging period for annual receipts from 3 years to 5 years:

i. The number of mid-size businesses that have exceeded the size standard and would regain small business status in at least one NAICS industry with a receipts-based size standard (*i.e.,* 3-year average > size standard ≥ 5-year average)—expansive impact;

ii. The number of advanced small businesses within 10 percent below the size standard that would have their small business status extended for a longer period in at least one NAICS industry with a receipts-based standard (5-year average < 3-year average ≤ size standard *and* 0.9*size standard < 3-year average ≤ size standard)—expansive impact;

iii. The number of currently small businesses that would lose their small business status in at least one NAICS industry subjected to a receipts-based size standard (*i.e.,* 3-year average ≤ size standard < 5-year average)—contractive impact; and

iv. The number of advanced small businesses within 10 percent below the size standard that would have their small business status shortened in at least one NAICS industry subject to a receipts-based standard (3-year average < 5-year average ≤ size standard *and* 0.9*size standard < 3-year average ≤ size standard)—contractive impact.

In this proposed rule, SBA is changing the period for calculation of average annual receipts for SBA receipts-based size standards for Business Loan, Disaster Loan, and SBIC Programs from 3 years to 5 years. The purpose of Public Law 115–324 is to allow small businesses more time to grow and develop competitiveness and infrastructure so that they are better prepared to succeed under full and open competition once they outgrow the size threshold. However, a longer 5-year averaging period may not always and necessarily provide relief to every small business concern. As discussed in the prior proposed rule, when annual revenues are declining or when annual revenues for the latest 3 years are lower than those for the earliest 2 years of the 5-year period, the 5-year average would be higher than the 3-year average, thereby ejecting some advanced small businesses out of their small business status sooner or rendering some small businesses under the 3-year average not small immediately.

There are 4 different types of impacts on small businesses from changes to the averaging period for annual receipts from 3 years to 5 years as follows: (i) Enabling current large or mid-size businesses to gain small business status (impact i); (ii) enabling current advanced small businesses to lengthen their small business status (impact ii); (iii) causing current small businesses to lose their small business status (impact iii); and (iv) causing current small businesses to shorten their small business status (impact iv).

However, with the SBA's proposal to permit businesses in the Business Loan, Disaster Loan, and SBIC programs to use either a 3-year average or a 5-year average for calculating average annual receipts for the purposes of qualifying as a small business, the two contractive impacts (namely impact (iii) and impact (iv)) do not apply to this proposed rule. Accordingly, this proposed rule provides the analysis of the two expansive impacts of changing the averaging periods for annual receipts from 3 years to 5 years (namely impact (i) and impact (ii)) only.

Table 8, ''Percentage Distribution of Impacted Firms with Receipts Based Size Standards by the Number of NAICS Codes,'' below, provides these results based on the 2019 SAM—2016 SAM matched firms.

TABLE 8—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS WITH RECEIPTS BASED SIZE STANDARDS BY THE NUMBER OF NAICS CODES

Impact*	Number of impacted firms	% Distribution of impacted firms by number of NAICS codes				
		1 NAICS code	2–5 NAICS codes	6–10 NAICS codes	>10 NAICS codes	Total
Currently large in all NAICS codes						
Impact (i)	899	36.3	33.9	12.6	17.2	100.0
Currently small in all NAICS codes						
Impact (ii)	1,227	27.3	36.3	17.8	18.6	100.0
Currently small in some NAICS and not small in others						
Impact (i)	1,761	0	27.4	22.7	50.0	100.0
Impact (ii)	1,072	0	27.8	24.3	47.9	100.0
Total impact by impact type						
Impact (i)	2,660	12.3	29.6	19.2	38.9	100.0
Impact (ii)	2,299	14.6	32.3	20.8	32.3	100.0
Total expansive impact	4,702	14.1	31.8	20.2	34.0	100.0

*Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

It is highly notable that the distribution of impacted firms by the number of NAICS codes, as shown in Table 8, is very different as compared to a similar distribution based on the overall matched and total 2019 SAM data (*see* Table 4), especially with respect to firms with only one NAICS code and those with more than 5 NAICS codes. For example, as shown in Table 4, above, more than 40 percent of all firms in the overall data were associated with only one NAICS code, as compared to less than 15 percent among impacted firms in Table 8. Similarly, firms with more than 5 NAICS codes accounted for about 20 percent of all firms in the original data, as compared to more than

50 percent among impacted firms. It is also notable that, among the industries with receipts based size standards, NAICS Sectors 54, 56, and 23 together accounted for more than 70 percent of impacted firms, with Sector 54 (Professional, Scientific and Technical Services) accounting for about 30–35 percent, followed by Sector 23 (Construction) about 25–30 percent, and Sector 56 (Administrative and Support, Waste Management and Remediation Services) about 10–13 percent.

Each of these impacts was then multiplied by an applicable factor or ratio, as shown in the last column of Table 3, to obtain the respective impacts corresponding to all firms in 2019 SAM subject to at least one receipts-based size standard. These results are presented below in Table 9, ''Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years.'' The last column of the table shows the percent of firms impacted relative to all business concerns in 2019 SAM.

Because the SAM data only captures businesses that are primarily interested in Federal procurement opportunities, the SAM-based results do not fully capture the impacts the proposed change may have on businesses participating in various non-procurement programs that apply SBA's receipts-based size standards, such as exemptions from compliance with paperwork and other regulatory requirements.

TABLE 9—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact [1]	Firms impacted in matched dataset	Total to matched ratio (Table 1)	Total firms impacted in 2019 SAM	Total firms in 2019 SAM	% Impacted
Entities other than small under all NAICS code(s)					
Impact (i)	899	1.32	1,189	42,536	2.8
Entities small under all NAICS code(s)					
Impact (ii)	1,227	1.859	2,281	282,671	0.8
Entities small in some NAICS code(s) and other than small in other(s)					
Impact (i)	1,761	1.211	2,132	9,783	21.8
Impact (ii)	1,072	1.211	1,298	9,783	13.3
Total expansive impact by impact type					
Impact (i)	2,660		3,320	52,319	6.3
Impact (ii)	2,299		3,579	292,454	1.2
Overall total expansive impact [2]	4,702	1.391	6,542	334,990	2.0

[1] Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.
[2] Number of firms under total positive impacts refer to the number of unique firms. Some firms could appear in both impact types and hence individual impacts may not add up to overall impact.

