

SMALL BUSINESS ADMINISTRATION**13 CFR Part 121**

RIN 3245-AH09

Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade**AGENCY:** U.S. Small Business Administration.**ACTION:** Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or the Agency) is increasing its employee-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Mining, Quarrying, and Oil and Gas Extraction (Sector 21); Utilities (Sector 22); Manufacturing (Sector 31–33); Transportation and Warehousing (Sector 48–49); Information (Section 51); Finance and Insurance (Sector 52); Professional, Scientific and Technical Services (Sector 54); and Administrative and Support, Waste Management and Remediation Services (Sector 56). Specifically, in terms of industries defined under the NAICS 2022 revision, SBA is increasing 144 and retaining 268 employee-based size standards in those sectors. SBA is also retaining the current 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule.

DATES: This rule is effective March 17, 2023.**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205–6618 or sizestandards@sba.gov.**SUPPLEMENTARY INFORMATION:****Discussion of Size Standards**

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

net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective December 19, 2022, was published in the **Federal Register** on November 17, 2022 (87 FR 69118). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification (NAICS) revisions to its table of small business size standards. On December 21, 2021, OMB published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for “the 2022 Revision to the North American Industry Classification System (NAICS), . . .” On July 5, 2022, SBA issued a proposed rule to adopt the OMB’s NAICS 2022 revisions for its table of size standards (87 FR 40034), which SBA finalized in September 2022 with an effective date of October 1, 2022 (87 FR 59240; September 29, 2022).

This final rule is part of a series of final rules that revised size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards under the Jobs Act, SBA has already issued five final rules reviewing all monetary-based size standards and all employee-based size standards that

are part of the Wholesale Trade and Retail Trade sectors.¹

To complete its second five-year review of size standards, SBA reviewed size standards under Sector 31–33 and other sectors with employee-based size standards not part of Wholesale and Retail Trade sectors to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After its review, SBA published in the April 26, 2022, issue of the **Federal Register** (87 FR 24752) a proposed rule (“April 2022 proposed rule”) to increase the employee-based size standards for 150 industries or subindustries (or “exceptions”) under NAICS 2017, including 10 industries in NAICS Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 10 industries in NAICS Sector 22 (Utilities), 120 industries in NAICS sector 31–33 (Manufacturing), five industries in Sector 48–49 (Transportation and Warehousing), three industries in Sector 51 (Information), one subindustry (“exception”) in Sector 54 (Professional, Scientific and Technical Services), and one subindustry (“exception”) in Sector 56 (Administrative and Support, Waste Management and Remediation Services). SBA also proposed to retain the 500-employee size standard under its nonmanufacturer rule.

In this final rule, SBA is adopting the proposed size standards from the April 2022 proposed rule without change and applying the adopted changes to the recently adopted NAICS 2022 structure following the methodology outlined in the NAICS 2022 adoption final rule.

In conjunction with the current, second five-year comprehensive size standards review, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of various industry and program factors

¹ See Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction (87 FR 18607; March 31, 2022), Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing (87 FR 18627; March 31, 2022), Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services (87 FR 18665; March 31, 2022), Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services (87 FR 18646; March 31, 2022), and Small Business Size Standards: Wholesale Trade and Retail Trade (87 FR 35869; June 14, 2022).

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

In evaluating an industry's size standard, as described in its Size Standards Methodology as well as in the April 2022 proposed rule, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size) and the small business level and share of

Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each employee-based industry in NAICS Sector 31–33 and other sectors with employee-based size standards, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available when the proposed rule was developed). The 2012 Economic Census special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association's (RMA) Annual eStatement Studies (<http://www.rmahq.org/estatement-studies/>) with the simple average

receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2016–2018. Table 4 of the April 2022 proposed rule, Size Standards Supported by Each Factor for Each Industry (Employees), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry ("exception") covered by the proposed rule. Of the 427 industries and 5 subindustries (*i.e.*, "exceptions") reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors discussed above supported increasing employee-based size standards for 157 industries and 2 subindustries ("exceptions"), decreasing size standards for 216 industries, and maintaining size standards for 54 industries and 3 subindustries ("exceptions"). Table 1, Summary of Calculated Size Standards (NAICS 2017), below, summarizes the analytical results from the April 2022 proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS [NAICS 2017]

NAICS sector	NAICS sector title	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	24	15	9	0
22	Utilities	11	11	0	0
31–33	Manufacturing	360	123	187	50
48–49	Transportation and Warehousing	15	5	8	2
51	Information	12	3	7	2
54	Professional, Scientific and Technical Services	7	1	3	3
Other	Agriculture, Forestry, Fishing and Hunting (Sector 11); Finance and Insurance (Sector 52); Administrative and Support, Waste Management and Remediation Services (Sector 56).	3	1	2	0
Total .....	.....	432	159	216	57

In the April 2022 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all size standards for which the analytical results supported an increase to size standards, except for

nine industries where SBA's evaluation of dominance in field of operation indicated that size standards should be maintained at the current levels to exclude dominant firms and one industry for which SBA proposed to adopt a smaller increase to the size standard also to exclude dominant firms.

In the April 2022 proposed rule, SBA also evaluated the 500-employee size standard applicable to nonmanufacturers participating in the Federal contracting market. SBA's regulations at 13 CFR 121.406 require small business concerns to meet certain

requirements when they offer to the Government an end item they did not manufacture, process, or produce. These requirements are known as the nonmanufacturer rule. To qualify for a Federal Government supply contract set aside for small business, a nonmanufacturer must have an average of 500 or fewer employees over the past 24 months, be primarily engaged in wholesale or retail trade activities and supply the product of a U.S. small

manufacturer.² In the proposed rule, SBA proposed to retain the 500-employee size standard under the nonmanufacturer rule.

In the Request for Comments section of the proposed rule, SBA requested comments on the appropriateness of the current 500-employee size standard under the nonmanufacturer rule and suggestions for alternative measures to an employee-based size standard that would be more appropriate for size determination of nonmanufacturers.

SBA also sought comments on its proposal to increase size standards for 150 industries and retain the current size standards for the remaining 282 industries or subindustries (“exceptions”) in Sector 31–33 and other sectors with employee-based size standards (excluding Wholesale Trade and Retail Trade Sectors). Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule; whether the decision not to lower any size standards is justified by considerations of impacts of the COVID–19 pandemic; whether the equal weighting of individual factors to derive an industry size standard is appropriate; and whether the data sources used in developing proposed size standards were appropriate or sufficient. SBA also sought comments on its evaluation of specific industries or subindustries (“exceptions”), including the Information Technology Value Added Resellers (ITVAR) exception to NAICS 541519 (Other Computer Related Services), NAICS 482111 (Line Haul Railroads), NAICS 482112 (Short Line Railroads), the Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services), and certain industries for which SBA adjusted calculated size standards based on its analysis of dominance in field of operation.

To evaluate the impact of the changes to size standards adopted in this final rule on the Federal contracting market and SBA’s loan programs, SBA analyzed FPDS–NG data for fiscal years 2018–2020 and internal data on its guaranteed and disaster loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule.

In accordance with 13 CFR 121.102(e), SBA advises eligible parties

of the option to file a petition for reconsideration of a revised, modified, or established size standard at SBA’s Office of Hearings and Appeals (OHA) within 30 calendar days after publication of this final rule in accordance with 15 U.S.C. 632(a)(9) and 13 CFR 134 Subpart I. OHA can be reached using the following contact information: by mail at U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third St. SW, Eighth Floor, Washington, DC 20416, by email at ohafilings@sba.gov, by phone at (202) 401–8200 TTY/TRS: 711, or by fax at (202) 205–7059.

Discussion of Comments

SBA received a total of 49 comments on the proposed rule, 37 of which pertained to SBA’s proposal to increase the size standard for the ERS exception to NAICS 562910 from 750 employees to 1,000 employees. Of the 37 comments pertaining to the ERS exception, 28 opposed SBA’s proposed increase to the size standard and nine supported SBA’s proposal. SBA also received five comments pertaining to general size standards issues, two comments that pertained to SBA’s proposal to retain the 500-employee size standard under its nonmanufacturer rule, one comment on the ITVAR exception to NAICS 541519, one comment on SBA’s proposed size standards for power generation industries, one comment on NAICS 315210 (Cut and Sew Apparel Contractors), one comment on NAICS 333310 (Commercial and Service Industry Machinery Manufacturing), and one comment that was outside the scope of the rule.

As mandated by section 1344 of the Jobs Act, SBA is required to hold not less than two public forums during its quinquennial review of size standards. SBA held two virtual public forums on size standards to update the public on the status of the ongoing second five-year review of size standards and to consider public testimony on changes contained in the April 26, 2022, proposed rule. The two virtual public forums on size standards were held on June 14, 2022, and on June 16, 2022. The comments received during the virtual public forums are included in the count of comments above. All comments to the proposed rule, including those received as part of the virtual public forums, are available at www.regulations.gov (RIN 3245–AH09) and are summarized and discussed by topic below.

Comments Received During SBA’s Virtual Public Forums on Size Standards

As explained in the Discussion of Comments section above, on June 14 and June 16, 2022, SBA held a series of two virtual public forums on size standards to update the public on the status of the ongoing second five-year review of size standards and to consider public testimony on proposed changes contained in the April 26, 2022, proposed rule. Over the course of the two days, of 87 total participants, SBA received testimony from eight commenters, of which seven provided comments pertaining to the SBA’s proposal to increase the size standard for the ERS exception from 750 employees to 1,000 employees and one provided comments pertaining to SBA’s increases to size standards generally. Of the seven comments that pertained to the ERS exception, one commenter expressed support for the SBA’s proposed increase to the size standard from 750 employees to 1,000 employees, while six commenters opposed the proposed increase, asking for a lower size standard.

Regarding the public forum comments pertaining to the ERS exception, one commenter supporting the SBA’s proposed change expressed that by raising the size standard to 1,000 employees, SBA will support the creation of a healthy industrial base of ERS providers for Federal clients and make it easier for small businesses to build the strength and capabilities needed to grow and successfully graduate from small business status. This commenter also urged SBA to consider adopting a size standard of 1,200 employees based on SBA’s analysis in the proposed rule of all firms operating under the ERS exception regardless of whether ERS was their primary business activity.

Commenters opposed to SBA’s proposed increase to the size standard for the ERS exception expressed that SBA’s proposed change would adversely impact smaller small businesses. One commenter also argued that SBA’s reliance on Federal contracting data for fiscal years 2016–2018 led the Agency to make incorrect conclusions about industry trends following SBA’s prior increase to the ERS size standard from 500 employees to 750 employees, which resulted in SBA proposing a size standard above what SBA’s analysis would support if more recent data were used. Specifically, the commenter pointed out that part of SBA’s rationale for increasing the size standard for the ERS

² On June 6, 2022, SBA issued a final rule implementing section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, which changed the averaging period for calculating employees for SBA’s employee-based size standards from 12 months to 24 months (87 FR 34094).

exception is to address the decline in small business participation that occurred during fiscal years 2016–2018; however, the commenter maintained that, based on the latest available data, small business participation has increased significantly since that period. The commenter further explained that one reason for the lag between SBA's previous increase to the size standard for ERS and a corresponding increase in small business participation in the Federal market could be due to the nature of the Federal Government's procurement process in general which in some cases could take months, if not years, to award contracts due to protests, shifting agency priorities, funding levels, and other issues. Moreover, this commenter raised concerns that the Department of Energy's (DOE) reliance on management and operating (M&O) contractors, of which most are large businesses, may have skewed SBA's results. The commenter argued that if SBA excludes DOE's M&O contracts under the ERS exception from its analysis of industry factors, small business participation would be far more robust than what SBA reported in the proposed rule.

Another commenter expressing similar concerns about SBA's use of data from fiscal years 2016–2018 to measure small business participation in the Federal market also urged SBA to consider startup costs in its analysis of the industry size standard and utilize more recent data from the Engineering News-Record (ENR) (an industry trade publication) of the top 200 ENR firms in the industry when describing the economic characteristics of ERS firms. Another commenter urged SBA to consider the Environmental Protection Agency's (EPA) Region 2 Superfund program as a representation of the NAICS 562910 remediation industry. The commenter argued that these program data demonstrate the ability of firms well under the current 750-employee size standard to fulfill the Federal Government's small business remediation requirements; thus, it is unnecessary for SBA to increase the size standard beyond the current threshold as the added competition from larger firms could impact the number of opportunities available for smaller small firms that are already thriving under the current 750-employee size standard. SBA received three comments expressing agreement with this commenter, specifically in support of the notion that the current size standard of 750 employees is already appropriate.

Besides comments pertaining to the ERS exception, during the public forums on size standards, SBA also

received one comment from a business operating under NAICS 561110 (Office of Administrative Services) pertaining to SBA's review of size standards generally. The commenter opposed any increases to size standards at this time, citing concerns about an impending economic recession, category management impacts, and best-in-class requirements, which together, reduce small business opportunities and eventually the total number of small businesses participating in the Federal market. The commenter urged SBA to help small businesses facing these concerns by improving its engagement efforts through increased access to financial assistance and other support rather than increasing size standards.

The comments received during the virtual public forums that pertain to the ERS exception closely mirror the public submissions received electronically through the www.regulations.gov portal. In fact, many commenters at the virtual public forums also submitted more detailed comments in writing, elaborating on their oral testimony. Thus, SBA is addressing these comments as part of its summary and response to comments under the Comments to the Exception to NAICS 562910 (Environmental Remediation Services) section of this final rule. Similarly, SBA responds to the comment opposing increases to size standards generally as part of its summary and response to comments under the General Comments on SBA's Proposed Changes to Size Standards section of this final rule.

Comments on SBA's Proposed Changes to Power Generation Industries

SBA received one comment from a national trade association representing nearly 900 local electric cooperatives and other rural electric utilities supporting SBA's proposed changes to size standards for industries under NAICS Sector 22 (Utilities). Specifically, the association agreed with SBA's decision to maintain the current size standard for NAICS 221116 and adopt adjusted calculated increases to size standards for NAICS 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, and 221210 based on SBA's analysis of dominance in field of operation.

SBA Response

SBA appreciates the association's comments supporting SBA's proposed size standards for several select industries under Sector 22, Utilities. SBA agrees that the proposed size standards are appropriate in terms of industry market conditions in those

industries and believes that the changes will ensure access to SBA's programs for the intended beneficiaries within these industries while excluding the largest and potentially dominant firms from being considered small. Thus, in the absence of opposing comments, SBA is adopting the proposed size standards for Sector 22 industries, as proposed.

Comments on the Federal Procurement Size Standard for Nonmanufacturers

SBA received one comment, expressing support for SBA's proposal to maintain the current 500-employee size standard for nonmanufacturers. The commenter expressed concern that if SBA were to adopt a receipt-based size standard, as explored by SBA in the proposed rule, thousands of firms that currently qualify as small under the 500-employee nonmanufacturer size standard would lose their eligibility to seek set-aside procurements for small businesses. The commenter further explained that a receipts-based size standard would likely limit sales volume for most resellers while also impacting their ability to maintain satisfactory employment levels. Thus, the commenter urged SBA to retain the current 500-employee size standard for nonmanufacturer resellers.

SBA also received one comment opposing SBA's proposal to maintain the current 500-employee size standard for nonmanufacturers. The commenter believed that SBA provided an insufficient and non-compelling rationale for not adopting the calculated size standard of 550 employees for nonmanufacturers, and instead proposing to maintain the current 500-employee size standard. Specifically, the commenter expressed that SBA's rationale to maintain the size standard simply because it is familiar to the industry and working well in practice sets a bad and arbitrary precedent. Thus, the commenter urged SBA to follow the results of its analysis and increase the size standard for nonmanufacturers to 550 employees, as suggested by the results. This commenter also expressed support for maintaining an employee-based size standard for nonmanufacturers rather than adopting a receipts-based size standard.

SBA Response

SBA agrees with commenters that an employee-based size standard is most appropriate for nonmanufacturers. In the proposed rule, as an alternative, SBA calculated a receipts-based size standard of \$27 million for nonmanufacturers. However, although SBA evaluated a receipt-based size standard for nonmanufacturers, SBA

believes that adopting a receipts-based size standard, instead of an employee-based size standard, would be inappropriate for several reasons. Specifically, the Small Business Act provides that the size of manufacturing firms be based on the number of employees and that the size of services firms be based on average annual receipts. Adopting a receipts-based size standard under the nonmanufacturer rule, which currently applies only to Government acquisitions for supplies, would cause many manufacturing concerns supplying products to the Government as nonmanufacturers under the nonmanufacturer rule to be evaluated under a receipts-based size standard, which would be contrary to the requirements of the Small Business Act. Moreover, based on data from the 2017 Economic Census, SBA determined that under the calculated \$27 million receipts-based size standard, more than 35,000 firms would lose their small business status they currently enjoy under the 500-employee nonmanufacturer size standard. Thus, as proposed, SBA is maintaining an employee-based size standard for nonmanufacturers.

