upon the ambient temperature and humidity, so environmental conditions for testing are much more important for heat pump pool heaters than for gas-fired pool heaters.

In light of the above, DOE tentatively plans to update the pool heater test procedures by adding provisions to address electric heat pump pool heaters through use of a COP performance metric drawn from industry standards, coupled with a separate conversion to thermal efficiency (*i.e.,* the regulating metric specified in EPCA) and integrated thermal efficiency (*i.e.,* the new regulating metric, as amended by EISA 2007). Because there are currently no energy conservation standards for electric heat pump pool heaters, no certification or reporting would be required for those products until such time as DOE sets minimum energy conservation standards for those products (which will include energy consumption in active, standby, and off modes). However, after a test method is adopted for electric heat pump pool heaters, manufacturers would be required to use the DOE test method for making efficiency representations and would be able to use the COP metric, the integrated thermal efficiency metric, or both for making efficiency representations during this interim period. Compliance with the amended test procedure for representations purposes would be required 180 days after the date of publication of the test procedure final rule. Once DOE sets energy conservation standards for pool heaters, EPCA requires the use of the thermal efficiency metric. Therefore, if DOE were to set energy conservation standards for heat pump pool heaters, manufacturers would then be required to rate their products using the integrated thermal efficiency metric, although they would still have the option of making supplemental representations of efficiency using the COP metric.

DOE requests comment on the applicability of the ANSI Z21.56 test method for pool heaters that are powered by energy sources other than gas. Additionally, DOE seeks comment on its tentative plans for updating the pool heater test procedure to include electric pool heaters and information on potential methods to apply the integrated thermal efficiency metric to electric pool heaters (including heat pump pool heaters).

2. Other Issues

DOE also seeks comments on other relevant issues that would affect the test procedures for residential pool heaters. Although DOE has attempted to identify those portions of the test procedure where it believes amendments may be warranted, interested parties are welcome to provide comments on any aspect of the test procedure as part of this comprehensive 7-year-review rulemaking.

III. Public Participation

DOE invites all interested parties to submit in writing by November 28, 2011, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for residential water heaters, direct heating equipment, and pool heaters.

After the close of the comment period, DOE will begin collecting data, conducting relevant analyses, and reviewing the public comments. These actions will be taken to aid in the development of a test procedure NOPR for residential water heaters, direct heating equipment, and pool heaters.

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on September 29, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

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BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG26

Small Business Size Standards: Information

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 15 industries in North American Industry Classification System (NAICS) Sector 51, Information. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all receipts based size standards in NAICS Sector 51 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that examines size standards of industries grouped by NAICS Sector. The SBA issued a White Paper entitled ''Size Standards Methodology'' and published a document in the October 21, 2009, issue of the **Federal Register** that ''Size Standards Methodology'' is available on its Web site at *http://www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before December 12, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AF26, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov;* follow the instructions for submitting comments; or, (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416. The SBA will not accept comments submitted by e-mail.

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

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

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business definitions (referred to as size standards) for private sector industries in the United States. The SBA uses two primary measures of business size—average annual receipts and average number of employees. The SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the start of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's Table of size standards). Thirty-one of these size standards were based on average annual receipts, seven were based on average 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 the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. The SBA also makes periodic inflation adjustments to its monetary based size standards. The SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach of reviewing a group of industries within an NAICS Sector. An NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise size standards for those industries for which currently available data and other relevant factors support doing so.

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

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for establishing, reviewing and modifying size standards when necessary. The SBA has published this document on its Web site at *http://www.sba.gov/size* for public review and comments and included it, as a supporting document, in the electronic docket of this proposed rule at *http://www.regulations.gov.* The SBA does not apply every feature of its methodology to every size standard evaluation because not all features are appropriate for every industry. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 51, the methodology described here applies to establishing receipts based standards. However, the methodology is made available in its entirety for parties who are interested in SBA's overall approach to establishing, evaluating, and modifying small business size standards. The SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

The SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider. Comments on the SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008; follow the instructions for submitting comments; or, (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of October 12, 2011, SBA has received seven comments to its ''Size Standards Methodology.'' The comments are available to the public at *http://www.regulations.gov.* The SBA continues to welcome comments on its methodology from interested parties.

