Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AH16

Small Business Size Standards: Calculation of Annual Average Receipts

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to modify its method for calculating annual average receipts used to prescribe size standards for small businesses. Specifically, consistent with a recent amendment to the Small Business Act, SBA proposes to change its regulations on the calculation of annual average receipts for all receipts-based SBA size standards and other agencies' proposed size standards for service-industry firms from a 3-year averaging period to a 5-year averaging period.

DATES: SBA must receive comments to this proposed rule on or before August 23, 2019.

ADDRESSES: Identify your comments by RIN 3245–AH16 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *https://www.regulations.gov,* follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, U.S. Small Business Administration, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

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

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

SUPPLEMENTARY INFORMATION:

I. Background Information

Public Law 115–324 (the ''Small Business Runway Extension Act of 2018'') amended section 3(a)(2)(C)(ii)(II) of the Small Business Act, 15 U.S.C. 632(a)(2)(C)(ii)(II), to modify the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards.

Under section 3(a)(2)(C)(ii) of the Small Business Act as amended, an agency without separate statutory authority to issue size standards must satisfy three requirements to prescribe a size standard. First, the agency must propose the size standard with an opportunity for public notice and comment. Second, the agency must provide for determining the size of a manufacturing concern based on a 12-month average of the concern's employment, the size of a services concern based on a 5-year average of gross receipts, and the size of another business concern on the basis of data of not less than 3 years. Third, the agency must obtain approval of the size standard from the SBA Administrator.

In contrast to agencies subject to section 3(a)(2)(C), SBA has independent statutory authority to issue size standards. Under section 3(a)(2)(A) of the Small Business Act, the SBA Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of SBA's programs or any other Federal Government program. Section 3(a)(2)(B) of the Small Business Act further provides that such definitions may utilize the number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors. To determine eligibility for Federal small business assistance, SBA establishes detailed size definitions for small businesses (usually referred to as ''size standards'') that vary from industry to industry reflecting differences among the various industries. SBA typically uses two primary measures of business size for size standards purposes: (i) Annual average gross receipts for businesses in services, retail trade, agricultural, and construction industries, and (ii) average number of employees for businesses in all manufacturing and most mining and utilities industries. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size.

The SBA's size standards establish eligibility for a variety of Federal small business assistance programs, including Federal government contracting and business development programs designed to assist small businesses in obtaining Federal contracts, and for SBA's loan guarantee programs, which provide access to capital for small businesses that are unable to qualify for conventional loans elsewhere. The government contracting programs that use SBA's size standards include the SBA's 8(a) Business Development (BD) program, the Historically Underutilized Business Zones (HUBZone) program, the Service Disabled Veteran-Owned Small Business (SDVOSB) program, the Woman-Owned Small Business (WOSB) program, and the Economically Disadvantaged Woman-Owned Small Business (EDWOSB) program. In fiscal year 2017, small businesses received $105.7 billion in Federal contracts, including $42.0 billion in set-aside contracts for small businesses. Small businesses received $25.6 billion in Federal set-aside contracts in fiscal year 2017 through the SBA's 8(a), HUBZone, SDVOSB, WOSB, and EDWOSB programs. (In addition to using SBA's size standards, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) loan programs use either the industry-based size standards or tangible net worth and net income based alternative size standards to determine eligibility for those programs.)

SBA has long interpreted section 3(a)(2)(C) of the Small Business Act as not applying to SBA's size standards issued under section 3(a)(2)(A). In the preambles to the proposed and final rules implementing 3(a)(2)(C), SBA explained that the Small Business Act requires that other Federal agencies use SBA's size standards *or* else use their own size standards that meet the requirements as set forth in that section. 65 FR 4176 (Jan. 26, 2000) and 67 FR 13714 (March 26, 2002). In the final implementation in 2002, SBA interpreted section 3(a)(2)(C) as applying only to non-SBA agencies, stating, ''Unless a statute specifies size standards for an agency's program or gives an agency direct authority to establish size standards, the agency must use the applicable size standards established by SBA.'' However, the Act allows an agency to ''prescribe a size standard for categorizing a business concern as a small business concern (*see* sec. 3(a)(2)(C) of the Act) provided that the contemplated size standard meets certain criteria and the agency obtains approval of the SBA Administrator.'' 67 FR 13714. Since 2002, SBA has repeated this interpretation of section 3(a)(2)(C) in the **Federal Register** 52 times: 67 FR 48423; 67 FR 61835; 68 FR 74841; 70 FR 68373; 70 FR 72582; 71 FR 28610; 72 FR 41242; 72 FR 61577; 73 FR 41241; 73 FR 42519; 74 FR 53953; 74 FR 53923; 74 FR 53937; 75 FR 61596; 75 FR 61602; 75 FR 61608; 76 FR 14339; 76 FR 27950; 76 FR 63524; 76 FR 63228; 76 FR 70693; 76 FR 70679; 77 FR 7513; 77 FR 11016; 77 FR 10945; 77 FR 42211; 77 FR 42224; 77 FR 42453; 77 FR 55753; 77 FR 55767; 77 FR 58746; 77 FR 58754; 77 FR 58759; 77 FR 72775; 77 FR 72701; 77 FR 72707; 78 FR 37415; 78 FR 37403; 78 FR 37421; 78 FR 37408; 78 FR 77342; 78 FR 77350; 79 FR 28645; 79 FR 33654; 79 FR 53665; 79 FR 54170; 81 FR 3947; 81 FR 3955; 81 FR 4466; 81 FR 4485; 82 FR 18263; 82 FR 44893. Additionally, in the final Size Standards Methodology that SBA issued in April 2009, SBA stated, ''Paragraph 3(a)(2)(C) refers to the establishment of size standards by other Federal agencies. SBA generally applies these same provisions when it establishes its size standards, but the Agency is not legally bound by them. On the other hand, Paragraphs 3(a)(2)(A) and 3(a)(2)(B) give the Administrator the flexibility to evaluate and establish size standards using a broader range of criteria, depending on what the Administrator determines will serve small businesses the best.'' Thus, section 3(a)(2)(C) pertains to special size standards that agencies prescribe for defining small businesses for their programs when they determine that SBA's size standards are not appropriate for such programs.

SBA grounds this long-standing interpretation of section 3(a)(2)(C) on the following facts. First, SBA has applied a 3-year average for receipts-based size standards since January 1956, *see* 21 FR 80, and the requirement in section 3(a)(2)(C) for an agency lacking specific authority to use a 3-year average was not passed into law until 38 years later on October 22, 1994 through the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, section 301. Second, the legislative history from the U.S. Senate Committee on Small Business and Entrepreneurship specifically excepts SBA from section 3(a)(2)(C) by stating that the 1994 amendment ''clarifies that a Federal Department or agency, *other than the Administration,* may issue a size standard set in terms of number of employees, average annual gross receipts, or otherwise, only under certain conditions. Those conditions are that the standard is set by rulemaking, including a proposal and an opportunity for public comment, and that the SBA Administrator has approved the standard.'' S. Rpt. No. 103–332 (emphasis added). Third, the predecessor statutory provision to section 3(a)(2)(C), which is set forth in section 222(a) of Public Law 102–366, explicitly stated that the specified averaging period applied only ''for the use of such department or agency'' where the department or agency had issued its own size standard, and the 1994 amendment did not evince any intent to change this rule of limited applicability. Fourth, based on a literal reading of the Small Business Act, section 3(a)(2)(C) only applies where an agency is not specifically authorized by statute to issue size standards, but SBA has specific authorization to issue SBA's size standards in section 3(a)(2)(A) of the Small Business Act. As such, section 3(a)(2)(C) requires that a non-SBA agency obtain approval from the SBA's Administrator for adopting its own size standard.