With respect to the comment petitioning SBA to adopt 550 employees as the size standard for nonmanufacturers as suggested by SBA's analytical results, SBA disagrees that its rationale for maintaining the 500-employee size standard is arbitrary. As explained in the proposed rule, the analytical results support raising the size standard for nonmanufacturers from 500 employees to 550 employees. However, to maintain continuity with general public familiarity with and long acceptability of the 500-employee nonmanufacturer size standard, SBA proposed to maintain the current 500-employee size standard. In the proposed rule, SBA clarified why it believed that the 500-employee size standard is appropriate and working well for the majority of firms to which it applies, explaining that the 500-employee size standard for nonmanufacturers is also the most common size standard among the manufacturing industries (NAICS Sector 31–33) where some manufacturers bid on supply contracts under which they do not propose to produce the particular product to be supplied with their own labor force, notwithstanding that they are capable of doing so, and therefore must qualify as small businesses under the nonmanufacturer rule. Thus, SBA believes that maintaining 500 employees as the size standard for nonmanufacturers would promote

consistency in its regulations and increase compliance. Therefore, in an effort to minimize the adverse consequences on manufacturers who may provide supplies to the Federal Government as nonmanufacturers under the nonmanufacturer rule, and to promote fair competition among manufacturers and nonmanufacturers, SBA is adopting the predominant 500-employee size standard for manufacturers as the size standard for nonmanufacturers who desire to bid on Federal supply contracts.

Comments on the Application of the Nonmanufacturer Rule to Information Technology Value Added Resellers (ITVARs)

SBA received one comment urging SBA to reconsider whether the nonmanufacturer rule should apply to the ITVAR exception to NAICS 541519 (Other Computer Related Services). The commenter expressed that it may be inconsistent for SBA to apply the nonmanufacturer rule to the ITVAR exception when most or all of the supplies provided by resellers under this exception would fall under one of the NAICS codes for which class waivers currently exist.

SBA Response

As stated in Footnote 18 to SBA's table of size standards at 13 CFR 121.201, for a Federal contract to be classified under the ITVAR exception and its 150-employee size standard, it must consist of at least 15 percent, but not more than 50 percent of value-added services. In addition, the offeror must comply with the manufacturing performance requirements, or comply with the nonmanufacturer rule by supplying the products of small business concerns, unless SBA has issued a class or contract specific (individual) waiver of the nonmanufacturer rule.

While SBA agrees with the commenter that class waivers may already exist for some IT products commonly purchased using the ITVAR exception, SBA also acknowledges that not all IT products procured through the ITVAR exception have a waiver of its nonmanufacturer rule. Moreover, considering the rapid pace of development in the IT industry, SBA believes that it is not unreasonable to assume that there will be new products purchased by the Federal Government using the ITVAR exception in the future that likewise do not qualify for a waiver. Thus, by eliminating the nonmanufacturer rule for the exception, SBA could disadvantage small firms who are currently offering, or plan to

offer products not subject to a class waiver.

SBA also believes it would be inconsistent with the intent of the Small Business Act if ITVAR resellers could provide the supplies produced primarily by a large original equipment manufacturer (OEM), or other large manufacturers, without a waiver of the nonmanufacturer rule. SBA is concerned that without the compliance with the nonmanufacturer rule, the ITVAR exception may allow small IT resellers to simply serve as “pass throughs” for large OEMs and other large manufacturers. While SBA recognizes that the nonmanufacturer rule may work better for some products than for others, it strongly believes that the rule must apply to all supply contracts equally. Thus, like all other products and supplies, the nonmanufacturer rule must also apply to IT products, including those purchased through the ITVAR exception. Therefore, SBA is retaining the requirement that the supply component of small business set-aside ITVAR contracts must comply with the manufacturing performance requirements or the SBA's nonmanufacturer rule.

Comments on NAICS 315210 (Cut and Sew Apparel Contractors)

SBA received one comment petitioning SBA to increase the size standard for NAICS 315210 (Cut and Sew Apparel Contractors) from 750 employees to 1,500 employees. The commenter maintained that the manufacture of personal protection equipment (PPE) by Cut and Sew Apparel Contractors and the reliance of the Federal Government on this industry to satisfy strategic objectives related to sourcing PPE equipment and supplies domestically suggests that the threshold should be larger than 750 employees. Elaborating on this idea, the commenter explained that increasing the size standard would allow PPE manufacturers to sufficiently scale up their operations to meet the Federal Government's demand at lower costs. Moreover, the commenter presented data to show the high fixed costs of production and relative labor intensity of Cut and Sew Apparel Contractors relative to other manufacturing industries, which the commenter believed justified an increase to the size standard when considering the strategic importance of firms within the Cut and Sew Apparel Contractor industry. The commenter also argued that, due to the pandemic, the distribution of goods being produced by Cut and Sew Apparel Contractors has changed, and as a result,

these companies must invest significantly more in property, plant, and equipment if they are to become more cost-efficient producers of PPE. The commenter explained that in order to meet the Federal Government's demands for quality and quantity of goods for PPE purchases, companies must be larger, both in terms of capital investment and employment size. However, the commenter did not provide any data on industry and Federal contracting factors showing why the size standard for the Cut and Sew Apparel Contractor industry should be increased from 750 employees to 1,500 employees.

SBA Response

SBA disagrees with the commenter's argument that SBA should increase the size standard for NAICS 315210 based on the industry's importance to Government purchases of PPE. Specifically, SBA believes that the commenter may have mis-identified the proper NAICS code for which Government purchases of PPE normally fall under. Based on the NAICS manual, available at www.census.gov/naics, NAICS 315210 comprises firms that are commonly referred to as contractors that are primarily engaged in (1) cutting materials owned by others for apparel and accessories and/or (2) sewing materials owned by others for apparel and accessories. Normally, Federal Government purchases of PPE do not fall under this NAICS code as Government purchases of PPE are normally to acquire new materials and equipment, and not to modify materials and equipment already owned by the Federal Government. Instead, Government purchases of PPE usually fall under NAICS 339112 (Surgical and Medical Instrument Manufacturing), NAICS 339113 (Surgical Appliance and Supplies Manufacturing), or NAICS 423450 (Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers)³ with Product Service Code (PSC) 6515 (Medical and Surgical Instruments, Equipment, and Supplies). Based on an analysis of FPDS-NG data for fiscal years 2018–2020, SBA found that less than 0.1 percent of Government purchases under PSC 6515 fall under NAICS 315210 while nearly 80 percent of Government purchases under PSC 6515 occur under one of the three aforementioned NAICS codes. Since

PSC 6515 includes a broad range of supplies, SBA also analyzed the data by keywords to identify contracts for PPE, including respirators, masks, surgical gowns, and other PPE. SBA again found that NAICS 315210 was insignificant in terms of the total dollars obligated towards purchases of these PPE items. Thus, SBA does not agree that the industry's importance to Federal Government purchases of PPE warrants an increase to the size standard in NAICS 315210 in order to enable the industry to meet greater demand for PPE.

Moreover, SBA's analysis of industry factors, as presented in Table 4 of the April 2022 proposed rule, supported a calculated size standard of only 450 employees for NAICS 315210. However, in response to the economic challenges presented by the COVID-19 pandemic and the measures taken by Federal Government to protect public health, SBA decided to adopt a policy to not lower size standards during the ongoing second five-year review of size standards in order to reduce the economic impacts to small businesses. Thus, SBA proposed to retain the current size standard for NAICS 315210 at 750 employees even though the data supported 450 employees. Based on the 2017 Economic Census data, 99.8 percent of firms are already small under the current 750-employee size standard for NAICS 315210. Increasing the size standard to 1,500 employees might include the largest and potentially dominant firms as small, which would run counter to the Small Business Act requirement that the size standards must exclude dominant firms from being qualified as small.

Regarding the industries that most accurately classify purchases of PPE, namely NAICS 339112 and NAICS 339113, SBA has proposed to retain the current size standard for NAICS 339112 at 1,000 employees and increase the size standard for NAICS 339113 to 800 employees based on the analysis of industry and Federal contracting factors. While the commenter submitted data on the costs of employment for firms operating under NAICS 315210 relative to other manufacturing industries, the provided data are not at the 6-digit industry level and do not demonstrate that SBA's analysis of NAICS 339112 and 339113 is insufficient. Thus, for the above reasons, SBA is not adopting the commenter's recommendation to increase the size standard for NAICS 315210 from 750 employees to 1,500 employees, nor is SBA adopting 1,500 employees as the size standard for other three NAICS codes under which

solicitations for PPE are normally categorized.

Comments on the Exception to NAICS 562910 (Environmental Remediation Services)

As explained above in the Discussion of Comments section of this final rule, SBA received a total of 37 comments pertaining to SBA's proposal to increase the size standard for the Environmental Remediation Services (ERS) exception to NAICS 562910 from 750 employees to 1,000 employees. Of the 37 comments pertaining to the ERS exception, 28 (including six comments opposing SBA's proposal received during SBA's virtual public forums on size standards) opposed SBA's proposed increase and nine (including one comment supporting SBA's proposal during the virtual public forums) supported SBA's proposal. Below, SBA summarizes and responds to comments supporting the SBA's proposed change to the ERS size standard, then summarizes and responds to comments opposing the SBA's proposed change.

Comments Supporting SBA's Proposed Change to the ERS Exception

A total of nine comments were received supporting SBA's proposal to increase the size standard for the ERS exception from 750 employees to 1,000 employees. One commenter supporting SBA's proposed increase to the size standard argued that SBA's current 750-employee size standard is too restrictive and has been a detriment to many companies in the industry. The commenter expressed that adopting a 1,000-employee size standard would remove the restraint and allow for further growth for companies without forcing them to prematurely graduate from the small business status and to compete with larger firms with more resources when they exceed the size standard.

An additional four commenters, submitting nearly identical comments, supported SBA's proposed increase to the ERS size standard for similar reasons, expressing that SBA's proposed increase would allow additional firms to participate in Federal contracting as small businesses, increase small business competition, and ultimately reverse the downward trend in small business share of ERS contract dollars from fiscal years 2013 to 2018. These commenters further expressed that their business would benefit from SBA's proposed change due to the increased capabilities they could achieve under a larger size standard which would allow them to take on larger and more complex remediation projects. One

³ Per the requirements at 13 CFR 121.402(b)(2), acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a Wholesale Trade or Retail Trade NAICS code, however, FPDS-NG data shows that some contracting activity may be misclassified under these NAICS codes.

commenter also supported SBA's proposal based on the belief that the Federal Government will have access to an expanded pool of more capable small businesses to meet the demand for the surge in ERS requirements expected as part of the implementation of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021). Three commenters petitioned SBA to increase the size standard for the ERS exception to 1,200 employees based on SBA's analysis in the proposed rule which showed support for a size standard as high as 1,200 employees when including data from the largest firms whose principal business activities were generally unrelated to ERS.

Referring to an opposing comment received during SBA's virtual public forums on size standards that urged SBA to exclude the Department of Energy (DOE) contracts from its analysis of the ERS exception due to DOE's unique reliance on large M&O contractors, one commenter expressed that the notion of excluding such procurements, which are often related to nuclear remediation, is in direct contradiction to the definition of the ERS subindustry, as stated in Footnote 14 of SBA's Table of Size Standards at 13 CFR 121.201. The commenter explained that this footnote specifically lists nuclear remediation as an eligible activity and further argued that the justification for excluding DOE contracts from the analysis simply because they are dominated by large businesses is not sufficient. This commenter also opposed using the Engineering News-Record (ENR) top 200 environmental firms list as a source of industry data for evaluation of the ERS size standard as suggested by one commenter at the virtual public forums, because the data do not cover the whole industry and may contain subjective measures of revenue that do not comport with SBA's definitions.

SBA Response

SBA agrees with commenters supporting SBA's proposed increase to the size standard for the ERS exception that adopting a size standard of 1,000 employees would extend the runway for firms to grow while still allowing access to SBA's contracting and financial assistance programs. SBA also believes that increasing the size standard to 1,000 employees would improve competition in the industry and help small businesses to earn more Federal contracting dollars and compete for more complex environmental remediation projects, including those that may become newly available as a

result of the Infrastructure Investment and Jobs Act.

As explained in the proposed rule, the procurement data analyzed by SBA showed that the dollars awarded by firms' employment size were concentrated among the largest firms. Specifically, small firms with less than or equal to 750 employees received about 37 percent of the total ERS dollar awards during fiscal years 2016–2018, while firms with more than 5,000 employees accounted for about 60 percent of the total ERS contract awards, with two firms alone accounting for almost 40 percent of the total awards under ERS activities. Firms between 750 employees and 5,000 employees accounted for 3.5 percent of the total ERS contract dollars. Procurement data from FPDS–NG for fiscal years 2019–2021 analyzed by SBA showed an increase in the small business share of ERS contract dollars to 43.5 percent and a decrease in the share of the largest firms (*i.e.*, those with more than 5,000 employees) to 54 percent, with two of them alone accounting for about 34 percent of total ERS dollars during that period. Firms between 750 employees and 5,000 employees accounted for remaining 2.5 percent. While the small business share of ERS contract dollars increased from about 37 percent during fiscal years 2016–2018 to about 43.5 percent during fiscal years 2019–2021, this is still smaller than the corresponding share of about 50 percent during fiscal years 2013–2015.

Thus, SBA believes that the large skewness in the distribution of ERS firms by the number of employees, the large percentage of ERS contracting dollars being concentrated among very large firms, a decrease in the small business share of total ERS awards compared with fiscal years 2013–2015, and the analysis of industry factors according to the SBA's Size Standards Methodology outlined in the proposed rule support SBA's proposal to increase the ERS size standard to 1,000 employees. SBA believes that its proposal to increase the size standard to 1,000 employees will further increase small business participation in the industry over time.

Regarding the adoption of a higher calculated size standard of 1,200 employees for the ERS industry, SBA does not believe that the calculated size standard of 1,200 employees accurately reflects the economic characteristics of firms primarily engaged in the business activities related to the ERS exception since this calculation was based on untrimmed data, and thus, included very large firms whose primary activity was likely unrelated to the ERS

exception. Moreover, in response to comments pertaining to using the ENR data on the top 200 environmental firms, SBA agrees with commenters supporting SBA's increase to the ERS size standard that this dataset is not comprehensive enough for SBA's size standards purposes. For example, SBA's analysis of the ERS industry included 974 firms participating in Federal contracting under the exception to NAICS 562910 during fiscal years 2019–2021, while the ENR dataset suggested by the commenters only includes the top 200 environmental firms.⁴ In order to reliably evaluate the size standard of any industry, SBA must rely on comprehensive data that is representative of the economic trends of the entire industry, rather than only the top firms.

Comments Opposing SBA's Proposed Change to the ERS Exception

Of the 28 comments opposing SBA's proposed change to the size standard for the ERS exception, 27 comments expressed similar arguments for why SBA should retain the current 750-employee size standard for the ERS exception, including 21 comments submitted through the *regulations.gov* rulemaking portal, of which 20 were nearly identical, and six comments submitted orally through SBA's Virtual Public Forum on Size Standards. Many of these 27 commenters, including the 20 commenters that submitted nearly identical comments, and at least two commenters at SBA's Virtual Public Forum on Size Standards were part of a group of firms using data from FEDMINE, a business intelligence provider specializing in Federal Government contracting, as the basis for their comments. One commenter whose comment was also based on the FEDMINE report provided a list of 52 other firms that endorsed their comment. The remaining commenters that did not reference FEDMINE data provided similar reasons as those outlined by commenters using FEDMINE data for opposing SBA's proposed increase to the ERS size standard.

One commenter opposed to SBA's proposed size standard increase for the ERS exception raised issues other than those identified by the above 27 commenters, including establishing a separate NAICS industry specifically for munitions and unexploded ordnance

⁴ 974 is the number of firms after the removal of entities with null revenue and null number of employees as well as the identified Government entities and manufacturing firms. This number is the total entities participating in the ERS activity before trimming the data.

services. Below, SBA summarizes and responds to these opposing comments separately.

Comments Opposing SBA's Proposed Change to the ERS Exception for Similar Reasons

SBA received 27 comments petitioning SBA to retain the current 750-employee size standard for the ERS exception based on similar arguments, including six comments received during the virtual public forums on size standards and 21 comments received through the www.regulations.gov rulemaking portal of which 20 were almost identical. The commenters commissioned FEDMINE, a business intelligence provider specializing in Federal Government contracting, to prepare a report on their behalf regarding Federal spending under the ERS exception for fiscal years 2016–2021.

