SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG07

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

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing 37 small business size standards for 34 industries and three sub-industries (''exceptions'' in SBA's table of small business size standards) in North American Industry Classification System (NAICS) Sector 54, Professional, Technical, and Scientific Services. SBA is also increasing the one size standard in NAICS Sector 81, Other Services, which it did not review in 2010. These size standards are all receipts based. SBA is retaining the current standards for the remaining industries in NAICS Sector 54. This rule also removes ''Map Drafting'' as the ''exception'' to NAICS 541340, Drafting Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated every receipts based size standard in NAICS Sector 54 as well as the one previously unreviewed size standard in NAICS Sector 81 to determine whether the existing standards should be retained or revised.

DATES: This rule is effective March 12, 2012.

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SUPPLEMENTARY INFORMATION:

Supplementary Information

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. At the start of the current comprehensive size standards review, SBA's size standards consisted of 41 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities (or ''exceptions''). Of these size levels, 31 were based on average annual receipts, seven were based on number of employees, and three were 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, in particular, that they do not reflect changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were 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 latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review 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 determine whether existing size standards have supportable bases relative to the current data, and where necessary, to revise current size standards.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240. 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 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 is reviewing a group of related industries on a Sector by Sector basis.

As part of SBA's ongoing comprehensive review of size standards, the Agency reviewed all receipts based small business size standards in NAICS Sector 54, Professional, Technical, and Scientific Services, and one size standard in NAICS Sector 81, Other Services, to determine whether they should be retained or revised. SBA published a proposed rule for public comment in the **Federal Register** on March 16, 2011 (76 FR 14323), which proposed to increase the size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81. The proposed rule and this final rule concern only NAICS 811212, Computer and Office Machine Repair and Maintenance, in NAICS Sector 81. When SBA reviewed the size standards for NAICS Sector 81, it advised the public that it would review NAICS 811212 when it reviewed the receipts based size standards for NAICS Sector 54 because this industry shares a common size standard with computer-related services in that Sector.

SBA has 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 included it as a supporting document in the electronic docket of the March 16, 2011 proposed rule at *www.regulations.gov,* Docket ID SBA–2009–0008, posted October 31, 2009.

As described in the proposed rule, when it evaluates an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size), the level and small business share of Federal contracts within the industry, the potential impact on SBA financial assistance programs, and dominance in the field of operations. SBA analyzed the characteristics of all industries with receipts based size standards in NAICS Sector 54 and one industry in NAICS Sector 81 mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (which is the latest available data). SBA evaluated Federal contracting activities in those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. To evaluate the impact of proposed changes to size standards on its loan programs, SBA analyzed its internal data on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the March 16, 2011 proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review, and modify where necessary, the existing receipts based standards in NAICS Sector 54 and one size standard in NAICS Sector 81. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology due to the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

In the proposed rule, SBA proposed to increase receipts based size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81, based on its analyses of the latest industry data, Federal procurement data, and other relevant data. Although SBA's analyses suggested lowering the existing size standards for some industries, SBA believes, as the proposed rule pointed out, that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency and the Federal Government are doing to help small businesses and to create jobs.

The decision to not lower size standards is consistent with SBA's final rules covering NAICS Sector 44–45, Retail Trade (75 FR 61597, October 6, 2010); NAICS Sector 72, Accommodation and Food Services (75 FR 61604, October 6, 2010); and Sector 81, Other Services (75 FR 61591, October 6, 2010). In each of those final rules, SBA adopted its proposal not to reduce any size standards for the same reasons it provided in the March 16, 2011 proposed rule. Therefore, SBA proposed to retain the existing size standards when its analysis suggested lowering them.

Summary of Comments

SBA sought comments on its proposal to increase size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81 and to retain the existing size standards for the remaining industries in NAICS Sector 54. SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for several Industry Groups in NAICS Sector 54. SBA received 1,426 public comments to the proposed rule. Many of them were duplicative and/or from the same individual. Below is a discussion of the issues and concerns the commenters raised and SBA's responses.

General Summary of Comments

SBA received 1,426 comments on the proposed rule from about 1,320 unique members of the public representing individuals, about 850 firms, and a dozen trade groups and professional associations. Ninety-five percent of the comments applied to industries covered by the proposed rule, about three percent did not reference any NAICS codes, and the remainder related to other Industries or Sectors. Of the total comments that related to SBA's proposed revisions to the size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81, 30 percent supported SBA's proposed revisions, 53 percent opposed the proposed revisions, and 12 percent supported SBA's effort to increase size standards but recommended smaller increases. The rest of the comments remained neutral, took other positions, or raised other related issues.

Commenters supporting SBA's proposed increases in size standards believed that higher size standards will enable small businesses to grow and be able to compete fully and openly in the Federal market, effectively compete against largest firms in their industries for Federal contracts, retain or regain small business size eligibility for Federal assistance, and successfully perform and meet size and other requirements associated with Federal contracts. Many also believed higher size standards would expand the pool of qualified small businesses, allowing Federal agencies to meet their needs and for large prime contractors to meet small business subcontracting goals. Many commenters, especially those in the architectural and engineering (A&E) area, felt that current size standards are too low and should be increased given the changes in industry structure and the Federal marketplace. Many supporting the proposed $19 million size standard for the A&E group believed increased utilization of subcontracting and inflation also warranted an increase.

Most commenters opposing the proposed rule believed that small businesses under the current size standards would face adverse competition with the newly defined small businesses under the proposed increases. Many contended that if the proposed increases are adopted, an exorbitant percentage of businesses, including many mid-sized and large businesses, will qualify as small, thereby increasing competition for small business opportunities in the Federal market. Many others also felt that the proposed size standards do not reflect ''what is truly small.'' Many commenters in architectural and landscape architectural services pointed out that a vast majority of firms either operate as sole proprietors or have fewer than 20 employees and do not need a higher size standard.

Commenters' positions on SBA's proposed revisions to size standards varied significantly by industry categories, with an overwhelming majority of comments opposing SBA's proposed increases to size standards for NAICS 541310 (Architectural Services) and NAICS 541320 (Landscape Architectural Services) and the majority of comments supporting SBA's proposed increases to size standards for most other industries. Additionally, several commenters also provided feedback on SBA's size standards methodology and data sources it used, as well as various issues with Federal procurements. These results are summarized below by industry and type of issues.

Detailed Summary of Comments by Industry/Industry Group

NAICS Industry Group 5411—Legal Services

SBA received only one comment opposing the proposed increase in size standards for all industries in NAICS Industry Group 5411 from $7 million to $10 million in average annual revenues. Since the commenter provided no explanation or specific information for opposing the proposed increase, SBA is adopting its proposed $10 million common size standard for all industries within in NAICS Industry Group 5411.

NAICS Industry Group 5412—Accounting, Tax Preparation, Bookkeeping, and Payroll Services

NAICS Industry Group 5412 received 10 comments, including four at the 4-digit level (*i.e.,* no specific industries were identified at the 6-digit NAICS level), four for NAICS 541211 (Offices of

Certified Public Accounts), one for NAICS 541213 (Tax Preparation Services), and one for NAICS 541219 (Other Accounting Services). All comments on NAICS 541211, NAICS 541213, and NAICS 541219 supported SBA's effort to increase the current size standards but recommended $25.5 million, a much larger increase than SBA's proposed $14 million.

SBA received comments concerning its proposed size standards for NAICS 541211 (Offices of Certified Public Accountants) and NAICS 541219 (Other Accounting Services) from two associations representing the accounting profession, including one which testified on the May 5, 2011 hearing entitled ''Professional Services: Proposed Changes to the Small Business Size Standards'' before the Subcommittee on Economic Growth, Tax and Capital Access of the U.S. House Committee on Small Business. The association that testified before Congress submitted a copy of its congressional testimony as its public comments on the proposed rule. In the testimony, the association indicated that it was ''evident that the source data referenced above [*i.e.,* SBA's sources] used in this calculation did not adequately reflect the accounting profession.'' The association also provided SBA with additional data, including the estimated values from the results of industry surveys, covering accounting firms of all sizes. SBA had previously met with representatives from both associations regarding the standards for these industries, without discussing what changes the Agency was considering to propose. SBA explained its size standards methodology and indicated its openness to considering other data and information that the associations might have to support the size standard they suggested. Because the two sets of comments were very similar, SBA will discuss them together, below.

The associations concluded that the substitution of their data in SBA's calculations would support a $19 million size standard for NAICS 541211 and NAICS 541219. However, they proposed that SBA adopt a $25.5 million size standard to account for secondary factors related to changes in Federal procurement policies and practices, including contract bundling and larger Federal contracts.

The primary factors underlying the associations' support of a $19 million size standard for these two industries were their recalculations of the four-firm concentration ratio and Gini coefficient values using their data. Under SBA's analysis based on the 2007 Economic Census, the proposed $14 million size standard did not include the four-firm concentration ratio because it was calculated to be less than 40 percent. However, the associations' calculations resulted in a four-firm concentration ratio higher than 40 percent, supporting a higher $19 million size standard for that factor. Likewise, SBA's calculations of the Gini coefficient value supported a $10 million size standard, whereas the associations obtained a higher Gini coefficient value that supported a $19 million size standard.

SBA had proposed a $14 million common size standard for all industries in NAICS Industry Group 5412, including NAICS 541211 and NAICS 541219. The associations suggested that, based on their data alone, the size standards for those industries should be $19 million. However, as stated above, the associations recommended that the size standard be increased to $25.5 million, in consideration of secondary factors affecting the ability of small accounting firms to compete for Federal contracts. They commented that the $25.5 million size standard would enable small accounting firms to grow and build expertise and infrastructure to be able to meet the requirements for today's larger Federal contracts. The associations pointed out that there are fewer than 30 accounting firms with average annual revenues between $19 million and $25.5 million. They also noted that a firm at the $19 million revenue level is comparable to a firm at the $25 million revenue level in terms of the number of professionals it employs, suggesting that such firms are similarly capable to compete for and perform Federal contracts.

SBA gave due consideration to the analytical results and secondary factors that the associations presented. Despite having some concerns with their data (as discussed elsewhere in this rule), SBA generally accepts their findings and characterizations of the Federal marketplace, which seem to support a size standard higher than the proposed $14 million size standard for those industries. However, SBA is concerned that the $25.5 million size standard could put many small accounting firms at a significant competitive disadvantage for contracting opportunities, while benefiting only a limited number of relatively larger firms. Accordingly, SBA is adopting $19 million as the appropriate size standard for NAICS 541211 and NAICS 541219. To be consistent with its proposal to use a common size standard for all industries in NAICS Industry Group 5412, SBA is also adopting the same $19 million size standard for the remaining two industries in the Group (NAICS 541213 and NAICS 541214).

NAICS Industry Group 5413—Architectural, Engineering, and Related Services

SBA proposed a $19 million common size standard for all industries in NAICS Industry Group 5413 based on its evaluation of industry and Federal procurement factors for the entire Architectural and Engineering (A&E) group and its interest in maintaining the common size standard that is currently in place for most industries in the industry group. SBA received more than 1,200 comments on NAICS Industry Group 5413, of which 60 percent applied to NAICS 541310 (Architectural Services), nearly 20 percent to NAICS 541330 (Engineering Services), six percent to NAICS 541320 (Landscape Architectural Services), and seven percent to other A&E industries at the 6-digit level. The remaining seven percent were limited to NAICS Industry Group 5413 as a group. SBA discusses the results by NAICS industry below.

NAICS 541310—Architectural Services; and NAICS 541320—Landscape Architectural Services

SBA is increasing the current $4.5 million size standard to $7 million for NAICS 541310 (Architectural Services) and retaining the current $7 million size standard for NAICS 541320 (Landscape Architectural Services). In response to the comments, SBA re-evaluated its proposal and determined that industry specific size standards that are lower than proposed are more appropriate for these industries.

Of the 1,426 public comments that SBA received, over one-half addressed SBA's proposed $19 million standard for these two industries. In general, commenters overwhelmingly opposed the proposed increases, and many offered alternatives. Two associations, one representing NAICS 541310 (Architectural Services) and the other representing NAICS 541320 (Landscape Architectural Services), were among the commenters. However, the number of supportive comments was not insignificant, and many of them opposed the position of the associations representing architectural firms.

Of the comments that applied to NAICS 541310 (about 735 in total), 87 percent opposed SBA's proposal to increase the size standard to $19 million, mostly arguing in support of the current $4.5 million. Only about six percent supported $19 million as proposed, while six percent supported a smaller increase. Several commenters supporting the smaller increase recommended, as an alternative to SBA's proposed $19 million, size standards ranging from $5 million to $14 million and averaging about $8 million.

Similarly, of the comments concerning NAICS 541320 (about 70 in total), 78 percent opposed SBA's proposal to increase the size standard for this industry, mostly in support of the existing $7 million size standard and some suggesting to lower it. Of the 14 comments that supported an increase, half supported the proposed increase to $19 million, while the other half supported a smaller increase. A few provided alternative size standards, ranging from $8.5 million to $14 million and averaging about $11 million.

SBA proposed a $19 million size standard to be consistent with its past use of a common size standard for several industries within NAICS Industry Group 5413, including NAICS 541310 and NAICS 541320. SBA acknowledges that the industry specific data did not necessarily support the proposed $19 million size standard for these individual industries, but SBA proposed that level in the interest of maintaining a common size standard for industries in NAICS Industry Group 5413. In its 1999 final rule (64 FR 26275), SBA adopted a common standard for these industries in response comments it received to its earlier proposed rule (63 FR 5480). In its March 16, 2011 proposed rule, SBA proposed continuing that practice.

Several commenters on NAICS 541310 (Architectural Services) and NAICS 541330 (Engineering Services) noted that each of these two industries is very distinct and stated that SBA should not use a common size standard for them. They noted that significant differences between these industries in terms of their primary industry factors, such as average firm size and distribution of firms as reflected in the Gini coefficient, do not support using a common size standard for them.

An architectural industry association pointed out that SBA's view of most firms being multi-disciplinary "does not match the reality of smaller architecture groups." The association stated that small firms do not have engineers or other specialties on their payroll until they are quite substantial in size. Rather, the smaller architectural firms subcontract those services to others. The association stated that average billings for firms with up to 35 employees are under $5 million. A landscape architectural association indicated that SBA's proposed $19 million was not an accurate reflection of the industry's receipts and recommended that SBA retain the current $7 million size standard. It urged SBA to target its analysis to this industry alone and not include it in the $19 million common size standard that it proposed for the other industries in the A&E group.