The Economic Census, combined with the Census of Agriculture and County Business Patterns Reports, provides for each NAICS code information on the number of total small and large businesses subjected to a receipts-based size standard. Based on the matched SAM data, SBA computed percentages of businesses impacted under each impact category for each NAICS industry subject to a receipts-based size standard. By applying such percentages to the 2012 Economic Census tabulation, SBA estimated the number of all businesses impacted under each impact type for each NAICS code subject to a receipts-based size standard. These results are presented in Table 10, ''Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years (2012 Economic Census),'' below.

TABLE 10—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

[2012 Economic census]

Impact [1]	Total firms	Estimate of impacted firms	% Impacted
Impact (i)	271,505	8,565	3.2
Impact (ii)	6,896,633	60,176	0.9
Overall expansive impact	7,168,138	68,742	1.0

[1] Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

Currently large or mid-size businesses regaining small business status would get various benefits as small business concerns, including access to SBA loan programs, and exemptions from various compliance and paperwork requirements. With their small business status extended, advanced small businesses would continue to receive such benefits for a longer period. However, the change from 3-year average receipts to 5-year average may also harm some small businesses by causing them to lose or shorten their small business status in at least one receipts-based size standard, thereby depriving them of access to small business assistance, including SBA's lending. To mitigate such impacts, SBA is allowing businesses to elect either the 3-year average annual receipts or the 5-year average annual receipts for the Business Loan, Disaster Loan, and SBIC programs. SBA seeks comment on implementation of Public Law 115–324 for the Business Loan, Disaster Loan, and SBIC programs.

C. The Baseline

1. Baseline for Changing the Averaging Period for Employees From 12 Months to 24 Months

In this rulemaking, SBA establishes an appropriate baseline to evaluate benefits, costs, or transfer impacts of this action and alternative approaches considered, if any. A baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action modifying an existing regulation (such as changing the calculation of the average number of employees from 12 months to 24 months), a baseline assuming no change to the regulation (*i.e.,* maintaining the status quo) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Based on the 2012 Economic Census special tabulations (the latest available), 2012 County Business Patterns Reports (for industries not covered by the Economic Census), and 2012 Agricultural Census tabulations (for agricultural industries), of a total of about 7.2 million firms in all industries with employee-based size standards, about 96 percent were considered small and 4 percent other than small under the 12-month employee average. Similarly, of 334,990 businesses that were subject to at least one employee-based size standard and eligible for Federal contracting, 87.3 percent were small in at least one NAICS code and 12.7 percent other than small in all NAICS codes with an employee-based size standard.

Based on the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal year 2019, on average, about 39,714 unique firms in industries subject to employee-based size standards received at least one Federal contract during 2019, of which 85.3 percent were small. Businesses subject to employee-based size standards received $232.6 billion in annual average Federal contract dollars in 2019, of which nearly $47 billion or about 20.2 percent went to small businesses. Of total dollars awarded to small businesses subject to employee-based size standards, $23.8 billion or 50.6 percent was awarded through various small business set-aside programs and 49.4 percent was awarded through non-set aside contracts.

Based on SBA's internal data on its loan programs, small businesses subject to employee-based size standards received, on an annual basis, a total of 7,672 7(a) and 504 loans for fiscal years 2018–2020, totaling $4.9 billion, of which 75 percent was issued through the 7(a) program and 25 percent was issued through the CDC/504 program. During fiscal years 2016–2018, small businesses in those industries also received about 400 loans through the SBA's disaster loan program, totaling about $0.04 billion on an annual basis. Table 11, ''Baseline Analysis of Employee-Based Size Standards,'' below, provides these baseline results.

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

TABLE 11—BASELINE ANALYSIS OF EMPLOYEE-BASED SIZE STANDARDS

Measure	Value
Total industries subject to employee-based size standards	500
Total firms subject to at least one employee-based size standard (million)—2012 Economic Census	680,266
Total small firms subject to at least one employee-based size standard (million)—2012 Economic Census	657,942
Total small firms subject to at least one employee-based size standard as % of total firms—2012 Economic Census	96.7
Total business concerns in SAM [1] (as of September 1, 2019)	403,116
Total business concerns subject to a employee-based size standard in at least one NAICS code [2] (2019 SAM)	152,450
Total businesses that are small in at least one NAICS code subject to an employee-based size standard	133,958
Small business concerns as % of total business concerns subject to employee-based standards (2019 SAM)	87.9
Average total number of unique Eligible vendors getting Federal contracts [1]—FPDS–NG (2019)	106,230
Average total number of unique firms with employee-based size standards getting Federal contracts [2] —FPDS–NG (2019)	39,714
Average total contract dollars awarded to business concerns, subject to employee-based standards ($ billion)—FPDS–NG (2019)	$232.6
Average total small business contract dollars awarded to businesses subject to employee-based standards ($ billion)—FPDS–NG (2019)	$47.1
Small business dollars as % of total dollars awarded to firms subject to employee-based standards	20.2
Annual average number of 7(a) and 504 loans to businesses subject to employee-based standards (2018–2020)	7,672
Annual average amount of 7(a) and 504 loans ($ billion) (2018–2020)	$4.9
Number of disaster loans to businesses subject to employee-based size standards (2016–2018)	399
Amount of disaster loans ($ billion) (2016–2018)	$0.04

[1] Entities in SAM and FPDS–NG presented above only include business concerns that can be eligible to qualify as small for Federal contracting. That is, entities that can never qualify as small (*e.g.,* foreign, not-for-profit and government entities) are excluded as they are not impacted by this rule.

[2] A business concern could appear in multiple NAICS industries involving both employee-based and size standards and those based on other measures (such as employees). Similarly, a business could be small in some industries and other than small in others.

