SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
525990	Other Financial Vehicles	30.0	
* * * * * * *			
551111	Offices of Bank Holding Companies	19.0	
551112	Offices of Other Holding Companies	19.0	

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Footnotes

[8] *NAICS Codes 522110, 522120, 522130, 522190, and 522210*—A financial Institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. ''Assets'' for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

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Dated, June 22, 2012.

Karen G. Mills,

Administrator.

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BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG43

Small Business Size Standards: Agriculture, Forestry, Fishing, and Hunting

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 11 industries in North American Industry Classification System (NAICS) Sector 11, Agriculture, Forestry, Fishing and Hunting. As part of its ongoing comprehensive size standards review, SBA evaluated receipts based size standards for 16 industries and two sub-industries in NAICS Sector 11 to determine whether they should be retained or revised. SBA did not review size standards for 46 industries in NAICS Sector 11 that are currently set by statute at $750,000 in average annual receipts. SBA also did not review the 500-employee based size standard for NAICS 113310, Logging, but will review it in the near future with other employee based size standards. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that the document is available on its Web site at *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: SBA must receive comments to this proposed rule on or before November 13, 2012.

ADDRESSES: Identify your comments by RIN 3245–AG43 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov*, following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

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

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Ph.D., Economist, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards, or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also adjusts all monetary based size standards (except for statutorily set size standards in NAICS Sector 11) for inflation at least once every five years. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

NAICS 11, Agriculture, Forestry, Fishing and Hunting, includes 46 industries within NAICS Subsector 111 (Agricultural Crop Production) and NAICS Subsector 112 (Animal

Production) for which size standards are set by statute, currently at $750,000 in average annual receipts. Within NAICS Subsector 112, SBA may revise the size standards for only two industries: NAICS 112112 (Cattle Feedlots) and NAICS 112310 (Chicken Egg Production).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, 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. In addition, the Jobs Act requires that SBA review all size standards not less frequently than once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. A NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in a NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at *www.regulations.gov.* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate for every industry. For example, since all industries in NAICS Sector 11 that are being reviewed in this proposed rule have receipts based size standards, the methodology described in this proposed rule applies only to establishing receipts based size standards. However, the methodology is available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other 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 use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's size standards methodology should be submitted via: (1) The Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; the docket number is SBA–2009–0008, or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov.* As of May 31, 2012, SBA has received 14 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

Congress granted the SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, 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 is the 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 (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to receipts based size standards for 16 industries and two sub-industries (''exceptions'') in NAICS Sector 11. This proposed rule affords the public an opportunity to review and to comment on SBA's proposal to revise size standards in NAICS Sector 11, as well as on the data and methodology it used to evaluate and revise the size standards.

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 today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA's financial assistance and for most Federal programs has been 100 employees. However, NAICS codes for the Wholesale Trade Sector and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44–45) is 500 employees under 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 is neither a minimum nor a maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from other industries with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''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 generally 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, then 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 11 reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised 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, 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 standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 11. A more detailed description of this analysis is provided in SBA's ''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 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 size standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual eStatement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those 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, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

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-firm concentration ratio for an industry 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 share of economic activity of the largest four firms within the industry is less than 40 percent. For an industry with a four-firm concentration ratio of 40 percent or more, SBA examines the average size of the four largest firms to determine 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 in assessing industry competition. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support 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 can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *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 with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group this may, all else being equal, warrant a size standard higher than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for 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, this could justify considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. 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 support a size standard larger than the current size standard.

SBA considers Federal contracting 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 significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. For this, SBA examines the data on volume and number of its 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 current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards 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 standards, SBA does not consider this factor when determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule are special tabulations of the 2007 County Business Patterns (see *www.census.gov/econ/cbp/*) from the U.S. Bureau of Census (Census Bureau) and the 2007 Census of Agriculture (*http://www.nass.usda.gov*) from the National Agricultural Statistics Service (NASS). NAICS Sector 11 is not covered by the Census Bureau's Economic Census. The special tabulations provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts, and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's and NASS' tabulations, 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's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual eStatement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. 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.