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

This proposed rule includes information regarding the factors SBA evaluated and the criteria the Agency used to propose any adjustments to size standards in NAICS Sector 51. It also explains why SBA has proposed to adjust some size standards in NAICS Sector 51 but not others. This proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 51 as well as on the data and methodology it uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. The SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. The SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, SBA has set 100 employees as the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance programs. However, NAICS codes for Wholesale Trade Industries (NAICS Sector 42) and their 100 employee size standard for the Wholesale Trade Sector do not apply to Federal procurement programs. Rather, for Federal procurement purposes the size standard is 500 employees for all industries in Wholesale Trade (NAICS Sector 42), and for all industries in Retail Trade (NAICS Sector 44–45) under the SBA's nonmanufacturer rule (13 CFR 121.406(b)).

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

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

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those of the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 51 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts, with the weighted average size standard for the group being $29 million. The SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. The SBA also evaluates, as an additional primary factor, the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, *etc.*). The SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. The SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below are brief descriptions of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 51 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

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

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

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

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

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

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

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

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

5. *Impact on Federal contracting and SBA loan programs.* The SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, different skill sets required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, and other factors, will likely influence the type of firms that compete for Federal contracts. By comparing the Federal contracting small business share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

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

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

Sources of Industry and Program Data

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

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector) or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible.

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

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

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

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

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business definition or size standard established by the SBA Administrator. The SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

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

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 51 that has a receipts based standard. In NAICS Sector 51, 20 industries have size standards based on annual receipts, and 12 have size standards based on the number of employees. In this proposed rule, SBA has not reviewed employee based size standards for those 12 industries and the current standards will remain in effect until SBA reviews industries with employee based size standards. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. To establish these eight receipts based size standard levels, SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following: $2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. The SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is also an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million include those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million at the start of the current comprehensive size standards review. Among the higher level size clusters, SBA has set four fixed levels: Namely, $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between some of the fixed levels, SBA also established two intermediate levels: Namely, $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

Evaluation of Industry Structure

SBA evaluated the structure of the 20 industries in NAICS Sector 51, Information, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each of the 20 industries in NAICS Sector 51 to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

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

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

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

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

Derivation of Size Standards Based on Industry Factors

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

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

For example, if an industry's simple average receipts are $3.3 million, that would support a $19 million size standard. The $3.3 million level is 52.8 percent between the average firm size of $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.616 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.616 million). The final step is to round the estimated $18.616 million size standard to the nearest fixed size standard level, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in the SBA's ''Size Standards Methodology,'' available on SBA's Web site at *http://www.sba.gov/size.* (However, note that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available.) Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then size standard is ($ million)
< 1.15	< 15.22	< 0.73	< 142.8	< 0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
> 5.71	> 133.41	> 3.61	> 1,577.1	> 0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are at obtaining Federal contracts under current size standards. For the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than the current size standard for industries where the small business share of total Federal contracting dollars is 10 to 30 percentage points lower than the small business share of total industry receipts and at two levels higher than the current size standard where the difference is more than 30 percentage points.