Nevertheless, to promote consistency government-wide on small business size standards, SBA proposes to change its own size standards to provide for a 5-year averaging period for calculating annual average receipts for all receipts-based size standards. It would be confusing for a service-industry business to use a 3-year average for SBA's receipts-based size standards and switch to a 5-year average for another agency's receipts-based size standards. Similarly, it would be confusing to apply SBA's size standards for a business that is engaged in both service- and non-service industries to use a 5-year average for determining small business status in a service industry but switch to a 3-year average for a non-service industry. Thus, although section 3(a)(2)(C), as amended, permits any agency to use a 3-year average outside of the service industries, SBA proposes to adopt a 5-year averaging period for calculating the annual receipts of businesses for all industries that are subject to receipts-based size standards, including the retail trade, agricultural, and construction industries.

SBA's proposed rule carries out the intent of Public Law 115–324, as expressed in the Report of the House Committee on Small Business, H. Rpt. 115–939. The Committee report states that, to help advanced small businesses successfully navigate the middle market as they reach their small business size thresholds, the bill would lengthen the time in which the SBA measures size through revenue, from the average of the past 3 years to the average of the past 5 years. The Committee report states that the bill would reduce the impact on small businesses from rapid-growth years which would result in spikes in revenue that may prematurely eject a small business out of their small size standard. The Committee report adds that the bill would allow small businesses at every level more time to grow and develop their competitiveness and infrastructure, before entering the open marketplace. The bill, as the report states, would also protect Federal investment in SBA's small business programs by promoting greater chances of success in the middle market for newly graduated firms, resulting in enhanced competition against large prime contractors.

As stated in the Committee report, during the period when annual revenues are rising, the 5-year average will generally be lower than the 3-year average, thereby allowing: (i) Mid-sized businesses who have just exceeded size standards to regain their small business status, and (ii) advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. It is notable that, when annual revenues are declining, the 5-year average may be higher than the 3-year average. This would cause small businesses near the size thresholds to lose their small business status sooner under the 5-year average than under the 3-year average. This is more likely to happen during economic downturns. Businesses that lose their small business status under the 5-year average may be disadvantaged further because they may have to wait several years more to regain their small business status, as compared to under a 3-year average. Newly established firms that have been in business for less than 5 years will receive no benefit from a change to a 5-year average. A firm that has been in business for less than the averaging period simply annualizes the receipts from its full existence.

Additionally, by enabling mid-size businesses to regain small business status and by lengthening the small business status of advanced and successful larger small businesses, the longer averaging period may disadvantage smaller small businesses in more need of Federal assistance than their more advanced and larger counterparts in competing for Federal opportunities. Similar to concerns from mid-size businesses that they lack necessary resources, past performance qualifications and expertise to be able to compete against very large businesses in the full and open market, SBA has also received concerns from smaller small businesses that they also lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified, and experienced large small businesses for Federal opportunities for small businesses.

SBA's proposed rule satisfies the requirements of section 3(a)(6) of the Small Business Act, which requires that, to revise, modify, or establish size standards pursuant to section 3(a), SBA must issue a notice of proposed rulemaking that includes, among other things, the anticipated effect of the proposed rulemaking on industry. In this regard, the United States Supreme Court has ruled that agencies must ''use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.'' *Perez* v. *Mortgage Bankers Assn.,* 135 S. Ct 1199, 1206 (2015).

II. Section-by-Section Analysis

A. Section 121.104

The proposed rule removes ''Schedule K'' from the definition of receipts. SBA has found that reviewing Schedule K is generally not useful, but SBA reserves the ability to request a Schedule K as part of SBA's review of the other Internal Revenue Service (IRS) forms listed in section 121.104(a).

For consistency with the size standard averaging period being changed in § 121.104, for the purposes of applying SBA's receipts-based size standards, the proposed rule changes the averaging period for a business that has been in business for 5 or more fiscal years to a 5-year period, *i.e.,* the business calculates its total receipts over the 5-year period and divides by 5. Under the proposed rule, if a business has been in business for less than 5 complete fiscal years, the business calculates its total receipts, divides by the number of weeks in business, and multiplies by 52. This is the same process SBA currently uses when a business has less than 3 complete fiscal years. If a business has a short year as one of its 5 years, the business calculates its total receipts over the 5-year period, divides by the number of weeks in the short year and its other 4 fiscal years, and multiplies by 52. This too is the same process SBA currently uses.

SBA proposes that the 5-year averaging period in § 121.104 would not distinguish between firms in service industries and other firms subject to receipts-based size standards. Although section 3(a)(2)(C) of the Small Business Act, as amended, permits other agencies to use a 5-year averaging period for service-industry firms and a 3-year averaging period for other firms, SBA believes that, in applying SBA's own size standards, separating out service-industry firms would cause confusion and create a greater compliance burden on firms that participate in both services industries and non-services industries (such as agriculture, construction, and retail trade) with receipts-based size standards.

This proposed rule only would affect the application of SBA's size standard rules after the effective date of a final rule. Thus, until the effective date of a final rule, SBA will continue to apply the 3-year averaging period in the present § 121.104 for calculating annual average receipts for all SBA's receipts-based size standards. Since size is determined as of the date when a firm certifies its size as part of its initial offer which includes price, the 3-year calculation period will apply to any offer submitted prior to the effective date of a final rule. Thus, even if SBA receives a request for a size determination or size appeal after the effective date of the final rule, SBA will still use a 3-year calculation period if the determination or appeal relates to a certification submitted prior to the final rule's effective date.

SBA also proposes to clarify how it believes annual receipts should be calculated in connection with the acquisition or sale of a division. Specifically, the proposed rule would provide that the annual receipts of a concern would not be adjusted where the concern sells or acquires a segregable division during the applicable period of measurement or before the date on which it self-certified as small. This would be different from how SBA treats the sale or acquisition of a subsidiary. In the case of a subsidiary, SBA's regulations provide that ''[t]he annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.'' 13 CFR 121.104(d)(4).

SBA believes that the sale or acquisition of a division is different from buying or selling a separate legal entity and, as such, should be treated differently. Any receipts attributable to a specific division of a concern are certainly receipts earned by the concern. Even if that division is later sold, its receipts were always part of the receipts directly received by the concern itself, and SBA believes that those receipts should remain a part of the concern's receipts after the sale for purposes of determining the concern's size. Similarly, where a concern acquires a segregable division from another business entity during the applicable period of measurement, the proposed rule would not increase the concern's overall receipts by the amount of receipts attributable to that division. This proposal is consistent with decisions of SBA's Office of Hearings and Appeals (OHA). *See, e.g. Size Appeal of Global, A 1st Flagship Co.,* SBA No. SIZ–5462 (2013) (''OHA has repeatedly held that a firm which acquires most of the assets of a subsidiary or division of a larger firm is affiliated only with that subsidiary or division, and not with the entire parent company.'').

SBA understands that some may feel that distinguishing the sale of a division from that of a subsidiary would elevate form over substance, and would merely require a seller to move assets into a separate subsidiary and then sell that subsidiary in order to bring the transaction under the rule. However, SBA believes that there really is an important distinction between a division and a separate legal entity. SBA specifically requests comments on this issue.

B. Section 121.903

As required by Public Law 115–324, SBA is proposing to amend the requirements for agencies that seek to propose and adopt size standards for their own programs, instead of applying SBA's size standards. Under the proposed rule, a non-SBA agency's receipts-based size standard applying to services-industry firms must be proposed with an averaging period of at least 5 years.