Generally, those who supported SBA's proposed increases for NAICS 541310 and NAICS 541320 indicated that, if adopted, firms in these industries would be able to grow and develop in the open market, compete against larger businesses, transition from small to the next level of entrepreneurship, perform on larger Federal contracts, and retain or regain their small business size status. These reasons are pertinent to why SBA should increase the size standards for these industries. Nevertheless, based on the Agency's reexamination of the industry and Federal procurement data in conjunction with its evaluation of public comments, SBA does not believe it should increase the size standards for these industries to the level it proposed. In fact, industry specific data do not support anything higher than the $7 million size standard for NAICS 541310. Because SBA is not adopting the proposed $19 million common A&E size standard for these industries, it is adopting the size standards that it derived based on industry specific and on the other relevant data as described in the proposed rule.

Generally, those who opposed SBA's proposed increases to the size standards for NAICS 541310 and NAICS 541320 indicated that, if adopted, these standards would define too many companies as small, create adverse competition from the newly defined small businesses, include mid-sized and large businesses as small, include dominant firms, and not represent "truly small" firms (addressed elsewhere in this rule). A number of comments recommended that SBA should apply industry specific size standards rather than including these industries under the $19 million proposed common size standard, and that SBA should analyze alternative industry data provided by the relevant associations. Many commenters pointed out that the architectural industries are economically depressed and stated that the current size standards ($4.5 million for NAICS 541310 and $7 million for NAICS 541320) are already too high. A substantial number of comments supported their respective association's position to oppose SBA's proposal.

Industry factors and other relevant data that SBA used for the March 16, 2011 proposed rule support a $7 million size standard for NAICS 541310 (which is an increase from the current $4.5 million size standard) and a $5 million size standard for NAICS 541320 (which is lower than the current $7 million size standard). The proposed rule stated that SBA will not lower any small business size standards because if it did so, some existing small businesses could lose their eligibility, which would be counter-productive in the current economic climate. Therefore, SBA is retaining the current $7 million size standard for NAICS 541320.

Several individual comments and the architectural industry association suggested that SBA explore ways to modify its definition of receipts to allow for the exclusion of amounts paid to third-party subcontractors (referred to as "pass throughs"). The association indicated that many of its members report they "pay between 15–50 percent of their receipts to third-party subcontractor [sic]." SBA addresses this issue elsewhere in this rule. To summarize, SBA does not allow for the exclusion of "pass throughs" because they are part of the usual and customary costs of doing business. SBA acknowledges that the architectural industry and other industries may have substantial subcontracting costs, and as such, SBA considers "pass throughs," and other similar factors, as secondary factors when it establishes small business size standards. Specifically, SBA uses industry data from the 2007 Economic Census (discussed above), and that data, which firms report (under law) to the Census Bureau, include the firm's revenue, which includes those costs.

The architectural association also stated that about 80 percent of firms in its industry have fewer than 10 employees and requested that SBA consider using employees rather than receipts as a size standard to target smaller firms. SBA has previously taken this suggestion into consideration and has decided not to adopt it. In March 2004, SBA proposed a size standard of 50 employees and maximum annual receipts of $7 million (69 FR 13130). In that proposed rule, which covered nearly all industries including Architectural Services, SBA proposed to base all size standards on number of employees instead of annual receipts and other measures. In response, there were myriad and varied comments, mostly opposing the proposed rule. Thus, SBA withdrew the proposed rule in July 2004. Over the years, comments have generally supported receipts based size standards for service industries in the various Sectors, including NAICS Sector 54. Although SBA requested comments on whether employee based standards would be more appropriate for certain industries in NAICS Sector 54, there were not many commenters supporting such a change.

The association also requested SBA to consider developing a ''micro-metric'' for the architectural industry. A number of individual commenters also recommended that SBA consider creating a ''micro-business'' category to target Federal assistance to ''truly small'' businesses. The Small Business Act gives SBA's Administrator the authority to determine what constitutes a small business concern for Federal government programs, but the Act does not provide for definitions other than small. The Small Business Competitiveness Demonstration (CompDemo) Program provided for an Emerging Small Business (ESB) category, under which an ESB concern was one that was at or below half the size standard for its industry, and it applied to architectural firms. However, the Jobs Act terminated the CompDemo Program, effective September 27, 2010. Public Law 111–240, sec. 1335 (Sept. 27, 2010).

SBA believes that the size standards that it is adopting will allow small architectural firms to grow without having to compete with very large businesses. Although the revised size standards may redefine about 600 currently large (''other than small'') firms as small, this represents only 2.5 percent of total firms in NAICS 541310. In addition, these size standards will allow Federal agencies to set aside more contracts for small business concerns. Prior to the repeal of the CompDemo Program, firms in the architectural and engineering services industries were effectively competing in the open market, because most contracts were ''full and open.'' Small business set-asides were only required when an agency participating in the CompDemo Program did not meet its small business goals. With the adoption of these size standards, combined with the repeal of the CompDemo Program, SBA believes there will be more set-asides contracts for more small businesses.

NAICS 541330—Engineering Services

SBA received about 240 comments on NAICS 541330 (Engineering Services). More than 60 percent fully supported the proposed increase in the size standard from $4.5 million to $19 million. Another 16 percent supported a smaller increase than proposed by SBA. About 12 percent opposed the $19 million proposed size standard in support of the current size standard of $4.5 million, while 11 percent took other positions. Several of those who supported a size standard lower than SBA's proposed $19 million but higher than the current $4.5 million provided alternative size standards, ranging from $6.5 million to $12.5 million and averaging about $10 million.

One commenter strongly supported SBA's proposal to increase the size standard for NAICS 541330 from $4.5 million to $19 million. The comment indicated that under the current size standard, small businesses are only able to perform a small portion of work under the set-aside contracts they are awarded and need to subcontract the majority of the work, often to large businesses, which defeats the very intent of the small business program. The comment also indicated that engineering firms in the $5 million to $15 million revenue range have very limited opportunities to compete effectively for Federal contracts in full and open competition, although they have the best qualifications, in terms of complexity and scope, to meet the requirements of Federal contracts for professional services. The commenter believed that the higher size standard will enable a larger pool of small businesses to participate in the Federal market as prime contractors and to perform the majority of small business set-aside contracts by themselves. The commenter further stated that the proposed $19 million size standard for engineering services will enable more small businesses to participate in more complex and larger Indefinite Delivery Indefinite Quantity (IDIQ) multiple award contracts (MACs). The comment pointed out that businesses that exceed the $4.5 million size standard by a small margin lack the capabilities to effectively compete with large firms with thousands of employees. SBA generally agrees with this comment and based on its reevaluation of data and comments on the proposed rule, the Agency has decided to increase the size standard for NAICS 541330 to $14 million.

Another commenter supportive of the proposed increase noted that the improvement in national infrastructure will be the key to job creation and long-term economic growth, and this effort will require the professional services of architects, engineers, surveyors, *etc.* However, under the current $4.5 million size standard, many small businesses cannot participate in Federally funded projects. Upon graduation, firms with $5 million in revenue are forced to compete with firms that are much larger than they are. Thus, under the current size standard, it is mostly the large firms with hundreds of millions of dollars in revenue and thousands of employees that benefit. Large prime contractors are required to subcontract a portion of a Federal contract to small businesses. Thus, once they exceed the current size standard, small businesses lose teaming and subcontracting opportunities with large prime contractors. Relying on data from Engineering News Record regarding revenues for the largest architectural and engineering companies, the comment indicated that disparities in market share and average revenue between large firms and small firms have significantly increased in recent years, with the recent economic recession exacerbating this situation. The commenter pointed out that the average annual revenue of the top 100 engineering and design firms is about $650 million, and postured that since five percent of that value is $32.5 million, $19 million was an easily supportable size standard. According to the commenter, under the $19 million proposed size standard, there will be more opportunities for small businesses to grow and create jobs, and large businesses will have a larger and more talented pool of small businesses for their teaming and subcontracting needs. The commenter also noted that ''pass throughs'' (*i.e.,* fees and costs for supporting consultants) account for 35 percent of the gross revenues of architects, engineers and surveyors and suggested that SBA consider this factor when evaluating the size standard. The commenter believed that these ''pass throughs'' also warrant the proposed $19 million size standard. After exceeding the current size standard, many formerly small businesses are unable to compete with their larger counterparts, and thus are forced to be acquired by larger firms, which often results in job losses when redundant jobs are eliminated in the process. The commenter stated that SBA's proposed $19 million size standard will help small businesses overcome these challenges. The commenter believed that increasing the size standard to $19 million would not create a significant competitive disadvantage for firms below the current size standard. The commenter also believed that the proposed increase was supported by the fact that while most other size standards in NAICS Sector 54 had been increased over the years for inflation, the engineering, architectural, and surveying size standard often remained unchanged. SBA generally agrees with these arguments and based on its reevaluation of data and comments on the proposed rule, the Agency has decided to increase the size standard for NAICS 541330 to $14 million.

Another commenter believed that an increase to the current size standard was long overdue and strongly supported SBA's proposal to increase it to $19 million because this would allow small businesses to win larger and multiple multiyear IDIQ contracts, thereby allowing them to grow and become more competitive. According to the commenter, under the current $4.5 million size standard, a small business is unable to win several simultaneous IDIQ contracts in NAICS 541330 because just one or two such contracts would cause it to exceed the size standard. Once a small business exceeds the size standard, it is forced to compete with large companies with thousands of employees and significantly more resources. Thus, under the current size standard, small businesses are unable to develop the capabilities to meet the complex technical requirements for most IDIQ and other contracts under NAICS 541330. As such, the commenter supported the proposed $19 million size standard. Additionally, the commenter questioned the rationale underlying a higher $7 million size standard for interior designers and landscape architects and a lower $4.5 million size standard for architects and engineers. The commenter also pointed out that the proposed increase would expand the pool of qualified small businesses for Federal agencies to meet their small business contracting goals. SBA generally agrees with these points and based on public comments and reevaluation of relevant data, the Agency has adopted a $14 million size standard for NAICS 541330. SBA believes this higher size standard will expand Federal contracting opportunities for small businesses.

A national association representing nearly 5,500 engineering firms also commented on SBA's proposed $19 million size standard for NAICS 541330. While the association supported SBA's efforts to address the need to update the existing $4.5 million size standard, it recommended a more moderate increase to $10 million. It commented that the size standard should be increased to keep pace with inflation and to accommodate the need to provide services to the Federal government. However, the association expressed concern that SBA's proposed increase to $19 million was too high, citing various issues with the Economic Census and FPDS–NG data that SBA used in its evaluation (as discussed elsewhere in this rule) and the impact that a large increase in the size standard might have on the industry. Specifically, the association commented that the proposed $19 million size standard was too high based on the fact that the majority of its members are very small, with fewer than 30 employees.

However, a large percentage of firms have fewer than 30 employees for all industries in NAICS Sector 54. In fact, for most other professional services, the proportion of firms with fewer than 50 employees is much higher than for engineering services. For example, based on the 2007 Economic Census, 86 percent of firms in NAICS 541330 have fewer than 20 employees and 94 percent have fewer than 50 employees, compared to 94 percent and 97 percent, respectively, for all industries within NAICS Sector 54, most of which have much higher size standards than $4.5 million and some higher than $19 million.

In addition, the association expressed concerns that increasing the size standard from $4.5 million to $19 million would (1) provide a competitive advantage to larger firms over their truly small counterparts; (2) allow more than 90 percent of engineering firms to qualify as small; (3) limit fair and open competition among qualified firms under the ''rule of 2''; and (4) harm the public and the Federal government through reduced performance and higher costs. SBA disagrees with these arguments.

As a preliminary matter, SBA points out that comparing the $4.5 million size standard with a standard of $19 million is somewhat misleading. If SBA had adopted the proposed $7.5 million size standard for Engineering Services in 1999, then with inflation adjustments, that would be about $10 million today. In that case, the proposed increase to $19 million would not appear as dramatic. Regarding the association's first concern, SBA notes that increasing size standards does not necessarily put firms that are small under the current standards at a competitive disadvantage. In fact, increasing size standards can have an opposite impact. With higher size standards and a larger pool of businesses qualifying as small, Federal agencies are likely to utilize more small business set-asides, thereby increasing opportunities for all small businesses. As stated above, the majority of comments received on NAICS 541330 supported the proposed $19 million size standard, contending, in part, that this increase will enable firms below that level to develop and become competitively viable. Second, it is true that more than 90 percent of engineering firms will qualify as small under the $19 million size standard. This is fully consistent with other industries in NAICS Sector 54, where more than 95 percent of businesses (and for some industries, as much as 99 percent of businesses), qualify as small under both current and proposed size standards. However, businesses qualifying as small under the $19 million size standard account for less than 29 percent of total revenues in NAICS 541330, as compared to the average of 49 percent for other industries within NAICS Sector 54. SBA believes that the share of industry revenues is a more robust and informative indicator of small business participation in the marketplace than the percentage of firms covered by a size standard. Third, since more businesses can qualify to compete for Federal small business set-aside contracts under higher size standards, there will be more competition under the ''rule of 2,'' not less. Fourth, with larger size standards, as many commenters supporting the proposed $19 million believed, there will be more competition among a larger pool of eligible small businesses, not less.

The association recommended an alternative size standard for NAICS 541330 of $9 million (or $10 million when rounded to the nearest fixed size level). To derive this value, the association used 50 employees as a ''natural break'' in firm size for the industry, based on a cross section of its member firms. Using the average revenue per employee for the industry, 35 percent for consultants' fees and other costs (*i.e.,* ''pass throughs,'' which are discussed elsewhere in this rule), and an additional 10 percent adjustment for high cost areas, the association translated 50 employees to about $9 million in revenues. SBA has several concerns with this analysis. First, the association's total membership includes about 5,500 engineering firms, which represents less than 12 percent of total firms in NAICS 541330, based on the 2007 Economic Census. SBA is concerned that findings based on such a limited sample may not accurately represent the entire engineering services industry. Second, the comment provided no explanation regarding its use of 50 employees as a ''natural break'' of firm size as an appropriate basis of size standards for the engineering industry. Third, the association did not provide any references to the data sources it used to verify its findings.