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

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is: (1) Independently owned and operated; (2) not dominant in its field of operation; and (3) within a specific small business definition or size standard established by SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard 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 includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify receipts based size standards, SBA has proposed to select size standards 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)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that such a large number of different small business size standards are 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.

SBA proposes, therefore, to apply one of eight receipts based size standards to the analysis of receipts based size standards for 16 industries and two sub-industries within NAICS Sector 11 that are reviewed in this proposed rule. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 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 an anchor standard. The lowest or minimum receipts based size level will be $5 million. Other than the size standards for NAICS Sector 11 that are set by statute and those based on commissions (such as real estate brokers and travel agents), $5 million includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of the large intervals between some of the fixed levels, SBA 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 levels reflect roughly the same proportional differences as between the other two successive 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 separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, 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 separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519, and NAICS 811212), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). More recently SBA adopted common size standards for some of the industries in NAICS Sector 54, Professional, Scientific and Technical services (77 FR 7490 (February 10, 2012)) and NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)).

In NAICS Sector 11, currently all industries in NAICS Subsector 114 (Fishing, Hunting, and Trapping) and all industries (except for two sub-industries under NAICS 115310) within NAICS Industry Subsector 115 (Support Activities for Agriculture and Forestry) have common size standards. However, in this proposed rule, based on characteristics of individual industries, SBA proposes different size standards for some of the industries in those Subsectors. Whenever SBA proposes a common size standard for closely related industries it will provide its justification.

Evaluation of Industry Structure

SBA evaluated all industries and two sub-industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, with the exceptions of NAICS 113310 (Logging) and those industries for which their size standards were determined by statute, 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 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's 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 are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The proposed new size standard is 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, Average Characteristics of Receipts Based Comparison Groups, shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Average firm size ($ million)		Average assets size ($ million)	Four-firm concentration ratio (%)	Average receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* 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, Average Characteristics of Receipts Based Comparison Groups, 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, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. 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, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, 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's ''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. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors and Supported Size Standards 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 average receipts size ($ million)	*Or if* weighted average receipts size ($ million)	*Or if* average assets size ($ million)	*Or if* average receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then implied size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several 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 more 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 may 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 for incorporating the Federal contracting factor in its size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market that SBA should consider.