The commenters objected to SBA's proposed increase to the ERS size standard on the grounds that more recent data shows that SBA's calculation of the small business share of the Federal market under NAICS 562910 is understated, and therefore, undermines SBA's justification for increasing the size standard in order to help small businesses better compete for contracting opportunities. Specifically, according to the commenters' analysis, the amount of Federal dollars awarded to small businesses under the ERS exception increased nearly 50 percent, from about \$1.4 billion in 2016 to about \$2.1 billion in 2021. The commenters also provided data showing that the small business share of the ERS Federal spend increased from 35 percent in 2018 to 46 percent in 2021. The commenters argued that increasing the share of ERS Federal dollars obligated to small firms demonstrates, contrary to SBA's analysis, that the prior increase in the size standard for the exception from 500 employees to 750 employees was effective in increasing competition in the Federal market under the ERS exception (81 FR 4436 (January 26, 2016)). The commenters contended that SBA should evaluate data beyond fiscal year 2018 for purposes of analyzing the ERS exception because most Federal dollar obligations under the exception are awarded under indefinite delivery contracts (IDCs), and as such, SBA should recognize that there was a lapse of time between when the ERS size standard was increased in 2016 until IDCs were awarded and significant dollars were obligated to small businesses under the new size standard.

These commenters also maintained that the DOE's unique procurement

methods, including the Agency's reliance on management and operating (M&O) contracts which are typically awarded to large firms, have a significant influence on SBA's calculations due to DOE's high proportion of total dollars obligated under the ERS exception. Thus, commenters urged SBA to exclude DOE contracts from the analysis since they do not accurately reflect market conditions outside of the DOE.

Regarding the influence of DOE's procurement trends on SBA's calculations, the commenters presented data showing the percent of DOE's ERS contracts dollars obligated to small businesses and the proportion of total ERS awards attributable to the DOE. The data submitted by commenters showed that for fiscal years 2016–2021, on average, DOE awarded only about seven percent of ERS contracting dollars to small businesses while comprising nearly 50 percent of total Federal ERS spending. The commenters maintained that unlike other Federal agencies, DOE awards nearly all ERS work through its M&O contractors, which are exclusively large businesses. For example, the commenters added, in fiscal year 2021, of the \$1.2 billion that DOE awarded under the exception, only \$3.2 million (0.3%) was awarded to non-M&O contracts. Subtracting the large business M&O dollars from the DOE's total ERS dollars, the commenters found that the small business share of total dollars was 97.8 percent. The commenters also argued that since most M&O contractors are joint ventures between two or more large businesses, each with employee counts far in excess of the SBA's size threshold, no reasonable increase in the ERS size standard would influence the ability of small businesses to compete at the prime level in the DOE M&O market and that the contracting dollars awarded to small business is not likely to increase simply because the number of businesses considered small under the exception has grown.

Regarding the dollars obligated to small businesses outside of DOE, the commenters presented data showing that since fiscal year 2016, the share of non-DOE ERS contract dollars awarded to small businesses increased from an average of 53 percent in fiscal years 2013–2015 to an average of 63 percent in fiscal years 2016–2018, and to an average of 78 percent in fiscal years 2019–2021.

Moreover, the commenters expressed concern with SBA's impact analysis which showed that two additional small businesses would gain access to small business set aside opportunities under the proposed 1,000-employee size

standard for the ERS exception. Specifically, the commenters expressed that these newly eligible firms may adversely impact smaller small businesses competing for Federal contracts under the exception. The commenters argued that the addition of larger and more experienced firms may take away future opportunities from currently small firms that are adequately meeting small business procurement needs of Federal agencies.

During SBA's virtual public forums on size standards, SBA received comments expressing similar concerns as those outlined above regarding SBA's use of data from fiscal years 2016–2018 to measure small business participation in the Federal ERS market. One commenter also urged SBA to consider startup costs in its analysis of the industry size standard and utilize more recent data from the ENR, an industry trade publication, which describes the economic characteristics and primary business activities of the top 200 engineering/environmental firms in the industry down to the subsector level. Another commenter urged SBA to consider Environmental Protection Agency's (EPA) Region 2 Superfund program as a representation of the ERS industry. The commenter argued that these program data demonstrate the ability of small firms well under the current 750-employee size standard to fulfill the Federal Government's remediation requirements; thus, it is unnecessary for SBA to increase the size standard beyond the current threshold as the added competition from larger firms could impact the number of opportunities available for smaller small firms that are already thriving under the current size standard. Additional commenters at the virtual public forums agreed with the commenter's assertion that the current 750-employee size standard for the ERS exception is adequate.

For the above reasons, these commenters concluded that SBA's 2016 increase in the ERS size standard from 500 employees to 750 employees successfully increased small business participation in ERS contracts and preserved competition within the industry. As such, the commenters urged SBA to maintain the current 750-employee threshold instead of adopting 1,000 employees, as proposed.

SBA Response

SBA has reviewed the data provided by the above commenters and has determined that the results largely agree with the latest available data that SBA evaluated in response to the commenters' arguments, as we

discussed in the section *Comments Supporting SBA's Proposed Change to the ERS Exception* above. Moreover, consistent with the commenters, SBA found that DOE awards accounted for 49.2 percent of total dollars obligated under the ERS exception, of which only about 8.5 percent were awarded to small businesses through prime contracts.

However, although SBA's further analysis of the ERS industry confirmed some of the data submitted by commenters as presented above, SBA also found important differences in the commenter's position and SBA's evaluation, particularly in regards to SBA's evaluation of size standards generally and the proportion of dollars awarded by DOE under the exception through M&O contracts, a special class of contracts under which the Federal Government contracts for the operation, management, or support, on its behalf, of a government-owned or -controlled establishment devoted to one or more major government programs.

Regarding SBA's evaluation of size standards generally, in the proposed rule, SBA described its methodology for evaluating industry structure to derive size standards based on five primary factors including: average firm size (simple and weighted average firm size factors), startup costs and entry barriers (average assets size factor), industry competition (four-firm ratio factor), distribution of firms by size (Gini coefficient factor), and small business success in receiving Federal contracts under the current size standard (Federal contracting factor). As detailed in Table 4 of the April 2022 proposed rule, based on the data for fiscal years 2016–2018, SBA found that three of the five industry factors analyzed supported raising the size standard for the ERS industry above the current 750 employee threshold. Specifically, the factors for simple and weighted average firm size supported a size standard of 1,500 employees while the average assets size and Gini coefficient supported size standards of 850 employees and 1,250 employees, respectively. Only the four-firm ratio supported a size standard lower than 750 employees.

With respect to the Federal contracting factor, which measures small business participation in the Federal market in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of an industry's total receipts, SBA found that the 750-employee size standard was appropriate. Based on SBA's Size Standards Methodology, if the share of Federal contract dollars awarded to

small businesses in an industry is significantly smaller than the small business share of total industry's receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases, where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with respect to the Federal contracting factor. Thus, regarding the ERS exception specifically, using the FPDS-NG data for fiscal years 2016–2018, SBA calculated a Federal contracting factor to be 64.2 percent, indicating the small business share of the Federal market is appreciably high relative to the small business share of industry receipts, which supported a size standard of 750 employees. Based on this result, SBA agrees with commenters that small businesses in the ERS industry are well-represented in the Federal contracting marketplace under the current 750-employee size standard and have adequate Federal contracting opportunities.

In the proposed rule, as an additional indicator, SBA also considered the change in the share of total ERS contract dollars awarded to small businesses from fiscal years 2013–2015 (under the 500-employee size standard) to fiscal years 2016–2018 (under the 750-employee size standard), finding that the small business share decreased from about 50 percent during fiscal years 2013–2015 to about 37 percent during fiscal years 2016–2018. This result, alongside SBA's analysis of industry factors demonstrated that an additional increase to the ERS size standard was warranted in order to optimize and protect the number of opportunities available to small businesses in the ERS industry. However, SBA notes that this additional indicator was not the primary basis for SBA's proposed increase to the size standard for the ERS exception. SBA's further analysis of data from fiscal years 2019–2021 showed that the small business share of total ERS contract dollars increased to 43.5 percent from 37 percent in fiscal years 2016–2018; however as previously stated, this is not a primary factor in SBA's comprehensive analysis of the ERS industry nor is it the sole basis for prescribing the size standard for the industry.

Based solely on the Federal contracting data, SBA agrees that the 750-employee size standard is appropriate for the ERS industry. However, while SBA believes that analyzing Federal contracting trends,

including the Federal contracting factor, are an important component of SBA's evaluation of industry size standards, SBA's size standards methodology does not provide for the weighting of one factor more than others. In other words, the methodology establishes that SBA will give equal weights to all five primary factors that are considered in the evaluation of an industry size standard. Thus, SBA believes that the proposed size standard for the ERS industry, which is based on SBA's comprehensive evaluation of industry and Federal contracting factors, accurately reflects the economic characteristics of the industry, including the high level of small business participation in the Federal marketplace.

Regarding DOE's M&O contracts, SBA generally recognizes the special nature of M&O contracts which have received special regulatory treatment under Subpart 17.6 of the FAR. For example, when evaluating agency contracting performance under SBA's procurement scorecard assessment tool, starting from fiscal year 2015, SBA evaluates DOE's prime contracting performance by including M&O first tier subcontracts pursuant to 15 U.S.C. 644(g)(3). Thus, SBA believes commenters may be justified in requesting that SBA count DOE's M&O first tier subcontracts as prime contracts consistent with SBA's procurement scorecard methodology. However, SBA does not agree with commenters that the dollars obligated through DOE's M&O contracts should be excluded altogether from the evaluation of the industry size standard since M&O contracts are a valid and important part of the overall Federal contracting landscape, and because the DOE accounts for roughly half of total ERS contract dollars. SBA believes that excluding M&O contracts from the evaluation of size standards, particularly for purposes of calculating the Federal contracting factor, would lead to unreliable results in industries where M&O contracts are used prominently.

Moreover, SBA found that, contrary to the commenter's suggestion, it is not true that the majority of DOE contracts classified under the ERS exception are M&O contracts.⁵ SBA obtained data from the DOE listing its M&O contractors and showing the proportion of total dollars awarded under the ERS exception to M&O contractors for fiscal years 2016–2021. The data showed that the DOE did not award any contracts

⁵ See Guidance on the Department of Energy Subcontracting Program, *Section 1.2 Background*.

under the ERS exception to firms classified as an M&O contractor.

Based on data from the Electronic Subcontracting Reporting System (eSRS), SBA found that small businesses were well represented in DOE's first tier subcontracts classified under NAICS 562910. Specifically, SBA analyzed the data from fiscal years 2016–2021 and found that, when accounting for the dollars awarded to small businesses through first-tier subcontracts, about 57 percent of total dollars awarded by DOE under the ERS exception passed through to small businesses. Thus, even if SBA considered all DOE awards under the exception as M&O contracts and therefore counted the first-tier subcontracts as prime contracts, SBA believes that the evaluation would reflect a high degree of small business participation under the ERS exception, which, as explained above, is consistent with SBA's results under the proposed rule.

Nonetheless, in response to the commenters' petition, SBA conducted an analysis of the ERS industry using updated FPDS–NG data from fiscal years 2019–2021 following the same methodology as detailed in the proposed rule and in the SBA's Size Standards Methodology. SBA's analysis using the more recent data did not support a size standard lower than the SBA's proposed 1,000-employee size standard. In fact, except for the weighted average firm size, values of each industry factor based on the data for fiscal years 2019–2021 were higher than those based on the data for fiscal years 2016–2018. Although the weighted average firm size was lower in fiscal years 2016–2018, weighted average firm size still supported a 1,500-employee size standard. The Federal contracting factor based on the data for fiscal years 2019–2021 continued to support the 750-employee size standard.

Regarding petitions by commenters for SBA to use alternative sources of data to evaluate industry characteristics, specifically data from the ENR on the top 200 environmental firms and EPA's Region 2 Superfund program, SBA disagrees that these sources would provide the best representation of the ERS industry. SBA believes these data are not comprehensive enough for SBA's purposes. For example, SBA's analysis of the ERS industry included 974 firms participating in Federal contracting under the exception to NAICS 562910 during fiscal years 2019–2021, while the ENR dataset only includes the top 200 environmental firms. In order to reliably evaluate the size standard of any industry, SBA must rely on comprehensive data that is

representative of the economic trends of the entire industry, rather than only the top firms, or those associated with one agency's contracting program.

SBA does not agree with the commenters that a few larger firms that would qualify as small under the proposed 1,000-employee size standard would have significant adverse impacts on small businesses under the current 750-employee size standard in terms of access to Federal opportunities to smaller small firms. The relevant data does not demonstrate that the previous increase in size standard from 500 employees to 750 employees had a significant adverse impact on small businesses below 500 employees in terms of accessing Federal small business opportunities. For example, firms below 500 employees accounted for 84 percent of total ERS dollars awarded to small businesses during fiscal years 2019–2021.

SBA believes that increasing the size standard to the proposed 1,000-employee level based on its comprehensive evaluation of industry and Federal contracting factors may increase the number of set-asides in this industry and further benefit the small firms that are already well-represented in the Federal contracting market at the current 750-employee size standard. SBA believes that increasing the size standard to 1,000 employees will expand the runway for small businesses to compete for more complex remediation projects while also ensuring that the Federal Government has access to a larger pool of qualified small businesses to select from when issuing solicitations for ERS. As such, based on SBA's evaluation of the above public comments pertaining to the ERS exception and SBA's analyses of industry and Federal contracting factors, SBA is adopting 1,000 employees as the size standard for ERS as proposed in the April 2022 proposed rule.

Comments Opposing SBA's Proposed Change to the ERS Exception for Other Reasons

One commenter opposing SBA's proposed increase to the size standard for the ERS exception from 750 employees to 1,000 employees argued that since SBA's analysis of Federal procurement data from fiscal years 2016–2018 in the proposed rule showed that the dollars obligated to small businesses decreased significantly despite an increase to the size standard from 500 employees to 750 employees in 2016, SBA should forego increasing the size standard again, and instead, pursue other methods of increasing small business participation.

Specifically, the commenter petitioned SBA to task, demand, encourage and/or impose on Federal agencies higher small business participation goals. The commenter also argued that SBA's proposed size standard increase would adversely impact competition because currently small firms would find it difficult to compete with larger firms with more advanced capabilities. The commenter also urged SBA to implement rules and/or programs to support smaller firms within the ERS industry, for example, by creating a class of set-aside opportunities reserved for firms with fewer than 50 employees. The commenter also expressed concerns over what they viewed as discriminatory and inconsistent application of NAICS code selection by contracting officers when determining the applicable NAICS code for munitions response services, which are sometimes misclassified under the ERS exception rather than the general NAICS 562910 or some other more appropriate NAICS codes. The commenter maintained that while some munitions remediation projects may require engineers for planning purposes (*i.e.*, NAICS 541330) and geophysical survey and mapping services (*i.e.*, NAICS 541360), these services represent only a small portion of the contract dollars spent (usually 10–20%) on a munitions remediation project. The commenter further explained that the overwhelming majority of funds allocated to munitions remediation projects are spent on unexploded object (UXO) technicians and labor to remove and dispose of the UXOs. Thus, citing the requirements of ERS solicitations under Footnote 14, the commenter argued that, since greater than 50 percent of the work related to munitions remediation would be attributable to a single NAICS code, the requirements for classifying the solicitation under the ERS exception are not met. To remedy the misclassification of contracts for munitions remediation services, the commenter recommended that SBA create a separate NAICS code for munitions and UXO services and issue guidance to contracting officers on the appropriate use of the ERS exception.

SBA Response

SBA disagrees with the comment that SBA should forego increasing the size standard for the ERS exception and instead pursue other methods of increasing small business participation, including higher small business goals for Federal agencies and creating separate set-aside opportunities for smaller small firms. SBA believes that establishing appropriate size standards

for industries based on its Size Standards Methodology is not mutually exclusive to conducting other engagement efforts to increase small business participation.

Moreover, SBA believes that the aforementioned comment is largely beyond the scope of this rulemaking as the proposed rule did not propose any changes to SBA's goaling guidelines for Federal agencies, nor did SBA propose establishing a separate class of set-aside opportunities for smaller small businesses. By increasing the size standard for the ERS exception to 1,000 employees, SBA will extend the runway for firms to grow while also ensuring that small businesses retain access to SBA's contracting and financial assistance programs. Increasing the size standard to 1,000 employees will also improve competition in the industry and help small businesses to earn more Federal contracting dollars and compete for and perform more complex environmental remediation projects.

Regarding the misclassification of munitions remediation projects under the ERS exception rather than the general NAICS 562910, or some other more appropriate NAICS codes, SBA notes that it is ultimately the responsibility of the contracting officer to designate the proper NAICS code based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). SBA does not believe that changes to size standards, including the creation of new NAICS industries or exceptions, is an appropriate tool to address incorrect NAICS code selections by contracting officers. More importantly, SBA does not have authority to create new NAICS codes. SBA has established a process for affected parties to appeal with SBA's Office of Hearings and Appeal (OHA) a contracting officer's NAICS code designation in its regulations at 13 CFR 121.1101. SBA encourages impacted firms to use this process when they believe that a contracting officer has miscategorized a solicitation under an improper NAICS code.