The association identified several factors to characterize the U.S. engineering industry, namely: Staffing, marketing, management, technology, competition, mergers and acquisitions, and costs. However, it provided no information on what specific roles these factors play in defining what constitutes a small firm in the engineering industry nor it explained why these factors would support its suggested $10 million size standard.

Further, the association questioned how the inclusion of the three ''exceptions'' for NAICS 541330 in the Economic Census data influenced SBA's results for general engineering services. As noted in the proposed rule, the data from the Census Bureau's tabulation are limited to the 6-digit NAICS industry level and hence do not provide separate data on ''exceptions.'' As such, SBA used product service codes (PSCs) for contracting activity reported in FPDS–NG to identify firms that were active in general engineering services and in the three ''exceptions.'' Using the revenue and employment data for those firms from the Central Contractor Registration (CCR), SBA analyzed industry factors for firms engaged in general engineering services and those involved in the ''exceptions.''

SBA agrees with the association's comment that the Agency should reassess the impact that the inclusion of three ''exceptions'' in the analysis might have on the calculated size standard for general engineering services. As SBA explained in the proposed rule, firms engaged in Military and Aerospace Equipment and Military Weapons and in Marine Engineering and Naval Architecture are significantly larger in size than firms engaged in other general engineering services. Consequently, the inclusion of those larger firms in the analysis for the size standard for general engineering services creates an upward bias in the estimated size standard. In the past, SBA gave considerable weight to public comments on the engineering size standard, which for various reasons, overwhelmingly supported a lower size standard than otherwise supported by the industry data. In contrast, the comments to the March 16, 2011 proposed rule revealed much broader support for a higher size standard for engineering services. Thus, SBA concurs with the comment that it should reevaluate the industry data before revising the size standard. SBA also agrees that, when deciding the size standard for general engineering services, it should exclude from the analysis, as best as it can, the larger firms that primarily provide services in those three sub-categories or ''exceptions.''

To adjust the industry-wide data for NAICS 541330 obtained from the 2007 Economic Census, SBA re-estimated the values for the industry factors. As described in the proposed rule, SBA analyzed data from CCR and FPDS–NG to evaluate size standards for the two engineering ''exceptions.'' These are the only appropriate data sets available because these sub-categories represent firms that are predominately engaged in the Federal procurement market, and as the proposed rule pointed out and as indicated above, the Economic Census data are not available at the sub-industry level (*i.e.,* below the 6-digit NAICS industry level). The analysis of those firms using the CCR and FPDS–NG data also had produced the results for all other engineering firms. However, because CCR and FPDS–NG data are limited to the Federal market, rather than using those results directly, SBA applied the differences between firms in the engineering sub-categories and those in the remaining engineering services based on the CCR/FPDS data to adjust industry factors estimated from the Economic Census data for NAICS 541330.

SBA calculated ratios for industry and Federal procurement factors between the two engineering sub-categories and all other engineering services. The ratio for average firm size and average assets size was estimated to be 66.2 percent and 87.5 percent for the weighted average. In this analysis, SBA did not consider the Gini coefficient values, because the size distributions of firms are not comparable between CCR/FPDS–NG and Economic Census data. The Federal small business share for the remaining engineering firms continues to be similar to the overall industry small business share, and as discussed in the proposed rule, is not a factor in the analysis. Using the above ratios, SBA adjusted industry factors (*i.e.,* simple average firm size, weighted average firm size, and average assets) obtained from the 2007 Economic Census for NAICS 541330. Based on those adjusted factors, SBA is adopting a $14 million size standard for NAICS 541330.

SBA's decision to adopt a $7 million size standard for architectural services and a $14 million size standard for engineering services (except for Military and Aerospace Equipment and Military Weapons and for Marine Engineering and Naval Architecture) departs from the historic use of a common size standard for these two industries. Unlike in the past, comments on a proposed common size standard for A&E differed significantly between the two industries. Specifically, almost 90 percent of the comments addressing architectural services opposed the proposed $19 million size standard, while more than 75 percent of the comments addressing engineering services supported a significant increase to the current size standard. The comments focused primarily on an appropriate size standard for their specific industries, with little discussion of the need to have a common size standard for architectural services and engineering services. Accordingly, SBA believes that the different size standards adopted for each of these two industries better reflect the structure of each industry, while providing increased Federal contracting opportunities for small businesses without requiring them to compete against what many commenters believed would have been much more competitive mid-sized firms included as small under the proposed $19 million size standard. In addition, SBA was concerned that the relatively low 15.6 percent small business share of industry receipts for engineering services under the $4.5 million size standard was out of line with the typical small business market share of other professional services industries and thus, constraining small business opportunities in Federal contracting in engineering services. The $14 million size standard will expand the number of deserving businesses that should be considered small in engineering services and increase Federal contracting opportunities for small businesses.

NAICS 541330—Engineering Services (Three ''Exceptions'')

There were 16 public submissions that specifically commented on SBA's proposal to retain the current $27 million size standard for the Military and Aerospace Equipment and Military Weapons sub-category or ''exception.'' All believed that the current $27 million size standard was too low and needed to be increased. Some comments recommended that SBA reform its current approach to size standards so that size standards are based on the average size of dominant players in the Federal market.

One commenter expressed concern with SBA's proposal to increase 36 size standards in NAICS Sector 54 but to maintain the size standard for Military and Aerospace Equipment and Military Weapons at the current $27 million level. The commenter believed that this size standard should also be increased, pursuant to the intent of Small Business Jobs Act of 2010 to help small businesses create jobs. The commenter stated that a higher size standard would expand the pool of qualified small businesses for Federal contracts. The commenter believed that the $27 million size standard does not reflect changes in the Federal contracting marketplace in military and aerospace engineering services for aviation programs, including Naval Air Systems Command and Naval Air Warfare Center Aircraft Division (NAVAIR/NAWCAD). The commenter pointed out that small business contracts for engineering services with NAVAIR/NAWCAD totaled $95 million in 2008 and commented that leaving the size standard at $27 million would negatively impact NAVAIR's ability to meet its needs and small business goals. The commenter went on to allege that this will reduce the number of small businesses available to perform as prime contractors and as subcontractors for large prime contractors. Further, the commenter stated that some businesses that are small under the current size standard will soon lose their small business status due to contract cost escalation for multi-year task order contracts. The commenter stated that some upward adjustment to the current standard will not include small businesses that would be dominant in their fields relative to high revenue of large firms that receive contracts for engineering work. In the view of the commenter, upward adjustment to the current size standard would enable small businesses to compete for larger contracts. The commenter stated that contracts for military and aerospace engineering tend to be large relative to the current $27 million size standard. The commenter recommended that SBA also consider the critical nature of military and aerospace engineering services in war efforts as an additional factor in its methodology. Upon graduation, the commenter stated, small businesses are forced either to compete with large industry leaders for military and aerospace engineering contracts on an unrestricted basis or elect to be acquired by large businesses. The current size standard should be adjusted to $30 million to account for inflation and higher labor and operating costs in some regions.

Six commenters noted that dominant firms in the Federal market for military and aerospace equipment and military weapons average $25 billion in annual revenues compared to the $27 million size standard.

Two commenters on ''Military and Aerospace Equipment and Military Weapons'' size standard believed that mid-sized firms are too large to qualify under SBA's current standards and too small to compete with large businesses in the Federal market. Successful companies that outgrow size standards are forced to compete with businesses that are many times larger than they are. The commenters noted that mid-sized firms have seen their share in the federal market decline from 40 percent in 1995 to 30 percent in 2009, while the large business share increased from 41 percent to 48 percent in the same period. As conduit for innovation, robust mid-tier companies are desirable for the Federal marketplace, they contended.

Two commenters stated that the majority of contracts for Military and Aerospace Equipment and Military Weapons are so large that companies with $27 million in revenue cannot meet their requirements. They also noted that the Federal government is moving from the single award vehicle to much larger and more complex multiple award contract (MAC) vehicles, making it harder for even mid-sized companies to compete in the Federal market.

Several commenters recommended a substantial increase to the current $27 million size standard for Military and Aerospace Equipment and Military Weapons. They contended that a higher size standard would enable small businesses in this sub-category to grow and be able to compete with the largest businesses for Federal contracts in full and open competition, successfully transition from small to mid-sized businesses, meet size and other requirements for Federal contracts, and retain or regain their small business eligibility for Federal assistance.

SBA generally agrees with the above comments. However, the commenters did not provide data or data sources to support their positions. SBA is aware that there are very large companies in the Federal market for Military and Aerospace Equipment and Military Weapons. However, SBA's analysis of FPDS–NG data indicates that many small and ''mid-sized'' firms have grown and been successful in this arena.

SBA agrees that the size standard for the two engineering ''exceptions'' (Military and Aerospace Equipment and Military Weapons, and Marine Engineering and Naval Architecture) should be increased, and as such, SBA is adopting a size standard of $35.5 million. The comments above raised two main issues that, when assessed along with SBA's analysis in the proposed rule, support a higher size standard. First, Federal contracts for these types of engineering services tend to be extremely large and beyond the capabilities of small businesses under the current size standards. Under the current standards, small businesses obtained a relatively small proportion of Federal contracts (11.2 percent for Military and Aerospace Equipment and Military Weapons, and 3.6 percent for Marine Engineering and Naval Architecture). Larger size standards for Military and Aerospace Equipment and Military Weapons and for Marine Engineering and Naval Architecture will provide opportunities for contracting officers to structure contracts within the capabilities of small businesses. Second, small businesses that outgrow the size standard must compete against extremely large businesses for Federal contracts. The graduated small businesses have not developed sufficiently to compete with those large businesses, which are the Federal government's largest contractors as well as among the largest companies in the U.S.

Industry data from the Economic Census do not fully capture the structure of the sub-industries comprising the above exceptions. While SBA's analyses of the average firm size and average assets size support the points made by the comments, the Gini coefficient and Federal contracting factors point to inconsistent assessments of the industry data and the Federal market as characterized by the comments. The Gini coefficient indicates a $5 million size standard while all the other industry factors support a $35.5 million size standard. The low Gini coefficients may have resulted from an unusually skewed firm size distribution that is unsuitable for the size standard analysis. While the firms are extremely large in size, the Gini coefficient is low perhaps because of the presence of about a dozen extremely large firms, resulting in a more even firm distribution than generally exists when only a few extremely large firms obtain a large market share of the industry. Thus, SBA did not apply the Gini coefficient in its final analysis. The remaining industry factors all support a $35.5 million size standard for both exceptions.

As discussed in the proposed rule, the Federal contracting factor did not support an increase in the current size standard for these two exceptions. However, the comments above raised valid concerns regarding the availability of Federal contracting opportunities for small businesses. Although the small business Federal market share does not differ significantly from the small business share of overall revenue for these sub-categories, SBA is concerned that the small business Federal contract share for these sub-categories is relatively low as compared to other professional services industries.

As required by law, SBA is also adopting the $35.5 million size standard for the third ''exception'' to NAICS 541330 (Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992).

Section 3021(b)(1) of Public Law 102–486, the National Energy Policy Act of 1992 (106 Stat. 2776, 3133) states that ''for purposes of contracts and subcontracts requiring engineering services (awarded under this Act) the applicable size standard shall be that established for Military and Aerospace Equipment and Military Weapons.''

NAICS 541360—Geophysical Surveying and Mapping Services; and NAICS 541370—Surveying and Mapping (Except Geophysical) Services

SBA received 22 comments on NAICS 541360 (Geophysical Surveying and Mapping Services) and 38 comments on NAICS 541370 (Surveying and Mapping (except Geophysical) Services). Almost all commenters supported SBA's proposal to increase the current $4.5 million size standard. The vast majority (87 percent) fully supported SBA's proposal to increase it to $19 million, and the remainder supported a more moderate increase.

An association representing private sector firms in the geospatial (remote sensing and geographic information systems) market supported SBA's proposed $19 million size standard for NAICS 541370 (Surveying and Mapping (except Geophysical) Services). The association commented that the current size standard of $4.5 million fails to meet the needs of Federal agencies and private geospatial firms, thereby restricting small business set-asides and small business participation at the prime contractor and subcontractor level. The commenter noted that this has caused some Federal agencies to select other NAICS codes with higher size standards for surveying and mapping work. The comment also indicated that few firms at $4.5 million in annual revenue can make the capital investments necessary to perform Federal contracts involving surveying, mapping, and geospatial services. The commenter added that the participation of some of the largest corporations in the geospatial market has rendered small businesses at the current $4.5 million size standard unable to compete in the Federal market.

SBA is adopting a $14 million size standard for both NAICS 541360 and NAICS 541370. As discussed elsewhere in this rule, the Agency had proposed $19 million as a common size standard for all industries in NAICS Industry Group 5413 (Architectural, Engineering and Related Services) but has decided not to apply a common size standard for this industry group. Rather, SBA agrees with many of the comments that a common size standard is not appropriate for the entire industry group. SBA has therefore assessed the comments received on the individual industries and reexamined the specific industry data for these industries.

The decision to adopt a $14 million size standard for the two surveying and mapping industries is based on several considerations. First, public comments overwhelmingly supported increasing the current $4.5 million size standard to the significantly higher proposed level of $19 million. Commenters contended that the higher size standard would enable firms in these industries to grow and develop to a size at which they could compete against larger businesses, while retaining or regaining their small business status. Second, historically, the size standards for these two industries have been the same as the size standards for architectural and engineering services. In this rule, SBA is adopting a $7 million size standard for NAICS 541310 (Architectural Services) and NAICS 541320 (Landscape Architectural Services), and a $14 million size standard for NAICS 541330 (Engineering Services). SBA believes it should continue to maintain similar or comparable size standards among the surveying and mapping industries and the architectural and engineering service industries. Thus, although the industry data point to a size standard higher than $14 million for NAICS 541360 and lower than $14 million for NAICS 541370, SBA believes a common size standard of $14 million is more appropriate than establishing two very different size standards for the two very similar types of industries, because (1) it represents a significant increase to the current size standard, as the commenters desired and (2) it maintains the historical common size standard between mapping and surveying services and architecture and engineering services.