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

Of the 20 industries reviewed in this proposed rule, five industries averaged $100 million or more annually in Federal contracting during fiscal years 2007–2009. However, the Federal contracting factor was not significant and no size standard was calculated for this factor for any of these five industries. The small business share of total Federal contracting dollars was already higher than the small business share of the total industry receipts for four of these five industries. In the one industry, the small business share of total Federal contracting dollars was less than the small business share of total industry receipts, but the difference was less than 10 percent. Thus, the latest data show that Federal contracting activity is insignificant for most of the industries in NAICS Sector 51, and for the majority of those industries where it is significant, small businesses seem to be doing well in terms of their share of the Federal marketplace relative to their share of the industry's total sales.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no estimated size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. As mentioned earlier, no size standard is derived for the Federal contracting factor as that factor was significant in none of the industries in NAICS Sector 51 reviewed in this proposed rule. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

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

[Millions of dollars]

NAICS code/industry title (1)	Simple average firm size ($ million) (2)	Weighted average firm size ($ million) (3)	Average assets size ($ million) (4)	Four-firm ratio (%) (5)	Four-firm average size ($ million) (6)	Gini coefficient (7)	Federal contract factor (%) (8)	Calculated new size standard ($ million) (9)	Current size standard ($ million) (10)
511210 Software Publishers	$22.9 35.5	$358.8 35.5	$16.0 35.5	38.9	$13,171.0	0.903 $35.5	31.0	$35.5	$25.0
512110 Motion Picture and Video Production	5.1 30.0	591.5 35.5	2.4 19.0	52.7	7,893.3 35.5	0.932 $35.5	....	30.0	29.5
512120 Motion Picture and Video Distribution	4.1 25.5	34.9 10.0	....	30.6	157.2	0.814 $25.5	....	25.5	29.5
512131 Motion Picture Theaters (except Drive-Ins)	6.2 35.5	304.1 35.5	7.4 35.5	53.9	1,699.2 35.5	0.909 $35.5	....	35.5	7.0
512132 Drive-In Motion Picture Theaters	0.4 5.0	1.8 5.0	....	23.0	5.5	0.322 $5.0	....	5.0	7.0
512191 Teleproduction and Other Postproduction Services	2.2 14.0	46.5 14.0	1.4 10.0	27.1	296.6	0.817 $25.5	....	19.0	29.5
512199 Other Motion Picture and Video Industries	3.2 19.0	78.8 19.0	1.7 14.0	75.7	151.8 7.0	0.866 $35.5	....	19.0	7.0
512210 Record Production	1.0 5.0	26.2 7.0	0.5 5.0	46.7	39.5 5.0	0.711 $10.0	....	7.0	7.0
512240 Sound Recording Studios	0.5 5.0	4.6 5.0	0.2 5.0	9.8	21.0	0.520 $5.0	....	5.0	7.0
512290 Other Sound Recording Industries	1.1 5.0	19.7 7.0	....	30.9	34.6	0.718 $10.0	....	10.0	7.0
515111 Radio Networks	7.9 35.5	112.1 30.0	....	61.4	633.4 14.0	0.889 $35.5	....	30.0	7.0
515112 Radio Stations	4.7 25.5	149.1 35.5	6.6 35.5	42.2	1,569.4 30.0	0.885 $35.5	....	35.5	7.0

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

[Millions of dollars]

NAICS code/industry title (1)	Simple average firm size ($ million) (2)	Weighted average firm size ($ million) (3)	Average assets size ($ million) (4)	Four-firm ratio (%) (5)	Four-firm average size ($ million) (6)	Gini coefficient (7)	Federal contract factor (%) (8)	Calculated new size standard ($ million) (9)	Current size standard ($ million) (10)
515120 Television Broadcasting	39.8	367.3	56.8	43.3	3,893.7	0.878	....	35.5	14.0
	35.5	35.5	35.5		35.5	$35.5			
515210 Cable and Other Subscription Programming	101.2	1,186.4	82.0	62.0	6,964.8	0.911	....	35.5	15.0
	35.5	35.5	35.5		35.5	$35.5			
517410 Satellite Telecommunications	6.2	111.8	....	42.4	471.1	0.894	9.2	30.0	15.0
	35.5	30.0			14.0	$35.5			
517919 All Other Telecommunications	4.0	184.3	....	46.8	1,572.9	0.908	-2.3	30.0	25.0
	25.5	35.5			30.0	$35.5			
518210 Data Processing, Hosting, and Related Services	7.3	74.4	5.9	25.8	4,301.8	0.854	18.0	30.0	25.0
	35.5	19.0	35.5			$35.5			
519110 News Syndicates	8.1	105.5	....	68.8	368.0	0.894	....	25.5	7.0
	35.5	25.5			10.0	$35.5			
519120 Libraries and Archives	0.9	24.7	....	27.3	126.7	0.754	....	14.0	7.0
	5.0	7.0				$19.0			
519190 All Other Information Services	5.1	141.6	....	54.5	320.2	0.916	8.8	25.5	7.0
	30.0	35.5			10.0	$35.5			

