

CFPB strongly encourages enforcers of Federal consumer financial law to contact the CFPB with suggestions for new *Consumer Financial Protection Circulars*. The CFPB is also interested in receiving feedback on any *Consumer Financial Protection Circulars* it issues. Enforcers, and the broader public, can also provide feedback and comments to [Circulars@cfpb.gov](mailto:Circulars@cfpb.gov).

### About Consumer Financial Protection Circulars

*Consumer Financial Protection Circulars* are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other "enumerated consumer laws," 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.*, 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with \$10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

*Consumer Financial Protection Circulars* are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

*Consumer Financial Protection Circulars* are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.*, 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

*Consumer Financial Protection Circulars* are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They

provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

**Rohit Chopra,**

*Director, Consumer Financial Protection Bureau.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

**RIN 3245-AH10**

#### Small Business Size Standards: Wholesale Trade and Retail Trade

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based and employee-based small business size definitions (commonly referred to as "size standards") for North American Industry Classification System (NAICS) sectors related to Wholesale Trade and Retail Trade. Specifically, SBA is increasing size standards for 57 industries in those sectors, including 22 industries in NAICS Sector 42 (Wholesale Trade) and 35 industries in NAICS Sector 44-45 (Retail Trade).

**DATES:** This rule is effective July 14, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 619-0389 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as "size standards") for private sector industries

in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, 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.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504, September 27, 2010) ("Jobs Act"), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA's latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget's (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB's 2017 NAICS revisions to its size standards (82 FR 44886 (September 27, 2017)).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries

<sup>1</sup> On December 21, 2021, the U.S. Office of Management and Budget (OMB) published its "Notice of NAICS 2022 Final Decisions . . ." (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . . . In the near future, SBA will issue a proposed rule to adopt the OMB's NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). Although the industries in Sectors 42 and 44–45 have both receipt-based and employee-based industry size standards, SBA is evaluating these sectors together because these size standards share the characteristic that they cannot be used in Federal contracts for supplies. Instead, by rule, these size standards are superseded by a 500-employee size standard for Federal contracts in the Wholesale and Retail Trade sectors. In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards, SBA reviewed all receipt-based and employee-based size standards in NAICS Sectors 42 and 44–45 to determine whether the existing size standards should be retained or revised based on the current industry and program data. After its review, SBA published in the May 25, 2021, issue of the **Federal Register** (86 FR 28012) a proposed rule to increase the size standards for 14 industries in NAICS Sector 42 (Wholesale Trade) and 35 industries in NAICS Sector 44–45 (Retail Trade). In this final rule, SBA is adopting the proposed size standards from the May 2021 proposed rule without change, except for eight industries in Sector 42 for which SBA is increasing size standards instead of maintaining them as proposed after refining its analysis of the economic characteristics of the comparison industry group.

In conjunction with the ongoing second five-year review of size standards under the Jobs Act, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of

various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. In the May 2021 proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA’s responses, refer to SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA’s Size Standards Methodology is available on its website at [www.sba.gov/size](http://www.sba.gov/size).

In evaluating an industry’s size standard, SBA normally examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. However, since NAICS codes in the Wholesale Trade and Retail Trade sectors cannot be used to classify Federal Government procurement for supplies, and only the applicable manufacturing code can be applied, the Federal contracting factor is not considered in evaluating industry-based size standards for these sectors (13 CFR 121.402(b)). SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a proposed or revised size standard would be dominant in its industry.

SBA analyzed the characteristics of each industry in NAICS Sectors 42 and 44–45, mostly using a special tabulation

obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available when the proposed rule was prepared). The 2012 special tabulation contains information for different levels of NAICS categories on average (simple and weighted average) and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association’s (RMA) Annual eStatement Studies (<https://www.rmahq.org/statementstudies/>) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry.

Table 5 of the May 2021 proposed rule, Size Standards Supported by Each Factor for Each Industry (Employees) and Table 6, Size Standards Supported by Each Factor for Each Industry (Receipts), show the results of analyses of industry factors for each industry covered by the proposed rule. Of the 137 industries, including 71 in Sector 42 and 66 in Sector 44–45, reviewed in the proposed rule, the results from analyses of the latest available data on the four primary industry factors (*i.e.*, average firm size, average assets size, four-firm ratio, and Gini coefficient) supported increasing size standards for 49 industries (14 in Sector 42 and 35 in Sector 44–45), decreasing size standards for 66 industries (38 in Sector 42 and 28 in Sector 44–45), and maintaining size standards for 22 industries (19 in Sector 42 and 3 in Sector 44–45). Table 1, Summary of Calculated Size Standards, summarizes the analytical results from the proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
42	Wholesale Trade	71	14	38	19
44–45	Retail Trade	66	35	28	3
Total		137	49	66	22