Furthermore, comments provided by a mapping industry association cited the expanding role of geospatial activities in NAICS 541370 and recommended a much higher size standard than supported by the Economic Census industry data. Many of the firms in NAICS 541370 are engaged in conventional land surveying, and such firms are significantly different in many respects from those involved in geospatial services. The most important distinction is that firms engaged in geospatial services have much higher capital expenses for equipment such as aircraft, precision aerial cameras, analytical or softcopy stereoplotters, and specialized computer peripheral equipment. The staff required to operate these types of equipment and process the information have a very different and much more expensive skill set than that which is required for other, more traditional, surveying activities. Importantly, firms primarily engaged in geospatial services are now competing against many of the largest firms obtaining Federal contracts in this area. Additionally, the Federal market for geospatial services consists of multiyear, multimillion dollar contracts. SBA agrees with the association's comment that Economic Census data do not reflect these developments in the Federal market for geospatial services.

SBA also evaluated data from FPDS–NG and CCR. In terms of total contract dollars, NAICS 541370 represented a significantly larger share of the Federal market than did NAICS 541360. In addition, Federal contracts tend to be larger for NAICS 541370 than for NAICS 541360. In contrast to Economic Census data, values for industry factors based on revenue data on firms that participate in Federal market for surveying and mapping services were also much higher for NAICS 541370 than for NAICS 541360.

The association stated that some of its members were concerned that increasing the NAICS 541370 size standard to $19 million may result in Federal agencies' overreliance on small business set-asides, thereby causing disadvantage to mid-sized firms that are principally engaged in geospatial activities. SBA anticipates some redistributions of contracts from mid-sized firms to newly defined small businesses under the $14 million size standard; however it does not anticipate that impact to be significant. The $14 million size standard, instead of the proposed $19 million, should mitigate some of their concerns.

In view of these considerations, SBA believes a $14 million size standard is appropriate for both NAICS 541360 and for NAICS 541370.

NAICS 541340—Drafting Services; and NAICS 541350—Building Inspection Services

SBA received four comments on NAICS 541340 (Drafting Services) and two comments on NAICS 541350 (Building Inspection Services). To maintain the common size standards for all industries within NAICS Industry Group 5413, SBA had proposed a $19 million size standard for both of these industries, although the data for the individual industries supported much lower size standards for them. Nearly all comments supported SBA's proposal to increase the current $7 million size standard to $19 million.

In light of SBA's decision not to adopt the proposed $19 million common size standard for NAICS 5413, which was based on public comments and significant differences in estimated size standards among individual industries, SBA reevaluated the size standards for NAICS 541340 for NAICS 541350. To do so, SBA analyzed updated industry data from the 2007 Economic Census and Federal contracting data from FPDS–NG. The updated analysis supported lowering the size standard to $5 million for both industries. However, given SBA's decision not to lower any size standards, SBA is adopting the current $7 million size standard for NAICS 541340 for NAICS 541350.

SBA received no comment or concern regarding its proposal to eliminate Map Drafting as an exception to NAICS 541340. The exception for this activity was created in support of the CompDemo Program, which the Jobs Act of 2010 repealed. Therefore, SBA is removing the exception for Map Drafting from NAICS 541340.

NAICS 541380—Testing Laboratories

SBA received 10 comments on NAICS 541380 (Testing Laboratories). Seven comments fully supported SBA's proposed $19 million size standard, while three comments opposed it in support of retaining the current $12 million size standard.

One commenter who strongly supported SBA's proposal to increase the size standard also supported the common size standard proposed for all industries within NAICS Industry Group 5413. The commenter mentioned that a common size standard would ease contracting officers' burden of selecting the perfect NAICS codes for government contracts and reduce the likelihood of NAICS code appeals. Citing growing consolidation in the industry, the commenter stated that the current $12 million size standard for NAICS 541380 should not be lowered based on industry-specific analysis, in the event that SBA does not adopt the $19 million common size standard. The commenter pointed out that the effect of losing small business status would be immediate and devastating to its company and other similar small businesses because lowering size standards would force small businesses to cut hours and salaries and lay off employees to survive. For the same reasons, the commenter also agreed with SBA's decision not to lower any size standards under current economic conditions.

Given SBA's decision not to adopt the proposed $19 million common size standard for NAICS 5413 (discussed elsewhere in this rule), SBA reevaluated the size standard for NAICS 541380. The initial industry specific analysis supported a size standard of $10 million, which is lower than the current size standard of $12 million. For reasons explained in the proposed rule, SBA proposed to retain the current size standard where analyses supported lowering them. In this final rule, to be consistent with the use of eight fixed levels, instead of the current $12 million size standard, SBA is adopting a size standard of $14 million, which is the nearest fixed size level. The updated Economic Census tabulation also supported a $14 million size standard for this industry.

NAICS Industry Group 5414—Specialized Design Services

For the reasons explained in the proposed rule, SBA proposed to retain the current $7 million size standard for all industries in NAICS Industry Group 5414 (Specialized Design Services), even if the industry data supported a lower $5 million size standard. In response, SBA received 11 comments, with about half supporting the current $7 million size standard and half opposing it. None of the comments expressed major concerns. Therefore, SBA is adopting the current $7 million size standard for all industries within NAICS Industry Group 5414.

NAICS Industry Group 5415—Information Technology Services; and NAICS 811212—Computer and Office Machine Repair and Maintenance

SBA received about 25 comments on NAICS 5415 (Information Technology Services) and NAICS 811212 (Computer and Office Machine Repair and Maintenance) at the 6-digit level. The majority recommended that the current size standard be higher than the $25.5 million size standard that SBA proposed for these industries. Commenters recommended alternative size standards varying from $30 million to $35.5 million, with an average of $30 million. A few commenters fully supported the proposed $25.5 million size standard. Additionally, SBA received 34 comments for NAICS 5415 at the 4-digit level, many of which recommended either an employee based size standard or total reform of SBA's current size standards to expand Federal contracting opportunities for mid-sized companies. A few commenters recommended a size standard higher than the proposed $25.5 million size standard to account for inflation since SBA's last inflation adjustment.

An association representing 350 companies involved in a variety of professional services commented on SBA's proposed $25.5 million common size standard for NAICS Industry Group 5415 and NAICS 811212. It also commented, as discussed elsewhere in this rule, on some of the factors and analyses that SBA used to develop the proposed size standards. It also expressed concerns for the SBA's proposal to increase the size standard for the Architectural and Engineering (A&E) services from $4.5 million to $19 million, while it proposed to increase the size standard for computer related services only by $0.5 million to $25.5 million.

The association strongly supported SBA's effort to review size standards in view of changes in the professional services industry since the last overall review. That was several decades ago and there have been significant changes in the Federal marketplace for professional services, especially the rapid growth in Federal spending on professional services in recent years. The association noted that SBA proposed increases to 36 size standards in NAICS Sector 54 will provide much needed flexibility for small businesses to grow, while still having access to Federal contracts on an unrestricted basis. The association believed that proposed increases are not too substantial to squeeze very small businesses out of the ability to compete for Federal contracting opportunities. The association questioned the rationale for a dramatic increase in the size standard for engineering and architectural services from $4.5 million to $19 million, in contrast to the increase of just $0.5 million in the size standard for computer related services, despite significant changes in Federal market for those services.

SBA's proposal to increase the A&E size standard to $19 million was based on the evaluation of industry and Federal procurement factors for the entire A&E group given the commonalities and overlap among firms in the A&E commercial and Federal marketplace. Another rationale was to maintain the use of common size standard for the group, as supported by the industry's comment on SBA's 1998 proposed rule to revise size standards for the architectural, engineering and surveying industries. In addition, SBA believes that it is misleading to compare $4.5 million with $19 million without considerations of the results from the industry data. If SBA had adopted the proposed $7.5 million size standard for the A&E industry in 1999, with inflation adjustment the size standard would be about $10 million today and the proposed increase to $19 million would not be as dramatic as it seems. In response to industry's comments, SBA adopted a much lower $4 million size standard in the final rule.

SBA's analyses did not support a higher increase to the size standard for four of five computer related services, possibly indicating that the current $25 million size standard is already adequate. Under the current size standards, based on the 2007 Economic Census, the small business share of total industry revenue was 35 percent for computer related services (NAICS 5415 and NAICS 811212) versus 22 percent for A&E and Related Services (NAICS Industry Group 5413). Similarly, based on the FY 2008–2010 data, the small business share in the Federal market was 36 percent for computer related services, as compared to 16 percent for A&E services. These data clearly support the need for a much higher increase to the current size standard for the A&E group than for computer related services.

The association expressed its concerns about SBA's proposal to use a $25.5 million common size standard for all Computer Systems Design and Related Services Industries (NAICS Industry Group 5415 and NAICS 811212), when SBA's industry specific analysis supported a much higher $35.5 million size standard for NAICS 541513. It stated that by doing so, SBA has eliminated legitimate small businesses in that NAICS code from being able to qualify. It pointed out that this also applies to some architectural and engineering services industries. The association recommended that, when proposing a common size standard for a group of industries, SBA either adopt the highest calculated size standard for any NAICS code as the common size standard for the entire group, or adopt the size standard based on its analysis of individual NAICS codes. However, the commenter agreed with SBA's proposal not to lower any size standards, and recommended that no size standards be lowered when SBA decides not to adopt the common size standard. When establishing a common size standard, SBA evaluates the results for both individual industries and for the group as a whole, commonalities, and overlap among the industries in the group, historical practice, industry's input, and the impact of using separate industry specific size standards for closely related industries in the Federal market, when a common size standard may be more appropriate.

SBA has not adopted the association's recommendation. SBA has used a common size standard for all Computer Systems Design and Related Services since 1992 and received no concerns about the common size standard. Based on SBA's industry specific analysis using the 2007 Economic Census data, only about 20–30 firms in NAICS 541513 would be impacted by using the $25.5 million common size standard instead of $35.5 million. Meanwhile, if $35.5 million were used as the common size standard for the entire group, as suggested by the association, more than 300 otherwise large firms would qualify as small in other NAICS codes, possibly hurting many other legitimate small businesses in those industries. If SBA were not to create a common size standard it might give contracting officers an incentive to select NAICS 541513 because of its higher size standard, instead of another more appropriate NAICS code in the group. Many firms operating in NAICS 541513 also operate in other industries, such as NAICS 541511 and 541519, and will benefit from SBA's decision not to lower size standards for those industries based on industry specific analyses. Regarding the association's similar concern for the common size standard for the A&E industry group, as discussed elsewhere in this rule, SBA has, based on the comments and additional analysis, modified its proposed common size standard for that industry group.

One commenter believed that size standards for computer related services must be large enough to enable small businesses to grow and become competitive against large businesses that dominate ''full and open'' competition in the Federal market. It suggested that SBA raise the size standards for NAICS Industry Group 5415 to at least $35.5 million. It contended that SBA does not take into account the competition of mid-sized businesses with significantly larger Federal contractors. The commenter noted that once small businesses outgrow size standards after being moderately successful in the Federal market, they lack the resources, in terms of capital, staff, and infrastructure, to compete successfully with their significantly larger counterparts. SBA recognizes the challenges many mid-sized businesses face in the Federal market when they outgrow a size standard, but SBA is also very concerned that ''smaller'' small businesses may not be able to compete effectively with ''larger'' small businesses for Federal small business contracts if size standards are too large. SBA does not agree with the comment that it does not account for industry competition when establishing size standards. The Agency evaluated the four-firm concentration and size distribution of firms to account for completion within the industry.

The commenter recommended that the size standard for all industries in NAICS 5415 be increased to $35.5 million, based on the argument that a business concern at that revenue level is ''not dominant in its field of operation.'' SBA does not adopt this recommendation for three reasons. First, the requirement of the Small Business Act that a small business not be dominant in its field of operation does not mean that SBA should define all ''non-dominant'' firms as small. Rather, it means that a business concern defined as small may not be dominant in its field of operation. In other words, all dominant firms are necessarily other than small, but all non-dominant firms are not necessarily small. Second, using non-dominance as a basis of size standards could result in very large size standards for some industries, resulting in a significant competitive disadvantage to businesses that are more representative of what constitute small business concerns. Third, SBA's analyses of relevant data do not support the $35.5 million size standard for all industries within NAICS Industry Group 5415, either individually or as a group. In fact, the industry specific results would support size standards of $14 million and $19 million for NAICS 541511 and NAICS 541519, respectively, which are lower than the current $25 million.

In response to comments, SBA reevaluated industry and Federal procurement data for industries in NAICS Industry Group 5415. Based on this reevaluation, the data do not support higher than the proposed $25.5 million size standard. In fact, as stated below, when these industries are analyzed individually, the data supports lowering size standards for some of them. However, SBA is not lowering any size standards for the reasons given in the proposed rule. In addition, under the current $25 million size standard, small businesses in these industries seem to be doing relatively well, receiving 36 percent of total Federal contract dollars during fiscal years 2008 to 2010, as compared to 35 percent of total industry receipts.

One commenter supported SBA's effort to review all size standards and its size standards methodology. However, the commenter recommended that SBA evaluate inflation as an additional factor when reviewing size standards. Specifically, the commenter suggested that the proposed size standard based on five primary factors be adjusted for inflation since SBA's last adjustment and recommended a $30 million size standard for firms in NAICS 5415. Otherwise, the commenter stated, small businesses on the brink of exceeding the current size standard will soon be forced to compete with much larger firms.

SBA is required to review all size standards not less frequently than every five years. Accordingly, the latest inflation adjustment for all receipts based size standards, including those in NAICS 5415, was completed in July 2008. In this comprehensive size standards review, SBA's revisions to size standards are primarily based on the Agency's evaluation of industry and Federal procurement factors. SBA plans to adjust all monetary size standards together for inflation after it completes its review of all receipts based size standards. SBA is reviewing size standards on a Sector by Sector basis, and this can take several years to complete all of them. If SBA were to make additional adjustments for inflation on a Sector by Sector basis, the result would be inconsistent size standards across industries.

A few commenters recommended an employee based size standard for NAICS Industry Group 5415, and their suggested employee based standards varied from 500 employees to 1,500 employees. Based on the 2007 Economic Census data, if the size standard was set at 500 employees, 99.2 percent of businesses in NAICS Industry Group 5415 would qualify as small, and at 1,500 employees, 99.5 percent would qualify as small. Meanwhile, more than 92 percent of firms in this industry group have fewer than 20 employees. Based on the industry data from the 2007 Economic Census, a 500-employee size standard would translate to annual revenue of approximately $45 million and a 1,500-employee size standard would translate to nearly $70 million. SBA believes that such a large size standard would render many truly small businesses unable to compete with large small businesses for Federal opportunities. Currently, no SBA's receipts based size standard is higher than $35.5 million.