Special Considerations

Employee Based Size Standards

In this proposed rule, SBA has not reviewed 12 industries in NAICS Sector 51 that currently have employee based size standards. The SBA will review those industries when it reviews the Manufacturing Sector (NAICS Sector 31–33) and other industries that have employee based size standards. The SBA proposes, therefore, to leave the size standards for those 12 industries at their current levels until it reviews the employee based size standards.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly small businesses much smaller than the current size standards that use the SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 51, Information, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 4, below, summarizes the results of SBA analyses of size standards from Table 3. The results support increases in size standards in 15 industries, decreases in four industries, and no change in one industry.

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS code	NAICS industry title	Calculated new size standard ($ million)	Current size standard ($ million)
511210	Software Publishers	$35.5	$25.0
512110	Motion Picture and Video Production	30.0	29.5
512120	Motion Picture and Video Distribution	25.5	29.5
512131	Motion Picture Theaters (except Drive-Ins)	35.5	7.0
512132	Drive-In Motion Picture Theaters	5.0	7.0
512191	Teleproduction and Other Postproduction Services	19.0	29.5
512199	Other Motion Picture and Video Industries	19.0	7.0
512210	Record Production	7.0	7.0
512240	Sound Recording Studios	5.0	7.0
512290	Other Sound Recording Industries	10.0	7.0
515111	Radio Networks	30.0	7.0
515112	Radio Stations	35.5	7.0
515120	Television Broadcasting	35.5	14.0
515210	Cable and Other Subscription Programming	35.5	15.0
517410	Satellite Telecommunications	30.0	15.0
517919	All Other Telecommunications	30.0	25.0
518210	Data Processing, Hosting, and Related Services	30.0	25.0
519110	News Syndicates	25.5	7.0
519120	Libraries and Archives	14.0	7.0

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS code	NAICS industry title	Calculated new size standard ($ million)	Current size standard ($ million)
519190	All Other Information Services	25.5	7.0

However, lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate was 9.4 percent or higher from May 2009 to December 2010. It moderated to 8.8 percent in March 2011, but it increased to 9.2 percent in June 2011. The unemployment rate is forecast to remain around this elevated level at least through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

Reducing size standards based solely on analytical results would decrease the number of firms that could participate in Federal financial and procurement assistance for small businesses. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA has decided not to propose to reduce the size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards. As stated previously, the Small Business Act requires the Administrator to "* * * consider other factors deemed to be relevant * * *" to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant to establishing small business size standards. The SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and the Jobs Act. Therefore, for those industries for which analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Thus, of the 20 industries in NAICS Sector 51 that were reviewed in this proposed rule, SBA proposes to increase size standards for 15 industries and retain the current standards for five industries. Industries for which SBA has proposed to increase their size standards and proposed standards are in Table 5.