Only one industry in NAICS Sector 11, NAICS 115310 (Support Activities for Agriculture and Forestry), averaged $100 million or more annually in Federal contracting during the period of fiscal years 2008–2010. However, since the Federal contracting factor was not 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), no size standard was computed for that industry (including two sub-industries under it) based on Federal contracting factor.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), below, shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry 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 only if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, SBA does not estimate a 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 four largest firms together with a size standard based on that average. As stated earlier, since Federal contracting factor was not significant for any of industries and sub-industries in NAICS Sector 11 that are reviewed in this proposed rule, no size standard was estimated for that factor in column 8. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''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 FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS code/NAICS industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
112112	$1.0	$3.6	$0.6	3.7	$276.4	$0.732			
Cattle Feedlots	5.0	5.0	5.0			14.0		7.0	2.0
112310	0.2	1.4	0.1	4.0	74.8	0.848			
Chicken Egg Production	5.0	5.0	5.0			30.0		14.0	12.5
113110	1.8	9.1	1.7	24.0	45.6	0.726			
Timber Tract Operations	10.0	5.0	14.0			14.0		10.0	7.0
113210	2.0	21.7		54.0	47.4	0.755			
Forest Nurseries and Gathering of Forest Products	10.0	7.0			5.0	19.0		10.0	7.0
114111	1.6	44.8	1.4	29.0	130.7	0.802			
Finfish Fishing	10.0	14.0	14.0			25.5		19.0	4.0
114112	0.6	13.2	0.4	24.0	32.6	0.618			
Shellfish Fishing	5.0	5.0	5.0			5.0		5.0	4.0
114119	2.9	9.3		88.0	9.0	0.573			
Other Marine Fishing	19.0	5.0			5.0	5.0		7.0	4.0
114210	0.7	17.2		48.0	27.1	0.661			
Hunting and Trapping	5.0	7.0			5.0	5.0		5.0	4.0
115111	2.2	5.1	1.9	12.0	17.1	0.498			
Cotton Ginning	14.0	5.0	19.0			5.0		10.0	7.0
115112	1.2	8.6	0.7	14.0	84.9	0.641			
Soil Preparation, Planting, and Cultivating	7.0	5.0	5.0			5.0		5.0	7.0
115113	1.5	8.4	0.7	19.0	21.2	0.689			
Crop Harvesting, Primarily by Machine	7.0	5.0	7.0			7.0		7.0	7.0
115114	6.5	29.6	3.9	21.0	286.1	0.745			
Postharvest Crop Activities (Except Cotton Ginning)	35.5	10.0	35.5			14.0		25.5	7.0
115115	2.0	35.9		29.0	60.8	0.735			
Farm Labor Contractors and Crew Leaders	10.0	10.0				14.0		14.0	7.0
115116	1.0	7.7				0.682			
Farm Management Services	5.0	5.0				5.0		5.0	7.0
115210	0.6	11.3	0.3	15.0	90.2	0.611			
Support Activities for Animal Production	5.0	5.0	5.0			5.0		5.0	7.0
115310	0.9	8.4		18.0	66.2	0.672			
Support Activities for Forestry	5.0	5.0				5.0		5.0	7.0
Except,	0.6	4.7	0.3	16.0	13.5	0.657			

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

[Millions of dollars]

NAICS code/NAICS industry title (1)	Simple average firm size ($ million) (2)	Weighted average firm size ($ million) (3)	Average assets size ($ million) (4)	Four-firm ratio (%) (5)	Four-firm average size ($million) (6)	Gini coefficient (7)	Federal contract factor (%) (8)	Calculated size standard ($ million) (9)	Current size standard ($ million) (10)
Forest Fire Suppression and Fuels Management Services	5.0	5.0	5.0	....	....	5.0	....	5.0	17.5

Special Considerations: Forest Fire Suppression and Fuels Management Services

The Forest Fire Suppression and Fuels Management Services are sub-industry categories (or ''exceptions'') under NAICS 115310 (Support Activities for Forestry) with a size standard of $17.5 million in average annual receipts. In 2003, SBA established a different size standard for these activities (*see* 68 FR 33348 (June 4, 2003)). Data from the Census Bureau's and NASS' special tabulation are limited to the 6-digit NAICS industry level, and hence, do not provide separate data at the sub-industry level. As such, SBA relied upon data from other sources to evaluate the current $17.5 million size standard for both sub-industries.

Firms engaged in the Forest Fire Suppression and Fuels Management Services sub-industries were identified from contracting activity reported in FPDS–NG during fiscal years 2008–2010. The contracts for Forest Fire Suppression and Fuels Management Services can be identified as those classified within NAICS 115310 and by the Product Service Code (PSCs) F003 (Natural Resources/Conservation-Forest-Range Fire Suppression/Presuppression). SBA also looked at contract data from the USDA Forest Service National Interagency Fire Center (*http://www.fs.fed.us/fire/contracting/* and *http://www.fs.fed.us/business/incident/vipr.php*). Finally, SBA evaluated the description of the requirements of the contracts for the Forest Fire Suppression and Fuels Management Services in FPDS–NG, which allowed the Agency to identify principal activities related to forest fire suppression and fuel management services and to differentiate them from other supporting activities. SBA identified activities associated with specialized crews, equipment and engines with trained personnel that are critical to perform the tasks of suppressing or managing fires as principal activities and other activities, such as leases of equipment, machinery and transportation vehicles, or provision of services that do not require specialize personnel or special training as supporting activities. Since most firms involved in Fire Suppression Services were also found to be involved in Fuel Management Services and vice versa, SBA analyzed them together as one group.