For the reasons stated above, SBA is not adopting the recommendations of the commenter and is instead adopting 1,000 employees as the size standard for the ERS exception, as proposed in the proposed rule.

General Comments on SBA's Proposed Changes to Size Standards

SBA received four comments pertaining to its proposed changes to size standards generally, including one comment submitted orally as part of SBA's virtual public forum on size standards. Of the four comments

received, two commenters supported SBA's proposed changes to size standards while two commenters opposed the SBA's proposal. One commenter supported SBA's increases to size standards, specifically for industries under NAICS Sector 54, but only for agencies other than the Department of Defense (DOD). The commenter expressed concern that complex compliance requirements and other factors make it too costly for small businesses to compete against larger established businesses and that increases in the size thresholds would only exacerbate this problem. The commenter did not specify which size levels would be more appropriate for the Sector 54 industries covered under this rule or offer data in support of their position. Another commenter supported SBA's proposed changes to size standards because they believed the changes would be beneficial to all small businesses, particularly to those involved in government contracting.

Regarding the opposing comments, one commenter expressed opposition to SBA's increases to size standards in general, specifically for dump truck operators due to the increased competition that small operators face from larger mid-sized trucking firms. The commenter also urged SBA to look into the commercial insurance industry which has, according to the commenter, more than doubled insurance rates over a timespan of just a few months. The commenter did not specify which NAICS codes were the subject of their comment, nor did they recommend any actions SBA should take to address their comment on the commercial insurance industry.

SBA also received one comment opposed to SBA's changes to size standards from a business operating under NAICS 561110 (Office Administrative Services). The commenter opposed any increases to size standards at this time, citing concerns about an impending economic recession, category management impacts, and best-in-class requirements which together reduce small business opportunities and the total number of small businesses. The commenter urged SBA to help small businesses facing these concerns by improving its engagement efforts through increased access to financial assistance and other support rather than increasing size standards.

SBA Response

SBA agrees with commenters supporting SBA's proposed changes to size standards that the proposed changes are beneficial to small

businesses and will increase the number of Federal contracting opportunities available for small businesses. However, SBA disagrees with the comment supporting SBA's proposed changes in Sector 54, but only for agencies other than DOD. SBA does not believe that size standards should differ among Federal agencies based on the contracting preferences or requirements of each agency as this would result in a complicated regime of size standards that may fluctuate along with an agency's budget and priorities instead of the economic characteristics of the industry in which a firm operates. Moreover, to evaluate the size standards for industries within Sector 54, SBA relied on its size standards methodology. SBA's size standards methodology describes how its analyses of various industry and program factors are used to establish and revise size standards based on the latest data available. Thus, SBA believes that the size standards adopted in this final rule, including for industries within Sector 54, appropriately reflect the intended beneficiaries of SBA programs. Thus, SBA is adopting the size standards for industries in Sector 54 without change.

SBA also disagrees with the comment that expressed opposition to SBA's increases to size standards in general, but specifically for dump truck operators, urging SBA to take action to address increased insurance costs imposed by the commercial insurance industry. SBA believes that this comment is out of the scope of this rulemaking as dump truck operators normally operate under NAICS 484220 (Specialized Freight (except Used Goods) Trucking, Local), NAICS 532120 (Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing), or NAICS 562119 (Other Waste Collection), all of which have receipts-based size standards and were not covered under the proposed rule. Moreover, SBA does not have the authority to regulate the commercial insurance industry, which operates mostly under industries with receipt-based size standards not covered under this rule. It is also unclear how an adjustment to size standards within the commercial insurance industry would translate to lower insurance premiums for small business owners. Thus, SBA is not adjusting the size standards for any industries in response to this comment.

SBA also disagrees with the comment opposing any increases to size standards based on various concerns including the broader economic environment and certain Federal contracting trends that are reducing opportunities for small businesses. SBA believes that all small

businesses will benefit under a size standard that is appropriate to their industry. SBA's changes to size standards help small businesses to remain competitive in the Federal market and ensure that SBA's services go to their intended beneficiaries. Moreover, Table 9 of this final rule, Impacts of Increasing Size Standards, below, demonstrates the benefits of size standards increases, which would remain unrealized if SBA were to not adopt any increases to size standards. For example, based on its impact analysis, SBA estimates that increasing size standards would result in additional contracting opportunities for more than 100 small businesses worth nearly \$257 million. Thus, based on SBA's estimation of the positive net benefits accruing to small businesses as a result of the changes to size standards, SBA disagrees with the commenter that increases to size standards are harmful to small businesses. Therefore, SBA is adopting proposed increases to size standards as presented in the proposed rule.

Comments Pertaining to Other Issues

SBA received three comments pertaining to issues other than those already discussed above. One commenter, representing an optics manufacturer, in anticipation of SBA's adoption of Office of Management and Budget's (OMB) NAICS 2022 industry structure, petitioned SBA to adopt 1,000 employees as the size standard for NAICS 333310, which is a newly defined industry under NAICS 2022 encompassing elements from NAICS 333314, 333316, and 333318. The commenter argued that adopting the higher size standard would expand the runway for small businesses in this industry to compete against a greater number of large competitors with greater resources. Another commenter petitioned SBA to require all United States Department of Agriculture (USDA) regulated entities with current USDA certification status to be available for periodic surveys and questionnaires regarding their ability to spot, detect and report human trafficking. Another commenter petitioned SBA to reconsider the current minimum and maximum size threshold values for employee-based size standards. The commenter expressed concern with SBA's language in the proposed rule describing the minimum size standard as the size an established small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts, but does not account for small businesses that are newly formed or just starting operations.

The commenter maintained that, contrary to SBA's language, as small businesses adopt new technologies and innovation, it is possible to have adequate capabilities and resources to perform Federal contracts without a high employee count. Thus, the commenter urged SBA to explore measures such as financial statements, sales revenue, years in business and other applicable methods to determine capability and competency. The commenter also argued that SBA's minimum thresholds affect small business access to Federal procurement.

SBA Response

SBA agrees with the comment petitioning SBA to adopt 1,000 employees as the size standard for NAICS 333310 under the NAICS 2022 industry structure. On July 5, 2022, SBA published a proposed rule in the **Federal Register** with proposed revisions to size standards based on OMB's NAICS 2022 structure (87 FR 40034). In the proposed rule, SBA proposed 1,000 employees as the size standard for NAICS 333310 and adopted the proposed size standard in a final rule, effective October 1, 2022 (87 FR 59240; September 29, 2022). In this final rule, SBA is adopting changes to size standards based on the NAICS 2017 structure and applying the adopted changes to the recently adopted NAICS 2022 structure. SBA's NAICS adoption analysis, presented in this final rule under the section "Applying the Adopted Changes to the NAICS 2022 Structure," supports adopting 1,000 employees as the size standard for NAICS 333310 based on SBA's established NAICS adoption methodology.

Regarding the comment petitioning SBA to establish reporting requirements for certain operators under USDA's regulations, SBA notes that it does not have authority to regulate the trucking industry, nor does the Agency have purview over any USDA's certification programs. Thus, SBA has determined that this comment is totally outside the scope of this final rule.

Regarding the comment petitioning SBA to reconsider the current minimum and maximum threshold values for employee-based size standards, SBA evaluated employee-based size standards under this rule using its "Size Standards Methodology" (Methodology), issued on April 11, 2019, and available at www.sba.gov/size. SBA's Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size

standards. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification of the issuance of the final revised Methodology (84 FR 14587).

Pursuant to the Methodology, SBA has established 250 employees and 1,500 employees, respectively, as the minimum and maximum size standard levels for Manufacturing and other industries (excluding Wholesale and Retail Trade) with employee-based size standards. Accordingly, SBA will not generally propose or adopt a size standard that is either below the minimum level or above the maximum, even though the calculations yield values below the minimum or above the maximum levels. As stated in the proposed rule, the minimum size standard reflects the size an established small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts (but does not account for small businesses that are newly formed or just starting operations). On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would outcompete much smaller businesses when accessing Federal small business assistance. SBA notes that SBA's table of size standards at 13 CFR 121.201 only defines the largest a business can be and still be considered small. As such, although SBA uses 250 employees as the minimum size threshold for SBA's analysis of size standards, firms with less than 250 employees may still qualify as small businesses since they would be below the size threshold for their respective industry. Thus, SBA does not agree with the commenter that maintaining a minimum threshold for purposes of analysis of industry factors disadvantages small firms below the minimum threshold or excludes them from contracting opportunities. Moreover, SBA believes that this comment is likely beyond the scope of this rulemaking as the proposed rule did not propose any changes to SBA's Size Standards Methodology, which was finalized through notice and comment process in April 2019. SBA notes that the size standards reflect the maximum

size a business can be to be considered small.

Summary of Adopted Revisions to Size Standards

Based on the evaluation of public comments it received on the proposed rule and on its analyses of industry and Federal contracting factors using the latest available data when the proposed rule was prepared along with considerations of impacts of the ongoing COVID-19 pandemic, in this final rule,

SBA is adopting the size standards as proposed in the April 26, 2022, proposed rule. Thus, SBA is increasing size standards for 150 industries under NAICS 2017, including 10 industries in NAICS Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 10 industries in NAICS Sector 22 (Utilities), 120 industries in NAICS Sector 31-33 (Manufacturing), five industries in Sector 48-49 (Transportation and Warehousing), three industries in NAICS Sector 51

(Information), and one subindustry (or "exception") each in NAICS Sector 54 (Professional, Scientific and Technical Services) and in NAICS Sector 56 (Administrative and Support, Waste Management and Remediation Services). SBA's size standards revisions adopted in this rule can be found in Table 2, Adopted Size Standards Revisions (NAICS 2017). Also presented in Table 2 are current and calculated size standards for comparison.

TABLE 2—ADOPTED SIZE STANDARDS REVISIONS
[NAICS 2017]

NAICS 2017 code	NAICS 2017 industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed/ adopted size standard (employees)
212113	Anthracite Mining	250	600	250
212210	Iron Ore Mining	750	1,400	1,400
212222	Silver Ore Mining	250	1,100	250
212230	Copper, Nickel, Lead, and Zinc Mining	750	1,400	1,400
212291	Uranium-Radium-Vanadium Ore Mining	250	900	250
212299	All Other Metal Ore Mining	750	1,250	1,250
212313	Crushed and Broken Granite Mining and Quarrying	750	850	850
212319	Other Crushed and Broken Stone Mining and Quarrying	500	550	550
212322	Industrial Sand Mining	500	750	750
212324	Kaolin and Ball Clay Mining	750	1,050	750
212325	Clay and Ceramic and Refractory Minerals Mining	500	650	650
212391	Potash, Soda, and Borate Mineral Mining	750	1,050	1,050
212392	Phosphate Rock Mining	1,000	1,350	1,000
212393	Other Chemical and Fertilizer Mineral Mining	500	600	600
212399	All Other Nonmetallic Mineral Mining	500	600	600
221111	Hydroelectric Power Generation	500	750	750
221112	Fossil Fuel Electric Power Generation	750	950	950
221113	Nuclear Electric Power Generation	750	1,150	1,150
221114	Solar Electric Power Generation	250	700	500
221115	Wind Electric Power Generation	250	1,150	1,150
221116	Geothermal Electric Power Generation	250	1,050	250
221117	Biomass Electric Power Generation	250	550	550
221118	Other Electric Power Generation	250	650	650
221121	Electric Bulk Power Transmission and Control	500	950	950
221122	Electric Power Distribution	1,000	1,100	1,100
221210	Natural Gas Distribution	1,000	1,150	1,150
311111	Dog and Cat Food Manufacturing	1,000	1,250	1,250
311119	Other Animal Food Manufacturing	500	650	650
311211	Flour Milling	1,000	1,050	1,050
311212	Rice Milling	500	750	750
311213	Malt Manufacturing	500	900	500
311221	Wet Corn Milling	1,250	1,300	1,300
311224	Soybean and Other Oilseed Processing	1,000	1,250	1,250
311225	Fats and Oils Refining and Blending	1,000	1,100	1,100
311230	Breakfast Cereal Manufacturing	1,000	1,300	1,300
311313	Beet Sugar Manufacturing	750	1,150	1,150
311314	Cane Sugar Manufacturing	1,000	1,050	1,050
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	1,000	1,100	1,100
311422	Specialty Canning	1,250	1,400	1,400
311511	Fluid Milk Manufacturing	1,000	1,150	1,150
311512	Creamery Butter Manufacturing	750	1,000	750
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing.	750	1,000	1,000
311611	Animal (except Poultry) Slaughtering	1,000	1,150	1,150
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.	750	850	850
311920	Coffee and Tea Manufacturing	750	1,000	1,000
311930	Flavoring Syrup and Concentrate Manufacturing	1,000	1,100	1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing.	750	850	850
311942	Spice and Extract Manufacturing	500	650	650
311991	Perishable Prepared Food Manufacturing	500	700	700
311999	All Other Miscellaneous Food Manufacturing	500	700	700

TABLE 2—ADOPTED SIZE STANDARDS REVISIONS—Continued
[NAICS 2017]

NAICS 2017 code	NAICS 2017 industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed/adopted size standard (employees)
312111	Soft Drink Manufacturing	1,250	1,400	1,400
312112	Bottled Water Manufacturing	1,000	1,100	1,100
312140	Distilleries	1,000	1,100	1,100
313220	Narrow Fabric Mills and Schiffli Machine Embroidery	500	550	550
313230	Nonwoven Fabric Mills	750	850	850
314999	All Other Miscellaneous Textile Product Mills	500	550	550
315190	Other Apparel Knitting Mills	750	850	850
315990	Apparel Accessories and Other Apparel Manufacturing	500	600	600
316110	Leather and Hide Tanning and Finishing	500	800	800
316992	Women's Handbag and Purse Manufacturing	750	850	750
321113	Sawmills	500	550	550
321114	Wood Preservation	500	550	550
321211	Hardwood Veneer and Plywood Manufacturing	500	600	600
322110	Pulp Mills	750	1,050	1,050
322122	Newsprint Mills	750	1,050	1,050
323111	Commercial Printing (except Screen and Books)	500	650	650
323120	Support Activities for Printing	500	550	550
324122	Asphalt Shingle and Coating Materials Manufacturing	750	1,100	1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing	750	900	900
324199	All Other Petroleum and Coal Products Manufacturing	500	950	950
325110	Petrochemical Manufacturing	1,000	1,300	1,300
325120	Industrial Gas Manufacturing	1,000	1,200	1,200
325130	Synthetic Dye and Pigment Manufacturing	1,000	1,050	1,050
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1,000	1,050	1,050
325311	Nitrogenous Fertilizer Manufacturing	1,000	1,050	1,050
325312	Phosphatic Fertilizer Manufacturing	750	1,350	1,350
325314	Fertilizer (Mixing Only) Manufacturing	500	550	550
325320	Pesticide and Other Agricultural Chemical Manufacturing	1,000	1,150	1,150
325412	Pharmaceutical Preparation Manufacturing	1,250	1,300	1,300
325520	Adhesive Manufacturing	500	550	550
325611	Soap and Other Detergent Manufacturing	1,000	1,100	1,100
325612	Polish and Other Sanitation Good Manufacturing	750	900	900
325613	Surface Active Agent Manufacturing	750	1,100	1,100
325910	Printing Ink Manufacturing	500	750	750
325991	Custom Compounding of Purchased Resins	500	600	600
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	500	650	650
326121	Unlaminated Plastics Profile Shape Manufacturing	500	600	600
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing.	500	650	650
326220	Rubber and Plastics Hoses and Belting Manufacturing	750	800	800
326299	All Other Rubber Product Manufacturing	500	650	650
327211	Flat Glass Manufacturing	1,000	1,100	1,100
327410	Lime Manufacturing	750	1,050	1,050
327910	Abrasive Product Manufacturing	750	900	900
327992	Ground or Treated Mineral and Earth Manufacturing	500	600	600
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	500	750	750
331313	Alumina Refining and Primary Aluminum Production	1,000	1,300	1,300
331315	Aluminum Sheet, Plate, and Foil Manufacturing	1,250	1,400	1,400
331420	Copper Rolling, Drawing, Extruding, and Alloying	1,000	1,050	1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	750	900	900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	750	850	850
331512	Steel Investment Foundries	1,000	1,050	1,050
331513	Steel Foundries (except Investment)	500	700	700
331523	Nonferrous Metal Die-Casting Foundries	500	700	700
331524	Aluminum Foundries (except Die-Casting)	500	550	550
332112	Nonferrous Forging	750	950	950
332114	Custom Roll Forming	500	600	600
332117	Powder Metallurgy Part Manufacturing	500	550	550
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	750	1,000	1,000
332439	Other Metal Container Manufacturing	500	600	600
332613	Spring Manufacturing	500	600	600
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	500	600	600