As mentioned previously, businesses that would regain or lose small business status can be identified by comparing their 24-month employee average with the employee-based size standard. That is, if the 24-month employee average of a firm currently above the size standard is lower than the applicable employee-based size standard, that firm will gain or regain small business status. Similarly, if the 24-month employee average of a currently small business is higher than the size standard, that business will lose its small business status. However, to estimate the number of small businesses that would benefit by having their small business status extended for a longer period or would be penalized by having their small size status shortened, SBA considered small businesses whose 12-month employee average was within 10 percent below their employee-based size thresholds. Small businesses that are not immediately impacted may be impacted either negatively or positively someday as they continue to grow and approach the size standard threshold.

2. Baseline for Changing the Averaging Period for Receipts From 3 Years to 5 Years

For this new regulatory action modifying an existing regulation (such as changing the average annual receipts calculation from 3 years to 5 years), a baseline assuming no change to the regulation (*i.e.,* maintaining the status quo) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Based on the 2012 Economic Census special tabulations (the latest available), 2012 County Business Patterns Reports (for industries not covered by the Economic Census), and 2012 Agricultural Census tabulations (for agricultural industries), of a total of about 7.2 million firms in all industries with receipts-based size standards, about 96 percent are considered small and 4 percent other-than-small under the 3-year annual receipts average. Similarly, of 334,990 businesses in SAM 2019 that were subject to at least one receipts-based size standard and eligible to qualify as small business concerns, 87.3 percent were small in at least one NAICS code and 12.7 percent other than small in all NAICS codes.

Based on SBA's internal data on its loan programs, small businesses subject to receipts-based size standards received, on an annual basis, a total of about 50,150 7(a) and 504 loans for fiscal years 2018–2020, totaling nearly $24 billion, of which 85 percent was issued through the 7(a) program and 15 percent was issued through the CDC/504 program. During fiscal years 2016–2018, small businesses in those industries also received about 5,585 loans through the SBA's disaster loan program, totaling about $0.5 billion on an annual basis. Table 12, ''Baseline Analysis of Receipts-Based Size Standards,'' below, provides these baseline results.

Besides financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal agencies that use SBA's size standards. However, SBA has no data to estimate the number of small businesses receiving such benefits. Similarly, due to the lack of data, SBA is not able to determine impacts the proposed rule will have on small businesses participating in other agencies' programs that are subject to their own size standards based on average annual receipts.

TABLE 12—BASELINE ANALYSIS OF RECEIPTS-BASED SIZE STANDARDS

Measure	Value
Total industries subject to receipts-based standards	518
Total firms subject to at least one receipts-based standard (million)—2012 Economic Census	7.17
Total small firms subject to at least one receipts-based standard (million)—2012 Economic Census	6.9
Total small firms subject to at least one receipts-based standard as % of total firms—2012 Economic Census	96.2
Total business concerns in SAM [1] (as of September 1, 2019)	403,116
Total business concerns subject to a receipts-based size standard in at least one NAICS code [2] (2019 SAM)	334,990
Total businesses that are small in at least one NAICS code subject to a receipts-based size standard	292,454
Small business concerns as % of total business concerns subject to receipts-based standards (2019 SAM)	87.3
Annual average number of 7(a) and 504 loans to businesses subject to receipts-based standards (2018–2020)	50,153
Annual average amount of 7(a) and 504 loans ($ billion) (2018–2020)	$23.9
Number of disaster loans to businesses subject to receipts-based size standards (2016–2018)	5,585
Amount of disaster loans ($ billion) (2016–2018)	$0.5

[1] Entities in SAM presented above only include business concerns that can be eligible to qualify as small for Federal assistance. That is, entities that can never qualify as small (*e.g.,* foreign, not-for-profit and government entities) are excluded as they are not impacted by this rule.
[2] A business concern could appear in multiple NAICS industries involving both receipts-based size standards and those based on other measures (such as employees). Similarly, a business could be small in some industries and other-than-small in others.

Businesses that would regain or expand their small business status can be identified by comparing the estimate of their 5-year receipts average with the size standard. That is, if the 5-year receipts average of a firm currently above the size standard is lower than the applicable size standard, that firm will gain or regain small business status. To estimate the number of small businesses that would benefit by having their small business status extended for a longer period or would be penalized by having their small business status shortened, SBA considered small businesses whose 3-year average annual receipts was within 10 percent below their receipts-based size thresholds. Depending upon whether their annual receipts are growing or declining, small businesses that are not immediately impacted may be impacted, either positively (*i.e.,* gaining small business status) or negatively (*i.e.,* losing small business status) someday as they continue to grow and approach the size standard threshold as in the current 3-year averaging method. However, SBA is not able to quantify such impacts now.

D. Expansions in Small Business Size Status

1. Expansive Effects of Changing the Averaging Period for Employees From 12 Months to 24 Months

The most significant expansive effects to businesses from the proposed change in the averaging period for calculation of the number of employees for size standards from 12 months to 24 months include: (i) Enabling some mid-size businesses currently categorized above their corresponding size standards to gain or regain small business size status and thereby qualify for participation in Federal assistance intended for small businesses, and (ii) allowing some advanced and larger small businesses close to their size thresholds to lengthen their small business status for a longer period and thereby continue their participation in Federal small business programs. These programs include SBA's business and disaster loan programs and Federal procurement programs intended for small businesses.

Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs, including 8(a)/Business Development (BD), HUBZone, Women-Owned Small Business (WOSB), Economically Disadvantaged Women-Owned Small Business (EDWOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs. Expansive effects accruing to businesses gaining and extending small status are presented below in Table 13, ''Expansive Impacts of Changing the Averaging Period for Employees from 12 Months to 24 Months.'' The results in Table 13 pertain to businesses and industries subject to employee-based size standards only.