Finally, SBA obtained receipts and employment data for the fiscal years 2008–2010 from the Central Contractor Registration (CCR) for the firms that it identified from the FPDS–NG to develop the size standards evaluation factors. Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), above, shows the results from the analysis of these sub-industries, which supported a $5.0 million size standard as compared to the current $17.5 million. SBA believes that the results reflect decreases in numbers of forest fires and consequent reductions in payments (revenues) to contractors during fiscal years 2008–2010 as compared to prior years. Given the inherent uncertainty of occurrences of forest fires, SBA believes that contracting officers need flexibility to hire small businesses, especially in the worst case scenario. In a very active fire season, size of payments can easily support the $17.5 million size standard for Fire Suppression Services. With this reality in mind, SBA proposes to retain the current $17.5 size standard and seeks comments on this proposal.

Evaluation of SBA's Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on its loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Programs data for fiscal years 2008–2010 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data showed that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting reviewed in this proposed rule, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 4, Summary of Size Standards Analysis, below, summarizes the results of SBA's analyses from Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars). The results might support increases in size standards for 11 industries, decreases for four industries and two sub-industries and no change for one industry.

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS Code	NAICS Industry title	Current size standard ($ million)	Calculated size standard ($ million)
112112	Cattle Feedlots	$2.0	$7.0
1123106	Chicken Egg Production	12.5	14.0
113110s	Timber Tract Operations	7.0	10.0

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS Code	NAICS Industry title	Current size standard ($ million)	Calculated size standard ($ million)
113210	Forest Nurseries and Gathering of Forest Products	7.0	10.0
114111	Finfish Fishing	4.0	19.0
114112	Shellfish Fishing	4.0	5.0
114119	Other Marine Fishing	4.0	7.0
114210	Hunting and Trapping	4.0	5.0
115111	Cotton Ginning	7.0	10.0
115112	Soil Preparation, Planting, and Cultivating	7.0	5.0
115113	Crop Harvesting, Primarily by Machine	7.0	7.0
115114	Postharvest Crop Activities (Except Cotton Ginning)	7.0	25.5
115115	Farm Labor Contractors and Crew Leaders	7.0	14.0
115116	Farm Management Services	7.0	5.0
115210	Support Activities for Animal Production	7.0	5.0
115310	Support Activities for Forestry	7.0	5.0
Except,	Forest Fire Suppression	17.5	5.0
Except,	Fuels Management Services	17.5	5.0

However, SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since before World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law 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 is still high at 8.2 percent in June 2012 and is forecast to remain around this level at least through the end of 2012. In addition, the unemployment rate by industry and class of worker in June 2012 showed the agricultural workers facing one of the worst unemployment rates (8.4%) in the Nation.

Recently, Congress passed and the President signed the 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; includes 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. A proposal to reduce size standards will have an immediate impact on jobs, and it would be contrary to the expressed will of the President and the Congress.

Lowering size standards would decrease the number of firms that participate in Federal financial and procurement assistance programs for small businesses. It would also affect small businesses that are now exempt or receive some form of relief from other Federal regulations that use SBA's size standards. That impact could take the form of increased fees, paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. In industries and sub-industries reviewed in this proposed rule, about 70 businesses would lose their small business eligibility if size standards were lowered based solely on analytical results. That would run counter to what SBA and the Federal government are doing to help small businesses and create jobs. 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 does not intend to reduce size standards for any industries. Accordingly, for industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards.

Furthermore, as stated previously, the Small Business Act requires the SBA's Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant factors when establishing small business size standards. SBA nevertheless 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.