TABLE 2—ADOPTED SIZE STANDARDS REVISIONS—Continued
[NAICS 2017]

NAICS 2017 code	NAICS 2017 industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed/ adopted size standard (employees)
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	500	600	600
332992	Small Arms Ammunition Manufacturing	1,250	1,300	1,300
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500	550	550
333131	Mining Machinery and Equipment Manufacturing	500	900	900
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500	550	550
333314	Optical Instrument and Lens Manufacturing	500	600	600
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.	750	900	900
333991	Power-Driven Hand Tool Manufacturing	500	950	950
333993	Packaging Machinery Manufacturing	500	600	600
333995	Fluid Power Cylinder and Actuator Manufacturing	750	800	800
333997	Scale and Balance Manufacturing	500	700	700
334290	Other Communications Equipment Manufacturing	750	800	800
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.	500	550	550
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,250	1,350	1,350
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.	500	650	650
334514	Totalizing Fluid Meter and Counting Device Manufacturing	750	850	850
334517	Irradiation Apparatus Manufacturing	1,000	1,200	1,200
334519	Other Measuring and Controlling Device Manufacturing	500	600	600
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	500	600	600
335129	Other Lighting Equipment Manufacturing	500	550	550
335311	Power, Distribution, and Specialty Transformer Manufacturing.	750	800	800
335912	Primary Battery Manufacturing	1,000	1,300	1,300
335931	Current-Carrying Wiring Device Manufacturing	500	600	600
335991	Carbon and Graphite Product Manufacturing	750	900	900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.	500	600	600
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.	1,000	1,050	1,050
336414	Guided Missile and Space Vehicle Manufacturing	1,250	1,300	1,300
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.	1,000	1,050	1,050
336611	Ship Building and Repairing	1,250	1,300	1,300
336991	Motorcycle, Bicycle, and Parts Manufacturing	1,000	1,050	1,050
337125	Household Furniture (except Wood and Metal) Manufacturing.	750	950	950
337214	Office Furniture (except Wood) Manufacturing	1,000	1,100	1,100
339113	Surgical Appliance and Supplies Manufacturing	750	800	800
339910	Jewelry and Silverware Manufacturing	500	700	700
339930	Doll, Toy, and Game Manufacturing	500	700	700
339991	Gasket, Packing, and Sealing Device Manufacturing	500	600	600
339994	Broom, Brush, and Mop Manufacturing	500	750	750
339999	All Other Miscellaneous Manufacturing	500	550	550
483111	Deep Sea Freight Transportation	500	1,050	1,050
483113	Coastal and Great Lakes Freight Transportation	750	800	800
483114	Coastal and Great Lakes Passenger Transportation	500	550	550
483211	Inland Water Freight Transportation	750	1,050	1,050
483212	Inland Water Passenger Transportation	500	550	550
511199	All Other Publishers	500	550	550
512230	Music Publishers	750	900	900
512250	Record Production and Distribution	250	900	900
541715 (Exception 3)	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.	1,250	1,300	1,300
562910 (Exception)	Environmental Remediation Services	750	1,000	1,000

Table 3, Summary of Adopted Size Standards Revisions by Sector (NAICS

2017), summarizes the adopted changes to size standards by NAICS sector.

TABLE 3—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR
[NAICS 2017]

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	24	10	0	14
22	Utilities	11	10	0	1
31–33	Manufacturing	360	120	0	240
48–49	Transportation and Warehousing	15	5	0	10
51	Information	12	3	0	9
54	Professional, Scientific and Technical Services	7	1	0	6
Other Sectors ..	Agriculture, Forestry, Fishing and Hunting; Finance and Insurance; Administrative and Support, Waste Management and Remediation Services.	3	1	0	2
Total .....	.....	432	150	0	282

Applying the Adopted Changes to the NAICS 2022 Structure

Under this final rule, SBA has reviewed the size standards for 56 NAICS 2017 industries or their parts with employee-based size standards (excluding employee-based size standards in Sectors 42 and 44–45) and one industry with a receipts-based size standard that were split, merged, or modified to become part of 36 new industries under OMB’s NAICS 2022 changes. Overall, OMB’s NAICS 2022 revisions created 111 new industries by reclassifying, combining, or splitting 156 NAICS 2017 industries or their parts.⁶

Prior to issuing this final rule on employee-based size standards, SBA incorporated OMB’s NAICS 2022 changes into its Table of Size Standards at 13 CFR 121.201 in a final rule, effective October 1, 2022 (87 FR 59240; September 29, 2022), using the newly adopted size standards under SBA’s review of size standards under the Jobs Act. Specifically, as stated above, as part of SBA’s second five-year review of size standards under the Jobs Act, SBA revised all monetary-based size standards and employee-based size standards under NAICS Sectors 42

(Wholesale Trade) and 44–45 (Retail Trade).

Of the 36 new industries with employee-based size standards (excluding Sectors 42 and 44–45) that were created under the NAICS 2022 revision, 27 were formed by combining more than one NAICS 2017 industry or industry part, often with new 6-digit codes and industry titles. Three new industries were formed by changing the 6-digit code without changing the industry title, two industries were formed by changing the title without changing the 6-digit code, and four remaining industries had either their content, definition, or content changed, usually involving parts of NAICS 2017 industries.

SBA’s methodology for incorporating OMB’s NAICS revisions into size standards is generally well-established. On October 22, 1999, SBA proposed to replace the Standard Industrial Classification (SIC) System with NAICS 1997 as the basis of industry definitions for its table of small business size standards (64 FR 57188). The proposed rule included a set of guidelines or rules that SBA applied to convert the size standards for industries under SIC to industries under NAICS. The guidelines

primarily aimed to minimize the impact of applying a new industry classification system on SBA’s size standards and on small businesses that qualified as small under the SIC-based size standards. SBA received no negative comments against the proposed guidelines. Thus, SBA published its final rule on May 15, 2000 (65 FR 30386), corrected on September 5, 2000 (65 FR 53533), adopting the resulting table of size standards based on NAICS 1997 structure, as proposed. To be consistent, SBA generally applied the same guidelines when it updated its table of size standards to adopt NAICS 2002, NAICS 2007, NAICS 2012, NAICS 2017, and NAICS 2022 revisions. In those updates as well, SBA received no adverse comments against using those guidelines, or against the resulting changes to the size standards. These guidelines to adopt OMB’s NAICS revisions were also included in the SBA’s “Size Standards Methodology” white paper and SBA received no adverse comments when the revised methodology was open for public comments. The applicable guidelines are shown below in Table 4, “General Guidelines to Establish Size Standards for New Industries under NAICS 2022.”

TABLE 4—GENERAL GUIDELINES TO ESTABLISH SIZE STANDARDS FOR NEW INDUSTRIES UNDER NAICS 2022

If the NAICS 2022 industry is composed of:	The size standard for the NAICS 2022 industry code will be:
1. A single NAICS 2012 industry or part of a single NAICS 2012 industry.	The same size standard as for the NAICS 2012 industry or part.
2. Two or more NAICS 2017 industries; two or more parts of an NAICS 2017 industry; parts of two or more NAICS 2017 industries; or one or more NAICS 2017 industries and part(s) of one or more NAICS 2017 industries, and 2a. they all have the same size standard	The same size standard as for the NAICS 2017 industries or parts.

⁶ Complete information on the relationship between NAICS 2017 and NAICS 2022 is available on the U.S. Bureau of the Census (Census Bureau) website at <https://www.census.gov/naics/>. The

Census Bureau’s website also provides detailed documentation on Federal notices involving the replacement of SIC with NAICS, and all subsequent NAICS updates and revisions, including both the

July 2, 2021, and December 21, 2021, Federal notices regarding the NAICS 2022 revision.

TABLE 4—GENERAL GUIDELINES TO ESTABLISH SIZE STANDARDS FOR NEW INDUSTRIES UNDER NAICS 2022—
Continued

If the NAICS 2022 industry is composed of:	The size standard for the NAICS 2022 industry code will be:
2b. they all have the same size measure (<i>e.g.</i> , receipts, employees, <i>etc.</i>) but do not all have the same size standard.	The same size standard as for the NAICS 2017 industry or part that most closely matches the economic activity described by the NAICS 2022 industry, or The highest size standard among the NAICS 2017 industries and part(s) that comprise the NAICS 2022 industry, provided that the highest size standard does not include dominant or potentially dominant firms.
2c. they have different size measures (<i>i.e.</i> , for example, some are based on receipts and others on employees) and hence do not all have the same size standard.	The same size standard as for the NAICS 2017 industry or part that most closely matches the economic activity described by the NAICS 2022 industry, or The highest size standard among the NAICS 2017 industries and part(s) that comprise the NAICS 2022 industry, provided that the highest size standard does not include dominant or potentially dominant firms. To apply this rule, SBA converts all size standards to a single measure (<i>e.g.</i> , receipts, employees, <i>etc.</i>) using the size measure for the NAICS 2017 industry or part(s) that most closely match the economic activity described by the NAICS 2022 industry or using the size measure that applies to most of the NAICS industries or parts comprising the NAICS 2022 industry.

Thus, in this final rule, SBA is incorporating the adopted size standards, as presented in Table 2 (above), into the table of size standards based on NAICS 2022 following the guidelines prescribed in Table 4 (above).

SBA identified 56 NAICS 2017 unique industries or their parts reviewed under this final rule that became part of 37 new industries under NAICS 2022. New size standards for the 37 new NAICS

2022 industries resulted in a reduction in size standard for eight industries under NAICS 2017, an increase to size standard for 12 industries and 2 parts of one industry, change in the size standard from employees to receipts for one industry, and no change in size standards for the remaining 35 NAICS 2017 industries or their parts. Among the 37 new industries under NAICS 2022 evaluated in this final rule,

compared to the size standards adopted in the September 2022 NAICS 2022 adoption final rule, size standards increased for 10 industries and remained the same for the remaining 27 industries. Table 5, Size Standards for Industries Under NAICS 2017 Matched to NAICS 2022, below, presents these results.

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or \$ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or \$ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or \$ million)
212114	Surface Coal Mining	212111	Bituminous Coal and Lignite Surface Mining.	1,250	1,250	1,250	1,250.
		212113	Anthracite Mining— <i>Anthracite surface mining.</i>	250		250	
212115	Underground Coal Mining	212112	Bituminous Coal Underground Mining.	1,500	1,500	1,500	1,500.
		212113	Anthracite Mining— <i>Anthracite underground mining.</i>	250		250	
212220	Gold Ore and Silver Ore Mining.	212221	Gold Ore Mining	1,500	1,500	1,500	1,500.
212290	Other Metal Ore Mining	212222	Silver Ore Mining	250		250	
		212291	Uranium-Radium-Vanadium Ore Mining.	250	750	250	1,250.
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining.	212299	All Other Metal Ore Mining	750		1,250	
		212324	Kaolin and Ball Clay Mining.	750	500	750	650.
		212325	Clay and Ceramic and Refractory Minerals Mining.	500		650	
212390	Other Nonmetallic Mineral Mining and Quarrying.	212391	Potash, Soda, and Borate Mineral Mining.	750	500	1,050	600.
		212392	Phosphate Rock Mining	1,000		1,000	
		212393	Other Chemical and Fertilizer Mineral Mining.	500		600	
		212399	All Other Nonmetallic Mineral Mining.	500		600	
311221	Wet Corn Milling and Starch Manufacturing.	311221	Wet Corn Milling	1,250	1,250	1,300	1,300.
315120	Apparel Knitting Mills	315110	Hosiery and Sock Mills	750	750	750	850.
		315190	Other Apparel Knitting Mills.	750		850	

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022—Continued

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or \$ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or \$ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or \$ million)
315250	Cut and Sew Apparel Manufacturing (except Contractors).	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	750	750	750	750.
		315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	750 .....	.....	750	
		315280	Other Cut and Sew Apparel Manufacturing.	750 .....	.....	750	
316990	Other Leather and Allied Product Manufacturing.	316992	Women's Handbag and Purse Manufacturing.	750	500	750	500.
		316998	All Other Leather Good and Allied Product Manufacturing.	500 .....	.....	500	
321215	Engineered Wood Member Manufacturing.	321213	Engineered Wood Member (except Truss) Manufacturing.	750	500	750	500.
322120	Paper Mills	321214	Truss Manufacturing	500 .....	.....	500	
		322121	Paper (except Newsprint) Mills.	1,250	1,250	1,250	1,250.
325314	Fertilizer (Mixing Only) Manufacturing.	322122	Newsprint Mills	750 .....	.....	1,050	
325315	Compost Manufacturing ...	325314	Fertilizer (Mixing Only) Manufacturing— <i>except compost manufacturing.</i>	500	500	550	550.
		325314	Fertilizer (Mixing Only) Manufacturing— <i>compost manufacturing.</i>	500	500	550	550.
325992	Photographic Film, Paper, Plate, Chemical, and Copy Toner Manufacturing.	325992	Photographic Film, Paper, Plate, and Chemical Manufacturing.	1,500	1,500	1,500	1,500.
333248	All Other Industrial Machinery Manufacturing.	333244	Printing Machinery and Equipment Manufacturing.	750	750	750	750.
		333249	Other Industrial Machinery Manufacturing.	500 .....	.....	500	
333310	Commercial and Service Industry Machinery Manufacturing.	333314	Optical Instrument and Lens Manufacturing.	500	1,000	600	1,000.
		333316	Photographic and Photocopying Equipment Manufacturing.	1,000	1,000 .....	.....
		333318	Other Commercial and Service Industry Machinery Manufacturing.	1,000 .....	.....	1,000	
333998	All Other Miscellaneous General Purpose Machinery Manufacturing.	333997	Scale and Balance Manufacturing.	500	500	700	700.
		333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	500 .....	.....	500	
334610	Manufacturing and Reproducing Magnetic and Optical Media.	334613	Blank Magnetic and Optical Recording Media Manufacturing.	1,000	1,250	1,000	1,250.
		334614	Software and Other Pre-recorded Compact Disc, Tape, and Record Reproducing.	1,250 .....	.....	1,250	
335131	Residential Electric Lighting Fixture Manufacturing.	335121	Residential Electric Lighting Fixture Manufacturing.	750	750	750	750.
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	500	500	600	600.
335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.	335110	Electric Lamp Bulb and Part Manufacturing.	1,250	1,250	1,250	1,250.
		335129	Other Lighting Equipment Manufacturing.	500 .....	.....	550	
335910	Battery Manufacturing	335911	Storage Battery Manufacturing.	1,250	1,250	1,250	1,250.
		335912	Primary Battery Manufacturing.	1,000 .....	.....	1,300	
336110	Automobile and Light Duty Motor Vehicle Manufacturing.	336111	Automobile Manufacturing	1,500	1,500	1,500	1,500.

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022—Continued

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or \$ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or \$ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or \$ million)
		336112	Light Truck and Utility Vehicle Manufacturing.	1,500		1,500	
337126	Household Furniture (except Wood and Upholstered) Manufacturing.	337124	Metal Household Furniture Manufacturing.	750	750	750	950.
		337125	Household Furniture (except Wood and Metal) Manufacturing.	750		950	
513110		Newspaper Publishers	511110 519130	Newspaper Publishers Internet Publishing and Broadcasting and Web Search Portals— <i>Internet newspaper publishers.</i>	1,000 1,000	1,000	1,000 1,000	1,000.
513120	Periodical Publishers	511120 519130	Periodical Publishers Internet Publishing and Broadcasting and Web Search Portals— <i>Internet periodical publishers.</i>	1,000 1,000	1,000	1,000 1,000	1,000.
513130		Book Publishers	511130 519130	Book Publishers Internet Publishing and Broadcasting and Web Search Portals— <i>Internet book publishers.</i>	1,000 1,000	1,000	1,000 1,000
513140	Directory and Mailing List Publishers.	511140 519130	Directory and Mailing List Publishers. Internet Publishing and Broadcasting and Web Search Portals— <i>Internet directory and mailing list publishers.</i>	1,250 1,000	1,000	1,250 1,000	1,000.
513191		Greeting Card Publishers	511191 519130	Greeting Card Publishers Internet Publishing and Broadcasting and Web Search Portals— <i>Internet greeting card publishers.</i>	1,500 1,000	1,000	1,500 1,000	1,000.
513199	All Other Publishers	511199 519130	All Other Publishers Internet Publishing and Broadcasting and Web Search Portals— <i>All other Internet publishers.</i>	500 1,000	1,000	550 1,000	1,000.
516210		Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	515111	Radio Networks	\$41.5 million	\$41.5 million	
	515120		Television Broadcasting—television networks.	\$41.5 million			
	515210		Cable and Other Subscription Programming.	\$41.5 million			
	519110 519130		News Syndicates Internet Publishing and Broadcasting and Web Search Portals— <i>Internet broadcasting.</i>	\$32.0 million 1,000			1,000
517111	Wired Telecommunications Carriers.		517311	Wired Telecommunications Carriers.	1,500	1,500	1,500
517112	Wireless Telecommunications Carriers (except Satellite).	517312	Wireless Telecommunications Carriers (except Satellite)— <i>Except agents for wireless telecommunications carriers.</i>	1,500	1,500	1,500	1,500.
517121		Telecommunications Resellers.	517911	Telecommunications Resellers— <i>Except agents for wireless telecommunications resellers.</i>	1,500	1,500	1,500	1,500.
517122	Agents for Wireless Telecommunications Services.	517312	Wireless Telecommunications Carriers (except Satellite)— <i>Agents for wireless telecommunications carriers.</i>	1,500	1,500	1,500	1,500.
		517911	Telecommunications Resellers— <i>Agents for wireless telecommunications resellers.</i>	1,500		1,500	

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022—Continued

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or \$ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or \$ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or \$ million)
519290	Web Search Portals and All Other Information Services.	519130 519190	Internet Publishing and Broadcasting and Web Search Portals— <i>Web search portals</i> . All Other Information Services.	1,000	1,000	1,000	1,000.

