(2) If the presiding officer's initial decision, with respect to contentions that the prescribed acceptance criteria have not been met, finds that those acceptance criteria have been met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met;

(3) If the presiding officer's initial decision, with respect to contentions that the prescribed acceptance criteria will not be met, finds that those acceptance criteria will be met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met; and

(4) Notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, or a motion for stay under 10 CFR 2.342, or the filing of a petition under 10 CFR 2.206.

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PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

3. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 185, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2235, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), Secs. 147 and 149 of the Atomic Energy Act.

4. Revise § 52.99 to read as follows:

§ 52.99 Inspection during construction; ITAAC schedules and notifications; NRC notices.

(a) *Licensee schedule for completing inspections, tests, or analyses.* The licensee shall submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10(a), whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. The licensee shall submit updates to the ITAAC schedules every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, the licensee shall submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under paragraph (c)(1) of this section.

(b) *Licensee and applicant conduct of activities subject to ITAAC.* With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are met.

(c) *Licensee notifications.* (1) *ITAAC closure notification.* The licensee shall notify the NRC that prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met. The notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

(2) *ITAAC post-closure notifications.* Following the licensee's ITAAC closure notifications under paragraph (c)(1) of this section until the Commission makes the finding under 10 CFR 52.103(g), the licensee shall notify the NRC, in a timely manner, of new information that materially alters the bases for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met.

(3) *Uncompleted ITAAC notification.* If the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met, including, but not limited to, a description of the specific procedures and analytical methods to be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria are met.

(4) *All ITAAC complete notification.* The licensee shall notify the NRC that all ITAAC are complete.

(d) *Licensee determination of non-compliance with ITAAC.* (1) In the event that an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under 10 CFR 52.98(f).

(2) In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

(e) *NRC inspection, publication of notices, and availability of licensee notifications.* The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.

(1) At appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a), the NRC shall publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

(2) The NRC shall make publicly available the licensee notifications under paragraph (c) of this section. The NRC shall make publicly available the licensee notifications under paragraphs (c)(1) through (4) of this section no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a).

Dated at Rockville, Maryland, this 6th day of May 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–11679 Filed 5–12–11; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG08

Small Business Size Standards: Transportation and Warehousing

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards

for 22 industries in North American Industry Classification System (NAICS) Sector 48–49, Transportation and Warehousing. As part of its ongoing initiative to review all size standards, SBA has evaluated all industries in NAICS Sector 48–49 that have receipts based size standards to determine whether the size standards should be retained or revised. This rule is one of a series of proposed rules that will examine industries grouped by a NAICS Sector. SBA has issued a White Paper entitled "Size Standards Methodology" and published in the October 21, 2009 issue of the **Federal Register** a notice that "Size Standards Methodology" is available on its Web site at *http://www.sba.gov/size* for public review and comments. The "Size Standards Methodology" White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: You must submit your comments to this proposed rule on or before July 12, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AG08 by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments; or

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

SBA will post all comments to this proposed rule on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to *sizestandards@sba.gov.* You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

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

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—receipts and number of employees. SBA uses financial assets, electric output and refining capacity as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based size standards to determine eligibility for those programs. Currently, SBA's size standards consist of 42 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities ("exceptions" in SBA's table of size standards). Thirty-one of these size levels are based on average annual receipts, eight are based on number of employees, and three are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

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

Because of changes in Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary.

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

Rather than review all size standards at one time, SBA believes a more manageable approach is a phased examination of a group of industries within a NAICS Sector. A NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more industries. SBA will review the size standards for each industry in a NAICS Sector, and then will propose changing size standards for those industries for which currently available data and other relevant factors support doing so. Accordingly, this proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 48–49 as well as on the data and methodology it uses to evaluate and revise a size standard.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that was applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries within NAICS Sector 48–49, Transportation and Warehousing, and the impact of the proposed revisions to size standards on Federal small businesses assistance.

Size Standards Methodology

SBA has prepared a "Size Standards Methodology" White Paper for establishing, reviewing and modifying size standards when necessary. This document is available on SBA's Web site at *http://www.sba.gov/size.* SBA has also included its methodology in the electronic docket of this proposed rule as a supporting document at *http://www.regulations.gov.* SBA does not apply every feature of its methodology to every size standard evaluation because not all features are appropriate for every industry. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 48–49, the methodology described here mostly applies to establishing receipts based standards. However, SBA makes the methodology available in its entirety for parties who have an interest in SBA's overall approach to evaluating, establishing and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries. This proposed rule includes information regarding the factors SBA evaluated and the criteria the Agency used to propose any adjustments to size standards in NAICS Sector 48–49. It also explains why SBA has proposed to adjust some size standards in that sector but not others.

SBA welcomes comments from the public on a number of issues that it raises in its "Size Standards Methodology," such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's using anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology. Comments on the SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of May 13, 2011, SBA has received four comments to its "Size Standards Methodology." The comments are available to the public at *http://www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that "* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure, SBA also considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule when it establishes small business size standards. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

Below is a discussion on SBA's analysis of the economic characteristics of each industry reviewed in this proposed rule, the impact of proposed size standards revisions on SBA loan and Federal procurement programs, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small. This proposed rule affords the public an opportunity to review and comment on the data and methodology SBA uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three "base" or "anchor" size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, SBA has set 100 employees as the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance programs. For Federal procurement purposes, however, the size standard for all firms in both the Wholesale Trade (NAICS Sector 42) and Retail Trade (NAICS Sector 44–45) is 500 employees under the SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries (1,141) for which SBA establishes size standards. Furthermore, the data SBA analyzes are static, but the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

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

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 48–49 that are reviewed in this proposed rule, this second comparison group consists of industries with the highest receipts based size standards that range from $23 million to $35.5 million in average receipts, with the weighted average being $29 million. SBA refers to this comparison group as the "higher level receipts based size standard group."