SBA is not proposing to change the requirement that other agency's size standards for firms other than service and manufacturing firms use data over a period of at least 3 years. Such a change is not mandated by Public Law 115–324. Section 3(a)(2)(ii)(III) of the Small Business Act still provides that other agencies prescribe size standards for industries other than services or manufacturing using ''data over a period of not less than 3 years.'' Because Congress did not change this statutory language, SBA is reluctant to change it administratively. However, SBA believes that it could also require other agencies establishing size standards for industries other than services or manufacturing to use data over a 5-year period. Since requiring 5 years instead of 3 is not inconsistent with the statutory provision (*i.e.,* 5 years is ''not less than 3 years''), SBA specifically requests comments on whether SBA should require other agencies to use 5 years' worth of data for all industries.

This new calculation period does not affect existing non-SBA size standards. The averaging period for existing non-SBA size standards is not changed unless the responsible agency proposes and finalizes changes to such size standards. This is consistent with the change in Public Law 115–324 to the requirements for prescribing a non-SBA size standard, given the lack of any restrictions in the Small Business Act or Public Law 115–324 on applying an existing size standard. In proposing a change to the averaging period for its existing size standard, the responsible agency should coordinate with SBA using the procedure in § 121.903.

III. Request for Comments

SBA invites comments, input, or suggestions from interested parties on its proposal to change the period for the calculation of annual average receipts for all receipts-based size standards from 3 years to 5 years. The comments should address the following specific issues pertaining to the SBA's proposal.

1. SBA seeks feedback, along with supporting facts and analyses, on whether the Agency should calculate annual average receipts over 5 years for all industries subject to receipts-based size standards or on whether it should use a 5-year annual receipts average for businesses in services industries only and continue using a 3-year annual average for other businesses. SBA is concerned that the latter option may create confusion for both businesses in reporting their size based on annual average receipts and contracting personnel in verifying the size of bidders to Federal contracts.

2. SBA invites input on how the use of annual average receipts over 5 years instead of 3 years would impact both smaller small businesses and more advanced, larger small businesses in terms of getting access to Federal opportunities for small businesses.

IV. Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. However, in the next section, SBA provides a benefit-cost analysis of this proposed rule, including: (1) A statement of the need for the proposed action, and (2) an evaluation of the benefits and costs—both quantitative and qualitative—of the proposed action and alternatives considered. This rule is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800, *et seq.*

a. Benefit-Cost Analysis

1. What is the need for this regulatory action?

As stated elsewhere, the Small Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (usually referred to as ''size standards''). Recently, Public Law 115–324 modified the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards.

The need of this proposed rule is to carry out Public Law 115–324 and to ensure consistency in the calculation of annual average receipts for SBA's size standards. In addition to the averaging requirements, size standards prescribed under section 3(a)(2)(C)(ii) of the Small Business Act must meet two other requirements: (1) Be proposed with an opportunity for public notice and comment, and (2) be approved by the Administrator. Public Law 115–324 does not undo these 2 requirements, and this proposed rule satisfies these requirements.

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. This regulatory action promotes the Administration's goals and objectives and meets the SBA's statutory responsibility to implement a new law impacting size definitions for small businesses. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through access to capital, Federal Government contracts and purchases, and management, technical and disaster assistance.

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

Changing the period for calculating annual average receipts from 3 years to 5 years may enable some mid-size businesses that have just exceeded size standards to regain small business status. Similarly, it could also allow some advanced and larger small businesses about to exceed size standards to retain their small status for a longer period. However, it could also result in some advanced small businesses having a 5-year receipts average that happens to be higher than the 3-year receipts average, thus ejecting them out of their small business status sooner. Detailed impacts of the proposed change are discussed below.

It is difficult to determine the actual number of small and mid-size businesses that would be impacted by Public Law 115–324 and this regulatory action because there is no data on annual receipts of businesses. The annual receipts data from the Economic Census special tabulation are only available once every 5 years. Similarly, the System for Award Management (SAM) only records the data on 3-year annual average receipts of businesses over their three preceding fiscal years, but not their annual receipts for each fiscal year. For example, the receipts data for year 2018 is an average of annual receipts for 2017, 2016, and 2015. Similarly, the receipts data for 2017 is an average of annual receipts for 2016, 2015, and 2014, and so on. A 5-year receipts average for 2018 would be an average of annual receipts for 2017, 2016, 2015, 2014, and 2013.

Given the lack of annual receipts for each year, SBA approximates a firm's 5-year annual average revenue for 2018 as follows:

$$AvgRevenue_{2013-17} = \frac{1}{5} * \{(2 * AvgRevenue_{2015\,(SAM)}) + (3 * AvgRevenue_{2018\,(SAM)})\}$$

where:

$$AvgRevenue_{2015\,(SAM)} = AvgRevenue_{2012-14} = \frac{1}{3} * (Revenue_{2012} + Revenue_{2013} + Revenue_{2014})$$

and

$$AvgRevenue_{2018\,(SAM)} = AvgRevenue_{2015-17} = \frac{1}{3} * (Revenue_{2015} + Revenue_{2016} + Revenue_{2017}).$$

This result may slightly underestimate the 5-year revenue average when annual revenues are rising (*i.e.,* 2014 revenue > 2013 revenue > 2012 revenue) and overestimate it if annual revenues are declining (*i.e.,* 2014 revenue < 2013 revenue < 2012 revenue).

To estimate the 5-year receipts average for 2018 using the above formula, SBA analyzed the 2018 SAM extracts (as of September 1, 2018) and 2015 SAM extracts (as of September 1, 2015). The above 5-year annual average receipts formula would only work for businesses that were present in both 2015 and 2018 SAM extracts. One challenge was that some businesses found in 2018 SAM could not be found in 2015 SAM and vice versa. Excluding entities registered in SAM for purposes other than government contracting and entities ineligible for small business consideration (such as foreign governments and state-controlled institutions of higher learning), there were a total of 346,958 unique business concerns in SAM subject to at least one receipts-based size standard. Of these concerns, 293,524 (or about 84.6 percent) were ''small'' in all North American Industry Classification System (NAICS) industries, 9,990 (or 2.9 percent) were ''small'' in some industries and ''not small'' in other industries, and 43,444 (or 12.5 percent) were ''not small'' in any industry.

Excluding entities with ''null'' or ''zero'' receipts values, 194,686 firms (or about 56 percent) appeared both in 2018 SAM and in 2015 SAM and were included in the 5-year annual average receipts approximation and calculation of number of businesses impacted. Of those 194,686 matched firms subject to a receipts-based size standard, 154,220 (or about 79 percent) were ''small'' in all NAICS industries, 8,049 (or 4.1 percent) were ''small'' in some industries and other than small (''not small'') in other industries, and 32,417 (or about 17 percent) were ''not small'' in any industry. In other words, 303,514 (or 87.5 percent) of 346,958 total concerns in SAM 2018 and 162,269 (or 83.3 percent) of 194,686 total matched firms were small in at least one NAICS industry with a receipts-based size standard. These results are summarized in Table 1, ''Size Status of Businesses in Industries Subject to Receipts-Based Size Standards,'' below.

TABLE 1—SIZE STATUS OF BUSINESSES IN INDUSTRIES SUBJECT TO RECEIPTS-BASED SIZE STANDARDS

Size status	Total firms in 2018 SAM subject to at least one receipts-based standard		Firms in both 2015 SAM and 2018 SAM (matched)		% Matched	Total to matched ratio *
	Number of firms	%	Number of firms	%		
Small in at least one industry	303,514	87.5	162,269	83.3	53.5	1.809
Small in all industries	293,524	84.6	154,220	79.2	52.5	1.903
Small in some and not small in others	9,990	2.9	8,049	4.1	80.6	1.241
Large in all industries	43,444	12.5	32,417	16.7	74.6	1.340
Total	346,958	100.0	194,686	100	56.1	1.782

* To be used to translate the results from the matched data to overall 2018 SAM data.