For the above reasons, SBA is adopting the proposed $25.5 million size standard for all industries within NAICS 5415 and NAICS 811212.

NAICS Industry Group 5416—Management, Scientific and Technical Consulting Services

SBA received more than 100 comments for this industry group, with about one-fifth of them limited to the 4-digit level. The vast majority (73 percent) fully supported SBA's proposal to increase the size standard for all industries within NAICS Industry Group 5416 from the current size standard of $7 million to $14 million; 7 percent recommended a smaller increase; 13 percent opposed the increase, mostly in support of the current size standard; and the rest took other positions.

Many commenters supporting the proposed $14 million the size standard for NAICS Industry Group 5416 stated that the higher size standard will enable small businesses to develop and grow to be able to compete against large businesses for Federal contracting opportunities, meet requirements for Federal contracts, and retain or regain small business size status.

One commenter, who fully supported SBA's proposal to establish a $14 million common size standard for all industries within NAICS 5416, noted that firms in this industry group provide a variety of services in multiple NAICS codes, rather than operating solely in one. The commenter indicated that a common size standard would ease contracting officers' burden of selecting the perfect NAICS codes for closely related industries and reduce the likelihood NAICS code appeals. The commenter stated that SBA's proposed rule reaches an appropriate balance of ensuring that small business set-aside contracts continue to be awarded to small businesses, while recognizing the need that existing size standards in NAICS Sector 54 need to be revised to reflect current economic and market conditions.

One commenter recommended that no size standards in the industry group be decreased if SBA does not adopt the $14 million common size standard in the final rule. The commenter believed that decreasing the size standards would have significant impacts on small businesses and the economy as a whole. SBA agrees.

Of those who opposed the proposed $14 million size standard for NAICS 5416, several believed that currently small businesses will face increased competition with newly defined small businesses under the higher size standard. A few also contended that the $14 million size standard does not reflect what is truly small. However, these commenters did not provide specific data to support their arguments. Thus, based on the comments received on the proposed rule and its analyses of relevant industry data and other relevant factors, SBA is adopting the proposed $14 million common size standard for all industries within NAICS Industry Group 5416.

NAICS 541720—Research and Development in the Social Sciences and Humanities

SBA received six comments for the NAICS 5417 Industry Group, but none were related to NAICS 541720 (Research and Development in the Social Sciences and Humanities). Thus, SBA is adopting its proposal to increase the size standard for this industry from the current $7 million to $19 million.

NAICS Industry Group 5418—Advertising and Related Services

SBA received just one comment for NAICS Industry Group 5418 (Advertising and Related Services), which fully supported SBA's proposal to increase the size standard for all industries in this industry group from $7 million to $14 million. Since there were no major concerns against the SBA's proposed increase, SBA is adopting its proposal.

NAICS Industry Group 5419—Other Professional, Scientific and Technical Services

Based on the evaluation of industry and Federal procurement factors for all of NAICS Industry Group 5419, and in the interest of maintaining the common size standard that is currently in place for most industries in this industry group, SBA proposed a $7 million common size standard for NAICS Industry Group 5419. SBA received only eight comments on NAICS 5419, of which six supported the increase, one opposed, and one took other position. Two comments supporting the increase also suggested alternative size standards for industries NAICS 541910 and NAICS 541990. SBA generally agrees with these comments, as discussed below.

NAICS 541910—Marketing Research and Public Opinion Polling

One comment supporting SBA's proposal to increase the size standard for NAICS Industry Group 5416 opposed the creation of a common size standard for NAICS Industry Group 5419, because this is a ''catch all'' industry group and various industries therein are entirely unrelated. SBA agrees. A reevaluation of the FPDS–NG and CCR data showed that industries within NAICS Industry Group 5419 are distinct and generally unrelated. In addition, the data show that a large number of firms operating under NAICS 541910 also offer services within NAICS Industry Groups 5416 and 5418. Given the results of the industry specific analysis, the evaluation of the FPDS and CCR data, and the analysis of the comments from the industry, SBA is increasing the size standard for NAICS

541910 from the current $7 million to $14 million in average annual revenue. As discussed above, SBA is also adopting the $14 million size standard for all industries within NAICS Industry Groups 5416 and 5418.

NAICS 541990—All Other Professional, Scientific, and Technical Services

One commenter opposed keeping the size standard of NAICS 541990 at the current $7 million level, arguing that this industry is also a ''catch all'' of other industries under NAICS 5419 (which is already a ''catch all'' industry group, as discussed previously) as well as all other industries under NAICS Sector 54 as a whole. The commenter recommended a higher $19 million size standard for weather forecasting services, which is part of NAICS 541990. The commenter noted that the size and scope of Federal contracts involving weather forecasting are beyond the capabilities of firms under the current $7 million size standard. SBA partially agrees with this comment. Although the analysis of the primary factors suggested a size standard of $7 million, a reevaluation of the FPDS–NG and CCR data showed that the characteristics of businesses in the Federal market within NAICS 541990 are not captured well by the Economic Census data. The FPDS–NG data showed an average of nearly 10 billion dollars awarded annually to this industry and a small business share of about nine percent. In contrast, the analysis of the Economic Census data showed that small businesses account for 65 percent of the total industry receipts. However, the total Federal contracting dollars reported in FPDS–NG over the past several fiscal years has exceeded total industry receipts, suggesting that Economic Census does not adequately represent the Federal market for NAICS 541990. Also, the mix of services included in Federal contracts under NAICS 541990 tend to be much more technical and scientific in nature than the mix of services provided under other industries within NAICS Industry Group 5419. As expected, the FPDS–NG and CCR data showed that a large number of businesses operating under NAICS 541990 also offer services in several other industries within the NAICS Industry Groups 5416, 5418 and 5413, indicating the related types of services among these industries. Given these results, SBA has given more weight to the Federal procurement data factor in the final analysis and increased the size standard for NAICS 541990 from the current $7 million to $14 million in average annual receipts.

Summary of Comments on Other Issues

Calculation of Receipts and the Exclusion of ''Pass Throughs''

SBA received about 30 comments regarding subcontracting costs (termed as ''pass throughs'' in the comments), particularly among comments on NAICS 541310 (Architectural Services), NAICS 541320 (Landscape Architectural Services), and NAICS 541330 (Engineering Services). These commenters believe that ''pass throughs'' account for a large percentage of their revenues (suggested figures varied from 15 percent to as much as 60 percent, but most fell within the 30–40 percent range). Commenters suggested that SBA modify its definition of receipts to allow businesses to exclude from the calculation of revenues the amounts paid to subcontractors and suppliers in the course of doing their business. Some commented that instead of increasing the size standards, SBA should allow businesses to exclude ''pass throughs'' from their revenues, while a few others suggested an employee based size standard to address this issue (which has been addressed elsewhere in the rule).

This is not a new suggestion, nor is it unique to these industries. SBA's definition of receipts states the following: ''Receipts means '*total income'* (or in the case of a sole proprietorship, 'gross income') *plus 'cost of goods sold'* as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms * * *.'' 13 CFR 121.104 [emphasis added]. The definition of receipts provides for a number of exclusions (discussed below), none of which correspond to subcontracting, materials, or related costs. SBA recognizes that subcontracting and material costs can be more substantial for some types of businesses and industries than for others. The Economic Census data that SBA uses in its size standards analysis include all revenues received by companies, including the values of their subcontracts. If the Agency excluded the value of ''pass throughs'' revenues from the calculation of receipts, SBA would also have to establish a lower size standard to reflect the size of the industry without them.

Except for a few industries, SBA has always included all revenues in its calculation of receipts—first, because Economic Census data includes them, as stated above, and second, because SBA's existing definitions of receipts and employees provide a consistent approach to establishing eligibility for small business programs for all industries. If SBA were to exclude certain costs for one or a few industries, other industries could raise the same questions. This would create a ''slippery slope'' leading toward widespread inconsistency in how businesses calculate their receipts to determine if they are small. The better solution would be to have higher size standards than otherwise supported by industry and Federal procurement factors for industries with high ''pass throughs,'' so that the size standards reflect the realities of how such firms conduct their business. In fact, a number of commenters cited high ''pass throughs'' as one of their reasons for supporting SBA's proposed increases to size standards for architectural and engineering services. Again, SBA's current definition of receipts is consistent with how businesses report their revenues for the Economic Census. The current definition is also consistent with the Small Business Act, which provides that size standards are to be established based on ''* * * annual average *gross receipts* of the business concern * * *'' (15 U.S.C. 632(a)(2)(C)(ii)(II) [emphasis added]).

SBA's definition of ''receipts,'' cited above, goes on to provide for the following exclusions from the calculation: ''Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.'' 13 CFR 121.104(a). The following is a discussion of these exclusions:

1. ''Net capital gains'' are extraordinary income, and for a given company, their inclusion in the calculation of annual receipts could substantially alter its fiscal picture. A business uses its annual receipts averaged over its last three fiscal years to determine if it is small, and extraordinary income can substantially distort that calculation.

2. ''Proceeds from transactions between a concern and its domestic or

foreign affiliates'' would be counted two or more times, if included, because a company must include the receipts of its affiliates as well. 13 CFR 121.103(a)(6).

3. The other exclusions refer to *amounts that certain types of businesses receive but to which they never have a right.* That is, they collect money for others, hold the funds in trust, and disburse them on behalf of the party for whom they hold them. *The funds do not increase their asset base and can never be used to reduce their liabilities.* In other words, the funds are never the property of the company that receives them. They may receive commissions and/or fee for their services, which are their revenue, but the funds themselves are not.

4. ''All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts'' refers to the costs of doing business for firms that do not operate in industries where the above-named exclusions apply. For example, if a firm subcontracts work to others and/or purchases material in the course of its business dealings, it incurs liabilities. Payments received as a prime contractor, or from another prime contractor, to cover any of those usual and customary costs of doing business, constitute revenue, and the company cannot exclude them when it calculates its receipts.

In the same vein, SBA notes that a number of public submissions indicated that subcontracting costs can be very substantial in their industries. It is important to point out that, under SBA's regulations on Government Contracting Programs (13 CFR 125), ''In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, a WOSB or EDWOSB contract pursuant to part 127 of this chapter, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, a small business concern must agree that: (1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. * * *'' 13 CFR 125.6(a). A firm undertaking such contracts must comply with these ''limitations on subcontracting,'' even if it otherwise appears to meet the small business size standard for the procurement. It cannot qualify as small for award under any of the aforementioned programs if it subcontracts more than 50 percent of the contract.

Mid-Size Businesses

A number of comments advocated for SBA to significantly increase the size standards to enable formerly small businesses (termed as ''mid-sized'' businesses) to obtain Federal contracts. These comments related the difficulties experienced by former small businesses that have outgrown the size standards in their industries in obtaining Federal contractors as ''mid-sized'' businesses. The comments explained that such businesses are too large to qualify for small business set-asides and yet too small to compete successfully on a full and open basis against the largest businesses in their industries. They cited a study by the Center for International and Strategic Studies, *Structure and Dynamics of the U.S. Federal Professional Services Industrial Base 1995–2009,* which found that the market share of Federal contracts for professional services of mid-sized businesses had declined during the 1995–2009 period, while the large business share had increased. The study also found that the small business Federal professional services market share had essentially remained stable. In general, commenters contended that the formerly small businesses have not developed to a size where they possess the resources and capabilities to compete effectively against the largest businesses in their fields that have billions of dollars in revenue and thousands of employees. In addition, commenters contended that Federal contracting requirements and trends, especially contract bundling, make it difficult for mid-size companies to compete. These comments recommended a number of changes to address the problem of formerly small businesses. The discussion below provides descriptions of these recommendations, along with SBA's responses.

1. *Include as small businesses those which are not dominant in their field of operation, in accordance with the Section 3(a)(1) of the Small Business Act. For example, consider the average size of the largest businesses in an industry and determine the size standard as a percentage of that average.*

SBA does not adopt this recommendation. As described in its Size Standards Methodology and the proposed rule, in developing size standards, SBA considers various characteristics to identify the small business segment of an industry. SBA's implementation of this provision of the Small Business Act ensures that a size standard developed based on its industry analysis does not include a business that is dominant in its industry. The legislative history of the Act makes clear that a business under a size standard may not be dominant in its field and qualify as small. To do otherwise would include extremely large businesses never envisioned to be considered small.

2. *Redefine NAICS 517110 (Wired Telecommunications) to include information technology services, such as the design, development, and/or provision of software; the design, development, and/or provision of information technology systems; and IT infrastructure operations, maintenance, and security services.*

SBA does not adopt this comment. The information technology NAICS codes under NAICS Industry Group 5415 (Computer Systems Design and Related Services) are well defined and reflect the range of information technology services provided by businesses in that Industry Group that are listed in the recommendation. NAICS 517110, however, pertains to the provision of telecommunications services. Although telecommunications apply and use information technology in developing communications, that is not the nature of the services provided by businesses in NAICS 517110. If SBA were to adopt the recommendation, a 1,500-employee size standard would apply to information technology services. However, the industry data for NAICS Industry Group 5415 strongly support its proposed size standard of $25.5 million. SBA is also concerned that a 1,500-employee size standard for information technology services would harm currently defined small businesses by causing them to lose contracts to the much larger businesses under that suggested size standard.

3. *Develop a five-year pilot program for contracting officers to use number of employees to determine small business status.* The suggested tiers, based on the size of a contract, are as follows:

Tier	Number of employees	Anticipated contract value
1	1–50	$5 million.
2	51–150	$5–$50 million.
3	151–300	$51–$150 million.
4	301–500	$151–$300 million.
5	501–1,000	$301–$500 million.
6	1,001–2,000	$500 million.

Pursuant to the recommendation, businesses may compete for contracts within their size tier or a higher tier. The commenters stated that this recommendation attempts to protect the smallest businesses and assist developing firms and to create a level playing field among competitors of a similar size.