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition and distribution of firms by size. SBA also evaluates, as an additional primary factor, the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance and other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below are brief descriptions of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 48–49 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA "Size Standards Methodology," available at *http://www.sba.gov/size.*

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

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

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

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

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the "four-firm concentration ratio," a commonly used economic measure of market competition. SBA compares the four-firmconcentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

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

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

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group this may, all else being equal, warrant a higher size standard than the anchor. Conversely, if an industry shows a similar or lower Gini coefficient than industries in the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the

small business Federal market share and industry-wide share may have a variety of causes, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required on Federal contracts as compared to typical commercial contracting work, and the size of contracting requirements of Federal customers. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal procurement trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect a significant level of contracting in which a revision to a size standard may have an impact on expanding small business opportunities.

Besides the impact on small business Federal contracting, SBA also evaluates the influence of a proposed size standard on SBA's loan programs. To do this, SBA examines the volume of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards reduce financial assistance to small businesses, higher size standards are supportable. However, if small businesses have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standard, consideration of this factor for determining the size standard may not be necessary.

Sources of Industry and Program Data

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

In some cases, where Census data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector) or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible. Furthermore, the data are not available below the 6-digit NAICS Industry level and hence do not provide economic characteristics for sub-industry activities ("exceptions" in SBA's table of size standards).

Thus, when establishing, reviewing, or modifying size standards at the sub-industry levels ("exceptions") with significant Federal contracting (*i.e.,* $100 million or more in Federal contract dollars annually), SBA evaluates data from FPDS–NG and the Central Contractor Registration (CCR) using a two-step procedure. First, using FPDS–NG SBA identifies product service codes (PSCs) that correspond to specific activities or "exceptions." SBA then identifies firms that are active in Federal contracting involving those PSCs. Then, SBA evaluates for those firms revenue and employment data from CCR and FPDS–NG.

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

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

To evaluate Federal contracting trends, SBA examined data representing Federal contract awards for fiscal years 2007–2009. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) requires a small business concern to be one that is (1) independently owned and operated, and (2) not dominant in its field of operation. SBA establishes size standards for the various industries at levels that would ensure that no firm qualifying as "small" would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards for industries from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). Currently, there are 31 different levels of receipts based size standards. They range from $0.75 million to $35.5 million, and many of them apply to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in Sector 48–49 that has a receipts based standard. In this proposed rule, SBA has not reviewed the 15 employee based size standards in NAICS Sector 48–49. Those employee based size standards will remain in effect until SBA reviews industries that have employee based size standards. The eight "fixed" receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30.0 million, and $35.5 million. To establish these eight receipts based size standard levels SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following—$2.5 million to $4.5 million, $7 million, $9.0 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is also an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture (which are statutory) and those based on commissions (such as real estate brokers and travel agents), $5 million will include those industries with the currently lowest receipts based standards, which range from $2.0 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels, namely $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between the two of the fixed levels, SBA also established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate size levels reflect roughly similar proportional differences between the two successive size standard levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a specific size standard level for each industry, SBA believes that establishing different size standards for closely related industries may not be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, establishing a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than establishing separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services industries (NAICS 541511, NAICS 541112, NAICS 541513, and NAICS 541519), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). Within NAICS Sector 48–49, several industries currently have common size standards, some at the 3-digit NAICS (Subsector) level and others at 4-digit NAICS (Industry Group) level. In this rule, SBA proposes to retain the common size standards for those industries even if the data may support separate size standards for individual industries. Whenever SBA proposes a common size standard for closely related industries it will provide a justification for that in the proposed rule.

Evaluation of Industry Structure

SBA evaluated the structure of 42 industries and one sub-industry ("exception") in NAICS Sector 48–49, Transportation and Warehousing, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the "receipts based anchor comparison group." Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

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

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

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

[a] To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

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

An industry factor with a value significantly above or below the anchor comparison group will generally warrant a size standard above or below the $7.0 million anchor. The level of the new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, an industry's simple average receipts of $4.0 million supports a $19 million size standard. The $4.0 million level is at the 52.5 percent point between the average firm size of $1.55 million for the anchor comparison group and $6.22 million for the higher level comparison group (($4.00 million − $1.55 million) ÷ ($6.22 million − $1.55 million) = 0.525 or 52.5%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and the average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.52 million ([{$29.0 million − $7.0 million} * 0.525] + $7.0 million = $18.52 million). The final step is to round the estimated size standard of $18.52 million to the nearest fixed size standard level, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in "SBA Size Standards Methodology" which is available on its Web site at *www.sba.gov/size*. (However, it should be noted that figures in the "Size Standards Methodology" White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule). Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

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

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA evaluates Federal contracting data to assess, under current size standards, the extent to which small businesses are successful in getting Federal contracts. However, the available data on Federal contracting only identify businesses as small or other than small, and do not provide the exact size of the businesses receiving Federal contracts; this hinders SBA's attempts to conduct more precise analyses.