According to Table 2, ''Distribution of Business Concerns Subject to Receipts-Based Size Standards by Number of NAICS Codes,'' below, the distribution of firms by the number of NAICS codes in the matched data is very similar to that for the overall 2018 SAM data. About 42–44 percent of firms were in only one NAICS code that has a receipts-based size standard, about 35 percent in 2–5 NAICS codes, about 12 percent in 6–10 NAICS codes, and about 8–10 percent in more than 10 NAICS codes. In other words, 56–58 percent of firms were in multiple NAICS codes with receipts-based size standards. Thus, it is quite possible that the proposed change may impact a firm's small business status in multiple industries. For purposes of this analysis, an impacted firm is defined as one that would be impacted by the change in terms of gaining, regaining, extending, or losing small business status in at least one industry with a receipts-based size standard.

TABLE 2—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO RECEIPTS-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES

Number of NAICS codes	Total firms in 2018 SAM with at least one receipts-based NAICS code		Matched firms between 2018 and 2015 SAM	
	Count	%	Count	%
1 NAICS code	153,184	44.2	82,082	42.2
2 to 5 NAICS codes	123,277	35.5	68,458	35.2
6 to 10 NAICS codes	41,518	12.0	24,529	12.6
> 10 NAICS codes	28,979	8.4	19,617	10.1
Total	346,958	100.0	194,686	100.0

Note: A business concern is defined in terms of a unique local (vendor) DUNS number.

A central premise of Public Law 115–324 is that a 5-year annual receipts average (as opposed to a 3-year annual receipts average) would enable some mid-size businesses who have recently exceeded the size standard to regain small business status and some advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. However, this premise would only hold true when businesses' annual revenues are rising. When businesses' annual revenues are declining, due to economic downturns or other factors, the 5-year annual receipts average could be higher than the 3-year annual receipts average, thereby causing small businesses close to their size standards to lose their small business status sooner.

b. Impacts on Businesses From the Proposed Change

By comparing the approximated 5-year annual receipts average with the current receipts-based size standard for each of the 194,686 matched business concerns in each NAICS code subject to a receipts-based size standard, SBA first estimated the following:

i. The number of mid-size businesses that have exceeded the size standard and would regain small business status in at least one NAICS industry with a receipts-based size standard (*i.e.,* 3-year average > size standard ≥ 5-year average)—positive impact;

ii. the number of advanced small businesses within 10 percent below the size standard that would have their small business status extended for a longer period in at least one NAICS industry with a receipts-based standard (5-year average < 3-year average ≤ size standard *and* 0.9*size standard < 3-year average ≤ size standard)—positive impact;

iii. the number of currently small businesses that would lose their small business status in at least one NAICS industry subjected to at least one receipts-based size standard (*i.e.,* 3-year average ≤ size standard < 5-year average)—negative impact; and

iv. the number of advanced small businesses within 10 percent below the size standard that would have their small status shortened in at least one NAICS industry subject to a receipts-based standard (3-year average < 5-year average ≤ size standard *and* 0.9*size standard < 3-year average ≤ size standard)—negative impact.

In this proposed rule, SBA is changing the period for calculation of average annual receipts for all of its receipts-based size standards from 3 years to 5 years. The purpose of Public Law 115–324 is to allow small businesses more time to grow and develop competitiveness and infrastructure so that they are better prepared to succeed under full and open competition once they outgrow the size threshold. However, as stated previously, a longer 5-year averaging period may not always and necessarily provide relief to every small business concern. As discussed previously, when annual revenues are declining or when annual revenues for the latest 3 years are lower than those for the earliest 2 years of the 5-year period, the 5-year average would be higher than the 3-year average, thereby ejecting some advanced small businesses out of their small business status sooner or rendering some small businesses under the 3-year average not small immediately.

As discussed earlier, the change in the averaging period for annual receipts from 3 years to 5 years results in four different types of impacts on small businesses: (i) Enabling current large or mid-size businesses to gain small business status (impact i); (ii) enabling current advanced small businesses to lengthen their small business status (impact ii); (iii) causing current small businesses to lose their small business status (impact iii); and (iv) causing current small businesses to shorten their small business status (impact iv). Table 3, 'Percentage Distribution of Impacted Firms by the Number of NAICS Codes,' below, provides these results based on the 2018 SAM—2015 SAM matched firms.

TABLE 3—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS BY THE NUMBER OF NAICS CODES

Impact *	Number of impacted firms	% Distribution of impacted firms by number of NAICS codes				
		1 NAICS code	2–5 NAICS codes	6–10 NAICS codes	>10 NAICS codes	Total
Currently small in all NAICS codes:						
Impact (ii)	1,255	25.3	39.6	16.3	18.8	100.0
Impact (iii)	1,176	35.5	32.5	14.9	17.2	100.0
Impact (iv)	112	20.5	33.9	25.0	20.5	100.0

TABLE 3—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS BY THE NUMBER OF NAICS CODES—Continued

Impact *	Number of impacted firms	% Distribution of impacted firms by number of NAICS codes				
		1 NAICS code	2–5 NAICS codes	6–10 NAICS codes	>10 NAICS codes	Total
Currently large business in all NAICS codes:						
Impact (i)	914	36.0	36.1	13.6	14.3	100.0
Currently small in some NAICS and not small in others:						
Impact (i)	1,640	0.0	24.6	24.2	51.2	100.0
Impact (ii)	1,138	0.0	25.0	26.0	49.0	100.0
Impact (iii)	497	0.0	23.7	20.9	55.3	100.0
Impact (iv)	108	0.0	23.1	23.1	53.7	100.0
Total Impact by Impact Type:						
Impact (i)	2,554	12.9	28.7	20.4	38.0	100.0
Impact (ii)	2,393	13.3	32.6	20.9	33.2	100.0
Impact (iii)	1,673	24.9	29.9	16.7	28.5	100.0
Impact (iv)	220	10.5	28.6	24.1	36.8	100.0
Overall Impact:						
Positive	4,687	13.8	31.8	20.7	33.8	100.0
Negative	1,890	23.3	29.8	17.6	29.4	100.0
Both	6,577	16.5	31.2	19.8	32.5	100.0

* Impact (i) = Current large businesses gaining small status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

It is highly notable that the distribution of impacted firms by the number of NAICS codes, as shown in Table 3, is very different as compared to a similar distribution based on the overall matched and total 2018 SAM data (*see* Table 2), especially with respect to firms with only one NAICS code and those with more than 5 NAICS codes. For example, more than 40 percent of all firms in the overall data were associated with only one NAICS code, as compared to less than 20 percent among impacted firms. Similarly, firms with more than 5 NAICS codes accounted for about 20 percent of all firms in the original data, as compared to more than 50 percent among impacted firms. It is also notable that NAICS Sectors 54, 56, and 23 together accounted for more than 70 percent of impacted firms (both negatively and positively impacted), with Sector 54 (Professional, Scientific and Technical Services) accounting for about 35 percent, Sector 23 (Construction) about 25 percent, and Sector 56 (Administrative and Support, Waste Management and Remediation Services) about 12–13 percent.

Each of these impacts was then multiplied by an applicable factor or ratio, as shown in the last column of Table 1, to obtain the respective impacts corresponding to all firms in 2018 SAM subject to at least one receipts-based size standard. These results are presented below in Table 4, ''Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years.'' The last column of the table shows the percent of firms impacted relative to all business concerns in 2018 SAM.

Because the SAM data only captures businesses that are primarily interested in Federal procurement opportunities, the SAM-based results do not capture the impacts the proposed change may have on businesses participating in various non-procurement programs that apply to SBA's receipts-based size standards, such as SBA loan programs and exemptions from compliance with paperwork and other regulatory requirements.