SBA does not adopt this recommendation. The approach appears to offer Federal contracting opportunities for various small and mid-sized businesses. Under such an approach, the small business Federal procurement programs would become significantly more complex to administer. Furthermore, new small business procurement goals would need to be established for each tier to ensure that contracting officers did not structure contracts for only the largest tiers, and this in turn would create more burdensome reporting requirements than those that currently exist. Past programs that applied a tiered small business approach, such as the Very Small Business Program and the Emerging Small Business category under the CompDemo Program, were not successful and were eventually terminated.

4. *Establish separate size standards for Federal contracting.* Federal contracting imposes restrictions on business practices and operations not included in the commercial market. Because of the differences between commercial and government work, a recommendation was made for SBA to establish a separate set of size standards for Federal government procurement.

SBA does not adopt this recommendation. Federal procurement is one aspect of industry characteristics that is considered along with industry data and other relevant considerations in developing size standards. However, giving exclusive consideration to Federal procurement may produce skewed analyses that are biased in favor of more successful Federal contractors, which would reduce contracting opportunities for smaller businesses. For procurement sensitive industries, SBA will consider giving greater weight to the Federal contracting factor and possibly evaluating additional data related to Federal contracts. SBA has established separate size standards for Federal contracts of very specific types of goods and services as exceptions in certain industries.

At one point, the size standards for Federal procurements and SBA's loan programs were different. These separate size standards created confusion and complexity, and consequently, SBA adopted uniform standards for both procurement and non-procurement programs in the 1980s. SBA is also concerned that separate standards for Federal contracts, especially if they are appreciably higher than the current size standards, may cause significant disadvantage to very small businesses when they compete for Federal small business set-aside contracts.

5. *Calculate average size based on five years.* The commenter also recommended calculating average annual receipts every five years, instead of every three. The commenter alleged that this would allow small businesses to plan and increase capacity before entering full and open competition and provide longer transition time from small business status to non-small business status. In addition, small businesses with large temporary increases in revenues would not lose small business status.

SBA does not adopt this comment. For receipts based size standards, calculating size over a period of time ameliorates fluctuations in receipts due to variations in economic conditions. SBA maintains that the length of time should reasonably balance the problems of fluctuating receipts with the overall capabilities of firms that are about to exceed the size standard. The average receipts calculation has not been an issue with small businesses and is generally well accepted. Extending the averaging period to five years would allow a business to greatly exceed the size standard for one to three years and still be eligible for Federal assistance, perhaps at the expense of other smaller businesses. Such a change is more likely to benefit successful graduated small businesses by allowing them to prolong their small business status, thereby reducing opportunities for currently defined small businesses.

Tiered Size Standards

About 35 comments recommended that SBA establish some form of tiered size standards for Federal contracting. Generally, smaller firms and those opposing SBA's proposal to increase size standards recommended creating a ''micro-business'' category to help truly small businesses that are way below the size standards. Several commenters recommended a ''multi-tiered'' size standard approach based on the number of employees and/or size of Federal contracts, to expand Federal contracting opportunities for mid-sized firms and those close to exceeding the size standards, while protecting truly small businesses. Such recommendations are discussed in greater detail elsewhere in this rule. While SBA recognizes the challenges that both truly small and mid-sized businesses face in the Federal market, SBA has not adopted this recommendation in this rule for three reasons. First, as discussed elsewhere in this rule, SBA believes that tiered standards would add significant complexity to size standards, which many believe are already too complex, which would run counter to SBA's ongoing effort to simplify them. Second, in order for the tiered standards approach to work as envisioned by its proponents, small business contracting goals would need to be established at each tier to ensure that small businesses at different tiers have fair access to Federal small business contracts. Third, the Small Business Act requires SBA to establish one definition of what is a small business concern, not what is small, medium, and so forth.

Size Standards Methodology

SBA received about 70 comments regarding various aspects of the methodology it used to develop the proposed rule. Commenters generally supported SBA's methodology and its proposal to use eight fixed size levels to simplify size standards. Several commenters also supported SBA's decision not to lower any size any standards, just based on analytical results, under current economic conditions.

Some commenters believed that SBA's size standards methodology was too complicated and difficult to understand, while others questioned the rationale for using $7 million as an anchor for receipts based standards. There were a few who opposed fixed size levels and believed, because of big gaps between the two size levels, calculated size standards could be larger or smaller than otherwise.

SBA's ''Size Standard Methodology'' document provides a vast array of information on its size standards analysis from a general description of the analytical approach to rigorous mathematical expressions of the calculation of industry factors. While some portions of the document are of somewhat technical nature, the general description should be sufficient for the public to understand clearly the various factors and data sources SBA uses when reviewing a size standard. SBA's methodology document describes the basis for the $7 million anchor for all receipts based size standards. The use of an anchor size standard serves an important function by ensuring that the characteristics of all industries are consistently evaluated relative to the same baseline level. As the methodology document states, the anchor size standard concept has been in place for many years with widespread general acceptance. Additionally, the $7 million anchor has been used as the appropriate size standard for a majority of the industries that have receipts based size standards.

The fixed size standard levels were developed in response to concern from SBA and the public regarding the need to simplify size standards where possible. Because of the large number of industries and the great variation therein, a number of different size standards needed to be established. There were 31 different levels of receipts based size standards at the start of the current comprehensive size standards review, which SBA believes are both unnecessary and difficult to justify analytically. Thus, SBA has implemented the fixed size standards approach, and it welcomes comments on whether more or fewer size standard levels are more appropriate.

Several comments suggested an employee based size standard instead of a receipts based standard, arguing that number of employees is a better measure of business size for professional services industries, especially when high ''pass throughs'' are involved, and that receipts are much more sensitive to business cycles, costs of materials, and inflation in the economy. SBA disagrees. For industries where subcontracting is widespread, such as many professional services industries, SBA is concerned that an employee based size standard may encourage businesses to excessively outsource Federal work to other businesses to remain within the size standard. Under the receipts based standard, businesses are not allowed to deduct value of work outsourced. SBA will periodically review all industries not less frequently than every five years.

Some commenters recommended establishing size standards based on the average size of dominant firms in the industry, arguing that SBA's current methodology results in size standards that force mid-sized firms to compete with significantly larger firms in the Federal market. In developing a size standard, SBA considers various characteristics to identify the small business segment of an industry. The Small Business Act provides that a business concern defined as small cannot be dominant in its industry. SBA has implemented this provision of the Small Business Act by ensuring that a size standard based on its industry analysis does not include a business that is dominant in its industry.

A few questioned the methodology on the ground that calculated size standards are generally much higher than average firm size. A few expressed concerns regarding the use of simple average, instead of median, and averaging size standards over different factors. The purpose of evaluating a statistic such as average firm size is to describe quantitatively the structure of an industry. For example, is the industry comprised of many small or large firms or are most industry receipts obtained by many small firms or only a few large firms? Since no single statistic or factor can adequately describe industry structure, SBA evaluates several statistics or factors to best obtain a full representation of industry structure. Whichever statistics or factors are used, the key is to compare different industries in a consistent manner. Thus, average firm size and other industry factors are appropriate to compare how different industries are from one another. In addition, in most cases, equating the size standard to the average or median firm size in an industry can result in an unacceptably low size standard that may not adequately capture the small business segment in an industry that small business programs are intended to assist. Thus, for most industries, size standards are generally higher than the simple average or median firm size so that small businesses are able to grow and develop to an economically viable size while remaining eligible for Federal assistance. If size standards are too low, small businesses will quickly outgrow the size standards and be forced to compete with significantly larger businesses for Federal contracts on a full and open basis. SBA is equally concerned about setting size standards too high, as doing so could put smaller businesses at a disadvantage in competing for Federal opportunities.

A few commenters, including a trade association for professional services, recommended giving greater weight to the Federal contracting factor. Federal procurement is one of the factors SBA evaluates, along with industry data and other relevant considerations, when reviewing a size standard. When these factors are applied to size standards, a certain degree of additional consideration is appropriate. As discussed elsewhere in this rule, giving an excessive weight to Federal procurement (or some other factor for that matter) may produce skewed results with unintended adverse impact on small businesses. For procurement sensitive industries, SBA will consider giving greater weight to the Federal contracting factor, and possibly evaluating additional data related to Federal contracts, where appropriate. For example, SBA considers the Federal procurement factor for those industries that receive $100 million or more in total Federal contracts annually and demonstrate a large disparity between small business shares in the Federal market and the industry's total sales.

One commenter pointed out that the methodology indicated that SBA received several thousand comments on the 2004 Advance Notice of Proposed Rulemaking (ANPRM) that was proposed to simplify and restructure the size standards and that SBA held 11 public hearings throughout the country. The commenter stated that there was no resolution of many of these issues and asked if SBA resolved these issues before making the current proposed rules public—and if so, what the unresolved issues were and what SBA did to resolve them. While the 2004 ANPRM provided SBA with useful information on many size standard issues, there was not a general consensus on those issues. The major issues that SBA raised in the ANPRM are discussed in SBA's ''Size Standards Methodology'' White Paper (*q.v.,* pp. 45–48), and SBA welcomes the public's comments on any or all of these issues. Please visit *www.sba.gov/size* to access the White Paper. The public should submit its comments at *www.regulations.gov,* Docket ID SBA–2009–0008, posted October 21, 2009. SBA decided to withdraw the rule and continue its current approach and policies unless significant problems required changes to its regulations. More importantly, SBA continues to believe that the most pressing concern about small business size standards is to ensure that they are supportable by the current industry data and other relevant considerations, are consistent across industries, and effectively target Federal small business assistance to its intended beneficiaries.

One commenter stated that SBA's methodology of averaging size standards supported by different factors to calculate an overall size standard may result in loss of information. SBA disagrees. This procedure actually preserves information provided by different factors, as opposed to basing the size standard on only one or two factors. The commenter believed that the averaging procedure especially hurts companies in the $25.5 million to $35.5 million annual revenue range. However, as also noted by the commenter, if the size standard was based on the largest value supported by any of the factors, it would put smaller companies at a competitive disadvantage. The commenter believed that perhaps assigning different weights to different factors would provide better results, but it did not offer any specific suggestions.

An association representing professional services provided the following comments on the various factors and analyses SBA used to develop the proposed size standards.

1. *Start-up costs and barriers to entry:* The association commented that while using average assets may be a useful method for assessing barriers to entry into the commercial market, it fails to capture the extensive administrative and compliance requirements associated with Federal contracts, the different skills required for Federal contracts as compared to the commercial market, and the size of contracts, all of which also act as significant barriers to the Federal market. The association recommended that SBA also evaluate the unique costs of entering the Federal marketplace.

SBA agrees that these are important factors determining businesses' ability to enter the Federal market and should be considered when evaluating size standards. However, there exists no readily available data in a form to be able to formalize these factors in the size standards methodology. Given the lack of data, SBA believes that evaluation of small business Federal market share relative to small business share of the industry total revenues would provide a fairly good indication of how successful small businesses are in participating in the Federal market. In addition, SBA also looks at the distribution of Federal contracts by firm size and size of contracts, when appropriate.

2. *Industry competition:* The association recommended that SBA use the ''eight-firm concentration ratio,'' which it claimed is also a widely accepted tool for measuring market share (although no references were provided to support this claim), for evaluating industry competition. The association stated that the eight-firm concentration ratio provides a more accurate picture of market share controlled by the largest firms in an industry. According to the association, using the eight-firm concentration ratio, SBA may find that the largest firms control more than 40 percent in more industries than using the four-firm concentration ratio and SBA may have to increase size standards for those industries.

SBA agrees that there are various measures for assessing industry competition. SBA has always used the four-firm concentration ratio to measure industry competition in its size standards analysis because this is the mostly widely used measure in the relevant literature, as described in its ''Size Standard Methodology'' white paper. Further, the special tabulation of the Economic Census that SBA receives from the U.S. Census Bureau only includes data to compute the four-firm concentration ratio, not the eight-firm ratio. However, SBA will consider using the eight-firm concentration ratio in future reviews. In response to the comment, SBA evaluated the eight-firm concentration ratio using the revenue data for firms receiving Federal contracts under NAICS Industry Group 5415 in CCR. The eight-firm concentration ratio was more than 40 percent only for NAICS 541513, as was the case for the four-firm concentration ratio based on the 2007 Economic Census.

3. *Federal contracting factor:* The association agreed with SBA's method of assigning higher size standards for industries where small businesses are underrepresented in the Federal market relative to their share in the industry's total sales. The association believed that SBA should also assess the extent to which contracts are being set aside within specific industries, as this might have an effect on small business Federal market share. It pointed out that a higher size standard may not necessarily lead to a higher small business Federal market share if small business set-asides are not used in a particular industry. The comment contended that SBA's goal should be to spread all small business contracting opportunities across a broad variety of industries and stated that raising size standards may not have a measurable impact on that goal if Federal agencies are over-relying on set-aside contracts only in a handful of industries to meet their small business contracting goals.

While SBA agrees that small business opportunities should be spread across a variety of industries, it does not believe that size standards are the only factor deciding how many set-asides Federal agencies want to use in the various industries. SBA's size standards establish eligibility for the small business set-aside opportunities that Federal agencies provide in a particular industry, but they do not dictate how the agencies make their set-aside decisions. The number of set-asides in each industry can be a function of many factors, including the nature, scope, types, volume, and costs of goods and services the agencies need to procure. It should also be noted that the current 23 percent small business contracting goal only applies to total procurements government-wide, but it does not apply to individual industries.

The association contended that the Federal contracting factor warrants a greater weight, although it did not provide any specific value, to account for factors affecting small business share in the Federal market, including administrative and compliance requirements associated with Federal contracts, different skills required for Federal contracts, and size of contracts. As mentioned earlier, there is a lack of data to be able to formalize these factors and assign a specific weight for the Federal contracting factor for specific industries. SBA already gives more weight to the Federal contracting factor in some industries than in others by assigning higher size standards for those industries that have $100 million or more in annual Federal contracting and a lower small business share in the Federal market relative to their share in industry's total sales.

Data Issues

SBA received 25 comments on the 2007 Economic Census and FPDS–NG data it used to evaluate industry and Federal procurement factors in developing the proposed rule.

Two associations representing the accounting profession contended that the Economic Census data that SBA uses in its analysis did not adequately reflect the accounting profession and recommended using alternative data sources for their industries. They provided SBA with data, but in most cases those data were either estimates based on sample surveys or represented only a segment of a particular industry, such as the largest firms in terms of revenue or Federal contracts.