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

Given the limitations of the FPDS data and the complex relationships among a number of variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This enables SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 42 industries reviewed in this proposed rule, 9 industries averaged $100 million or more annually in Federal contracting during fiscal years 2007–2009. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) in four of those nine industries and a separate size standard was derived for that factor for each of them. Because the small business share of total Federal contracting dollars was already higher than the small business share of total industry receipts for the other five industries, the Federal procurement factor was not considered in determining the level of size standard for them. Thus, the latest data show that Federal contracting activity is insignificant for most of the industries in NAICS Sector 48–49 and, for the majority of those industries where it is significant, small businesses seem to be doing well in terms of their share in Federal marketplace relative to their share of industry's total sales.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no estimated size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA "Size Standard Methodology." For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH INDUSTRY FACTOR

[Millions of dollars]

(1) NAICS	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated new size standard	(10) Current size standard
481219, Other Non-Scheduled Air Transportation	$2.9 14.0	$31.4 7.0	$2.1 19.0	33.7	$115.9	0.793 $19.0	....	$14.0	$7.0
484110, General Freight Trucking—Local	1.0 5.0	7.8 5.0	0.3 5.0	....	....	0.694 $5.0	....	5.0	25.5
484121, General Freight, Trucking, Long-Distance, Truckload	3.0 14.0	64.7 19.0	1.1 10.0	13.0	2,761.9	0.857 $35.5	−37.1 $35.5	25.5	25.5
484122, General Freight, Trucking, Long-Distance, Less Than Truckload	10.8 35.5	335.7 35.5	4.2 $35.5	51.2	4,670.3 35.5	0.939 35.5	....	35.5	25.5
484210, Used Household and Office Goods Moving	2.0 10.0	70.5 19.0	0.7 5.0	27.6	1,059.8	0.799 $19.0	....	14.0	25.5
484220, Specialized Freight (except Used Goods) Trucking, Local	1.0 5.0	7.7 5.0	0.4 5.0	3.3	257.9	0.669 $5.0	....	5.0	25.5
484230, Specialized Freight (except Used Goods) Trucking, Long-Distance	2.7 14.0	28.8 7.0	1.1 10.0	8.0	541.3	0.811 $25.5	−29.1 $30.0	19.0	25.5
485111, Mixed Mode Transit Systems	2.4 10.0	22.7 5.0	....	65.6	21.3 5.0	0.739 $7.0	....	7.0	7.0
485112, Commuter Rail Systems	6.1 30.0	17.4 5.0	....	83.2	21.7 5.0	0.644 $5.0	....	10.0	7.0
485113, Bus and Other Motor Vehicle Transit Systems	5.5 25.5	86.1 25.5	....	46.3	306.0 7.0	0.877 $35.5	....	25.5	7.0
485119, Other Urban Transit Systems	6.8 30.0	78.8 25.5	....	86.6	63.3 5.0	0.884 $35.5	....	25.5	7.0
485210, Interurban and Rural Bus Transportation	7.1 35.5	131.3 35.5	....	60.2	249.3 7.0	0.873 $35.5	....	25.5	7.0
485310, Taxi Service	0.7 5.0	16.2 5.0	0.3 5.0	....	....	0.704 $5.0	....	5.0	7.0
485320, Limousine Service	0.9 5.0	17.7 5.0	0.4 5.0	14.3	138.3	0.698 $5.0	....	5.0	7.0
485410, School and Employee Bus Transportation	3.3 14.0	338.8 35.5	2.0 19.0	....	....	0.880 $35.5	....	25.5	7.0
485510, Charter Bus Industry	1.9 10.0	12.1 5.0	1.4 10.0	15.0	82.5	0.657 $5.0	....	7.0	7.0
485991, Special Needs Transportation	1.3 5.0	11.1 5.0	....	....	....	0.698 $5.0	....	5.0	7.0
485999, All Other Transit and Ground Passenger Transportation	1.0 5.0	9.1 5.0	0.4 5.0	15.9	42.9	0.686 $5.0	....	5.0	7.0
486210, Pipeline Transportation of Natural Gas	165.1 35.5	406.7 35.5	....	46.9	2,438.7 35.5	0.601 $5.0	....	25.5	7.0
486990, All Other Pipeline Transportation	39.7 35.5	56.0 14.0	....	77.5	207.5 7.0	0.305 $5.0	....	14.0	34.5