As shown in Table 13, of 21,155 firms not currently considered small in any employee-based size standards, 390 (or 1.8 percent) would benefit from the proposed change by gaining or regaining small status under the 24-month employee average in at least one NAICS industry that is subject to an employee-based size standard. Additionally, 373 or 0.3 percent of small businesses within 10 percent below size standards would see their average number of employees decrease under the 24-month averaging period, consequently enabling them to keep their size status for a longer period.

Using the 2012 Economic Census, SBA estimated that about 280 or 1.3 percent of currently large businesses would gain or regain small status and about 1,200 or 0.2 percent of total small businesses would see their small business status extended for a longer period as the result of the change in the calculation of employees. These results are shown in Table 13, below.

With more businesses qualifying as small under the proposed change in the calculation of employees, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current employee-based size standards will be able to retain their small business status for a longer period under the 24-month employee average, thereby enabling them to continue to benefit from the small business programs.

TABLE 13—EXPANSIVE IMPACTS OF CHANGING AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

Impact of proposed change	Large firms gaining small status	Small firms extending small status	Total expansive impact
Number of impacted industries	196	184	[1] 260
Number of large firms becoming small or/and small firms extending small status—SAM (as of Sept 1, 2019)	390	373	[2] 757
Large firms becoming small or/and small firms with extended small status as % of total large or/and small firms in the baseline—SAM (as of Sept 1, 2019)	1.8	0.3	0.5
Number of large firms becoming small or/and small firms extending small status—2012 Economic Census	281	1,203	1,484
Large firms becoming small or/and small firms extending small status as % of total large or/and small firms in the baseline—2012 Economic Census	1.3	0.2	0.2
Number of large firms becoming small or/and small firms extending small status for small business contracts—FPDS–NG (2019)	139	83	219
Additional small business dollars available to newly qualified firms or/and current small firms with extended small status ($ million)—FPDS–NG (2019)	$332.7	$90.5	$423.2
Additional small business dollars as % total small business contract dollars in the baseline	0.7	0.2	0.9
Number of additional 7(a) and 504 loans to newly qualified firms or/and current small firms extending small status	1	1	2
Additional 7(a) and 504 loan amount to newly qualified firms or/and current small firms extending small status ($ million)	$0.01	$0.02	$0.03
Additional 7(a) and 504 loan amount as % of total 7(a) and 504 loan amount in the baseline	0.0	0.0	0.001
Number of additional disaster loans to newly qualified firms or/and small firms extending small status	0	0	0
Additional disaster loan amount to newly qualified firms or/and small firms with extended small status ($ million)	$0	$0	$0
Additional disaster loan amount as % of total loan amount in the baseline	0	0	0

[1] Total impact represents total unique industries impacted to avoid double counting as some industries have large firms gaining small status and small firms extending small status.

[2] Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

Based on the FPDS–NG data for fiscal year 2019, as shown in Table 13, SBA estimates that those newly qualified small businesses (*i.e.,* large businesses gaining small status) under the proposed rule, if adopted, could receive about $333 million in small business contract dollars annually under SBA's small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. That represents a 0.7 percent increase to total small business contract dollars from the baseline in Table 11, above. Additionally, small businesses could receive approximately $90 million in additional small business contract dollars because of extension of their small business status, which is about a 0.2 percent increase from the total small business contract dollars in the baseline. That is, businesses gaining or extending small business status could receive about $423 million in additional small business contract dollars, which is a 0.9 percent increase to the total small business dollars in the baseline.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates up to about 1 SBA 7(a) and 504 loans totaling nearly $0.01 million could be made to these newly qualified small businesses under the proposed change. Additionally, small businesses could receive about 1 SBA 7(a) and 504 loans totaling nearly $.02 million due to the extension of their size status. These amounts represent a .001 percent increases to the 7(a) and 504 loan amount in the baseline.

Newly qualified small businesses and those with extended small business status under the 24-month averaging period may also benefit from the SBA's disaster loan program. However, since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. Based on the historical trends of the SBA's disaster loan data which shows that firms receiving loans under employee-based size standards are well below the industry size thresholds, SBA estimates that newly defined small businesses and small businesses extending small business status for a longer period would not receive any additional disaster loans under the proposed change.

The added competition from more businesses qualifying as small may result in lower prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to a larger pool of small businesses under the proposed change, HUBZone firms might actually end up getting more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to Federal agencies. While SBA cannot estimate such costs savings, as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms that will be awarded as set-asides, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Additionally, the newly defined small businesses, as well as those with a longer small business status, would also benefit from reduced fees, less paperwork, and fewer compliance requirements but SBA has no data to quantify this impact.

The proposed change will also address some of the challenges and uncertainties small businesses face in the open market once they graduate from their small business status. Small and mid-size businesses experience a considerable disadvantage in competing for full and open contracts against large businesses, including the largest in the industry. These large businesses often have several competitive advantages over small and mid-size firms, including vast past performance qualifications and experience, strong brand-name recognition, a plethora of professional certifications, security clearances, and greater financial and marketing resources. Small and mid-size businesses cannot afford to maintain these resources, leaving them at a considerable disadvantage.

With contracts getting bigger, one large set-aside contract could throw a firm out of its small business size status, thereby subjecting it to certain requirements that apply to other-than-small firms, such as developing subcontracting plans. That firm may not have the infrastructure, existing business processes, and/or other resources in place in order to comply with such requirements. This may also result in constant shuffling between small and other-than-small status.

By allowing smaller mid-size companies that have just exceeded the size threshold to regain small business status and advanced small businesses close to size standards to prolong their small business status for a longer period, this proposed rule can expand the pool of qualified small firms for agencies to draw upon to meet their small business requirements.

2. Expansive Effects of Changing the Averaging Period for Receipts From 3 Years to 5 Years

The most significant benefits to businesses from the change in the period for calculation of average annual receipts from 3 years to 5 years include: (i) Enabling some mid-size businesses currently categorized above their corresponding size standards to gain or regain small business status and thereby qualify for participation in Federal assistance intended for small businesses, including access to SBA's financial assistance and (ii) allowing some advanced and larger small businesses close to their size thresholds to lengthen their small business status for a longer period and thereby continue their participation in SBA's Business Loan, Disaster Loan and SBIC Programs. Benefits accruing to businesses gaining and extending small business status are presented below in Table 14, ''Expansive Impacts of Changing the Averaging Period for Receipts from 3 Years to 5 Years.'' The results in Table 14 pertain to businesses and industries subject to SBA's receipts-based size standards only.