TABLE 4—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact [1]	Firms impacted in matched dataset	Total to matched ratio	Total firms impacted in 2018 SAM	Total firms in 2018 SAM	% Impacted
Entities only small under all NAICS code(s):					
Impact (ii)	1,255	1.903	2,389	293,524	0.8
Impact (iii)	1,176	1.903	2,238	293,524	0.8
Impact (iv)	112	1.903	213	293,524	0.1
Entities other than small under all NAICS code(s):					
Impact (i)	914	1.340	1,225	43,444	2.8
Entities small in some NAICS code(s) and other than small in other(s):					
Impact (i)	1,640	1.241	2,035	9,990	20.4
Impact (ii)	1,138	1.241	1,412	9,990	14.1
Impact (iii)	497	1.241	617	9,990	6.2
Impact (iv)	108	1.241	134	9,990	1.3
Total impact by impact type:					
Impact (i)	2,554	....	3,260	53,434	6.1
Impact (ii)	2,393	....	3,801	303,514	1.3
Impact (iii)	1,673	....	2,855	303,514	0.9
Impact (iv)	220	....	347	303,514	0.1
Overall total by positive or negative impact: [2]					

TABLE 4—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS—Continued

Impact [1]	Firms impacted in matched dataset	Total to matched ratio	Total firms impacted in 2018 SAM	Total firms in 2018 SAM	% Impacted
Positive *[impact (i) or impact (ii)]*	4,687		6,690	346,958	1.9
Negative *[impact (iii) or impact (iv)]*	1,890		3,197	346,958	0.9
Total impact	6,577		9,887	346,958	2.8

[1] Impact (i) = Current large businesses gaining small business status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.
[2] Number of firms under overall positive, negative and total impacts refer to the number of unique firms. Some firms could appear in multiple impact types and hence individual impacts may not add up to overall impact.

The Economic Census, combined with the Census of Agriculture and County Business Patterns Reports, provides for each NAICS code information on the number of total small and large businesses subjected to a receipts-based size standard. Based on the matched SAM data, SBA computed percentages of businesses impacted under each impact category for each NAICS industry subject to a receipts-based size standard. By applying such percentages to the 2012 Economic Census tabulation, SBA estimated the number of all businesses impacted under each impact type for each NAICS code subject to a receipts-based size standard. These results are presented in Table 5, ''Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years (2012 Economic Census),'' below.

TABLE 5—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

[2012 Economic Census]

Impact [1]	Total firms (in million)	Estimate of impacted firms	% Impacted
Impact (i)	271,505	7,822	2.9
Impact (ii)	6,896,633	62,822	0.9
Impact (iii)	6,896,633	62,662	0.9
Impact (iv)	6,896,633	5,945	0.1
Overall impact:			
Positive *[impact (i) or impact (ii)]*	7,168,138	70,644	1.0
Negative *[impact (iii) or impact (iv)]*	7,168,138	68,607	1.0
Total impact	7,168,138	139,251	1.9

[1] Impact (i) = Current large businesses gaining small status; Impact (ii) = Current small businesses extending small status; Impact (iii) = Current small businesses losing small status; Impact (iv) = Current small businesses shortening small status.

Currently large or mid-size businesses regaining small business status would get various benefits as small business concerns, including access to Federal set-aside contracts, SBA's guaranteed loans and disaster assistance, reduced patent fees, and exemptions from various compliance and paperwork requirements. With their small business status extended, advanced small businesses would continue to receive such benefits for a longer period. However, the proposed change may also cause some small businesses to lose their small business status in at least one receipts-based size standard and access to small business assistance, especially Federal set-aside opportunities.

c. The Baseline

OMB directs agencies to establish an appropriate baseline to evaluate benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered, if any. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action modifying an existing regulation (such as changing the annual average receipts calculation from 3 years to 5 years), a baseline assuming no change to the regulation (*i.e.,* maintaining the status quo) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Based on the 2012 Economic Census special tabulations (the latest available), 2012 County Business Patterns Reports (for industries not covered by the Economic Census), and 2012 Agricultural Census tabulations (for agricultural industries), of a total of about 7.2 million firms in all industries with receipts-based size standards, about 96 percent are considered small and 4 percent other than small under the 3-year annual receipts average. Similarly, of 346,958 businesses that were subject to at least one receipts-based size standard and eligible for Federal contracting, 87.5 percent were small in at least one NAICS code and 12.5 percent other than small in all NAICS codes.

Based on the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2015–2017, on average, about 88,770 unique firms in industries subject to receipts-based size standards received at least one Federal contract during that period, of which 83 percent were small. Businesses subject to receipts-based standards received $182 billion in annual average Federal contract dollars during that period, of which nearly $64 billion or about 35 percent went to small businesses. Of total dollars awarded to small businesses subject to receipts-based size standards, $45 billion or 71 percent was awarded through various small business set-aside programs and another 29 percent was awarded through non-set aside contracts.

Based on SBA's internal data on its loan programs, small businesses subject to receipts-based size standards received, on an annual basis, a total of nearly 58,600 7(a) and 504 loans for fiscal years 2016–2018, totaling $24.5 billion, of which 85 percent was issued through the 7(a) program and 15 percent was issued through the CDC/504 program. During fiscal year 2018, small businesses in those industries also received about 11,350 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about $1.0 billion on an annual basis. Table 6, ''Baseline Analysis of Receipts-Based Size Standards,'' below, provides these baseline results.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal agencies that use SBA's size standards. However, SBA has no data to estimate the number of small businesses receiving such benefits. Similarly, due to the lack of data, SBA is not able to determine impacts the proposed rule will have on small businesses participating in other agencies' programs that are subject to their own size standards based on annual average receipts.

TABLE 6—BASELINE ANALYSIS OF RECEIPTS-BASED SIZE STANDARDS

Measure	Value
Total industries subject to receipts-based standards	518
Total firms subject to at least one receipts-based standard (million)—2012 Economic Census	7.17
Total small firms subject to at least one receipts-based standard (million)—2012 Economic Census	6.9
Total small firms subject to at least one receipts-based standard as % of total firms—2012 Economic Census	96.2
Total business concerns in SAM [1] (as of September 1, 2018)	420,381
Total business concerns subject to a receipts-based size standard in at least one NAICS code [2] (SAM)	346,958
Total businesses that are small in at least one NAICS code subject to a receipts-based size standard	303,514
Small business concerns as % of total business concerns subject to receipts-based standards (2018 SAM)	87.5
Average total number of unique Eligible vendors getting Federal contracts [1]—FPDS–NG (2015–2017)	126,500
Average total number of unique firms with receipts-based size standards getting Federal contracts [2]—FPDS–NG (2015–2017)	88,770
Average total contract dollars awarded to business concerns, subject to receipts-based standards ($ billion)	$182
Average total small business contract dollars awarded to businesses subject to receipts-based standards ($ billion)	$63.7
Small business dollars as % of total dollars awarded to firms subject to receipts-based standards	34.9
Annual average number of 7(a) and 504 loans to businesses subject to receipts-based standards (2015–2018)	58,569
Annual average amount of 7(a) and 504 loans ($ billion) (2015–2018)	$24.5
Number of EIDL loans to businesses subject to receipts-based size standards (2018)	11,345
Amount of EIDL loans ($ billion)	$1.0

[1] Entities in SAM and FPDS–NG presented above only include business concerns that can be eligible to qualify as small for Federal contracting. That is, entities that can never qualify as small (*e.g.,* foreign, not-for-profit and government entities) are excluded as they are not impacted by this rule.

[2] A business concern could appear in multiple NAICS industries involving both receipts-based and size standards and those based on other measures (such as employees). Similarly, a business could be small in some industries and other than small in others.