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

[Millions of dollars]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
NAICS	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini coefficient	Federal contract factor (%)	Calculated new size standard	Current size standard
487110, Scenic and Sight-seeing Transportation, Land	1.4 7.0	17.5 5.0	0.8 5.0	....	....	0.719 $5.0	....	5.0	7.0
487210, Scenic and Sight-seeing Transportation, Water	0.8 5.0	11.5 5.0	0.5 5.0	....	....	0.638 $5.0	....	5.0	7.0
487990, Scenic and Sight-seeing Transportation, Other	2.0 10.0	30.4 7.0	....	....	....	0.784 $19.0	....	14.0	7.0
488111, Air Traffic Control	9.7 35.5	49.8 14.0	....	94.2	59.5 5.0	0.741 $7.0	....	14.0	7.0
488119, Other Airport Operations	5.3 25.5	42.3 10.0	2.7 25.5	30.2	389.7	0.822 $30.0	....	25.5	7.0
488190, Other Support Activities for Air Transportation	4.7 19.0	78.7 25.5	2.2 19.0	....	....	0.869 $35.5	−9.8	25.5	7.0
488210, Support Activities for Rail Transportation	6.3 30.0	28.3 7.0	....	20.0	166.8	0.739 $7.0	....	14.0	7.0
488310, Port and Harbor Operations	8.1 35.5	27.1 7.0	....	....	....	0.698 $5.0	....	14.0	25.5
488320, Marine Cargo Handling	30.4 35.5	189.6 35.5	20.2 35.5	....	....	0.824 $30.0	....	35.5	25.5
488330, Navigational Services to Shipping	4.1 19.0	39.0 10.0	3.4 35.5	20.3	151.7	0.818 $25.5	12.1	25.5	7.0
488390, Other Support Activities for Water Transportation	2.7 14.0	21.2 5.0	2.0 19.0	22.7	97.5	0.793 $19.0	−10.2 $10.0	14.0	7.0
488410, Motor Vehicle Towing	0.6 5.0	7.7 5.0	0.2 5.0	....	....	0.499 $5.0	....	5.0	7.0
488490, Other Support Activities for Road Transportation	1.7 7.0	15.1 5.0	0.7 5.0	23.3	128.8	0.770 $14.0	....	10.0	7.0
488510, Freight Transportation Arrangement	3.2 14.0	41.7 10.0	0.7 5.0	8.8	905.5	0.793 $19.0	....	14.0	7.0
Except Non-Vessel Owning Common Carriers and Household Goods Forwarders	....	....	....	....	....	....	....	....	25.5
488991, Packing and Crating	2.0 10.0	24.9 5.0	0.7 5.0	30.1	199.3	0.796 $19.0	....	10.0	25.5
488999, All Other Support Activities for Transportation	0.7 5.0	4.8 5.0	0.3 5.0	52.0	2,105.0	0.679 $5.0	−21.0 $10.0	7.0	7.0
491110, Postal Service	....	....	....	....	....	....	....	....	7.0
492210, Local Messengers and Local Delivery	1.0 5.0	12.5 5.0	....	12.2	126.5	0.699 $5.0	....	5.0	25.5
493110, General Warehousing and Storage	5.4 25.5	14.4 5.0	4.0 35.5	33.3	2,265.5	0.626 $5.0	7.8	19.0	25.5
493120, Refrigerated Warehousing and Storage	5.8 25.5	15.9 5.0	6.2 35.5	30.7	307.3	0.627 $5.0	−24.3 $30.0	19.0	25.5
493130, Farm Product Warehousing and Storage	3.6 19.0	7.3 5.0	1.7 14.0	....	....	0.505 5.0$	....	10.0	25.5
493190, Other Warehousing and Storage	5.0 25.5	10.7 5.0	3.2 35.5	30.7	554.8	0.554 $5.0	6.4	19.0	25.5

Common Size Standards

When many of the same businesses operate in the same multiple industries, SBA believes that a common size standard is more appropriate than separate standards for these industries even if the industry and relevant program data would support different size standards. Within NAICS Sector 48–49, several industries currently have common size standards, some at the 3-digit NAICS (Subsector) level and others at 4-digit NAICS (Industry Group) level. For example, all industries within NAICS Subsector 484 (Truck Transportation) and those in NAICS Subsector 485 (Transit and Ground Transportation) have the common size standards of $25.5 million and $7.0 million, respectively. Similarly, industries within NAICS Subsector 487 (Scenic and Sight Seeing Transportation), NAICS Industry Group

4881 (Support Activities for Air Transportation), NAICS Industry Group 4884 (Support Activities for Road Transportation), and NAICS Industry Group 493 (Warehousing and Storage) have the common size standards.

On May 2, 2006, SBA proposed to increase the size standards for NAICS 488111 (Air Traffic Control), NAICS 488119 (Other Airport Operations), and NAICS 488190 (Other Support Activities for Air Transportation) from $6.5 million to $21 million in average annual receipts. Given that many firms operate in each of these three industries, SBA proposed establishing a common $21 million size standard for this Industry Group (*see* 71 FR 28604). For the same reason, also in this rule, SBA has proposed a common size standard for all three industries for this NAICS Industry Group.

Besides the above industries, because of similarities among industries within NAICS Industry Group 4883 (Support Activities for Water Transportation), in this rule, SBA also proposes a common size standard for that Industry Group. Table 4 (below) shows these Subsectors and Industry Groups, along with the 6-digit NAICS industries under them. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Subsector and each Industry Group using the same method as described above. These results are provided in Table 5 (immediately following Table 5).