As shown in Table 14, of 42,536 firms not currently considered small in any receipts-based size standards, 3,320 (or 6.4 percent) would benefit from the proposed change by gaining or regaining small business status under the 5-year receipts average in at least one NAICS industry that is subject to a receipts-based size standard. Additionally, nearly 3,600 or 1.2 percent of small businesses within 10 percent below size standards would see their annual receipts decrease under the 5-year averaging period, consequently enabling them to keep their small business status for a longer period.

Using the 2012 Economic Census, SBA estimated that more than 5,900 or 3.3 percent of currently large businesses would gain or regain small business status and more than 61,250 or 0.9 percent of total small businesses would see their small business status extended for a longer period as the result of this proposed rule. These results are shown in Table 14, below.

TABLE 14—EXPANSIVE IMPACTS OF CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact of proposed change	Firms gaining small business status	Firms extending small business status	Total expansive impact
Number of impacted industries	377	382	[1] 447
Number of large firms becoming small or/and small firms extending small business status—SAM (as of Sept 1, 2019)	3,320	3,579	[2] 6,542
Large firms becoming small or/and small firms with extended small business status as % of total large or/and small firms in the baseline—SAM (as of Sept 1, 2019)	6.35	1.22	1.95
Number of large firms becoming small or/and small firms extending small business status—2012 Economic Census	5,938	61,263	67,201
Large firms becoming small or/and small firms extending small business status as % of total large or/and small firms in the baseline—2012 Economic Census	3.3%	0.9%	0.9%

TABLE 14—EXPANSIVE IMPACTS OF CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS—Continued

Impact of proposed change	Firms gaining small business status	Firms extending small business status	Total expansive impact
Number of additional 7(a) and 504 loans to newly qualified firms or/and current small firms extending small status	1	4	5
Additional 7(a) and 504 loan amount to newly qualified firms or/and current small firms extending small status ($ million)	$0.2	$1.9	$2.1
Additional 7(a) and 504 loan amount as % of total disaster loan amount in the baseline	0.0	0.0	0.01
Number of additional disaster loans to newly qualified firms or/and small firms extending small status	1	1	2
Additional disaster loan amount to newly qualified firms or/and small firms with extended small status ($ million)	$0.00	$0.01	$0.01
Additional disaster loan amount as % of total loan amount in the baseline	0.0	0.0	0.002

[1] Total impact represents total unique industries impacted to avoid double counting as some industries have large firms gaining small business status and small firms extending small business status.
[2] Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the 5-year receipts average, thereby enabling them to continue to benefit from the small business programs.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates that about 1 SBA 7(a) and 504 loans totaling $0.2 million could be made to these newly qualified small businesses under the proposed change. Additionally, small businesses could receive up to 4 SBA 7(a) and 504 loans totaling $1.9 million due to the expansion of their size status. Together, these amounts represent a 0.01 percent increase to the loan amount in the baseline.

Newly qualified small businesses and those with extended small business status will also benefit from the SBA's disaster loan program. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the SBA disaster loan data, SBA estimates that, on an annual basis, the newly defined small businesses under the proposed change could receive about 1 disaster loan, totaling about $0.003 million. Similarly, extending small business status for a longer period could result in small businesses receiving 1 disaster loans, totaling about $0.01 million. These results are presented in Table 14, above.

Additionally, the newly defined small businesses, as well as those with a longer small business status, would also benefit from reduced fees, less paperwork, and fewer compliance requirements but SBA has no data to quantify this impact.

E. Contractions in Eligibility for Small Business Status

1. Contractive Effects of Changing the Averaging Period for Employees From 12 Months to 24 Months

As stated previously, the change enacted under Public Law 116–283 may not always and necessarily benefit every small business concern. When businesses' monthly employees are declining or when the number of employees for the latest 12 months are lower than those for the earliest 12 months of the 24-month averaging period, the 24-month employee average would be higher than the 12-month average, thereby ejecting small businesses out of their small status sooner or rendering some small businesses other than small immediately. Such small businesses would no longer be eligible for Federal small business opportunities, such as SBA's loans, Federal small business contracts, and other Federal assistance available to small businesses. These impacts are provided in Table 15, ''Contractive Impacts from Changing the Averaging Period for Employees from 12 Months to 24 Months,'' below.

SBA estimates that, of 133,958 firms in 2019 SAM that were small under at least one employee-based size standard based on the 12-month employee average, 260 firms (or 0.2 percent) would lose their small status and another 100 firms (or 0.08 percent) would see their size status shortened as a result of the proposed change. Similarly, based on the 2012 Economic Census data, 763 firms would lose their small business status and 287 firms would see their size status shortened, which represent, respectively, 0.1 percent and 0.04 percent of total small firms subject to an employee-based size standard.

TABLE 15—CONTRACTIVE IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

Impact of proposed change	Small firms losing small status	Small firms shortening small status	Total contractive impact
Number of industries impacted	190	64	[1] 211
Number of small firms losing or/and shortening small status—SAM (as of Sept 1, 2019)	260	101	[2] 361
Small firms losing or shortening small status as % of total small firms—SAM (as of Sept 1, 2019)	0.2	0.08	0.3
Number of small firms losing or extending small status—2012 Economic Census	763	287	1,050

TABLE 15—CONTRACTIVE IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS—Continued