By combining the results of Table 2 (NAICS 2022), SBA presents revisions to standards into the NAICS 2022 structure. Adopted Size Standard Revisions (in Table 6 (below), size standards resulting from the incorporation of the adopted size

TABLE 6—ADOPTED SIZE STANDARDS REVISIONS [NAICS 2022]

2022 NAICS Code	NAICS 2022 industry title	Current size standards (employees)	Adopted size standards (employees)
212210	Iron Ore Mining	750	1,400
212230	Copper, Nickel, Lead, and Zinc Mining	750	1,400
212290	Other Metal Ore Mining	750	1,250
212313	Crushed and Broken Granite Mining and Quarrying	750	850
212319	Other Crushed and Broken Stone Mining and Quarrying	500	550
212322	Industrial Sand Mining	500	750
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining	500	650
212390	Other Nonmetallic Mineral Mining and Quarrying	500	600
221111	Hydroelectric Power Generation	500	750
221112	Fossil Fuel Electric Power Generation	750	950
221113	Nuclear Electric Power Generation	750	1,150
221114	Solar Electric Power Generation	250	500
221115	Wind Electric Power Generation	250	1,150
221117	Biomass Electric Power Generation	250	550
221118	Other Electric Power Generation	250	650
221121	Electric Bulk Power Transmission and Control	500	950
221122	Electric Power Distribution	1,000	1,100
221210	Natural Gas Distribution	1,000	1,150
311111	Dog and Cat Food Manufacturing	1,000	1,250
311119	Other Animal Food Manufacturing	500	650
311211	Flour Milling	1,000	1,050
311212	Rice Milling	500	750
311221	Wet Corn Milling and Starch Manufacturing	1,250	1,300
311224	Soybean and Other Oilseed Processing	1,000	1,250
311225	Fats and Oils Refining and Blending	1,000	1,100
311230	Breakfast Cereal Manufacturing	1,000	1,300
311313	Beet Sugar Manufacturing	750	1,150
311314	Cane Sugar Manufacturing	1,000	1,050
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	1,000	1,100
311422	Specialty Canning	1,250	1,400
311511	Fluid Milk Manufacturing	1,000	1,150
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750	1,000
311611	Animal (except Poultry) Slaughtering	1,000	1,150
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour	750	850
311920	Coffee and Tea Manufacturing	750	1,000
311930	Flavoring Syrup and Concentrate Manufacturing	1,000	1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	750	850
311942	Spice and Extract Manufacturing	500	650
311991	Perishable Prepared Food Manufacturing	500	700
311999	All Other Miscellaneous Food Manufacturing	500	700
312111	Soft Drink Manufacturing	1,250	1,400
312112	Bottled Water Manufacturing	1,000	1,100
312140	Distilleries	1,000	1,100
313220	Narrow Fabric Mills and Schiffli Machine Embroidery	500	550
313230	Nonwoven Fabric Mills	750	850
314999	All Other Miscellaneous Textile Product Mills	500	550
315120	Apparel Knitting Mills	750	850
315990	Apparel Accessories and Other Apparel Manufacturing	500	600
316110	Leather and Hide Tanning and Finishing	500	800

TABLE 6—ADOPTED SIZE STANDARDS REVISIONS—Continued
[NAICS 2022]

2022 NAICS Code	NAICS 2022 industry title	Current size standards (employees)	Adopted size standards (employees)
321113	Sawmills	500	550
321114	Wood Preservation	500	550
321211	Hardwood Veneer and Plywood Manufacturing	500	600
322110	Pulp Mills	750	1,050
323111	Commercial Printing (except Screen and Books)	500	650
323120	Support Activities for Printing	500	550
324122	Asphalt Shingle and Coating Materials Manufacturing	750	1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing	750	900
324199	All Other Petroleum and Coal Products Manufacturing	500	950
325110	Petrochemical Manufacturing	1,000	1,300
325120	Industrial Gas Manufacturing	1,000	1,200
325130	Synthetic Dye and Pigment Manufacturing	1,000	1,050
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1,000	1,050
325311	Nitrogenous Fertilizer Manufacturing	1,000	1,050
325312	Phosphatic Fertilizer Manufacturing	750	1,350
325314	Fertilizer (Mixing Only) Manufacturing	500	550
325315	Compost Manufacturing	500	550
325320	Pesticide and Other Agricultural Chemical Manufacturing	1,000	1,150
325412	Pharmaceutical Preparation Manufacturing	1,250	1,300
325520	Adhesive Manufacturing	500	550
325611	Soap and Other Detergent Manufacturing	1,000	1,100
325612	Polish and Other Sanitation Good Manufacturing	750	900
325613	Surface Active Agent Manufacturing	750	1,100
325910	Printing Ink Manufacturing	500	750
325991	Custom Compounding of Purchased Resins	500	600
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500	650
326121	Unlaminated Plastics Profile Shape Manufacturing	500	600
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing	500	650
326220	Rubber and Plastics Hoses and Belting Manufacturing	750	800
326299	All Other Rubber Product Manufacturing	500	650
327211	Flat Glass Manufacturing	1,000	1,100
327410	Lime Manufacturing	750	1,050
327910	Abrasive Product Manufacturing	750	900
327992	Ground or Treated Mineral and Earth Manufacturing	500	600
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	500	750
331313	Alumina Refining and Primary Aluminum Production	1,000	1,300
331315	Aluminum Sheet, Plate, and Foil Manufacturing	1,250	1,400
331420	Copper Rolling, Drawing, Extruding, and Alloying	1,000	1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding	750	900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	750	850
331512	Steel Investment Foundries	1,000	1,050
331513	Steel Foundries (except Investment)	500	700
331523	Nonferrous Metal Die-Casting Foundries	500	700
331524	Aluminum Foundries (except Die-Casting)	500	550
332112	Nonferrous Forging	750	950
332114	Custom Roll Forming	500	600
332117	Powder Metallurgy Part Manufacturing	500	550
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	750	1,000
332439	Other Metal Container Manufacturing	500	600
332613	Spring Manufacturing	500	600
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	500	600
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	500	600
332992	Small Arms Ammunition Manufacturing	1,250	1,300
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500	550
333131	Mining Machinery and Equipment Manufacturing	500	900
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500	550
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing	750	900
333991	Power-Driven Hand Tool Manufacturing	500	950
333993	Packaging Machinery Manufacturing	500	600
333995	Fluid Power Cylinder and Actuator Manufacturing	750	800
333998	All Other Miscellaneous General Purpose Machinery Manufacturing	500	700
334290	Other Communications Equipment Manufacturing	750	800
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing	500	550
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,250	1,350

TABLE 6—ADOPTED SIZE STANDARDS REVISIONS—Continued
[NAICS 2022]

2022 NAICS Code	NAICS 2022 industry title	Current size standards (employees)	Adopted size standards (employees)
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.	500	650
334514	Totalizing Fluid Meter and Counting Device Manufacturing	750	850
334517	Irradiation Apparatus Manufacturing	1,000	1,200
334519	Other Measuring and Controlling Device Manufacturing	500	600
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing	500	600
335311	Power, Distribution, and Specialty Transformer Manufacturing	750	800
335931	Current-Carrying Wiring Device Manufacturing	500	600
335991	Carbon and Graphite Product Manufacturing	750	900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	500	600
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing	1,000	1,050
336414	Guided Missile and Space Vehicle Manufacturing	1,250	1,300
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	1,000	1,050
336611	Ship Building and Repairing	1,250	1,300
336991	Motorcycle, Bicycle, and Parts Manufacturing	1,000	1,050
337126	Household Furniture (except Wood and Upholstered) Manufacturing	750	950
337214	Office Furniture (except Wood) Manufacturing	1,000	1,100
339113	Surgical Appliance and Supplies Manufacturing	750	800
339910	Jewelry and Silverware Manufacturing	500	700
339930	Doll, Toy, and Game Manufacturing	500	700
339991	Gasket, Packing, and Sealing Device Manufacturing	500	600
339994	Broom, Brush, and Mop Manufacturing	500	750
339999	All Other Miscellaneous Manufacturing	500	550
483111	Deep Sea Freight Transportation	500	1,050
483113	Coastal and Great Lakes Freight Transportation	750	800
483114	Coastal and Great Lakes Passenger Transportation	500	550
483211	Inland Water Freight Transportation	750	1,050
483212	Inland Water Passenger Transportation	500	550
512230	Music Publishers	750	900
512250	Record Production and Distribution	250	900
541715 (Exception 3)	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts	1,250	1,300
562910 (Exception) ..	Environmental Remediation Services	750	1,000

Table 7, Summary of Adopted Size Standards Revisions by Sector (NAICS 2022), summarizes the adopted changes to size standards in this final rule by NAICS sector. Accordingly, of 412 NAICS 2022 employee-based size standards reviewed in this rule, SBA is increasing 144, including 117 in Sector 31–33, ten in Sector 22, eight in Sector

21, five in Sector 48–49, two in Sector 51, and one each in Sector 54 and Sector 56. SBA is retaining the remaining 268 employee-based size standards in those sectors, including 204 size standards that would decrease based on analytical results. In the April 2022 proposed rule as well as other rulemakings as part of the second five-year review of size

standards, in response to the impact of the COVID–19 pandemic, SBA maintained current size standards where the analytical results supported decreases. SBA is also retaining the remaining 64 size standards for which the results suggested no changes.

TABLE 7—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR
[NAICS 2022]

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction ..	17	8	0	9
22	Utilities	11	10	0	1
31–33	Manufacturing	346	117	0	229
48–49	Transportation and Warehousing	15	5	0	10
51	Information	13	2	0	11
54	Professional, Scientific and Technical Services ..	7	1	0	6
Other Sectors	Agriculture, Forestry, Fishing and Hunting; Finance and Insurance; Administrative and Support, Waste Management and Remediation Services.	3	1	0	2
Total .....	.....	412	144	0	268

Evaluation of Dominance in Field of Operation

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the revised size standards in Table 6 (above) would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, based on 2017 Economic Census, an individual firm's share of total industry receipts among those industries would be, on average, 2.3 percent, varying from 0.1 percent to 21.4 percent. Generally, SBA believes the shares below 40 percent would preclude dominant firms from qualifying as small and exerting control on any industry. Thus, the above market shares effectively preclude a firm at or below the revised size standards from exerting control on any of the industries.

Alternatives Considered

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

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 144 industries or subindustries, decreasing size standards for 204 industries or subindustries, and retaining size standards at their current levels for 64 industries or subindustries. Alternative Option Two was to retain all current size standards.

SBA is not adopting Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. Impacts of lowering size standards under Alternative Option One are discussed in detail in the Regulatory Impact Analysis section of this rule. Lowering size standards in the current environment would also run counter to various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing

COVID-19 pandemic. Given the effects of the 2007-2009 Great Recession, and the resulting government actions to support small businesses and the overall economy, SBA also adopted a policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

Under Alternative Option Two, given the current COVID-19 pandemic, SBA considered retaining the current levels of all size standards even though the analysis of relevant data suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because results discussed in the Regulatory Impact Analysis section, below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 144 and retaining 268 employee-based size standards. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA's loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

Federal Procurement Size Standard for Nonmanufacturers

In the April 2022 proposed rule, SBA proposed to maintain the 500-employee size standard for nonmanufacturers. Based on the evaluation of public comments pertaining to SBA's proposed size standard, its analyses of industry factors using the latest available data when the proposed rule was prepared, and SBA's considerations of other factors outlined in the proposed rule as well as public comments discussed above, in this final rule, SBA is adopting 500 employees as the size standard applicable to nonmanufacturers under 13 CFR 121.406 as proposed in the April 26, 2022, proposed rule.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for

purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including (1) A statement of the need for the regulatory action, (2) An examination of alternative regulatory approaches, and (3) An estimate of the benefits and costs—both quantitative and qualitative—of the regulatory action and the alternatives considered.

Regulatory Impact Analysis

1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small. Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in Federal marketplace.

The revisions to the existing size standards for 144 industries or subindustries (or "exceptions"), including 117 industries in Sector 31-33 and 27 industries and subindustries in other sectors are consistent with SBA's statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action

promotes the Administration’s goals and objectives as well as meets the SBA’s statutory responsibility. One of SBA’s goals in support of promoting the Administration’s objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal small business programs that are designed to assist them to become competitive and create jobs.

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

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency’s best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

Changes to Size Standards

Based on the results from the analyses of the latest industry and Federal

contracting data, evaluation of the public comments on the proposed rule, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small businesses and the overall economic activity, of the total of 412 industries and subindustries (or “exceptions”) in Sector 31–33 and other sectors that have employee-based size standards, SBA increases size standards for 144 industries or subindustries (“exceptions”) and maintain current size standards for the remaining 268 industries or subindustries (“exceptions”).

The Baseline

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

Based on the 2017 Economic Census, of a total of about 333,213 businesses in industries in Sectors 31–33 and other sectors with employee-based size standards, 96.8 percent are considered small under the current size standards. That percentage varies from 88.0 percent in NAICS Sector 22 to 99.8 percent in Sector 11. Based on the data

from FPDS–NG for fiscal years 2018–2020, about 41,838 unique firms in those industries received at least one Federal contract during that period, of which 84.3 percent were small under the current size standards. A total of \$231.6 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 18.6 percent of the dollars awarded went to small businesses. For industries and subindustries (“exceptions”) reviewed in this final rule, providing contract dollars to small business through set-asides is quite important. From the total small business contract dollars awarded during the period considered, 47.1 percent were awarded through various small business set-aside programs and 52.9 percent were awarded through non-set aside contracts. Based on the SBA’s internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 4,877 7(a) and 504 loans in that period, totaling about \$3.1 billion, of which 75.8 percent was issued through the 7(a) program and 24.2 percent was issued through the 504/CDC program. During fiscal years 2018–2020, small businesses in those industries also received 255 loans through the SBA’s Economic Injury Disaster Loan (EIDL) program, totaling about \$11.4 million on an annual basis.⁷ Table 8, Baseline for All Industries (NAICS 2022), below, provides these baseline results for Manufacturing (Sector 31–33) and all other sectors.

TABLE 8—BASELINE FOR ALL INDUSTRIES [NAICS 2022]

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (“exceptions”) reviewed in this proposed rule	346	66	412
Total firms in industries reviewed in this proposed rule (2017 Economic Census) ¹	259,377	73,836	333,213
Total small firms in those industries under current size standards (2017 Economic Census) ¹ ..	250,804	71,813	322,617
Small firms as % of total firms (2017 Economic Census) ¹	96.7%	97.3%	96.8%
Total contract dollars (\$ million) (FPDS–NG FY 2018–2020)	\$181,818	\$49,758	\$231,576
Total small business contract dollars under current standards (\$ million) (FPDS–NG FY2018–2020)	\$28,713	\$14,364	\$43,078
Small business dollars as % of total dollars (FPDS–NG FY 2018–2020)	15.8%	28.9%	18.6%
Total number of unique firms getting federal contracts (FPDS–NG FY 2018–2020)	34,225	9,312	41,838
Total number of unique small firms getting small business contracts (FPDS–NG FY 2018–2020)	29,056	7,291	35,268
Small firms getting federal contracts as % of total firms getting federal contracts (FPDS–NG FY 2018–2020)	84.9%	78.3%	84.3%
Number of 7(a) and CDC/504 loans (FY 2018–2020)	4,362	515	4,877
Amount of 7(a) and CDC/504 loans (\$ million) (FY 2018–2020)	\$2,863	\$248	\$3,111
Number of EIDL loans (FY 2018–2020) ²	202	53	255

⁷ The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan

analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data

limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

TABLE 8—BASELINE FOR ALL INDUSTRIES—Continued
[NAICS 2022]

	Sector 31–33	Other sectors	Total
Amount of EIDL loans (\$million) (FY 2018–2020) ²	\$8.3	\$3.1	\$11.4

¹ These figures do not include two 6-digit NAICS industries and 5 subindustries or “exceptions” for which Economic Census data is not available.

² Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Increases to Size Standards

As stated above, in terms of NAICS 2022, of 412 employee-based size standards in Sectors 31–33 and other sectors that are reviewed in this rule, based on the results from analyses of latest industry and Federal market data as well as impacts of size standards changes on small businesses and considerations for the impacts from the COVID–19 pandemic, SBA increases 144 size standards, including 117 in Sector 31–33 and 27 in other sectors. Below are descriptions of the benefits, costs, and transfer impacts of these increases to size standards.

Benefits of Increases to Size Standards

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

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through

reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2017 Economic Census, SBA estimates that in 144 industries or subindustries (“exceptions”) in NAICS Sector 31–33 and other sectors with employee-based size standards for which it is increasing size standards, 242 firms (see Table 9, Impacts of Increasing Size Standards, below), not small under the current size standards, will become small under the adopted size standards increases and therefore become eligible for these programs. That represents about 0.3 percent of all firms classified as small under the current size standards in industries for which SBA is adopting increases to size standards. SBA’s revised size standards would result in an increase to the small business share of total receipts in those industries from 27.4 percent to 29.3 percent.

With more businesses qualifying as small under the adopted increases to size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that 109 firms that are active in Federal contracting in those industries would

gain small business status under the adopted size standards. Based on the same data, SBA estimates that those newly-qualified small businesses under the higher size standards, if adopted, could receive Federal small business contracts totaling \$256.6 million annually. That represents a 2.4 percent increase to small business contract dollars from the baseline. Table 9 provides these results by NAICS sector.

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

As shown in Table 9, under SBA’s 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates that there will be no impact to the number of firms receiving 7(a) and 504 loans.

TABLE 9—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (“exceptions”) with proposed increases to size standards	117	27	144
Total current small businesses in industries with proposed increases to size standards (2017 Economic Census) ¹	66,066	5,252	71,318
Additional firms qualifying as small under proposed increases to size standards (2017 Economic Census) ¹	197	45	242
% of additional firms qualifying as small relative to current small businesses in industries with proposed increases to size standards (2017 Economic Census) ¹	0.3%	0.9%	0.3%

TABLE 9—IMPACTS OF INCREASING SIZE STANDARDS—Continued

	Sector 31–33	Other sectors	Total
Number of current unique small firms getting small business contracts in industries with proposed increases to size standards (FPDS–NG FY 2018–2020) ²	13,854	603	14,320
Additional number of small business firms gaining small business status under proposed increases to size standards (FPDS–NG FY 2018–2020)	89	22	109
% increase to number of small businesses relative to current unique small firms getting small business contracts in industries with proposed increases to size standards (FPDS–NG FY 2018–2020)	0.6%	3.6%	0.8%
Total small business contract dollars under current size standards in industries or subindustries with proposed increases to size standards (\$ million) (FPDS–NG FY 2018–2020)	\$9,617	\$1,032	\$10,648
Estimated small business dollars available to newly-qualified small firms (\$ million) (FPDS–NG FY 2018–2020) ³	\$75.9	\$180.6	\$256.6
% increase to small business dollars relative to total small business contract dollars under current standards in industries with proposed increases to size standards	0.8%	17.5%	2.4%
Total number of 7(a) and 504 loans to small business in industries with proposed increases to size standards (FY 2018–2020)	1,120	44	1,164
Total amount of 7(a) and 504 loans to small businesses in industries with proposed increases to size standards (\$ million) (FY 2018–2020)	\$751	\$30	\$781
Estimated number of 7(a) and 504 loans to newly-qualified small firms	0	0	0
Estimated 7(a) and 504 loan amount to newly-qualified small firms (\$ million)	\$0.0	\$0.0	\$0.0
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with proposed increases to size standards	0.0%	0.0%	0.0%
Total number of EIDL loans to small businesses in industries with proposed increases to size standards (FY 2018–2020) ⁴	65	10	75
Total amount of EIDL loans to small businesses in industries with proposed increases to size standards (\$ million) (FY 2018–2020) ⁴	\$2.9	\$0.7	\$3.5
Estimated no. of EIDL loans to newly-qualified small firms ⁴	0	0	0
Estimated EIDL loan amount to newly-qualified small firms (\$ million) ⁴	\$0.0	\$0.0	\$0.0
% increase to EIDL loan amount relative to the total amount of disaster loans in industries with proposed increases to size standards ⁴	0.0%	0.0%	0.0%

¹ These figures do not include two 6-digit NAICS industries and 5 subindustries or “exceptions” for which Economic Census data is not available.

² Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

³ Additional dollars are calculated multiplying average small business dollars obligated per unique firm times change in number of firms. Numbers of firms are calculated using the SBA’s current size standards, not the contracting officer’s size designation.

⁴ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Newly-qualified small businesses may also benefit from the SBA’s EIDL 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 precise estimate of this impact. However, based on the disaster loan program data for fiscal years 2018–2020, SBA estimates that, on an annual basis, the newly-defined small businesses under the adopted increases to size standards would not be impacted by SBA’s changes to size standards.

Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

Costs of Increases to Size Standards

Besides having to register in the System of Award Management (SAM) to be eligible 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 as a result of the adopted

increases to size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of impacted businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. More importantly, this final rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly-qualified small businesses could become active in Federal procurement, the adopted increases to size standards may entail some additional administrative costs to the Federal Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA’s loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*, more firms seeking

certification as 8(a)/BD or HUBZone firms or qualifying for small business, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA’s 8(a)/BD mentor-protégé programs. With an expanded pool of small businesses, it is likely that Federal agencies would set aside more contracts for small businesses under the increases to size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA’s historical data on the number of size protests processed shows that the number of size protests decreased following the increases to size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of FY 2013), as compared to about 500 during fiscal years 2018–2020 when size standard increases were in effect. That represents a 17 percent decline.

Among those newly-defined small businesses seeking SBA’s loans, there

could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the adopted increases to size standards, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the adopted size standards. 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 adopted increases to size standards, HUBZone firms might end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

Transfer Impacts of Increases to Size Standards

The adopted increases to 144 employee-based size standards may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity since total Federal contract dollars available for businesses to compete for will not change with changes to size standards. While SBA cannot quantify with certainty the

actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the adopted increases to size standards, some unrestricted Federal contracts which would otherwise be awarded to large businesses may be set aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set aside contracts due to the increased competition from larger businesses qualifying as small under the adopted size standards. This impact may be offset by a greater number of procurements being set aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

3. What alternatives have been considered?

Under OMB Circular A-4, SBA is required to consider regulatory alternatives to the adopted changes in this final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative to the adopted change, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 144 industries or subindustries (or "exceptions") for which the analytical results, as presented in Table 4 of the April 2022 proposed rule, suggested raising size standards would be raised. However, the size standards of 204 industries for which the analytical results suggest lowering size standards would be lowered. For the 64 remaining industries or subindustries for which the results suggested no changes, size standards would be maintained at their current levels. Alternative Option Two would propose retaining existing size standards for all industries, given the uncertainty generated by the ongoing COVID-19 pandemic. Below, SBA discusses benefits, costs and net impacts of each option.

Alternative Option One: Adopting All Calculated Size Standards

As discussed in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to

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

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

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

We have already discussed the benefits, costs and transfer impacts of increasing 144 and retaining 268 size standards. Below we discuss the benefits, costs, and transfer impacts of increasing 144, decreasing 204, and retaining 64 size standards based on the analytical results.

Benefits of Decreases to Size Standards

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to

its intended beneficiaries. These include SBA’s loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA’s business development programs, such as small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of smaller size standards when the results support them diminishes the risk of awarding contracts to firms which are not small anymore.

Decreasing size standards may reduce the administrative costs of the Government, because the risk of awarding set aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also reduce the risks of providing SBA’s loans to firms that are not needing them the most or of allowing firms that are not eligible for small business set-asides to participate on the SBA procurement

programs, which might provide a better chance for smaller firms to grow and benefit from the opportunities available on the Federal market and strengthen the small business industrial base for the Federal Government.

Costs of Decreases to Size Standards

Table 10, Impacts of Decreases to Size Standards Under Alternative Option One, shows the various impacts of lowering size standards in 204 industries based solely on the analytical results. Based on the 2017 Economic Census, about 658 (0.3%) firms would lose their small business status under Alternative Option One. Similarly, based on the FPDS–NG data for fiscal years 2018–2020, 172 (0.7%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts. With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of

small businesses from which to draw for their small business procurement programs. For example, in Alternative Option One, during fiscal years 2018–2020, agencies awarded, on an annual basis, about \$28.3 billion in small business contracts in those 204 industries for which this option considered decreasing size standards. Table 10 shows that lowering size standards in 204 industries would reduce Federal contract dollars awarded to small businesses by \$248 million or about 0.9 percent relative to the baseline level. Because of the importance of these industries for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact. SBA could take one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results; (2) Decrease size standards by a smaller amount than the calculated threshold; or (3). Retain the size standards at their current levels.

TABLE 10—IMPACTS OF DECREASES TO SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 31–33	Other sectors	Total
Number of industries for which SBA considered decreasing size standards	180	24	204
Total current small businesses in industries for which SBA considered decreasing size standards (2017 Economic Census)	163,803	43,056	206,856
Estimated number of firms losing small status in industries for which SBA considered decreasing size standards (2017 Economic Census)	572	86	658
% of firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2017 Economic Census)	0.4%	0.2%	0.3%
Number of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) ¹	19,687	5,731	24,839
Estimated number of small business firms that would have lost small business status in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) ¹	132	50	172
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) ¹	0.7%	0.9%	0.7%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (\$ million) (FPDS–NG FY 2018–2020)	\$15,325	12,932	\$28,256
Estimated small business dollars not available to firms losing small business status in industries for which SBA considered decreasing size standards (\$ million) (FPDS–NG FY 2018–2020) ²	\$128.6	\$119.5	\$248.0
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards ...	0.8%	0.9%	0.9%
Total number of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020)	2,875	325	3,200
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020)	\$1,851	\$147	\$1,999
Estimated number of 7(a) and 504 loans not available to firms that would have lost small business status in industries for which SBA considered decreasing size standards	1	0	1
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status (\$ million)	\$0.2	\$0.0	\$0.2
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards	0.0%	0.0%	0.0%
Total number of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) ³	115	17	132
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) ³	\$4.1	\$1.1	\$5.2
Estimated number of EIDL loans not available to firms that would have lost small business status in industries for which SBA considered decreasing size standards ³	0	\$0.0	0
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) ³	\$0.0	\$0.0	\$0.0
% decrease to EIDL loan amount relative to the baseline ³	0.0%	0.0%	0.0%

¹ Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

² Additional dollars are calculated multiplying average small business dollars obligated per unique small firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, not the contracting officer's size designation.

³ Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Nevertheless, since Federal agencies are still required to meet the statutory small business contracting goal of 23 percent, actual impacts on the overall set-aside activity are likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards so that they could meet their small business contracting goals.

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

As shown in Table 10, decreases to size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the current or calculated size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about one of SBA's 7(a) and 504 loans with total amounts of \$0.2 million could not be made to those small businesses that would lose eligibility under the calculated size standards. That represents about 0.01 percent decrease to the loan amount compared to the baseline. However, the actual impact on businesses seeking SBA's loans could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's 7(a) and CDC/504 loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted in terms of access to loans through the SBA's EIDL program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. Additionally, all those businesses were below the calculated size standards. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of

this impact. However, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, no small businesses would lose eligibility under the calculated size standards (see Table 10).

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

Transfer Impacts of Decreases to Size Standards

If the size standards were decreased under alternative option one, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the adopted increases to size standards, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will stay the same. While SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23 percent of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small

under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate the impacts increasing size standards (see Table 9). However, under Alternative Option One, SBA used the calculated size standards instead of the adopted increases to determine the impacts of changes to current thresholds. The impact of increases to size standards were shown in Table 9 (above). Table 10 (above) and Table 11, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impact of the decreases of size standards and the net impact of adopting the calculated results under alternative option one, respectively. Net impacts are generally obtained by subtracting impacts of decreases to size standards in Table 10 from impacts of increases to size standards in Table 9.

Based on the 2017 Economic Census (the latest available when the proposed rule was developed), SBA estimates that in 349 industries and subindustries ("exceptions") reviewed in this final rule for which the analytical results suggested to change size standards, about 415 firms (see Table 11), would become other than small under Alternative Option One. That represents about 0.2 percent of all firms classified as small under the current size standards.

Based on the FPDS-NG data for fiscal years 2018–2020, SBA estimates that about 83 unique active firms in Federal contracting in those industries would lose their small business status under alternative option one, most of them from Sector 31–33. This represents a decrease of about 0.3 percent of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about \$8.6 million of Federal procurement dollars would become available to all small firms, including those gaining small status. This represents an increase of 0.02 percent from the baseline. SBA estimates that the dollars obligated to small businesses

will increase despite a reduction in the total number of small firms because the contract dollars to newly qualified small businesses in sectors other than manufacturing with increases to size standards is higher than the contract dollars to small businesses losing small business status in sectors other than manufacturing with decreases to size standards.

Based on the SBA’s loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans may decrease by about one loan, and the loan amount by about \$0.2 million. This represents a 0.01 percent decrease of the loan amount relative to the baseline.

Firms’ participation under the SBA’s EIDL program may be affected as well. 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 disaster loan program data for fiscal years 2018–2020, SBA estimates that the total number of EIDL loans will not be impacted.

TABLE 11—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (“exceptions”) with changes to size standards	299	50	349
Total number of small firms under the current size standards in industries with changes to size standards (2017 Economic Census) ¹	229,933	48,322	278,255
Additional number of firms qualifying as small under size standards changes (2017 Economic Census) ¹	–375	–40	–415
% of additional firms qualifying as small relative to total current small firms (2017 Economic Census) ¹	–0.2%	–0.1%	–0.2%
Number of current unique small firms getting small business contracts in industries with changes to size standards (FPDS–NG FY 2018–2020)	26,771	6,295	32,164
Additional number of unique small firms gaining small business status in industries with changes to size standards (FPDS–NG FY 2018–2020) ²	–59	–29	–83
% increase to small firms relative to current unique small firms gaining small business status (FPDS–NG FY 2018–2020)	–0.2%	–0.5%	–0.3%
Total small business contract dollars under current size standards in industries with changes to size standards (\$ million) (FPDS–NG FY 2018–2020)	\$24,942	\$13,962	\$38,904
Estimated small business dollars available to newly-qualified small firms (\$ million) FPDS–NG FY 2018–2020)	–\$52.6	\$61.20	\$8.6
% increase to dollars relative to total small business contract dollars under current size standards	–0.2%	0.4%	0.02%
Total number of 7(a) and 504 loans to small businesses (FY 2018–2020)	3,995	368	4,363
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020)	\$2,603	\$177	\$2,780
Estimated number of additional 7(a) and 504 loans available to newly-qualified small firms	–1	0	–1
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms (\$ million)	–\$0.2	\$0.0	–\$0.2
% increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses	0.0%	0.0%	0.0%
Total number of EIDL loans to small businesses (FY 2018–2020) ⁴	180	\$27.0	207
Total amount of EIDL loans to small businesses (FY 2018–2020) ⁴	\$7.0	\$1.7	\$8.7
Estimated number of additional EIDL loans to newly qualified small firms ⁴	0	\$0.0	0
Estimated additional EIDL loan amount to newly qualified small firms (\$ million) ⁴	\$0.0	\$0.0	\$0.0
% increase to EIDL loan amount relative to the total amount of disaster loans to small businesses ⁴	0.0%	0.0%	0.0%

¹ These figures do not include two 6-digit NAICS industries and 5 subindustries or “exceptions” for which Economic Census data is not available.

² Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

³ Additional dollars are calculated multiplying average small business dollars obligated per unique firm times change in number of firms. Numbers of firms are calculated using the SBA’s current size standards, not the contracting officer’s size designation.

⁴ Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Alternative Option Two: Retaining All Current Size Standards

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (i.e., zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small

businesses to forgo various small business benefits (e.g., access to set-aside contracts and capital) that become available to them under the option of increasing 144 and retaining 268 size standards adopted under this final rule. Moreover, retaining all size standards under Alternative Option Two would also be contrary to the SBA’s statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

Congressional Review Act, 5 U.S.C. 801–808

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**. The OMB's Office of Information and Regulatory Affairs has determined that this is not a major rule under 5 U.S.C. 804(2).