TABLE 4—SUBSECTORS AND INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Subsector/industry group: NAICS codes	Subsector/industry group title	Industries: 6-digit NAICS codes
484	Truck Transportation	484110, 484121, 484122, 484210, 484220, 484230.
485	Transit and Ground Passenger Transportation	485111, 485112, 485113, 485119, 485210, 485310, 485320, 485410, 485510, 485991, 485999.
487	Scenic and Sightseeing Transportation	487110, 487210, 487990.
4881	Support Activities for Air Transportation	488111, 488119, 488190.
4883	Support Activities for Water Transportation	488310, 488320, 48830, 488390.
4884	Support Activities for Road Transportation	488410, 488490.
493	Warehousing and Storage	493110, 493120, 493130, 493190.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH SUBSECTOR AND EACH INDUSTRY GROUP

[Millions of dollars]

(1) NAICS code/title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current standard
484 (Subsector), Truck Transportation	$2.1	$45.8	$0.8	9.4	$5,205.2	0.821	−24.1%	$19.0	$25.5
	10.0	14.0	5.0			$25.5	$30.0		
485 (Subsector), Transit and Ground Passenger Transportation	1.7	56.2	0.9	28.0	1,892.8	0.810	7.0%	14.0	7.0
	7.0	14.0	7.0			$25.5			
487 (Subsector), Scenic and Sightseeing Transportation	1.0	12.9	0.6			0.694		5.0	7.0
	5.0	5.0	5.0			$5.0			
4881 (Industry Group), Support Activities for Air Transportation	4.9	65.3	2.4			0.859	−8.4%	30.0	7.0
	25.5	19.0	25.5			$35.5			
4883 (Industry Group), Support Activities for Water Transportation	8.9	78.7	6.3			0.855	11.8%	35.5	(1)
	35.5	25.5	35.5			$35.5			
4884 (Industry Group), Support Activities for Road Transportation	0.8	8.4	0.3	7.8	139.6	0.594		5.0	7.0
	5.0	5.0	5.0			$5.0			
493 (Subsector), Warehousing and Storage	5.4	12.8	4.0	23.2	2,315.2	0.604	−0.7%	19.0	25.5
	25.5	5.0	35.5			$5.0			

[1] Varies.

Special Considerations

1. Employee Based Size Standards

In this proposed rule, SBA has not reviewed 15 industries in NAICS Sector 48–49 that currently have employee based size standards. SBA will review those industries when it reviews the Manufacturing Sector (NAICS Sector 31–33) and other industries that have employee based size standards. SBA proposes, therefore, to leave the size standards for those 15 industries at their current levels until it reviews the employee based size standards.

2. Offshore Marine Air Transportation Services

Offshore Marine Air Transportation Services is currently an "exception" under both NAICS 481211 (Nonscheduled Chartered Passenger Air Transportation) and NAICS 481212

(Nonscheduled Chartered Freight Air Transportation), with the size standard of $28 million in average annual receipts. SBA will review this size standard when it reviews the employee based size standard for NAICS codes 481211 and 481212. Thus, in this rule, SBA proposes to keep the current $28 million size standard for Offshore Marine Air Transportation Services until it reviews those two principal NAICS industry codes.

3. Offshore Marine Water Transportation Services

Offshore Marine Water Transportation Services is an "exception" under NAICS Subsector 483 (Water Transportation) with the size standard of $28 million. All industries within NAICS Subsector 483 currently have an employee based standard. SBA has not reviewed employee based size standards in NAICS Sector 48–49, including those in Subsector 483. Thus, until the review of employee based size standards, SBA proposes to retain the current $28 million size standard for Offshore Marine Water Transportation Services.

4. Non-Vessel Owning Common Carriers and Household Good Forwarders

Non-Vessel Owning Common Carriers and Household Good Forwarders is an "exception" under NAICS 488510 (Freight Transportation Arrangement), with the size standard of $25.5 million in average annual receipts. As discussed above, the Census data are not available below the 6-digit NAICS industry level and hence SBA is not able to evaluate economic characteristics at the sub-industry levels ("exceptions"). This is also true for Non-Vessel Owning Common Carriers and Household Good Forwarders. In most cases, these "exceptions" are for procurement of specific goods or services within an industry where the Federal contracting is significant. However, for NAICS 488510 (including "exception"), Federal contracting averaged just $12 million annually during fiscal years 2007–2009, as compared to $41 billion in total revenue for the industry. Thus, given the lack of data and insignificant government contracting in this rule, SBA proposes to leave the size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders at the current level. SBA invites comments, along with supporting information, on this proposal as well as suggestions on whether a different size standard is more appropriate. Alternatively, in view of insignificant contracting, SBA also welcomes comments on whether it should continue to have a higher size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders as an "exception" under NAICS 488510 or should it apply the same size standard for the industry.

5. Postal Service (NAICS 491110)

Postal Service (NAICS 491) is one of the NAICS Sectors not covered by Census Bureau's Economic Census. Hence, SBA has no data to evaluate economic characteristics of the Postal Service Industry (NAICS 491110). Also, Federal contracting was not significant for this industry. Thus, given the lack of data, in this rule, SBA proposes to leave the size standard for Postal Service at the current level of $7 million in average annual revenue. SBA invites comments on this proposal as well as suggestions, along with supporting information, as to whether a different size standard is more appropriate.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through that program. For the industries reviewed, it is primarily small businesses much smaller than the size standards that use the SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 48–49, Transportation and Warehousing, needs an adjustment based on this factor.

Proposed Changes to Size Standards

The results of SBA analyses of industry specific size standards from Table 3 and results for common size standards from Table 5 are summarized in Table 6. In terms of industry specific size standards, the results support increases in size standards in 18 industries, decreases in 19 industries, and no changes in five industries and one sub-industry (exception to NAICS 488510). Similarly, based on common size standards, the results would support increases in 22 industries, decreases in 18 industries, and no changes in two industries and one sub-industry (exception to NAICS 488510).