Impact of proposed change	Small firms losing small status	Small firms shortening small status	Total contractive impact
Small firms losing or shortening small status as % of total small firms in the baseline—2012 Economic Census	0.1	0.04	0.2
Number of small firms losing or shortening small business eligibility for set-aside contracts—FPDS–NG (2019)	178	20	197
Small business dollars unavailable to small firms losing or shortening small status ($ million)—FPDS–NG (2019)	$197.1	$68.7	$265.8
Small business dollars as % of total small business dollars in the baseline	0.42	0.15	0.56
Number of 7(a) and 504 loans unavailable to small firms losing or shortening small status	1	1	2
7(a) and 504 loan amount unavailable to small firms losing or shortening ($ million)	$0.01	$0.01	$0.02
Unavailable 7(a) and 504 loan amount as % of total loan amount in the baseline (baseline = $24.5 billion)	0.0	0.0	0.0
Number of disaster loans unavailable to small firms losing or shortening small status	0.0	0.0	0.0
Unavailable disaster loan amount to small firms losing or extending small status ($ million)	$0.0	$0.0	$0.0
Unavailable disaster loan amount as % of total disaster loan amount in the baseline (baseline = $1.0 billion)	0.0	0.0	0.0

[1] Total impact represents total unique industries impacted to avoid double counting as some industries have small firms losing small status and small firms shortening small status.

[2] Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

Based on the contract awards data from FPDS–NG for fiscal year 2019, businesses losing or shortening small status would lose access to about $266 million in Federal small business contract collars, which is about a 0.6 percent decrease from the corresponding value in the baseline. Similarly, based on the SBA's loan data for fiscal years 2018–2020 and the number of impacted firms from the Economic Census, SBA estimates that businesses losing or shortening small business status would also lose access to about $0.02 million in SBA 7(a) and 504 loans. Based on the historical trends of the SBA's disaster loan data which shows that firms receiving loans under employee-based size standards are well below the industry size thresholds, SBA estimates that businesses losing or shortening small business status would not lose access to any additional disaster loans under the proposed change.

Businesses losing small status and those with size status shortened would also be deprived of other Federal benefits available, including reduced fees and exemptions from certain paperwork and compliance requirements. However, there exists no data to quantify this impact.

Additionally, by enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the proposed rule may disadvantage smaller small businesses in more need of Federal assistance than their larger counterparts in competing for Federal opportunities. SBA frequently receives concerns from smaller small businesses that they lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified and experienced large small businesses for Federal opportunities for small businesses.

Besides having to register in SAM to be able to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status. All businesses willing to do business with the Federal Government have to register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM. Furthermore, this proposed rule does not establish the new size standards for the first time; rather, it merely proposes to modify the calculation of annual average receipts that apply to the existing size standards in accordance with a statutory requirement.

The proposed change may entail some additional administrative costs to the Federal Government because more businesses may qualify as small for Federal small business programs. For example, there will be more firms seeking SBA's loans; more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov;* more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, WOSB, EDWOSB, and SDVOSB status; and more firms applying for SBA's 8(a)/BD and Mentor-Protégé programs. With an expanded pool of small businesses, it is likely that Federal agencies will set aside more contracts for small businesses under the proposed change. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on size protests actually show that the number of size protests actually decreased after an increase in the number of businesses qualifying as small as a result of size standards revisions as part of the first 5-year review of size standards. Specifically, on an annual basis, the number of size protests dropped from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013) to less than 500 during fiscal years 2017–2019. However, with more months of the data to be reviewed, 24-month averaging may increase time needed by size specialists to process a size protest. Among those newly defined small businesses seeking SBA's loans, there could be some additional costs associated with compliance and verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income based alternative size standard instead of using the industry-based size standard to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small under the proposed change, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the proposed change. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses under the 8(a)/BD, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the proposed change to the averaging period for employees from 12 months to 24 months, HUBZone firms might actually end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

2. Contractive Effects of Changing the Averaging Period for Receipts From 3 Years to 5 Years

As stated previously, the change enacted under Public Law 115–324 may not always and necessarily benefit every small business concern. When businesses' annual revenues are declining or when annual revenues for the latest 3 years are lower than those for the earliest 2 years of the 5-year period, the 5-year average would be higher than the 3-year average, thereby ejecting small businesses out of their small business status sooner or rendering some small businesses other than small immediately. Similarly, small businesses that lose their small business status would have to wait longer to qualify as small again. Such small businesses would no longer be eligible for Federal small business opportunities, such as Federal small business contracts, SBA loan programs and other Federal benefits (such as reduced fees and exemptions from certain paperwork and compliance requirements) available to small businesses. However, the SBA's proposal to allow businesses applying for its Business Loan, Disaster Loan and SBIC Programs to elect to use either the 3-year receipts average or the 5-year receipts average will mitigate such impacts. Moreover, the change in the averaging period for receipts in this proposed rule only applies to businesses in the SBA Business Loan, Disaster Loan, and SBIC Programs. In other words, the change in the calculation of average annual receipts in this proposed rule will have no impacts on businesses participating in Federal procurement and all other non-procurement programs except SBA loan programs.

By enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the proposed rule may disadvantage smaller small businesses in more need of Federal assistance than their larger counterparts in competing for Federal opportunities. SBA frequently receives concerns from smaller small businesses that they lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified and experienced larger small businesses for Federal opportunities for small businesses. SBA believes that overall benefits to small businesses from this proposed rule change outweigh the costs to small businesses.

F. Net Impact

1. Net Impact of Changing the Averaging Period for Employees From 12 Months to 24 Months

As discussed elsewhere, the proposed change in averaging period for employees would result in four primary impacts, which can be categorized as either having a 'expansive impact' or 'contractive impact' on size status of both currently large and small businesses. Allowing some currently large firms to gain small business status and some advanced small firms to remain small for a longer period represents the expansive impact of the proposed rule. Causing some currently small firms to lose or shorten their small business is the contractive impact.

Although businesses in a majority of industries with employee-based size standards would be both positively and negatively impacted by this proposed rule, in totality the number of firms with expansive impacts was generally greater than the number of firms with contractive impacts. The proposed rule would result in a net gain of about $158 million (or 0.3 percent increase from the baseline) in Federal small business contract dollars. The net impact of the proposed rule on SBA loans was also positive, but very small. Specifically, SBA estimates a net gain of $0.01 million in 7(a) and 504 loans and no change in disaster loans to small firms as a result of changing the period for calculating the average number of employees for size standards from 12 months to 24 months. Net impacts of the proposed rule are summarized in Table 16, "Net Impact from Changing the Averaging Period for Employees from 12 Months to 24 Months," below.