In addition, not lowering size standards is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services), which the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency's recently proposed rules for NAICS Sector 54 (Professional, Technical, and Scientific Services) (76 FR 14323, March 16, 2011), NAICS Sector 48–49 (Transportation and Warehousing) (76 FR 27935, May 13, 2011), and NAICS Sector 56 (Administrative and Support, Waste Management and Remediation Services) that is being published elsewhere in this issue of the **Federal Register**. In each of those final and proposed rules, SBA opted not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS code	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
511210	Software Publishers	$35.5	$25.0
512110	Motion Picture and Video Production	30.0	29.5
512131	Motion Picture Theaters (except Drive-Ins)	35.5	7.0
512199	Other Motion Picture and Video Industries	19.0	7.0
512290	Other Sound Recording Industries	10.0	7.0
515111	Radio Networks	30.0	7.0
515112	Radio Stations	35.5	7.0
515120	Television Broadcasting	35.5	14.0
515210	Cable and Other Subscription Programming	35.5	15.0
517410	Satellite Telecommunications	30.0	15.0
517919	All Other Telecommunications	30.0	25.0
518210	Data Processing, Hosting, and Related Services	30.0	25.0

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS—Continued

NAICS code	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
519110	News Syndicates	25.5	7.0
519120	Libraries and Archives	14.0	7.0
519190	All Other Information Services	25.5	7.0

Evaluation of Dominance in Field of Operation

The SBA has determined that for the industries in NAICS Sector 51, Information, for which it has proposed to increase size standards, no firm at or below the proposed size standard is large enough to dominate its field of operation. At the proposed size standards, if adopted, the small business shares of total industry receipts among those industries vary from less than 0.1 percent to 2.4 percent, with an average of 0.8 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on its industry.

Request for Comments

The SBA invites public comments on the proposed rule, especially on the following issues.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5.0 million, $7.0 million, $10.0 million, $14.0 million, $19.0 million, $25.5 million, $30.0 million, and $35.5 million. The SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. The SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. The SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry. The SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether an employee based standard for certain industries or exceptions is a more suitable measure of size, and if so, what that employee level should be.

3. The SBA's proposed size standards are based on its evaluation of five primary factors: Average firm size, average assets size (a proxy for startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size, and the level and small business share of Federal contracting dollars. The SBA welcomes comments on these factors and/or suggestions on other factors that it should consider in assessing industry characteristics when evaluating or revising size standards. The SBA also seeks information on relevant data sources, if available.

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

5. For some industries, SBA proposes to increase the existing size standards by a large amount (such as NAICS 512131, 515111, and 515112), while for others the proposed increases are modest. The SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. The SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

6. To simplify size standards, SBA has established or proposed common size standards for closely related industries in other NAICS Sectors. Based on SBA's analysis of the industry data, too much variation exists among the industries in NAICS Sector 51 to propose a common size standard for most industries. Therefore, for industries reviewed in this proposed rule, SBA has proposed size standards based on an analysis of each specific industry. SBA welcomes comments on whether it should adopt common size standards for certain industries in NAICS Sector 51, and if so, how are those industries related in a way to require a common size standard.

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

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

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is 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?

The SBA believes that the proposed size standards revisions for a number of industries in NAICS Sector 51, Information, will better reflect the economic characteristics of small businesses and the Federal government marketplace. The 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, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 15 industries for which SBA has proposed increasing size standards, SBA estimates that more than 500 additional firms will obtain small business status and become eligible for these programs. That number is 1.2 percent of the total number of firms that are classified as small under the current standards in all 20 industries in NAICS Sector 51 covered by this proposed rule. If adopted as proposed, this would increase the small business share of total industry receipts in those industries from about 13 percent under the current size standards to 15 percent.

Three groups will benefit from these proposed size standards, if they are adopted as proposed: (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 a larger pool of small businesses from which to draw for their small business procurement programs.

During fiscal years 2007–2009, nearly 98 percent of Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 15 industries for which SBA has proposed to increase size standards. The SBA estimates that additional firms gaining small business status under the proposed size standards could potentially obtain Federal contracts totaling up to $15 million to $20 million annually 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 could also 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 that about 5 to 10 additional loans totaling about $1.0 million to $2.0 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed 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 their exact number and 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 ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it similarly difficult to quantify the exact 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 500 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, 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 (CCR) Dynamic Small Business Search database; and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVO SBC, or SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

Additionally, the costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, 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. In addition, higher costs may result when more full and open contracts are awarded to HUBZone and SDB businesses that receive price evaluation preferences.