As mentioned previously, businesses that would regain or lose small business status can be identified by comparing their 5-year receipts average with the size standard. That is, if the 5-year receipts average of a firm currently above the size standard is lower than the applicable size standard, that firm will gain or regain small business status. Similarly, if the 5-year annual receipts average of a currently small business is higher than the size standard, that business will lose its small business status. However, to estimate the number of small businesses that would benefit by having their small business status extended for a longer period or would be penalized by having their small size status shortened, SBA considered small businesses whose 3-year annual average receipts average was within 10 percent below their receipts-based size thresholds. Small businesses that are not immediately impacted may be impacted either negatively or positively someday as they continue to grow and approach the size standard threshold.

d. Benefits

The most significant benefits to businesses from the proposed change in the period for calculation of annual average receipts from 3 years to 5 years include: (i) Enabling some mid-size businesses currently categorized above their corresponding size standards to gain or regain small business size status and thereby qualify for participation in Federal assistance intended for small businesses, and (ii) allowing some advanced and larger small businesses close to their size thresholds to lengthen their small business status for a longer period and thereby continue their participation in Federal small business programs. These include SBA's loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs, including 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. Benefits accruing to businesses gaining and extending small status are presented below in Table 7, ''Positive Impacts of Changing the Averaging Period for Receipts from 3 Years to 5 Years.'' The results in Table 7 pertain to businesses and industries subject to receipts-based size standards only.

As shown in Table 7, of 43,444 firms not currently considered small in any receipts-based size standards, 3,260 (or 7.5 percent) would benefit from the proposed change by gaining or regaining small status under the 5-year receipts average in at least one NAICS industry that is subject to a receipts-based size standard. Additionally, about 3,800 or 1.3 percent of small businesses within 10 percent below size standards would see their annual receipts decrease under the 5-year averaging period, consequently enabling them to keep their size status for a longer period.

Using the 2012 Economic Census, SBA estimated that about 7,800 or 2.9 percent of currently large businesses would gain or regain small status and more than 62,800 or 0.9 percent of total small businesses would see their small business status extended for a longer period as the result of this proposed rule. These results are shown in Table 7, below.

With more businesses qualifying as small under the proposed change, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the 5-year receipts average, thereby enabling them to continue to benefit from the small business programs.

TABLE 7—POSITIVE IMPACTS OF CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact of proposed change	Large firms gaining small status	Small firms extending small status	Total positive impact
No. of impacted industries	372	361	[1] 420
No. of large firms becoming small or/and small firms extending small status—SAM (as of Sept 1, 2018)	3,260	3,801	[2] 6,690
Large firms becoming small or/and small firms with extended small status as % of total large or/and small firms in the baseline—SAM (as of Sept 1, 2018)	7.5	1.3	1.9
No. of large firms becoming small or/and small firms extending small status—2012 Economic Census	7,822	62,822	70,644
Large firms becoming small or/and small firms extending small status as % of total large or/and small firms in the baseline—2012 Economic Census	2.9	0.9	1.0
No. of large firms becoming small or/and small firms extending small status for small business contracts (FPDS–NG)	910	838	[2] 1,700
Additional small business dollars available to newly qualified firms or/and current small firms with extended small status ($ million)	$961	$133	$1,094
Additional small business dollars as % total small business contract dollars in the baseline	1.5	0.2	1.7
No. of additional 7(a) and 504 loans to newly qualified firms or/and current small firms extending small status	54	478	532
Additional 7(a) and 504 loan amount to newly qualified firms or/and current small firms extending small status ($ million)	$22	$189	$211
Additional 7(a) and 504 loan amount as % of total EIDL loan amount in the baseline	0.1	0.8	0.9
No. of additional EIDL loans to newly qualified for/firms and small firms extending small status	21	84	105
Additional EIDL loan amount to newly qualified firms or/and small firms with extended small status ($ million)	$2.2	$7.8	$10.0
Additional EIDL loan amount as % of total loan amount in the baseline	0.2	0.8	1.0

[1] Total impact represents total unique industries impacted to avoid double counting as some industries have large firms gaining small status and small firms extending small status.

[2] Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

Based on the FPDS–NG data for fiscal years 2015–2017, as shown in Table 7, SBA estimates that those newly qualified small businesses (*i.e.,* large businesses gaining small status) under the proposed rule, if adopted, could receive $961 million in small business contract dollars annually under SBA's small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. That represents a 1.5 percent increase to total small business contract dollars from the baseline. Additionally, small businesses could receive approximately $133 million in additional small business contract dollars because of extension of their small business status, which is about a 0.2 percent increase from the total small business contract dollars in the baseline. That is, businesses gaining or extending small business status could receive about $1.1 billion in additional small business contract dollars, which is a 1.7 percent increase to the total small business dollars in the baseline.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2016–2018, SBA estimates up to about 54 SBA 7(a) and 504 loans totaling nearly $22.0 million could be made to these newly qualified small businesses under the proposed change. Additionally, small businesses could receive up to 478 SBA 7(a) and 504 loans totaling $189 million due to the extension of their size status. These are, respectively, 0.1 percent and 0.8 percent increases to the loan amount in the baseline.

Newly qualified small businesses and those with extended small business status will also benefit from the SBA's EIDL program. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL data, SBA estimates that, on an annual basis, the newly defined small businesses under the proposed change could receive about 21 EIDL loans, totaling about $21 million. Similarly, extending small business status for a longer period could result in small businesses receiving 84 EIDL loans, totaling about $7.8 million. These results are presented in Table 7, above.

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

Additionally, the newly defined small businesses, as well as those with a longer small business status, would also benefit from reduced fees, less paperwork, and fewer compliance requirements but SBA has no data to quantify this impact.

The proposed change will also address some of the challenges and uncertainties small businesses face in the open market once they graduate from their small business status. Small and mid-size businesses experience a considerable disadvantage in competing for full and open contracts against large businesses, including the largest in the industry. These large businesses have several competitive advantages over small and mid-size firms, including vast past performance qualifications and experience, strong brand-name recognition, a plethora of professional certifications, security clearances, and greater financial and marketing resources. Small and mid-size businesses cannot afford to maintain these resources, leaving them at a considerable disadvantage.

With contracts getting bigger, one large set-aside contract could throw a firm out of its small business size status, thereby subjecting it to certain requirements that apply to other-than-small firms, such as developing subcontracting plans. That firm may not have the infrastructure, existing business processes, and/or other resources in place in order to comply with such requirements. This may also result in constant shuffling between small and other-than-small status.

By allowing smaller mid-size companies that have just exceeded the size threshold to regain small business status and advanced small businesses close to size standards to prolong their small business status for a longer period, this proposed rule can expand the pool of qualified small firms for agencies to draw upon to meet their small business requirements.

e. The Costs

As stated previously, the change enacted under Public Law 115–324 may not always and necessarily benefit every small business concern. When businesses' annual revenues are declining or when annual revenues for the latest 3 years are lower than those for the earliest 2 years of the 5-year period, the 5-year average would be higher than the 3-year average, thereby ejecting small businesses out of their small status sooner or rendering some small businesses other than small immediately. Such small businesses would no longer be eligible for Federal small business opportunities, such as SBA's loans, Federal small business contracts, and other Federal assistance available to small businesses. These impacts are provided in Table 8, ''Negative Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years,'' below.