TABLE 16—NET IMPACT FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS

Impact of proposed change	Total expansive impact	Total contractive impact	Net impact
Total number of impacted firms—SAM (as of Sept 1, 2019)	757	361	396
Impacted firms as % of total firms in the baseline—SAM (as of Sept 1, 2019)	0.5	0.2	0.3
Number of impacted firms—2012 Economic Census	1,484	1,050	435
Impacted firms as % of total firms in the baseline—2012 Economic Census	0.2	0.2	0.1
Number of impacted firms eligible for set-aside contracts (FPDS–NG)	219	197	22
Small business dollars impacted ($ million)	$423.2	$265.8	$157.8
Small business dollars impacted as % total set-aside dollars in the baseline	0.9	0.6	0.3
Number of 7(a) and 504 loans impacted	2	2	0
7(a) and 504 loan amount impacted ($ million)	$0.03	$0.02	$0.01
7(a) and 504 loan amount impacted as % of total 7(a) and 504 loan amount in the baseline	0.0	0.0	0.0

TABLE 16—NET IMPACT FROM CHANGING THE AVERAGING PERIOD FOR EMPLOYEES FROM 12 MONTHS TO 24 MONTHS—Continued

Impact of proposed change	Total expansive impact	Total contractive impact	Net impact
Number of disaster loans impacted	0	0	0
Disaster loan amount impacted ($ million)	$0.0	$0.0	$0.0
Disaster loan amount impacted as % of total disaster loan amount in the baseline	0.0	0.0	0.0

2. Net Impact of Changing the Averaging Period for Receipts From 3 Years to 5 Years

Under the SBA's proposal allowing businesses to elect to choose either a 3-year receipts average or a 5-year receipts average to establish small business eligibility for its Business Loan, Disaster Loan, and SBIC Programs, none of the currently eligible small businesses will experience a contractive impact from the proposed change. In other words, the proposed change will not cause any currently small businesses to lose or shorten their small business status. The proposed change will enable some mid-size businesses above the size standard gain or regain small business status and some advanced small businesses close to the size standard to lengthen their small status. In the absence of contractive impacts, the expansive impacts shown in Table 14 (above) will also represent as net impacts of the proposed change.

G. Transfer Impacts

1. Transfer Impacts of Changing the Averaging Period for Employees From 12 Months to 24 Months

The proposed change may result in some redistribution of Federal contracts between businesses gaining or extending small status and large businesses, and between businesses gaining or extending small status and other existing small businesses. However, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will not change. While SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution of contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the proposed change, some unrestricted Federal contracts may be set aside for small businesses. As a result, large businesses may lose access to some Federal contracts. Similarly, some currently small businesses may obtain fewer set-aside contracts due to the increased competition from some large businesses qualifying as small and advanced small businesses remaining small for a longer period. This impact may be offset by a greater number of procurements being set aside for all small businesses. With large businesses qualifying as small and advanced larger small businesses remaining small for a longer period under the proposed rule, smaller small businesses could face some disadvantages in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

2. Transfer Impacts of Changing the Averaging Period for Receipts From 3 Years to 5 Years

The change from a 3-year averaging period to a 5-year averaging period may result in some redistribution of Federal contracts between businesses gaining or extending small business status and large businesses, and between businesses gaining or extending small business status and other existing small businesses. However, since the change in calculation of receipts in this proposed rule does not apply to Federal contracting, these distributional impacts are not relevant for changing the averaging period for receipts from 3 years to 5 years.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Benefit-Cost Analysis under Executive Order 12866. Additionally, Executive Order 13563, Section 6, calls for retrospective analyses of existing rules.

Following the enactment of Public Law 115–324, SBA issued a public notice advising business and contracting communities that SBA must go through a rulemaking process to implement the new law and that businesses still must report their receipts based on a 3-year average until SBA changes its regulations. SBA updated the Small Business Procurement Advisory Council (SBPAC) at its March 26, 2019, April 23, 2019, and August 26, 2019, meetings about SBA's rulemaking process to implement Public Law 115–324. On April 18, 2019, SBA also presented an update on the implementation of Public Law 115–324 at the 2019 Annual Government Procurement Conference. Through phone calls and emails, SBA also advised business and contracting communities and other interested parties about the SBA's process to implement the new law.

Regulatory Flexibility Act (Initial Regulatory Flexibility Analysis)

Under the Regulatory Flexibility Act (RFA), this proposed rule may have a significant economic impact on a substantial number of small businesses in industries subject to both employee-based and receipts-based size standards. As described above, this rule may affect small businesses in those industries seeking assistance under Federal small business programs. Specifically, the change in the averaging period for calculating the number employees for size standards from 12 months to 24 months may have a significant impact on a substantial number of businesses in industries subject to employee based size standards in terms of qualifying for Federal small business programs, including Federal contracts set aside for small businesses and SBA's loan programs. Similarly, the proposed change in the averaging period for receipts from 3 years to 5 years will also impact a substantial number of businesses in the SBA Business Loan, Disaster Loan, and SBIC programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of proposed rule to address the following questions: (1) What is the need for and objective of the rule?; (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record-keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

First, section 863 of the NDAA 2021, Public Law 116–283, changed the averaging period for SBA's employee-based size standards from 12 months to 24 months. The intent of this proposed rule is to implement Public Law 116–283 by amending 13 CFR 121.106 such that a concern would average its employees over all pay periods in the preceding completed 24 months. Second, in 2018, Public Law 115–324 amended section 3(a)(2)(C)(ii)(II) of the Small Business Act by modifying the period for calculating average annual receipts for prescribing size standards for business concerns in services industries by an agency without separate statutory authority to issue size standards from 3 years to 5 years. In a final rule published December 5, 2019 (84 FR 66561), SBA implemented Public Law 115–324 by making changes to its receipts-based size standards for all SBA programs except the Business Loan and Disaster Loan Programs. This proposed rule would extend the changes to SBA's receipts-based size standards for the Business Loan, Disaster Loan, and SBIC Programs.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