The proposed size standards may have 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 or SDB concerns instead of large businesses since those two categories of small businesses 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. 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 number of contracts transferred from large and from currently defined small businesses. The SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS–NG data only identify the size of businesses receiving Federal contracts as either ''small business'' or ''other than small business''; FPDS–NG does not provide the exact size of the business.

The proposed revisions to the existing size standards for Industries in NAICS Sector 51, Information, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to the small business programs designed to assist them.

Executive Order 13563

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

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. The SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. The 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. The presentation also included information on latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

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

The review of size standards in NAICS Sector 51, Information, is consistent with EO 13563, section 6 calling for retrospective analyses of existing rules. As discussed previously, 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 were limited to a few specific industries in response to requests from the public and Federal agencies. The 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, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

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

Paperwork Reduction Act

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

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small businesses in NAICS Sector 51, Information. As described above, this rule may affect small businesses seeking Federal contracts; loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, as well as assistance under other Federal small business programs.

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

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

Most of the size standards in NAICS Sector 51, Information, have not been reviewed since the early 1980s. Technology, 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 revisions to current size standards for some industries. Based on its analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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

If the proposed rule is adopted in its present form, SBA estimates that about 500 additional firms will become small because of increases in size standards in 15 industries. That represents 1.2 percent of the total number of firms that are classified as small under the current standards in all 20 industries in NAICS Sector 51 covered by this proposed rule. This will result in an increase in the small business share of total industry receipts for this Sector from about 13 percent under the current size standards to 15 percent under the proposed standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms have lost their small business eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. The SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the current 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?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. 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 to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). The SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

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

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

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

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. In § 121.201, in the table, revise the entries for ''511210'', ''512110'', ''512131'', ''512199'', ''512290'', ''515111'', ''515112'', ''515120'', ''515210'', ''517410'', ''517919'', ''518210'', ''519110'', ''519120'', and ''519190'' to read as follows:

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

* * * * *

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * * * *			
511210	Software Publishers	$35.5	
* * * * * * *			
512110	Motion Picture and Video Production	30.0	
* * * * * * *			
512131	Motion Picture Theaters (except Drive-Ins)	35.5	
* * * * * * *			
512199	Other Motion Picture and Video Industries	19.0	
* * * * * * *			
512290	Other Sound Recording Industries	10.0	
* * * * * * *			
515111	Radio Networks	30.0	

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
515112	Radio Stations	35.5	
515120	Television Broadcasting	35.5	
515210	Cable and Other Subscription Programming	35.5	
* * *	* * *	*	*
517410	Satellite Telecommunications	30.0	
* * *	* * *	*	*
517919	All Other Telecommunications	30.0	
* * *	* * *	*	*
518210	Data Processing, Hosting, and Related Services	30.0	
* * *	* * *	*	*
519110	News Syndicates	25.5	
519120	Libraries and Archives	14.0	
* * *	* * *	*	*
519190	All Other Information Services	25.5	
* * *	* * *	*	*

Dated: July 22, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–26208 Filed 10–7–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1068; Directorate Identifier 2010–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require installing an automatic shutoff system for the center and auxiliary tank fuel boost pumps, as applicable, and installing a placard in the airplane flight deck if necessary; replacing the P5–2 fuel system module assembly; and installing the un-commanded on (UCO) protection system for the center and auxiliary tank fuel boost pumps, as applicable. This proposed AD would also require revisions to the Limitations and Normal Procedures sections of the airplane flight manual to advise the flightcrew of certain operating restrictions for airplanes equipped with an automatic shutoff system. This proposed AD would also require revising the maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent operation of the center and auxiliary tank fuel boost pumps with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center and auxiliary fuel tanks. These conditions, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by November 28, 2011.

ADDRESSES: You may send comments by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; *telephone:* 425–917–6499; fax: 425–917–6590; *e-mail: Takahisa.Kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to