Lowering small business size standards is not in the best interests of small businesses under current economic conditions. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest recession since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate has been 9.4 percent or higher since May 2009 and is forecast to remain around 9 percent or higher through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts, including recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS codes	NAICS industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
481219	Other Non-Scheduled Air Transportation	$14.0		$7.0
484110	General Freight Trucking—Local	5.0	$19.0	$25.5
484121	General Freight, Trucking, Long-Distance, Truckload	25.5	19.0	25.5
484122	General Freight, Trucking, Long-Distance, Less Than Truckload	35.5	19.0	25.5
484210	Used Household and Office Goods Moving	14.0	19.0	25.5

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS codes	NAICS industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
484220	Specialized Freight (except Used Goods) Trucking, Local	5.0	19.0	25.5
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	19.0	19.0	25.5
485111	Mixed Mode Transit Systems	7.0	14.0	7.0
485112	Commuter Rail Systems	10.0	14.0	7.0
485113	Bus and Other Motor Vehicle Transit Systems	25.5	14.0	7.0
485119	Other Urban Transit Systems	25.5	14.0	7.0
485210	Interurban and Rural Bus Transportation	25.5	14.0	7.0
485310	Taxi Service	5.0	14.0	7.0
485320	Limousine Service	5.0	14.0	7.0
485410	School and Employee Bus Transportation	25.5	14.0	7.0
485510	Charter Bus Industry	7.0	14.0	7.0
485991	Special Needs Transportation	5.0	14.0	7.0
485999	All Other Transit and Ground Passenger Transportation	5.0	14.0	7.0
486210	Pipeline Transportation of Natural Gas	25.5		7.0
486990	All Other Pipeline Transportation	14.0		34.5
487110	Scenic and Sightseeing Transportation, Land	5.0	5.0	7.0
487210	Scenic and Sightseeing Transportation, Water	5.0	5.0	7.0
487990	Scenic and Sightseeing Transportation, Other	14.0	5.0	7.0
488111	Air Traffic Control	14.0	30.0	7.0
488119	Other Airport Operations	25.5	30.0	7.0
488190	Other Support Activities for Air Transportation	25.5	30.0	7.0
488210	Support Activities for Rail Transportation	14.0		7.0
488310	Port and Harbor Operations	14.0	35.5	25.5
488320	Marine Cargo Handling	35.5	35.5	25.5
488330	Navigational Services to Shipping	25.5	35.5	7.0
488390	Other Support Activities for Water Transportation	14.0	35.5	7.0
488410	Motor Vehicle Towing	5.0	5.0	7.0
488490	Other Support Activities for Road Transportation	10.0	5.0	7.0
488510	Freight Transportation Arrangement	14.0		7.0
Except	Non-Vessel Owning Common Carriers and Household Goods Forwarders			25.5
488991	Packing and Crating	10.0		25.5
488999	All Other Support Activities for Transportation	7.0		7.0
491110	Postal Service			7.0
492210	Local Messengers and Local Delivery	5.0		25.5
493110	General Warehousing and Storage	19.0	19.0	25.5
493120	Refrigerated Warehousing and Storage	19.0	19.0	25.5
493130	Farm Product Warehousing and Storage	10.0	19.0	25.5
493190	Other Warehousing and Storage	19.0	19.0	25.5

Reducing size standards would decrease the number of firms that can participate in Federal financial and procurement assistance. Furthermore, lowering size standards solely based on analytical results would cut off more than 2,500 currently eligible small business firms from those very programs, which would run counter to what the Federal government is trying to do for small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA has decided not to propose to reduce the size standards for any industries. For industries where analyses might support lowering size standards, SBA proposes to retain the current size standards. SBA invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

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

For industries or sub-industries where both industry specific size standards and common size standards have been calculated, SBA, for the above reasons, proposes to apply common size standards. For industries or sub-industries where common size standards have not been estimated, SBA proposes to apply industry specific size standards.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and Jobs Act. Therefore, SBA proposes to retain the current size standards for those industries for which its analyses suggested decreasing their size standards. Thus, of the 42 industries and one sub-industry in NAICS Sector 48–49 that were reviewed in this proposed rule, SBA proposes to increase size standards for 22 industries and retain the current standards for 20 industries and one sub-industry. Industries for which SBA has proposed to increase their size standards and proposed standards are shown in Table 7.

In addition, this is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) (75 FR 61597, 75 FR 61604, and 75 FR 61591). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS codes	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
481219	Other Non-Scheduled Air Transportation	$14.0	$7.0
485111	Mixed Mode Transit Systems	14.0	7.0
485112	Commuter Rail Systems	14.0	7.0
485113	Bus and Other Motor Vehicle Transit Systems	14.0	7.0
485119	Other Urban Transit Systems	14.0	7.0
485210	Interurban and Rural Bus Transportation	14.0	7.0
485310	Taxi Service	14.0	7.0
485320	Limousine Service	14.0	7.0
485410	School and Employee Bus Transportation	14.0	7.0
485510	Charter Bus Industry	14.0	7.0
485991	Special Needs Transportation	14.0	7.0
485999	All Other Transit and Ground Passenger Transportation	14.0	7.0
486210	Pipeline Transportation of Natural Gas	25.5	7.0
488111	Air Traffic Control	30.0	7.0
488119	Other Airport Operations	30.0	7.0
488190	Other Support Activities for Air Transportation	30.0	7.0
488210	Support Activities for Rail Transportation	14.0	7.0
488310	Port and Harbor Operations	35.5	25.5
488320	Marine Cargo Handling	35.5	25.5
488330	Navigational Services to Shipping	35.5	7.0
488390	Other Support Activities for Water Transportation	35.5	7.0
488510	Freight Transportation Arrangement	14.0	7.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 48–49, Transportation and Warehousing, for which it has proposed to increase size standards, no firm at or below the proposed size standard is large enough to dominate its field of operation. At the proposed size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.1 percent to 13.4 percent, with an average of 1.6 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on this industry.