This proposed rule applies to all small businesses that are subject to either an employee-based or a receipts-based size standard. Based on the 2012 Economic Census special tabulations, 2012 County Business Patterns Reports, and 2012 Agricultural Census tabulations, of a total of 680,266 firms in all industries with employee-based size standards to which this proposed rule will apply, 657,942 or about 96.7 percent are considered small under the 12-month employee average. Of 152,450 total concerns in SAM 2019 to which an employee-based size standard will apply, about 133,958 or 87.9 percent were small in at least one NAICS industry with an employee-based size standard. Similarly, based on the data from FPDS–NG for fiscal year 2019, about 39,700 unique firms in industries subject to employee-based size standards received at least one Federal contract in 2019, of which 85.3 percent, or 33,867 were small.

Based on the same data sources listed above, of a total of 7.2 million firms in all industries with receipts-based size standards to which this final rule will apply, 6.9 million or about 96 percent are considered small under the 3-years receipts average. Of 334,990 total concerns in SAM 2019 to which a receipts-based size standard will apply, 292,454 or 87.3 percent were small in at least one NAICS industry with a receipts-based size standard.

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

The proposed rule changes existing reporting or record-keeping requirements for small businesses. To qualify for Federal procurement and a few other programs, businesses are required to register in SAM and to self-certify that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. The change in the calculation of employees from a 12-month averaging period to a 24-month averaging period may result in some redistribution of Federal contracts between businesses gaining or extending small status and large businesses, and between businesses gaining or extending small status and other existing small businesses. However, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will not change. Since the change in the calculation of annual average receipts in this proposed rule only applies to SBA loan programs, this will have no impact on Federal contracting and associated record-keeping requirements.

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

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act, 5 U.S.C. 601(3), 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. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures or changing a measurement period, no practical alternative exists to the systems of numerical size standards. As stated elsewhere, the objective of this final rule is to change SBA's regulations on the calculation of business size in terms of average number of employees to implement Public Law 116–283 for all SBA programs and average annual receipts to implement Public Law 115–324 for the SBA's Business Loan, Disaster Loan and SBIC programs.

This rule is expected to affect a substantial number of small entities, but the effects are not expected to be significant. However, to mitigate any unintended negative impacts of a 5-year averaging period on small businesses and to allow small businesses to continue to use the 3-year receipts average, in this proposed rule, SBA is allowing applicants in Business Loan, Disaster Loan and SBIC programs to elect to calculate average annual receipts using either a 3-year averaging period or a 5-year averaging period.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this proposed rule would amend an information collection (SBA Form 355, Information for Small Business Size Determination, OMB Control Number 3245–0101). SBA will revise Instruction No. 5 to specify that respondents will use a 24-month average to calculate number of employees. In Part II, question 10, respondents will then provide an average number of employees over 24 months.

Concurrently with publication of this proposed rule, SBA is submitting to OMB an Information Collection Review based on the changes described above. SBA has determined that the changes to the Form 355 will not impact the paperwork burden, and it will remain at 4 hours.

SBA will revise the SBA Form 480, *Size Status Declaration,* for SBIC applicants. The form would reflect the change to the 24-month average for applicants using an employee-based size standard, and the change to an election between a 3-year average and a 5-year average for applicants using a receipts-based size standard. The metrics for the alternative size standard for SBIC applicants would not change.

SBA will revise Part M (Size Analysis) of SBA Form 1920 (7(a) Lender Application), OMB Control No.: 3245–0348, and Exhibit 4 of SBA Form 1244 (504 Loan Application), OMB Control No.: 3245–0071. The revisions would reflect the change to an election between a 3-year average or a 5-year average for applicants using a receipts-based size standard. The metrics for the alternative size standard for 7(a) and 504 applicants would not change.

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(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.104, revise the first sentence of paragraph (c)(1) and paragraphs (c)(2) through (4) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

* * * * *

(c) *Period of measurement.* (1) Except for the Business Loan, Disaster Loan, and Small Business Investment Company (SBIC) Programs, annual receipts of a concern that has been in business for 5 or more completed fiscal years means the total receipts of the concern over its most recently completed 5 fiscal years divided by 5. * * *

(2) Except for the Business Loan, Disaster Loan Programs, and SBIC Programs, annual receipts of a concern which has been in business for less than 5 complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Except for the Business Loan, Disaster Loan, and SBIC Programs, where a concern has been in business 5 or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the 4 full fiscal years divided by the total number of weeks in the short year and the 4 full fiscal years, multiplied by 52.

(4) For the Business Loan, Disaster Loan, and SBIC Programs, a concern that has been in business for three or more completed fiscal years may elect to calculate annual receipts using either the total receipts of the concern over its most recently completed 5 fiscal years divided by 5, or the total receipts of the concern over its most recently completed 3 fiscal years divided by 3. Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52. Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52. For the purposes of this subsection, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (''504 Loan Program''). The Disaster Loan Programs consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans.

* * * * *

■ 3. In § 121.106, revise paragraphs (b)(1) and (3) to read as follows:

§ 121.106 How does SBA calculate number of employees?

* * * * *

(b) * * *

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 24 calendar months.

* * * * *

(3) If a concern has not been in business for 24 months, the average number of employees is used for each of the pay periods during which it has been in business.

* * * * *

■ 4. In § 121.903, revise paragraph (a)(1)(i) to read as follows:

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) * * *

(1) * * *

(i) The size of a manufacturing concern by its average number of employees based on the preceding 24 calendar months, determined according to § 121.106;

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2021–23439 Filed 11–1–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0849; Airspace Docket No. 21–ACE–17]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–161, V–190, and V–307, and Revocation of VOR Federal Airway V–516 in the Vicinity of Oswego, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range