SBA believes that the Economic Census data it uses are in fact comprehensive and adequately reflect the accounting profession because the data include all accounting firms in the industry, including any subsidiaries, divisions, and other affiliates that perform accounting functions. They are also more complete because Federal law requires all firms to respond to the Economic Census. Accordingly, SBA believes that the Economic Census data are more appropriate for its size standard analyses.

The data submitted by the associations reflect estimated revenues generated by their worldwide membership and by readers of a major accounting publication. SBA does not dispute the accuracy of their data. However, SBA uses only data that reflect domestic operations of entities with revenues and/or employees in the NAICS Industries for review of their size standards. Although the associations' data may appear to be more complete, SBA does not find that their data meet Agency requirements for determining what an appropriate size standard should be for an industry. In addition, one association stated that it represents more than 370,000 members worldwide, but it is possible that not all members are firms. Its data included estimates of revenues and number of professionals per firm for 2007 and 2009, covering approximately 30,700 firms.

The Economic Census data that SBA uses are actual data on firms. SBA establishes small business size standards based on firms' sizes. Although the associations' data appear to be comprehensive, they are based on estimates. SBA does not believe their data are as accurate, comprehensive, and complete as the Economic Census. To be consistent with the past and with how SBA reviews size standards for all industries, SBA will continue to use Economic Census data in the absence of other more accurate data sources. However, the Agency will give due considerations to alternative data provided by the industries, especially if they are representative of the entire industry in question.

An association representing firms in the surveying, mapping, and geospatial market commented that the Economic Census data do not include the large firms that are active in the Federal geospatial market, which results in a downward bias in calculated standards. Since the Economic Census data that SBA receives from the Census Bureau are based on primary industry at the establishment level, establishments doing some geospatial work may not be included in that industry if that is not their primary work. SBA is aware that there are known problems with the Economic Census tabulation for some industries, and therefore it also evaluates CCR and FPDS–NG data for those industries.

A few commenters believed that the 2007 economic data are outdated and may not reflect current industry structure. SBA is attentive to this limitation, but the 2007 Economic Census is the latest and most comprehensive data source that is available for evaluating all industries consistently and on the same terms. An association representing architectural professionals contended that it has better data for the architectural industry than the Economic Census. The association's data on distribution of firms by size that it submitted with its comment were fairly comparable to a similar distribution based on the 2007 Economic Census special tabulation received from the U.S. Census Bureau. Several commenters cited a study from the Center for International and Strategic Studies on Federal professional services industrial base to substantiate their concerns regarding the participation of mid-sized businesses in the Federal market.

An association representing engineering firms raised a number of issues with the data from the 2007 Economic Census that SBA used to evaluate industry characteristics of Engineering Services (NAICS 541330). Specifically, it opined that Economic Census data do not accurately reflect the characteristics of businesses in the engineering industry for the reasons outlined below.

1. The association believed that the 2007 Economic Census includes several billion-dollar companies under NAICS 541330, thereby inflating SBA's calculated size standard for that industry. SBA disagrees with this comment. SBA received from the U.S. Census Bureau a special tabulation of the 2007 Economic Census for its size standards analysis. Only the total revenue of each establishment is included in the primary NAICS code for that establishment. Based on the evaluation of Federal contract data from FPDS–NG, NAICS 541330 does not appear be the primary industry for most of the companies that the association identified in its comment. That means that the vast majority of revenues they generate are not included in NAICS 541330. For example, in the case of one company, its primary industry is Aircraft Manufacturing (NAICS 336411), and hence its revenue will be included within that industry code. Had these companies' total revenues been included in NAICS 541330, the results would have supported a much larger size standard for Engineering Services. Even if these companies were primarily engaged in Engineering Services and included in the industry data, SBA believes that they should not be excluded. Excluding the largest firms from the analysis, as another association involved in surveying and mapping noted (discussed above), causes a downward bias on the calculated size standard.

2. The association also expressed concerns that the Economic Census data include firms that primarily provide engineering services to petroleum, petrochemical, and other industrial and manufacturing plants and processing industries, and therefore the data distort SBA's results. Based on the NAICS definition, SBA believes that all firms providing engineering services as their primary industry that are part of NAICS 541330 should be included in the analysis, no matter what their clients or industries receiving their services are.

3. The association commented that revenues that many engineering firms receive from non-Federal work, international work, and non-engineering work are also included in Economic Census data for NAICS 541330, distorting average firm size and estimated size standards. SBA disagrees with this comment for two reasons. First, revenues that U.S. companies generate in foreign countries are not included in the Economic Census. Second, including revenues that firms primarily engaged in Engineering Services generate from non-federal work or non-engineering type of work in NAICS 541330 is consistent with how SBA calculates revenues for its size standards purposes. In other words, for a company to qualify as small, its revenues from all sources (including Federal, state, and private work, and work related to non-primary industries) must be counted. *See* 13 CFR 121.104.

4. The association was also concerned that, compared to data from the Engineering News Record's (ENR) listing of the top 500 design firms, 2007 Economic Census data grossly overstated the number of firms with revenues over $25 million that provide infrastructure related engineering services. Specifically, the association stated that the 2007 Economic Census showed 771 firms with revenues over $25 million versus 383 firms based on ENR's listing of the top 500 design firms. SBA disagrees with these figures for two reasons. First, because Economic Census data for NAICS 541330 cover all types of engineering firms, not just a sample of design firms possibly developed through voluntary surveys, the figures from the two sources are simply not comparable. Second, the special tabulation of the 2007 Economic Census shows 1,242 firms above $25 million and 791 firms above $50 million in NAICS 541330. The association did not provide reference to the data source it used to verify its findings.

5. The association commented that the engineering industry is not homogenous and is composed of specialty (*i.e.,* single discipline) firms, full service (*i.e.,* multiple discipline) firms, and their variations. No industry is homogenous; otherwise size standards would be unnecessary. However, no matter how many disciplines, the Economic Census data for NAICS 541330 only include those establishments for which engineering services are the primary industry. All total revenues of an establishment are assigned to its primary NAICS industry.

The same engineering association also commented that the FPDS–NG data that SBA analyzed do not provide a complete picture of small business participation in the Federal marketplace. Specifically, it pointed out that there exist no data on work that large prime contractors subcontracted to small businesses, especially in design-build contracts. In design-build contracts, a construction contractor is usually the prime contract holder and subcontracts all or some of the engineering to small firms. Similarly, the association noted that there are no data on work subcontracted to large firms by small firms. The association made a further comment that no data exist on various size of firms performing Federal work within small and large business categories. Citing these problems, the association stated that there is no way of knowing how successful and competitive small businesses are in the Federal market under current size standards. In addition, the association did not provide in its comment any alternative data sources that SBA should examine besides the FPDS–NG data to more accurately assess the Federal marketplace.

SBA is aware that the FPDS–NG data do not provide information on subcontracting and do not contain information on the exact sizes of businesses receiving Federal contracts. The Electronic Subcontracting Reporting System (eSRS) collects data on subcontracting activity, but those data are not categorized by NAICS industry. SBA concurs with the association's recommendation that the current data collection system should be improved to address these problems. However, despite these and other issues, SBA believes that FPDS–NG is still the best data source available for assessing activity in the Federal marketplace.

The association also commented that FPDS–NG data lack information on the exact sizes of businesses receiving Federal contracts, which would allow a better estimate of the impact of size standards changes on small businesses. SBA analyzed Federal contracts by both actual size of contract recipients and size of contracts by merging contract data from FPDS–NG with employees and revenues information from the CCR. By using this analysis in conjunction with the share of small businesses in the Federal market relative to their share in overall industry total sales, SBA assessed the impacts of proposed size standards changes on small business participation in the Federal market. If this SBA analysis is flawed, it is likely due to its being based on flawed data that companies have self-reported for their CCR registration profiles. SBA does not verify what information companies put in their CCR profiles, except when they apply for one of SBA's Business Development Programs or when the Agency must make a size determination after a small business size protest.

Small Business Size Definitions and Related Issues

SBA received approximately 160 public submissions from about 130 unique individuals (many submitted multiple comments or the same comment multiple times) asserting that SBA's proposed small business size standards did not represent or target ''truly small'' businesses. Many also stated that the proposed standards included up to 99 percent of all businesses, and even up to 100 percent in their states. Public submissions also included ordinary dictionary definitions and size standards used by foreign countries.

SBA acknowledges that some of its proposed size standards could include 97 percent to 99 percent of firms in a given industry. However, it is very important to point out that while it may appear to be a large segment of an industry in terms of the percentage of firms, small firms in industries analyzed in this rule represent only 37 percent of total industry receipts under current standards and 43 percent under the proposed size standards. Similarly, small businesses in those industries account for 22–23 percent of total industry Federal government contract awards. These factors are major considerations when evaluating small business size standards. It is not uncommon for a small number of large firms to have a high percentage of industry receipts and employees and to obtain the largest number of Federal contacts. In the March 16, 2011 proposed rule, SBA detailed its analysis and evaluation of these and other factors that it used to arrive at its various proposed small business size standards. SBA discusses elsewhere in this rule why it is not adopting every small business size standard as proposed.

SBA's small business size standards apply to business concerns on a national basis. As part of its review, SBA investigates whether one or more firms at or below a proposed size standard would be dominant in its industry. As stated in its regulations, when SBA examines dominance, it ''* * * take[s] * * * into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence *on a national basis* in which a number of business concerns are engaged.'' 13 CFR 121.102(b) [emphasis added]. For Federal government procurement, opportunities for small business participation are not limited to contractors in any given area. SBA therefore looks at dominance on a national basis because U.S. Government contracting activities are located throughout the U.S., and contract performance can often be outside of the contracting activity's or the successful contractor's area. A contractor in Pennsylvania, for example, can bid on a contract in Hawaii, if it so chooses, and contracts awarded in California can be for work in New England. Therefore, SBA must evaluate dominance on a national basis, because place of bid, place of performance, and/or contractor location are virtually unlimited within the U.S.

Common dictionary definitions of ''small'' are very general and not relevant to why and how SBA establishes small business size standards. SBA's definition of a small business concern is more than a generic meaning of the word ''small'' in a dictionary. In addition, numeric small business size standards are just one component of what constitutes a small business concern. Size standards set thresholds an entity cannot exceed and still be small for various Federal government programs. If a firm (together with its affiliates) meets both SBA's definition of a business concern (*see* 13 CFR 121.105) and those numeric size thresholds, it is a small business concern; if it does not meet both SBA's definition of a business concern and those numeric thresholds, it is ''other than small.'' Common definitions of ''small'' usually speak about comparisons, and thus it is important to point out that such general definitions relate only to subjects as compared to others and lack specificity. SBA's small business size standards are comparisons, and small businesses are small when compared to those in its industry that are other than small, but SBA's definitions of what constitutes a small business concern for Federal government programs clearly delineate what is small. What constitutes a small business determines eligibility so that some businesses, but not all, can qualify for Federal government programs that provide benefits for small business concerns. A small business in one industry may not be ''small'' in another industry, because being small is relative to other business concerns that have similar ways of conducting their business.

Furthermore, just as SBA's small business size standards do not apply to programs of foreign entities, likewise another country's definition of what is small does not apply and has no relevance to U.S. Government programs.

All Other Issues

An association representing firms in NAICS 541360 (Geophysical Surveying and Mapping Services) expressed concern that Federal agencies often use NAICS 541930 (Commercial Photography) for contracts to perform mapping-related aerial photography. The association urged SBA to modify and clarify the distinction between aerial photography for mapping and commercial photography and to promulgate regulations to dissuade or prohibit the use of NAICS 541930 for aerial photography.

SBA does not establish, modify, or clarify NAICS industry definitions. Any comments regarding the NAICS industry definitions should be directed to the Office of Management and Budget, which in partnership with the U.S. Census Bureau, modifies and updates NAICS industry definitions. The Small Business Size Regulations (13 CFR 121) already contain provisions against the use of improper NAICS codes for Federal procurements. First, the regulations require Federal agencies to designate the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. *See* 13 CFR 121.402(b). Second, the regulations provide that any interested party adversely affected by a NAICS code designation may appeal the designation to the Office of Hearings and Appeals. *See* 13 CFR 121.1102–1103.

To increase small business participation in Federal market for mapping and surveying, the association made several policy recommendations, specifically that (1) SBA establish small business contracting and subcontracting goals in each industry category to ensure that small businesses receive a fair proportion of Federal procurements of goods and services in each industry; (2) size and complexity of small business set-aside contracts match with size and capability of small business firms and the ''rule of 2'' be revised to allow the distinction among types and size of contracts; (3) SBA work with the industry to develop policies to account for teaming and pass through subcontracting when determining a firm meets the size standard; (4) SBA work with existing authority, such as OFPP, to reinstate the Small Business Competitiveness Demonstration Program; (5) SBA extend the $300,000 threshold for Department of Defense contracts for architecture and engineering services under 10 U.S.C. 2855(b) to civilian agencies as well; and, (6) the SBA work with the industry to modify FAR part 36–601–4(a)(4) to ensure that the Brooks Act also applies to Federal contracts involving surveying, mapping and geospatial services, pursuant to 40 U.S.C. 1102.

An association representing firms in the engineering industries also provided several policy recommendations to improve participation of small business engineering firms in the Federal market. These relate to improvement in contracting data collection, development of contracts commensurate with capabilities and experience of small firms, expansion of teaming arrangements, setting small business subcontracting goals for larger primes, and targeting more set-aside contracts to truly small firms.

SBA agrees that these are important issues relating to small business participation in the Federal market for engineering, surveying, mapping and geospatial services, but they are outside of the scope of this rule. SBA will work with the industry to find appropriate avenues to address these important issues.

An association commented that SBA failed to account for the number of additional firms that would become eligible for each industry category under the proposed rule. It is not that SBA did not estimate those figures by industry; rather, the Agency did not include all those details in the proposed rule. SBA believes that conducting an impact analysis on an industry-by-industry basis would make the rule too long and complicated. The association also suggested that SBA provide estimates of additional firms that would become eligible in each industry if SBA proposed a size standard one level higher than the current proposed size standard. SBA believes that such information would make the rule much more complex. In addition, SBA finds it useful to receive public comments on its proposal supported by its analysis and other relevant considerations, rather than comments on different hypothetical scenarios. However, if SBA adopts in the final rule a different size standard from that in the proposed rule, SBA will provide the new estimate of firms impacted in its final regulatory flexibility analysis.