TABLE 8—NEGATIVE IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact of proposed change	Small firms losing small status	Small firms shortening small status	Total negative impact
No. of industries impacted	370	184	[1] 383
No. of small firms losing or/and shortening small status—SAM (as of Sept 1, 2018)	2,855	347	[2] 3,197
Small firms losing or shortening small status as % of total small firms—SAM (as of Sept 1, 2018)	0.9	0.1	1.1
No. of small firms losing or extending small status—2012 Economic Census	62,662	5,945	68,607
Small firms losing or shortening small status as % of total small firms in the baseline—2012 Economic Census	0.9	0.1	1.0
No. of small firms losing or shortening small business eligibility for set-aside contracts—FPDS–NG (2015–17)	416	82	498
Small business dollars unavailable to small firms losing or shortening small status ($ million)	$289	$46	$335
Small business dollars as % of total small business dollars in the baseline	0.5	0.07	0.5
No. of 7(a) and 504 loans unavailable to small firms losing or shortening small status	565	52	617
7(a) and 504 loan amount unavailable to small firms losing or shortening ($ million)	$256	$22	$278
Unavailable 7(a) and 504 loan amount as % of total loan amount in the baseline (baseline = $24.5 billion)	1.0	0.1	1.1
No. of EIDL loans unavailable to small firms losing or shortening small status	100	21	121
Unavailable EIDL loan amount to small firms losing or extending small status ($ million)	$9.6	$2.2	$11.8
Unavailable EIDL loan amount as % of total EIDL loan amount in the baseline (baseline = $1.0 billion)	1.0	0.2	1.2

[1] Total impact represents total unique industries impacted to avoid double counting as some industries have small firms losing small status and small firms shortening small status.

[2] Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

SBA estimates that, of 303,514 firms in 2018 SAM that were small under at least one receipts-based size standard based on the 3-year receipts average, 2,855 firms (or 0.9 percent) would lose their small status and another 347 firms (or 0.1 percent) would see their size status shortened as a result of the proposed change. Similarly, based on the 2012 Economic Census data, about 62,650 firms would lose their small business status and about 5,950 firms would see their size status shortened, which represent, respectively, 0.9 percent and 0.1 percent of total small firms subject to a receipts-based size standard.

Based on the contract awards data from FPDS–NG for fiscal years 2015–2017, businesses losing or shortening small status would lose access to about $335 million in Federal small business contract collars, which is about a 0.5 percent decrease from the corresponding value in the baseline. Similarly, based on the SBA's loan data for fiscal years 2016–2018 and the number of impacted firms from the Economic Census, SBA estimates that businesses losing or shortening small status would also lose access to about $277 million in SBA 7(a) and 504 loans and $12 million in EIDL loans. These are, respectively, 1.1 percent and 1.2 percent of the corresponding baseline values.

Businesses losing small status and those with size status shortened would also be deprived of other Federal benefits available, including reduced fees and exemptions from certain paperwork and compliance requirements. However, there exists no data to quantify this impact.

Additionally, by enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the proposed rule may disadvantage smaller small businesses in more need of Federal assistance than their larger counterparts in competing for Federal opportunities. SBA frequently receives concerns from smaller small businesses that they also lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified and experienced large small businesses for Federal opportunities for small businesses.

Besides having to register in SAM to be able to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status. All businesses willing to do business with the Federal Government have to register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM. Furthermore, this proposed rule does not establish the new size standards for the first time; rather, it merely proposes to modify the calculation of annual average receipts that apply to the existing size standards in accordance with a statutory requirement.

The proposed change may entail some additional administrative costs to the Federal Government because more businesses may qualify as small for Federal small business programs. For example, there will be more firms seeking SBA's loans; more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov;* more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, WOSB, EDWOSB, and SDVOSB status; and more firms applying for SBA's 8(a)/BD and All-Small Mentor-Protégé programs. With an expanded pool of small businesses, it is likely that Federal agencies will set aside more contracts for small businesses under the proposed change. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on size protests actually shows that the number of size protests actually decreased after an increase in the number of businesses qualifying as small as a result of size standards revisions as part of the first 5-year review of size standards. Specifically, on an annual basis, the number of size protests dropped from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013) to about 500 during fiscal years 2014–2016. However, with more years of data to be reviewed, 5-year averaging may increase time needed by size specialists to process a size protest. Among those newly defined small businesses seeking SBA's loans, there could be some additional costs associated with compliance and verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income based alternative size standard instead of using the industry-based size standard to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small under the proposed change, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the proposed change. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses under the 8(a)/BD, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the proposed increases to size standards, HUBZone firms might actually end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

f. Net Impact

As discussed elsewhere, the proposed rule would result in four primary impacts, which can be categorized as either having a 'positive impact' or 'negative impact' on size status of both currently large and small businesses. Allowing some currently large firms to gain small business status and some advanced small firms to remain small for a longer period represents the positive impact of the proposed rule. Causing some currently small firms to lose or shorten their small business is the negative impact.

Although businesses in a majority of industries with receipts-based size standards would be both positively and negatively impacted by this proposed rule, in totality the number firms with positive impacts was generally greater than the number of firms with negative impacts. The proposed rule would result in a net gain of about $759 million (or 1.2 percent) in Federal small business dollars. However, due to the relative sizes of the industries in terms of the number of firms, the net impact of the proposed rule on SBA loans was slightly negative. SBA estimates a net loss of 0.3 percent of 7(a) and 504 loans and 0.2 percent of EIDL loans to small firms as a result of changing the period for calculating annual average receipts from 3 years to 5 years. Net impacts of the proposed rule are summarized in Table 9, ''Net Impact from Changing the Averaging Period for Receipts from 3 Years to 5 Years,'' below.

TABLE 9—NET IMPACT FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact of proposed change	Total positive impact	Total negative impact	Net impact
Total no. of impacted firms—SAM (as of Sept 1, 2018)	6,690	3,197	3,493
Impacted firms as % of total firms in the baseline—SAM (as of Sept 1, 2018)	1.9	0.9	1.0
Number of impacted firms—2012 Economic Census	70,644	68,607	2,037
Impacted firms as % of total firms in the baseline—2012 Economic Census	1.0	1.0	0.03

TABLE 9—NET IMPACT FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS—Continued

Impact of proposed change	Total positive impact	Total negative impact	Net impact
Number of impacted firms eligible for set-aside contracts (FPDS–NG)	1,700	498	1,200
Small business dollars impacted ($ million)	$1,094	$335	$759
Small business dollars impacted as % total set-aside dollars in the baseline	1.7	0.5	1.2
Number of 7(a) and 504 loans impacted	532	617	−85
7(a) and 504 loan amount impacted ($ million)	$211	$277	−$66
7(a) and 504 loan amount impacted as % of total 7(a) and 504 loan amount in the baseline	0.9	1.1	−0.3
No. of EID loans impacted	105	121	−16
EID loan amount impacted ($ million)	$10.0	$11.8	−$1.8
EID loan amount impacted as % of total loan amount in the baseline	1.0	1.2	−0.2

g. Transfer Impacts

The proposed change may result in some redistribution of Federal contracts between businesses gaining or extending small status and large businesses, and between businesses gaining or extending small status and other existing small businesses. However, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will not change. While SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution of contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the proposed change, some unrestricted Federal contracts may be set aside for small businesses. As a result, large businesses may lose access to some Federal contracts. Similarly, some currently small businesses may obtain fewer set-aside contracts due to the increased competition from some large businesses qualifying as small and advanced small businesses remaining small for a longer period. This impact may be offset by a greater number of procurements being set aside for all small businesses. With large businesses qualifying as small and advanced larger small businesses remaining small for a longer period under the proposed rule, smaller small businesses could face some disadvantages in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

B. 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. This action does not have retroactive or preemptive effect.

C. 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.

D. Executive Order 13563

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

Following the enactment of Public Law 115–324, SBA issued a public notice advising business and contracting communities that SBA must go through a rulemaking process to implement the new law and that businesses still must report their receipts based on a 3-year average until SBA changes its regulations. SBA updated the Small Business Procurement Advisory Council (SBPAC) at its March 26, 2019, and April 23, 2019, meetings about SBA's rulemaking process to implement Public Law 115–324. On April 18, 2019, SBA also presented an update on the implementation of Public Law 115–324 at the 2019 Annual Government Procurement Conference. Through phone calls and emails, SBA also advised business and contracting communities and other interested parties about the SBA's process to implement the new law.