Final Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. This final rule may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504, and EIDL programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule?; (2) What are significant issues raised by the public comments in response to the initial regulatory flexibility analysis, assessment of the agency of such issues, and any changes made in the proposed rule as a result of such comments?; (3) What's the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and description of any change made to the proposed rule in the final rule as a result of the comments?; (4) What is SBA's description and estimate of the number of small businesses to which the rule will apply?; (5) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (6) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule; and (7) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

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

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal

assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are significant issues raised by the public comments in response to the initial regulatory flexibility analysis, assessment of the agency of such issues, and any changes made in the proposed rule as a result of such comments?

SBA did not receive any public comments to the initial regulatory flexibility analysis it provided in the April 26, 2022, proposed rule.

3. What's the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and description of any change made to the proposed rule in the final rule as a result of the comments?

SBA did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the April 26, 2022, proposed rule.

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

Based on data from the 2017 Economic Census, SBA estimates that there are nearly 71,318 small firms covered under this rulemaking in industries with changes to size standards. Under this final rule, SBA estimates that nearly 242 additional businesses will become small.

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

The size standard changes in this final rule impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (Federal Acquisition Regulation (FAR) 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary to ensure that they reflect the contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no new costs associated with SAM registration or annual re-certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a

regulatory burden because they neither regulate nor control business behavior.

6. 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 establish different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

7. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to increasing 144 and maintaining 268 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results, including the results from the evaluation of dominance and field of operation. In other words, the size standards of 144 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 204 industries for which the analytical results suggest lowering size standards would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in Sector 31–33 (see Table 10). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing

144 and decreasing 204 size standards. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 144 and retaining 268 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

Executive Order 13563

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

The review of size standards in the industries covered by this final rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act which requires SBA to review every five years all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions.

SBA issued a revised white paper entitled “Size Standards Methodology” and published a notice in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to advise the public that the document is available for public review and comments. The “Size Standards Methodology” white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and

relevant information obtained from industry groups, individual businesses, and federal agencies before finalizing and adopting the revised Methodology. For a summary of comments received and SBA’s responses, see the notice published in the **Federal Register** on April 11, 2019 (84 FR 14587). As part of the second five-year review of size standards under the Jobs Act, SBA has already issued five final rules reviewing all monetary-based size standards and all employee-based size standards that are part of the Wholesale Trade and Retail Trade sectors (see Footnote 1, above). This final rule is reviewing size standards under Sector 31–33 and other sectors with employee-based size standards not part of Wholesale and Retail Trade sectors completes SBA’s second five-year review of size standards under the Jobs Act. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and federal agencies in developing size standards for those industries covered by this final rule. As required by the Jobs Act, SBA held two virtual public forums on size standards on June 14 and June 16, 2022, to update the public on the second five-year review of size standards and to consider public testimony on proposed size standards in the April 26, 2022, proposed rule. SBA received a total of 49 comments (including seven comments received during the public forums on size standards) to the proposed rule. In the Discussion of Comments section of this final rule, SBA summarizes and provides responses to the comments received on the proposed rule.

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final 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.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or record keeping requirements.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table “Small Business Size Standards by NAICS Industry” by revising entries “212210,” “212230,” “212290,” “212313,” “212319,” “212322,” “212323,” “212390,” entries “221111” through “221115,” “221117,” “221118,” “221121,” “221122,” “221210,” “311111,” “311119,” “311211,” “311212,” “311221,” “311224,” “311225,” “311230,” “311313,” “311314,” “311411,” “311422,” “311511,” “311514,” “311611,” “311824,” “311920,” “311930,” “311941,” “311942,” “311991,” “311999,” “312111,” “312112,” “312140,” “313220,” “313230,” “314999,” “315120,” “315990,” “316110,” “321113,” “321114,” “321211,” “322110,” “323111,” “323120,” “324122,” “324191,” “324199,” “325110,” “325120,” “325130,” “325220,” “325311,” “325312,” “325314,” “325315,” “325320,” “325412,” “325520,” entries “325611” through “325613,” “325910,” “325991,” “325998,” “326121,” “326130,” “326220,” “326299,” “327211,” “327410,” “327910,” “327992,” “327999,” “331313,” “331315,” “331420,” “331491,” “331492,” “331512,” “331513,” “331523,” “331524,” “332112,” “332114,” “332117,” “332215,” “332439,” “332613,” “332722,” “332812,” “332992,” “332996,” “333131,” “333243,” “333924,” “333991,” “333993,” “333995,” “333998,” “334290,” “334416,” “334511,” “334512,” “334514,” “334517,” “334519,” “335132,”

“335311,” “335931,” “335991,” “339994,” “339999,” “483111,” “483113,” “483114,” “483211,” “483212,” “512230,” “512250,” “541715,” and “562910 (Exception)” to * * * * *
 “335999,” “336310,” “336414,” “336419,” “336611,” “336991,” “337126,” “337214,” “339113,” “339910,” “339930,” “339991,” read as follows:

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

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Sector 21—Mining, Quarrying, and Oil and Gas Extraction			
Subsector 212—Mining (except Oil and Gas)			
212210	Iron Ore Mining	1,400	
212230	Copper, Nickel, Lead, and Zinc Mining	1,400	
212290	Other Metal Ore Mining	1,250	
212313	Crushed and Broken Granite Mining and Quarrying	850	
212319	Other Crushed and Broken Stone Mining and Quarrying	550	
212322	Industrial Sand Mining	750	
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining	650	
212390	Other Nonmetallic Mineral Mining and Quarrying	600	
Sector 22—Utilities			
Subsector 221—Utilities			
221111	Hydroelectric Power Generation	750	
221112	Fossil Fuel Electric Power Generation	950	
221113	Nuclear Electric Power Generation	1,150	
221114	Solar Electric Power Generation	500	
221115	Wind Electric Power Generation	1,150	
221117	Biomass Electric Power Generation	550	
221118	Other Electric Power Generation	650	
221121	Electric Bulk Power Transmission and Control	950	
221122	Electric Power Distribution	1,100	
221210	Natural Gas Distribution	1,150	
Sector 31–33—Manufacturing			
Subsector 311—Food Manufacturing			
311111	Dog and Cat Food Manufacturing	1,250	
311119	Other Animal Food Manufacturing	650	
311211	Flour Milling	1,050	
311212	Rice Milling	750	
311221	Wet Corn Milling and Starch Manufacturing	1,300	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
311224	Soybean and Other Oilseed Processing		1,250
311225	Fats and Oils Refining and Blending		1,100
311230	Breakfast Cereal Manufacturing		1,300
311313	Beet Sugar Manufacturing		1,150
311314	Cane Sugar Manufacturing		1,050
*	*	*	*
311411	Frozen Fruit, Juice, and Vegetable Manufacturing		1,100
*	*	*	*
311422	Specialty Canning		1,400
*	*	*	*
311511	Fluid Milk Manufacturing		1,150
*	*	*	*
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing		1,000
*	*	*	*
311611	Animal (except Poultry) Slaughtering		1,150
*	*	*	*
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		850
*	*	*	*
311920	Coffee and Tea Manufacturing		1,000
311930	Flavoring Syrup and Concentrate Manufacturing		1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing		850
311942	Spice and Extract Manufacturing		650
311991	Perishable Prepared Food Manufacturing		700
311999	All Other Miscellaneous Food Manufacturing		700
Subsector 312—Beverage and Tobacco Product Manufacturing			
312111	Soft Drink Manufacturing		1,400
312112	Bottled Water Manufacturing		1,100
*	*	*	*
312140	Distilleries		1,100
*	*	*	*
Subsector 313—Textile Mills			
*	*	*	*
313220	Narrow Fabric Mills and Schiffli Machine Embroidery		550
313230	Nonwoven Fabric Mills		850
*	*	*	*
Subsector 314—Textile Product Mills			
*	*	*	*
314999	All Other Miscellaneous Textile Product Mills		550
Subsector 315—Apparel Manufacturing			
*	*	*	*
315120	Apparel Knitting Mills		850
*	*	*	*
315990	Apparel Accessories and Other Apparel Manufacturing		600
Subsector 316—Leather and Allied Product Manufacturing			
316110	Leather and Hide Tanning and Finishing		800

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Subsector 321—Wood Product Manufacturing			
321113	Sawmills		550
321114	Wood Preservation		550
321211	Hardwood Veneer and Plywood Manufacturing		600
* * *			
Subsector 322—Paper Manufacturing			
322110	Pulp Mills		1,050
* * *			
Subsector 323—Printing and Related Support Activities			
323111	Commercial Printing (except Screen and Books)		650
* * *			
323120	Support Activities for Printing		550
Subsector 324—Petroleum and Coal Products Manufacturing			
* * *			
324122	Asphalt Shingle and Coating Materials Manufacturing		1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing		900
324199	All Other Petroleum and Coal Products Manufacturing		950
Subsector 325—Chemical Manufacturing			
325110	Petrochemical Manufacturing		1,300
325120	Industrial Gas Manufacturing		1,200
325130	Synthetic Dye and Pigment Manufacturing		1,050
* * *			
325220	Artificial and Synthetic Fibers and Filaments Manufacturing		1,050
325311	Nitrogenous Fertilizer Manufacturing		1,050
325312	Phosphatic Fertilizer Manufacturing		1,350
325314	Fertilizer (Mixing Only) Manufacturing		550
325315	Compost Manufacturing		550
325320	Pesticide and Other Agricultural Chemical Manufacturing		1,150
* * *			
325412	Pharmaceutical Preparation Manufacturing		1,300
* * *			
325520	Adhesive Manufacturing		550
325611	Soap and Other Detergent Manufacturing		1,100
325612	Polish and Other Sanitation Good Manufacturing		900
325613	Surface Active Agent Manufacturing		1,100
* * *			
325910	Printing Ink Manufacturing		750
* * *			
325991	Custom Compounding of Purchased Resins		600
* * *			
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing		650
Subsector 326—Plastics and Rubber Products Manufacturing			
* * *			
326121	Unlaminated Plastics Profile Shape Manufacturing		600
* * *			
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing		650

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *		*	*
326220	Rubber and Plastics Hoses and Belting Manufacturing		800
* * * * *		*	*
326299	All Other Rubber Product Manufacturing		650
Subsector 327—Nonmetallic Mineral Product Manufacturing			
* * * * *		*	*
327211	Flat Glass Manufacturing		1,100
* * * * *		*	*
327410	Lime Manufacturing		1,050
* * * * *		*	*
327910	Abrasive Product Manufacturing		900
* * * * *		*	*
327992	Ground or Treated Mineral and Earth Manufacturing		600
* * * * *		*	*
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		750
Subsector 331—Primary Metal Manufacturing			
* * * * *		*	*
331313	Alumina Refining and Primary Aluminum Production		1,300
* * * * *		*	*
331315	Aluminum Sheet, Plate, and Foil Manufacturing		1,400
* * * * *		*	*
331420	Copper Rolling, Drawing, Extruding, and Alloying		1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding		900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).		850
* * * * *		*	*
331512	Steel Investment Foundries		1,050
331513	Steel Foundries (except Investment)		700
331523	Nonferrous Metal Die-Casting Foundries		700
331524	Aluminum Foundries (except Die-Casting)		550
* * * * *		*	*
Subsector 332—Fabricated Metal Product Manufacturing			
* * * * *		*	*
332112	Nonferrous Forging		950
332114	Custom Roll Forming		600
332117	Powder Metallurgy Part Manufacturing		550
* * * * *		*	*
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.		1,000
* * * * *		*	*
332439	Other Metal Container Manufacturing		600
* * * * *		*	*
332613	Spring Manufacturing		600
* * * * *		*	*
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing		600

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *		*	*
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.		600
* * * * *		*	*
332992	Small Arms Ammunition Manufacturing		1,300
* * * * *		*	*
332996	Fabricated Pipe and Pipe Fitting Manufacturing		550
* * * * *		*	*
Subsector 333—Machinery Manufacturing ⁽⁶⁾			
* * * * *		*	*
333131	Mining Machinery and Equipment Manufacturing		900
* * * * *		*	*
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing		550
* * * * *		*	*
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing		900
333991	Power-Driven Hand Tool Manufacturing		950
* * * * *		*	*
333993	Packaging Machinery Manufacturing		600
* * * * *		*	*
333995	Fluid Power Cylinder and Actuator Manufacturing		800
* * * * *		*	*
333998	All Other Miscellaneous General Purpose Machinery Manufacturing		700
* * * * *		*	*
Subsector 334—Computer and Electronic Product Manufacturing ⁽⁶⁾			
* * * * *		*	*
334290	Other Communications Equipment Manufacturing		800
* * * * *		*	*
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing		550
* * * * *		*	*
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.		1,350
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.		650
* * * * *		*	*
334514	Totalizing Fluid Meter and Counting Device Manufacturing		850
* * * * *		*	*
334517	Irradiation Apparatus Manufacturing		1,200
334519	Other Measuring and Controlling Device Manufacturing		600
* * * * *		*	*
Subsector 335—Electrical Equipment, Appliance and Component Manufacturing ⁽⁶⁾			
* * * * *		*	*
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing		600
* * * * *		*	*
335311	Power, Distribution, and Specialty Transformer Manufacturing		800
* * * * *		*	*
335931	Current-Carrying Wiring Device Manufacturing		600

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *		*	*
335991	Carbon and Graphite Product Manufacturing		900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing		600
Subsector 336—Transportation Equipment Manufacturing⁽⁶⁾			
* * * * *		*	*
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		1,050
336414	Guided Missile and Space Vehicle Manufacturing		1,300
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.		1,050
336611	Ship Building and Repairing		1,300
336991	Motorcycle, Bicycle, and Parts Manufacturing		1,050
* * * * *		*	*
Subsector 337—Furniture and Related Product Manufacturing			
* * * * *		*	*
337126	Household Furniture (except Wood and Upholstered) Manufacturing		950
337214	Office Furniture (except Wood) Manufacturing		1,100
* * * * *		*	*
Subsector 339—Miscellaneous Manufacturing			
* * * * *		*	*
339113	Surgical Appliance and Supplies Manufacturing		800
339910	Jewelry and Silverware Manufacturing		700
339930	Doll, Toy, and Game Manufacturing		700
339991	Gasket, Packing, and Sealing Device Manufacturing		600
339994	Broom, Brush, and Mop Manufacturing		750
339999	All Other Miscellaneous Manufacturing		550
* * * * *		*	*
Sector 48–49—Transportation and Warehousing			
* * * * *		*	*
Subsector 483—Water Transportation			
483111	Deep Sea Freight Transportation		1,050
483113	Coastal and Great Lakes Freight Transportation		800

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
483114	Coastal and Great Lakes Passenger Transportation .....	.....	550
483211	Inland Water Freight Transportation .....	.....	1,050
483212	Inland Water Passenger Transportation .....	.....	550
*	*	*	*
Sector 51—Information			
*	*	*	*
Subsector 512—Motion Picture and Sound Recording Industries			
*	*	*	*
512230	Music Publishers .....	.....	900
*	*	*	*
512250	Record Production and Distribution .....	.....	900
*	*	*	*
Sector 54—Professional, Scientific and Technical Services			
Subsector 541—Professional, Scientific and Technical Services			
*	*	*	*
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) ¹¹ .....	.....	11 1,000
541715 (Exception 1).	Aircraft, Aircraft Engine and Engine Parts ¹¹ .....	.....	11 1,500
541715 (Exception 2).	Other Aircraft Parts and Auxiliary Equipment ¹¹ .....	.....	11 1,250
541715 (Exception 3).	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts ¹¹ .....	.....	11 1,300
*	*	*	*
Sector 56—Administrative and Support and Waste Management and Remediation Services			
*	*	*	*
Subsector 562—Waste Management and Remediation Services			
*	*	*	*
562910 (Exception)	Environmental Remediation Services ¹⁴ .....	.....	14 1,000
*	*	*	*
Footnotes			
*	*	*	*
<p>⁶ NAICS Subsectors 333, 334, 335 and 336—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a “manufacturer” although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.</p>			
<p>¹¹ NAICS code 541713, 541714, and 541715—</p> <p>(a) “Research and Development” means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.</p> <p>(b) For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.</p> <p>(c) For purposes of the Small Business Innovation Research (SBIR) and Small Business Transfer Technology (STTR) programs, the term “research” or “research and development” means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements. See 15 U.S.C. 638(e)(5) and section 3 of the SBIR and STTR policy directives available at www.sbir.gov. For size eligibility requirements for the SBIR and STTR programs, see § 121.702 of this part.</p> <p>(d) “Research and Development” for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.</p>			
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¹⁴ NAICS 562910—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (e.g., engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Isabella Casillas Guzman,

Administrator.

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