All public submissions to the proposed rule are available for public review at *http://www.regulations.gov.*

Conclusion

Based on the reevaluations of relevant industry and program data and the Agency's assessments of public comments it received on the proposed rule, SBA has decided to increase small business size standards for 34 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81. SBA has decided to maintain 11 receipts based size standards in NAICS Sector 54 at their current levels. SBA also is removing Map Drafting (along with its $4.5 million size standard) as the ''exception'' under NAICS 541340, Drafting Services. The following Table—Summary of Size Standards Changes—summarizes SBA's decisions.

SUMMARY OF SIZE STANDARDS CHANGES

NAICS Codes	NAICS industry title	Current size standard ($ millions)	Proposed size standard ($ millions)	Revised size standard ($ millions)
541110	Offices of Lawyers	$7.0	$10.0	$10.0
541191	Title Abstract and Settlement Offices	7.0	10.0	10.0
541199	All Other Legal Services	7.0	10.0	10.0
541211	Offices of Certified Public Accountants	8.5	14.0	19.0
541213	Tax Preparation Services	7.0	14.0	19.0
541214	Payroll Services	8.5	14.0	19.0
541219	Other Accounting Services	8.5	14.0	19.0
541310	Architectural Services	4.5	19.0	7.0
541320	Landscape Architectural Services	7.0	19.0	7.0
541330	Engineering Services	4.5	19.0	14.0
Except	Military and Aerospace Equipment and Military Weapons	27.0	27.0	35.0
Except	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	27.0	27.0	35.5

SUMMARY OF SIZE STANDARDS CHANGES—Continued

NAICS Codes	NAICS industry title	Current size standard ($ millions)	Proposed size standard ($ millions)	Revised size standard ($ millions)
Except,	Marine Engineering and Naval Architecture	18.5	25.5	35.5
541340	Drafting Services	7.0	19.0	7.0
Except,	Map Drafting	4.5	[1]	[1]
541350	Building Inspection Services	7.0	19.0	7.0
541360	Geophysical Surveying and Mapping Services	4.5	19.0	14.0
541370	Surveying and Mapping (except Geophysical) Services	4.5	19.0	14.0
541380	Testing Laboratories	12.0	19.0	14.0
541410	Interior Design Services	7.0	7.0	7.0
541420	Industrial Design Services	7.0	7.0	7.0
541430	Graphic Design Services	7.0	7.0	7.0
541490	Other Specialized Design Services	7.0	7.0	7.0
541511	Custom Computer Programming Services	25.0	25.5	25.5
541512	Computer Systems Design Services	25.0	25.5	25.5
541513	Computer Facilities Management Services	25.0	25.5	25.5
541519	Other Computer Related Services	25.0	25.5	25.5
541611	Administrative Management and General Management Consulting Services.	7.0	14.0	14.0
541612	Human Resources Consulting Services	7.0	14.0	14.0
541613	Marketing Consulting Services	7.0	14.0	14.0
541614	Process, Physical Distribution and Logistics Consulting Services.	7.0	14.0	14.0
541618	Other Management Consulting Services	7.0	14.0	14.0
541620	Environmental Consulting Services	7.0	14.0	14.0
541690	Other Scientific and Technical Consulting Services	7.0	14.0	14.0
541720	Research and Development in the Social Sciences and Humanities.	7.0	19.0	19.0
541810	Advertising Agencies	7.0	14.0	14.0
541820	Public Relations Agencies	7.0	14.0	14.0
541830	Media Buying Agencies	7.0	14.0	14.0
541840	Media Representatives	7.0	14.0	14.0
541850	Display Advertising	7.0	14.0	14.0
541860	Direct Mail Advertising	7.0	14.0	14.0
541870	Advertising Material Distribution Services	7.0	14.0	14.0
541890	Other Services Related to Advertising	7.0	14.0	14.0
541910	Marketing Research and Public Opinion Polling	7.0	7.0	14.0
541921	Photography Studios, Portrait	7.0	7.0	7.0
541922	Commercial Photography	7.0	7.0	7.0
541930	Translation and Interpretation Services	7.0	7.0	7.0
541940	Veterinary Services	7.0	7.0	7.0
541990	All Other Professional, Scientific and Technical Services	7.0	7.0	14.0
811212	Computer and Office Repair and Maintenance	25.0	25.5	25.5

[1] Eliminate.

Compliance With Executive Orders 12866, 13563, 12988, 13132, and 13272 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 final 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 the revised changes to small business size standards for 34 industries and three sub-industries within NAICS Sector 54, Professional, Technical, and Scientific Services, and one industry in NAICS Sector 81, Other Services, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. 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 establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegated to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. In addition, the Jobs Act requires the Administrator to review one-third of all size standards during each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The supplementary information sections of the March 16, 2011 proposed rule and this final rule explained in detail 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 as a result of this rule is gaining or regaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) program, and programs benefitting 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 may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive.

In the 35 industries and three sub-industries for which SBA has decided to increase size standards in this rule, SBA estimates that, based on an updated special tabulation of the 2007 Economic Census, about 8,350 additional firms will obtain small business status and become eligible for these programs. That number is about 1.1 percent of the total number of firms in those industries defined as small under the current standards. SBA estimates that this will increase the small business share of total industry receipts in those industries from about 37 percent under the current size standards to 42 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups as follows: (1) Some businesses that are above the current size standards will 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 larger pools of small businesses from which to draw for their small business procurement programs.

Based on the FPDS–NG data for fiscal years 2008–2010, more than 95 percent of total Federal contracting dollars spent in industries covered by this rule were accounted for by the 35 industries and three sub-industries for which SBA is increasing the size standards. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling up to $500 million per year under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC programs and other unrestricted procurements. The added competition for many of these procurements also could result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008–2010 data, SBA estimates about 75 to 100 additional loans totaling about $15 million to $20 million in Federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly their number and the total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for business concerns that do not meet the size standards for their industry ($15 million in tangible net worth and $5 million in net income after income taxes). Therefore, SBA finds it similarly difficult to quantify the impact of these proposed 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, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that 8,350 newly defined small firms under the revised size standards could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, 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, or SDB status. Among businesses in this group 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 administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. 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 small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. The additional costs associated with fewer bidders, however, are expected 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 revised size standards 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 Federal 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 an evaluation adjustment for contracts when they compete 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 under the revised 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 away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The revisions to the existing size standards are consistent with SBA's statutory mandate to assist small businesses. 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

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

In an effort to engage interested parties in this action, SBA presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA met with various industry groups to obtain their feedback on its methodology and other size standards issues. SBA also presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. These presentations 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.

Before SBA issued the March 16, 2011 proposed rule, it met with representatives from two associations representing firms in NAICS Industry Group 5412, Accounting, Tax Preparation, Bookkeeping, and Payroll Services, to learn their ideas for size standards for these industries, without discussing what changes SBA was considering to propose. SBA explained its methodology and indicated it would consider other data or information they might have to support the size standard that they suggested.

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 size standards and whether current standards meet their programmatic needs (both procurement and nonprocurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the proposed rule.

Furthermore, when SBA issued the proposed rule, it provided notice of its publication to over 230 individuals and companies that had in recent years exhibited an interest by letter, email, or phone, in size standards for NAICS Sector 54 so they could comment.

The review of size standards in NAICS Sector 54, and the implementation of necessary adjustments to reflect current industry data and market conditions, are consistent with EO 13563 section 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 had 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 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 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 to 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.

Executive Order 13272

Pursuant to Executive Order 13272 and the Small Business Jobs Act of 2010, Federal agencies issuing final rules are required to discuss and give every appropriate consideration to comments received from the SBA's Office of Advocacy to the proposed rule. SBA's Office of Advocacy submitted two comments on the proposed rule. In the first comment submitted on May 12, 2012, it expressed a concern about the large proposed increase to the size standard for the A&E services industries that would define as small much larger firms than those considered small under the current size standard. It also recommended that SBA extend the comment period an additional 45 days to allow stakeholders to further evaluate and comment on the proposed size standards. SBA partially agreed with this recommendation by extending the comment period for an additional 30 days. As a result, SBA received approximately 1,000 additional comments after the closing date of original comment period.

The second comment submitted by SBA's Office of Advocacy on June 14, 2011 addressed the size standard concerns on behalf of three industries. For the A&E services, it acknowledged that stakeholders had expressed differing concerns regarding the proposed $19 million size standard. It recommended that SBA consider a lower size standard than proposed, but increase the current $4.5 million size standard to allow for some growth of firms in the Federal marketplace. As discussed earlier in this final rule, SBA decided not to adopt the proposed $19 million size standard for the A&E services. Rather, based largely upon the comments and SBA's further analysis of industry data, SBA adopted a $7 million size standard for architectural services and a $14 million size standard for engineering services.

For the mapping services and accounting industries, SBA's Office of Advocacy recommended no specific size standard other than suggesting that SBA should give careful consideration to the comments submitted by associations in these industries. In particular, it stressed that SBA should examine the geospatial market within the surveying and mapping industry and reassess its methodology for evaluating the primary and secondary factors for the accounting industry.

SBA agreed with these recommendations. As discussed earlier in this final rule, SBA found that the information provided in the comments on these two industries warranted a reassessment of the size standards. Based on industry comments and data as well as SBA's additional analysis, SBA adopted a higher 19 million size standard rather than the proposed $14 million for the accounting industry. SBA's decision not to adopt a common size standard for all industries in NAICS Industry Group 5413, assessment of public comments, and reevaluation of industry and Federal procurement data, as previously discussed, resulted in a $14 million size standard for both NAICS 541360 (Geophysical Surveying and Mapping Services) and NAICS 541370 (Surveying and Mapping, except Geophysical), which includes geospatial services. Without that assessment, the data for NAICS 541370 alone would have supported only a $5 million size standard.

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

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

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in industries covered in this rule. As described above, this rule may affect small entities seeking Federal contracts, SBA 7(a) and 504 Guaranteed Loans, SBA Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final 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 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 are the need for and objective of the rule?

Many of SBA's size standards for the Professional, Technical, and Scientific Services industries had not been reviewed since the 1980s. Since then, technological changes, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

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

Based on the updated tabulation from the 2007 Economic Census, SBA estimates that about 8,350 additional firms will become small because of increases in size standards in 35 industries and three sub-industries. That represents 1.1 percent of total firms in those industries and sub-industries. This will result in an increase in the small business share of total industry receipts for those industries and sub-industries from about 37 percent under the current size standard to 42 percent under the revised size standards. SBA does not anticipate the revised size standards to cause a significant competitive impact on smaller businesses in these industries. As many comments to the proposed rule suggested, the revised size standards will enable more small businesses to retain their small business status for a longer period. Under current standards, many small businesses have lost their eligibility and 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 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 and an estimate of the classes of small entities which will be subject to the requirements?

Revised size standards 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 CCR database and certify at least once 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. Changing size standards alters the access to SBA programs that assist small businesses but does not impose a regulatory burden, as they neither regulate nor control business behavior.

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

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. 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 or revising 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 reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

■ a. In § 121.201, in the table, revise the entries for ''541110'', ''541191'', ''541199'', ''541211'', ''541213'', ''541214'', ''541219'', ''541310'', ''541330 introductory entry and first, second and third sub-entry'', ''541360'', ''541370'', ''541380'', ''541511'', ''541512'', ''541513'', ''541519 introductory entry'', ''541611'', ''541612'', ''541613'', ''541614'', ''541618'', ''541620'', ''541690'', ''541720'', ''541810'', ''541820'', ''541830'', ''541840'', ''541850'', ''541860'', ''541870'', ''541890'', ''541910'', ''541990'', and ''811212'' ; and

■ b. In § 121.201, in the table, amend the entry for ''541340'' by removing the subentry ''Except'', ''Map Drafting'' ''$4.5''.

The revisions 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
* *	* * *	*	*
541110	Offices of Lawyers	$10.0	
541191	Title Abstract and Settlement Offices	10.0	
541199	All Other Legal Services	10.0	
541211	Offices of Certified Public Accountants	19.0	
541213	Tax Preparation Services	19.0	
541214	Payroll Services	19.0	
541219	Other Accounting Services	19.0	
541310	Architectural Services	7.0	
* *	* * *	*	*
541330	Engineering Services	14.0	
Except,	Military and Aerospace Equipment and Military Weapons	35.5	
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	35.5	
Except,	Marine Engineering and Naval Architecture	35.5	
* *	* * *	*	*
541360	Geophysical Surveying and Mapping Services	14.0	
541370	Surveying and Mapping (except Geophysical) Services	14.0	
541380	Testing Laboratories	14.0	
* *	* * *	*	*
541511	Custom Computer Programming Services	25.5	
541512	Computer Systems Design Services	25.5	
541513	Computer Facilities Management Services	25.5	
541519	Other Computer Related Services	25.5	
* *	* * *	*	*
541611	Administrative Management and General Management Consulting Services.	14.0	
541612	Human Resources Consulting Services	14.0	
541613	Marketing Consulting Services	14.0	
541614	Process, Physical Distribution and Logistics Consulting Services	14.0	
541618	Other Management Consulting Services	14.0	
541620	Environmental Consulting Services	14.0	
541690	Other Scientific and Technical Consulting Services	14.0	
* *	* * *	*	*
541720	Research and Development in the Social Sciences and Humanities	19.0	
541810	Advertising Agencies [10]	[10] 14.0	
541820	Public Relations Agencies	14.0	
541830	Media Buying Agencies	14.0	
541840	Media Representatives	14.0	
541850	Display Advertising	14.0	
541860	Direct Mail Advertising	14.0	
541870	Advertising Material Distribution Services	14.0	
541890	Other Services Related to Advertising	14.0	
541910	Marketing Research and Public Opinion Polling	14.0	
* *	* * *	*	*
541990	All Other Professional, Scientific and Technical Services	14.0	
* *	* * *	*	*
811212	Computer and Office Repair and Maintenance	25.5	

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
* * *	* *	*	*

* * * * *

[10] *NAICS codes 488510 (part) 531210, 541810, 561510, 561520,* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * *

Dated: November 7, 2011.

Karen G. Mills,

Administrator.

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