As discussed above, lowering small business size standards is inconsistent with what the Federal government is doing to stimulate the economy and would discourage job growth for which Congress established the Recovery Act and Jobs Act. In addition, it would be inconsistent with the Small Business Act requiring the Administrator to establish size standards based on industry analysis and other relevant factors such as current economic conditions. Thus, SBA proposes to increase size standards for 10 industries and retain the current size standards for six industries and two sub-industries in NAICS Sector 11 that are reviewed in this rule. The SBA's proposed increases are in Table 5, Summary of Proposed Size Standards Revisions, below.

In addition, retaining current standards when the analytical results suggested lowering them 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) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency' recently published proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) for NAICS Sector 54, Professional, Technical, and Scientific Services, propose rule (76 FR 27935 (May 13, 2011)) and final rule (77 FR 10943 (February 24, 2012)) for NAICS Sector 48–49, Transportation and

Warehousing, and proposed rules for NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)), NAICS Sector 62, Health Care and Social Assistance (77 FR 11001 (February 24, 2012)), NAICS Sector 71, Arts, Entertainment and Recreation (forthcoming), and NAICS Sector 23, Construction (forthcoming). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule.

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS Code	NAICS Industry title	Current size standard ($ million)	Proposed size standard $ million)
112112	Cattle Feedlots	$2.0	$7.0
112310	Chicken Egg Production	12.5	14.0
113110	Timber tract Operations	7.0	10.0
113210	Forest Nurseries and Gathering of Forest products	7.0	10.0
114111	Finfish Fishing	4.0	19.0
114112	Shellfish Fishing	4.0	5.0
114119	Other Marine Fishing	4.0	7.0
114210	Hunting and trapping	4.0	5.0
115111	Cotton Ginning	7.0	10.0
115114	Postharvest Crop Activities (Except Cotton Ginning)	7.0	25.5
115115	Farm Labor Contractors and Crew Leaders	7.0	14.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, for which it has proposed to increase size standards in this proposed rule, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, if adopted, the small business share of total industry receipts among those industries is, in average, 2.9 percent, with an interval showing a minimum of 0.02 percent to a maximum of 17.0 percent. These market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether this is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether SBA's proposal to increase size standards for 11 industries and retain current size standards for five industries and two sub-industries (within NAICS 115310, Support Activities for Forestry) within NAICS Sector 11 is appropriate, given the economic characteristics of each industry reviewed in this proposed rule. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA has proposed to retain the current size standards for four industries and two sub-industries for which its analysis would support lowering them. SBA seeks comments on whether SBA should lower them solely based on its analysis or retain them at their current levels in view of current economic conditions.

4. SBA's proposed size standards are based on five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and, the level and small business share of Federal contracting dollars of the evaluated industries. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than what it uses, if available.

5. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving 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 suggested weights for each factor along with supporting information.

6. For analyzing the Forest Fire Suppression and Fuel Management Services size standard, two sub-industries (''exception'') within NAICS 115310, SBA used PSC F003 within NAICS 115310 to identify contracting activity reported in FPDS–NG, and firms in the Forest Fire Suppression and Fuel Management Services sub-industry during fiscal years 2008–2010. Using the receipts and employment data for those identified firms from CCR, SBA analyzed the industry factors for these sub-industries. SBA seeks suggestions or comments on the use of the data sources and its proposal to retain the current $17.5 million size standard for them even if the analysis supported lowering it to $5 million. SBA is also interested in comments on the elimination of the Forest Fire Suppression and Fuel Management Services as ''exceptions'' to NAICS 115310, and the application of the same size standard for them as for the rest of NAICS 115310. Comments on applying the same NAICS 115310 size standard for Forest Fire Suppression and Fuel Management Services should address why the same size standard is more suitable than separate size standards for Forest Fire Suppression and Fuel management Services sub-industry size standard or why Forest Fire Suppression and Fuel management Services firms should continue to be treated as separate activities from the rest of NAICS 115310 for SBA's size standards purposes.

7. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard

methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and its proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, 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, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. In order to help explain the need of this rule and the rule's potential benefits and costs, SBA is providing a Cost Benefit Analysis in this section of the rule. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards revisions in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, will better reflect the economic characteristics of small businesses in this Sector and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary 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 proposed rule is gaining or retaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide 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 businesses (SDVOSB). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that in 11 industries in NAICS Sector 11 for which it has proposed to increase size standards more than 7,500 firms, not small under the existing size standards, will become small under the proposed size standards and therefore become eligible for these programs. That is about 17 percent of all firms classified as small under the current size standards in all industries reviewed in this proposed rule. If adopted as proposed, this will increase the small business share of total receipts in those industries from 78.4 percent to 79.1 percent.

Three groups will benefit from the proposed size standards revisions in this rule, if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them 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 enabling them 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.

SBA estimates that firms gaining small business status under the proposed size standards could receive Federal contracts totaling $7 million to $12 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008–2010 data, SBA estimates up to about 32 SBA's 7(a) and 504 loans totaling about $7.0 million could be made to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact.

In addition, newly defined small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal government.

To the extent that those 7,500 newly defined additional small firms could become active in Federal procurement programs, the proposed changes to size standards, if adopted, may entail some additional administrative costs to the government as a result of more businesses being eligible for Federal small business programs. For example, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration (CCR)'s Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses only rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The proposed size standards revisions, if adopted, may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, some businesses defined small under the current size standards may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the proposed size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The proposed revisions to the existing size standards for 11 industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

Descriptions of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its size standards methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with a number of industry groups and individual businesses to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, 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's size standards and whether current size 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 size standards in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive 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 were 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 no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires 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

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

Executive Order 13132

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

Paperwork Reduction Act

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

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

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

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

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sector 11. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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

If the proposed rule is adopted in its present form, SBA estimates that more than 7,500 additional firms will become small because of increased size standards seven industries in NAICS Sector 11. That represents 17 percent of total firms that are small under current size standards in all industries reviewed by SBA within that Sector. This will result in an increase in the small business share of total industry receipts for the Sector from 78.4 percent under the current size standards to 79.1 percent under the proposed size standards. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards 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 exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

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

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. However, there are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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 to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act 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 law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

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 part 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), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''112112'', ''112310'', ''113110'', ''113210'', ''114111'', ''114112'', ''114119'', ''114210'', ''115111'', ''115114'', and ''115115'' to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * *	* * *	*	
112112	Cattle Feedlots	$7.0	
* * *	* * *	*	
112310	Chicken Egg Production	14.0	
* * *	* * *	*	
113110	Timber Tract Operations	10.0	
113210	Forest Nurseries and Gathering of Forest Products	10.0	
* * *	* * *	*	
114111	Finfish Fishing	19.0	
114112	Shellfish Fishing	5.0	
114119	Other Marine Fishing	7.0	
114210	Hunting and Trapping	5.0	
115111	Cotton Ginning	10.0	
* * *	* * *	*	
115114	Postharvest Crop Activities (except Cotton Ginning)	25.5	
115115	Farm Labor Contractors and Crew Leaders	14.0	
* * *	* * *	*	

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Dated: June 22, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–22259 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0932; Directorate Identifier 2012–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The. This proposed AD was prompted by a report that during a test of the oxygen system, an operator found that the passenger oxygen masks did not properly flow oxygen, and that a loud noise occurred in the overhead area, which was caused by the flex line separating from the hard line due to a missing clamshell coupler. This proposed AD would require, for certain airplanes, performing a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, and corrective actions if necessary. For all airplanes, this proposed AD would require performing and meeting the requirements of the low pressure leak test. We are proposing this AD to prevent the oxygen system flex line from separating from the hard line, which could cause an oxygen leak and a drop in the oxygen system pressure, resulting in improper flow of oxygen through the passenger masks and injury to passengers if emergency oxygen is needed.

DATES: We must receive comments on this proposed AD by October 26, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be