Request for Comments

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

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5.0 million, $7.0 million, $10.0 million, $14.0 million, $19.0 million, $25.5 million, $30.0 million and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. If not, SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. For industries in NAICS Sector 48–49 that SBA has reviewed, SBA has proposed receipts based size standards ranging from $7.0 million to $35.5 million in average annual revenue. SBA seeks feedback on whether the levels of proposed size standards are appropriate given the economic characteristics of each industry. SBA also seeks public opinion and suggestions on alternative standards, if they would be more appropriate, including whether an employee based size standard is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA has proposed to continue the common size standards for industries within NAICS Subsector 484 (Truck Transportation), NAICS Subsector 485 (Transit and Ground Transportation), NAICS Subsector 487 (Scenic and Sight Seeing Transportation), NAICS Industry Group 4881 (Support Activities for Air Transportation), NAICS Industry Group 4884 (Support Activities for Road Transportation), and NAICS Industry Group 493 (Warehousing and Storage). SBA has also proposed a common size standard for industries in NAICS Industry Group 4853 (Support Activities for Water Transportation). SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt a common size standard for those industries or establish a separate size standard for each industry based on industry-specific analyses.

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

4. SBA's proposed standards are based on the evaluation of five primary factors—average firm size, average assets size (as proxy of startup costs and entry barriers), the four-firm concentration ratio, distribution of firms by size, and small business share of Federal contracting dollars. SBA welcomes comments on whether it should consider other factors when evaluating or revising an industry's size standard. Please provide relevant data sources, if available.

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

6. For some industries, SBA proposes to increase the size standards by a large amount, while for others the proposed increases are modest. SBA invites comment on whether it should, as a policy, limit the amount of increase or decrease to a size standard. Similarly, SBA also seeks feedback on whether it should, as a policy, establish certain minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

7. Given the lack of industry data at the sub-industry level, SBA has proposed to leave the size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders ("exception" under NAICS 488510) at its current level. SBA invites comments, along with supporting information, on this proposal. Alternatively, in view of insignificant Government contracting, SBA also welcomes comments on whether it should continue to have a higher size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders as an "exception" under NAICS 488510 or should it apply the same $14 million proposed size standard for the industry.

8. Because of the lack of data to review the industry structure, SBA has proposed to leave the size standard for Postal Service (NAICS 491110) at the current level of $7 million in average annual revenue. SBA invites comments on this proposal as well as suggestions, along with supporting information, if a different size standard is more appropriate.

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

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

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed revisions to size standards in this proposed rule. This will help SBA move forward with its review of size standards for other NAICS Sectors. Commenters that address specific size standards for one or more industries or group of industries should include data and/or other information that support their comments. If comments address the use of size standards for Federal procurement programs, SBA suggests that commenters relate their comments to the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

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

Executive Order 12866

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

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that it needs to adjust certain size standards in NAICS Sector 48–49, Transportation and Warehousing, to reflect the economic characteristics of small businesses and Federal marketplace in those industries better. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA must establish distinct definitions of which businesses are small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses. Federal procurement provides targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Other Federal agencies also use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive. In the 22 industries in NAICS Sector 48–49 for which SBA has proposed increasing size standards, SBA estimates that about 1,200 more firms will gain small business status and become eligible for these programs. That number is 0.7 percent of the total number of firms in those industries defined as small under the current standards. If adopted as proposed, this will increase the small business share of total industry receipts in those industries from 36 percent under the current size standards to 39 percent.

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

Based on the data for fiscal years 2007–2009, 68 percent of total Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 22 industries for which SBA has proposed increasing size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could obtain Federal contracts totaling up to $25 million per year under the small business set-aside program, the 8(a), HUBZone, WOSB, and SDVO SBC Programs and other unrestricted procurements. The added competition for many of these procurements may also result in a lower price to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, based on fiscal years 2009–2010 data, SBA estimates 10–15 additional loans totaling $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses. Because of the size of these loans, however, most loans were made primarily to small businesses that are well below their industry size standards. The recently enacted Jobs Act increased the maximum limit of SBA 7(a) and 504 loans from $2 million to $5 million ($5.5 million for manufacturers under the 504 loan program). In addition, the Jobs Act not only adopted the tangible net worth based and net income based alternative size standard used in 504 loans for 7(a) loans, it also increased the maximum limit of tangible net worth from $8 million to $15 million and that of net income from $3 million to $5 million. Thus, combined with these changes that are aimed at expanding credit opportunities for small businesses, proposed increases to the size standards will likely result in additional SBA loans to small businesses. However, given the lack of data, SBA is not able to estimate the extent of their number and the total loan amount.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. The EIDL Program is contingent on the number and severity of disasters, which SBA cannot estimate for the future. Therefore, a meaningful estimate of those benefits is impractical.

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

The costs to the Federal Government may be higher for some contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders, although there will be more small businesses eligible to participate. In addition, higher costs may result when more full and open contracts are awarded to HUBZone price evaluation preferences. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices.