Additionally, SBA issued a revised draft white paper titled ''Small Business Size Standards: Revised Size Standards Methodology'' and published a notice in the April 27, 2018, issue of the **Federal Register** (83 FR 18468) to advise the public that the document is available for public review and comments. The Revised Size Standards Methodology explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. On April 11, 2019, SBA published a **Federal Register** Notice (84 FR 14587) advising the public that the Agency has issued the revised final white paper.

E. Executive Order 13771

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

F. Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in industries subject to receipts-based size standards. As described above, this rule may affect small businesses in those industries seeking Federal contracts, loans under SBA's 7(a), 504 and EIDL programs, and assistance under other Federal small business programs.

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

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

Recently, Public Law 115–324 amended section 3(a)(2)(C)(ii)(II) of the Small Business Act by modifying the period for calculating annual average receipts of business concerns providing services in a proposed size standard prescribed by an agency without separate statutory authority to issue size standards from 3 years to 5 years. This proposed rule is needed to implement Public Law 115–324 and to make consistent changes to SBA's definition of annual receipts by amending the SBA's regulations on the calculation of annual average receipts for all receipts-based standards from over 3 years to over 5 years.

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

This proposed rule applies to all small businesses that are subject to a receipts-based size standard. Based on the 2012 Economic Census special tabulations, 2012 County Business Patterns Reports, and 2012 Agricultural Census tabulations, of a total of about 7.2 million firms in all industries with receipts-based size standards to which the rule will apply, 6.9 million or about 96.0 percent are considered small under the 3-year annual receipts average. Of 346,958 total concerns in SAM 2018 to which the rule will apply, about 303,500 or 87.5 percent were small in at least one NAICS industry with a receipts-based size standard. Similarly, based on the data from FPDS–NG for fiscal years 2015–2017, on average, about 88,770 unique firms in industries subject to receipts-based size standards received at least one Federal contract during that period, of which 83 percent, or 73,825 were small.

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

The proposed rule changes existing reporting or record-keeping requirements for small businesses. In reporting receipts to SBA for an SBA size determination, businesses will report a 5-year average rather than a 3-year average. To qualify for Federal procurement and a few other programs requires businesses to register in SAM and to self-certify that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Changing size standards alters access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

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

However, the Small Business Act and SBA's regulations allow Federal agencies to 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. As stated elsewhere, the objective of this proposed rule is to change SBA regulations on the calculation of business size in terms of annual average receipts to implement Public Law 115–324 and there are no other alternatives to achieve that objective.

G. Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this proposed rule would amend an information collection (SBA Form 355, Information for Small Business Size Determination, which was previously approved under OMB Control Number 3245–0101). In addition to seeking reinstatement of this information collection, SBA will also submit it to OMB for approval of the changes described below. Certain proposed revisions in Parts III and IV of Form 355 address the change from 3 years to 5 years for calculating annual average receipts. Other proposed revisions to the form would be to delete unnecessary questions, clarify certain previously approved requests for information, and in some instances, to request additional information where SBA has determined there is a programmatic need. The proposed deletions and clarifications, though not required by the statute, will alleviate the additional burden posed by changing from 3 years to 5 years for calculating annual average receipts.

First, SBA will amend the General Instructions section to define ''concern'' and ''principal stockholders''; state that separate affiliation rules apply in some of SBA's loan and research programs; remove the requirement to identify a labor surplus county, as well as obsolete information about industries with special size standards; and to include in the certification a statement that accompanying documentation is true and correct.

Second, in Part 1, SBA will clarify that the information relates to the applicant business; add a checkbox for the firm to identify its corporate organization structure; require a firm to disclose whether it is organized for profit; and remove various obsolete or unnecessary information regarding county/city, purpose of the size determination, the contracting agency, the business's major products or services and shares of sales, addresses of owners or officers, and recently completed mergers. Part 1 will also be amended to request ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons.

Third, in Part II, SBA will limit the information requested about employees to businesses that are being evaluated under an employee-based size standard.

Fourth, in Part III, SBA will limit the information request about receipts to businesses that are being evaluated under a receipts-based size standard. SBA will add 2 additional lines to the entries for annual receipts so that a business that has been in business for 5 years provides information about its most recently competed 5 fiscal years.

Fifth, in Part IV, SBA will add that the business must provide information for any business that the applicant's owner reports on a Schedule C or Schedule E of the owner's personal tax returns if the owner or an immediate family member has a controlling interest in the business, remove the request for addresses of individual owners and managers, request ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons, limit the request for employee information to applicants being evaluated under an employee-based size standard, limit the information request for receipts information to applicants being evaluated under a receipts-based size standard, and add two rows to the receipts table so that the receipts of acknowledged affiliates are reported based on a 5-year average.

Sixth, in Part V, SBA will remove requests about acknowledged affiliates that are covered in Part IV; delete questions about performance of work on the contract, financial impact of termination for default, and specific terms and conditions of the contract; and add a question about actual or proposed subcontracts between the applicant and any of its alleged affiliates.

SBA determines that these changes to the information collection will cause the paperwork burden to remain at 4 hours. The changes will require a business in an industry with a receipts-based size standard to gather information about the business's 5 prior fiscal years and complete information about its 5 prior fiscal years and the 5 prior fiscal years for acknowledged affiliates. However, a business with a receipts-based size standard will not complete information about its number of employees. Similarly, a business with an employee-based size standard will not complete information about its receipts. Additionally, SBA has removed all requests for the addresses of individual owners and managers, and deleted 3 questions from Part V.

The deadline and method for submitting comments are as stated above in the **DATES** and **ADDRESSES** sections, respectively. The title, summary of the amended information collection, description of respondents, and an estimate of the reporting burden are discussed below. Included in the estimate is the time for reviewing instructions, searching existing data, and completing and reviewing each collection of information.

1. *Title and Description:* SBA Form 355, Information for Small Business Size Determination. The information provided in this form will be used by SBA for a size determination of a business applying for assistance available to small businesses under any program administered by this Agency, except for its SBIC Program which uses SBA Form 480, or at the request of another Federal agency for purposes of its small business program.

Need and Purpose: This information collection is necessary for SBA to, among other things, evaluate the eligibility of an applicant for SBA's small business programs.

OMB Control Number: 3245–0101.

Description of and Estimated Number of Respondents: This information will be collected from small businesses seeking an SBA determination of size. Based on historical information, SBA estimates this number to be between 500 and 600 each year.

Estimated Response Time: 4 hours.

Total Estimated Annual Hour Burden: 2,000–2,400.

SBA invites comments on: (1) Whether the proposed changes to this collection of information are necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. In § 121.104 revise the second sentence of paragraphs (a), paragraphs (c) and (d)(3) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) * * * Generally, receipts are considered "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 (such as Form 1120 for corporations; Form 1120S for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships) * * *

* * * * *

(c) *Period of measurement.* (1) Annual receipts of a concern that has been in business for 5 or more completed fiscal years means the total receipts of the concern over its most recently completed 5 fiscal years divided by 5.

(2) Annual receipts of a concern which has been in business for less than 5 complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Where a concern has been in business 5 or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the 4 full fiscal years divided by the total number of weeks in the short year and the 4 full fiscal years, multiplied by 52.

(d) *Annual receipts of affiliates.*

* * * * *

(3) If the business concern or an affiliate has been in business for a period of less than 5 years, the receipts for the fiscal year with less than a 12-month period are annualized in accordance with paragraph (c)(2) of this section. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

* * * * *

■ 3. Amend by § 121.903 by revising paragraphs (a)(1)(ii) as follows:

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) * * *

(1) * * *

(i) * * *

(ii) The size of a services concern by its average annual receipts over a period of at least 5 years, determined according to § 121.104;

* * * * *

Dated: June 6, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–12754 Filed 6–21–19; 8:45 am]

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