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

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

Executive Orders 12866 and 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues.

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

The review of NAICS Sector 48–49, Transportation and Warehousing, is consistent with EO 13653, Sec 6. calling for retrospective Analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries in no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010 the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose new reporting or record keeping requirements, other than those already required of SBA.

Regulatory Flexibility Act, 5 U.S.C., 601–612

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in NAICS Sector 48–49, Transportation and Warehousing. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA Economic Injury Disaster Loans, and other Federal small business assistance.

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

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

Most of the size standards for industries in NAICS Sector 48–49, Transportation and Warehousing, have not been reviewed since the early 1980s. Technology, productivity growth, global competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. In addition, the recently enacted Small Business Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect economic characteristics and the Federal marketplace in those industries.

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

If the proposed rule is adopted in its present form, SBA estimates that approximately 1,200 additional firms will become small because of increases in size standards in 22 industries. That represents 0.7 percent of total firms in those industries. This will result in an increase in the small business share of total industry receipts in those industries from about 36 percent under the current size standard to nearly 39 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many either have lost their small business eligibility or find it difficult to compete with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that have either exceeded or are about to exceed the size standards.

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

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify, at least annually, that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters access to Federal small business assistance, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

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

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

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

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

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 et seq., 111 Stat. 2592.

2. In § 121.201, in the table, revise the entries for “481219”, “485111”, “485112”, “485113”, “485119”, “485210”, “485310”, “485320”, “485410”, “485510”, “485991”, “485999”, “486210”, “488111”, “488119”, “488190”, “488210”, “488310”, “488320”, “488330”, “488390”, and “488510”

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * *	* *	*	*
	Sector 48–49—Transportation and Warehousing		
* * *	* *	*	*
481219	Other Non-Scheduled Air Transportation	$14.0	
* * *	* *	*	*
485111	Mixed Mode Transit Systems	14.0	
485112	Commuter Rail Systems	14.0	
485113	Bus and Other Motor Vehicle Transit Systems	14.0	
485119	Other Urban Transit Systems	14.0	
485210	Interurban and Rural Bus Transportation	14.0	
485310	Taxi Service	14.0	
485320	Limousine Service	14.0	
485410	School and Employee Bus Transportation	14.0	
485510	Charter Bus Industry	14.0	
485991	Special Needs Transportation	14.0	
485999	All Other Transit and Ground Passenger Transportation	14.0	
* * *	* *	*	*
486210	Pipeline Transportation of Natural Gas	25.5	
* * *	* *	*	*
488111	Air Traffic Control	30.0	
488119	Other Airport Operations	30.0	
488190	Other Support Activities for Air Transportation	30.0	
488210	Support Activities for Rail Transportation	14.0	
488310	Port and Harbor Operations	35.5	
488320	Marine Cargo Handling	35.5	
488330	Navigational Services to Shipping	35.5	
488390	Other Support Activities for Water Transportation	35.5	
* * *	* *	*	*
488510	Freight Transportation Arrangement	14.0	
* * *	* *	*	*

Dated: May 3, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–11717 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG07

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

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: On March 16, 2011, the U.S. Small Business Administration (SBA or Agency) proposed to increase small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. SBA provided a 60-day comment period ending on May 16, 2011. In this notice, SBA is extending the comment period an additional 30 days to June 15, 2011.

DATES: The comment period for the proposed rule published on March 16, 2011, at 76 FR 14323, is extended through June 15, 2011.

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

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments; or

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

FOR FURTHER INFORMATION CONTACT: The SBA's Office of Size Standards at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

In the proposed rule (76 FR 14323), SBA sought public comment on whether the proposed increases to size standards are appropriate given the economic characteristics of industries. Based on its analysis of industry and Federal procurement data and the use of a common size standard, for some industries SBA proposed to increase the size standards by more than three times their current levels (*e.g.,* Engineering, Architectural and Related Services), while for some other industries proposed increases are more modest (*e.g.,* Computer System Designs and Related Services). SBA also sought public feedback on a number of policy issues regarding its size standards methodology, such as whether SBA's proposal to apply eight fixed size standards levels is appropriate to simplify size standards and whether SBA should adopt a common size standards for related industries although the analysis might support a different size standard for each industry.

As of May 9, 2011, SBA has received over 210 comments to the proposed rule which are posted on *http://www.regulations.gov.* Some comments support SBA's proposed increases, some feel that proposed increases are too large, and others believe that proposed increases are too small. Given the impact the proposed changes might have on affected businesses and the lack of consensus in the comments received to date, SBA believes that the Agency and the affected industries will benefit from more public input before it finalizes any changes. Therefore, SBA is extending the comment period to June 15, 2011. This will also give more time to affected businesses and interested parties to review the proposed changes and prepare accurate, constructive and convincing comments to the proposed rule.

Dated: May 9, 2011.

Joseph Jordan,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. 2011–11707 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0448; Directorate Identifier 2007–SW–51–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified Eurocopter France Model EC 120B helicopters. This proposed AD would require modifying the pilot cyclic control friction device by replacing a certain thrust washer with two thrust washers. This proposed AD is prompted by an incident in which the pilot encountered a sudden restriction of the cyclic control movement during flight. The actions specified by this proposed AD are intended to prevent jamming of a pilot cyclic control stick and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 12, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2011–0448, Directorate Identifier 2007–SW–51–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each