In the May 2021 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower

any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards

and adopt all size standards for which the analytical results supported an increase to size standards. In this final rule, SBA is adopting the proposed size standards from the May 2021 proposed rule without change, except for eight

industries in Sector 42 for which SBA is increasing size standards instead of maintaining them as proposed after refining its analysis of the economic characteristics of the comparison industry group in accordance with its "Size Standards Methodology." Specifically, SBA is increasing the size standards for the following eight additional NAICS industries from 100 employees to 125 employees: NAICS 423740 (Refrigeration Equipment and Supplies Merchant Wholesalers); NAICS 423820 (Farm and Garden Machinery and Equipment Merchant Wholesalers); NAICS 423840 (Industrial Supplies Merchant Wholesalers); NAICS 423850 (Service Establishment Equipment and Supplies Merchant Wholesalers); NAICS 423930 (Recyclable Material Merchant Wholesalers); NAICS 423940 (Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers); NAICS 424520 (Livestock Merchant Wholesalers); and NAICS 425110 (Business to Business Electronic Markets).

To evaluate the impact of the changes to size standards adopted in this final rule on SBA's loan programs, SBA analyzed its internal data on its guaranteed and disaster loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule. The impact of these changes is limited to SBA's loan programs because, as discussed above, these size standards do not apply to Federal procurements, such as those in SBA's contracting programs.

In the May 2021 proposed rule, SBA sought comments on its proposal to increase size standards for 49 industries and retain the current size standards for the remaining 88 industries in Sectors 42 and 44–45. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule; whether the decision not to lower any size standards is justified by the COVID–19 pandemic; whether the equal weighting of individual factors to derive an industry size standard is appropriate; and whether the data sources used were appropriate or sufficient.

#### Discussion of Comments

SBA received a total of nine comments to the proposed rule, of which four were not pertinent. Of the remaining five comments that were pertinent to the rule, two comments expressed support for the proposed changes to size standards in general, one comment supported SBA's proposed change for the size standard for convenience store-related industries,

one comment raised concern regarding SBA's proposal to retain the 500-employee size standard applicable to nonmanufacturers for purposes of Federal contracting, and one comment opposed the proposed changes. All comments to the proposed rule are available at [www.regulations.gov](http://www.regulations.gov) (RIN 3245–AH10) and are summarized and discussed below.

#### *Comments Supporting SBA's Proposed Changes to Both Sectors*

SBA received two comments supporting SBA's proposed changes to size standards in both Wholesale Trade and Retail Trade sectors. One commenter supported the rule because they viewed size limits as an important tool for defining small businesses. The second commenter supported the rule on the grounds that it would result in more assistance to small businesses in the form of increased SBA loans and Federal contracting opportunities.

#### SBA's Response

SBA agrees with the comment that size limits are an important tool for defining small businesses for eligibility for Federal small business assistance. SBA's proposed changes will help more businesses qualify as small and ensure that SBA's resources and assistance are directed to their intended beneficiaries. SBA also agrees with the comment expressing support for the rule on the grounds that it would result in more assistance to small businesses in the form of increased financial assistance and Federal contracting opportunities. As shown in Table 6 in the Regulatory Impact Analysis section of the rule, below, SBA estimates that the changes to size standards in this final rule will result in an increase to the number of 7(a) and CDC/504 and Economic Injury Disaster Loan (EIDL) loans to small firms. Moreover, although industries within Sectors 42 and 44–45 cannot be used for purposes of classifying Federal contracting opportunities, SBA believes that all small businesses will benefit from this rule in terms of access to its financial assistance that is available for small businesses. Therefore, SBA is adopting increases to 49 size standards from the proposed rule plus increases to eight additional size standards based on its reevaluation of analytical results, as discussed above.

#### *Comment Supporting Proposed Changes to the Convenience Services Industry*

SBA received one comment from an association representing the U.S. convenience services industry, including owners and operators of vending machines and micro markets,

expressing support for SBA's changes to size standards for the industries it represents. The commenter did not specify which 6-digit NAICS industries were the focus of their comment, but based on industry descriptions in the NAICS manual, SBA assumed the comment pertained to NAICS 445120 (Convenience Stores), NAICS 447110 (Gasoline Stations with Convenience Stores), NAICS 454210 (Vending Machine Operators), and NAICS 454390 (Other Direct Selling Establishments). The association supported SBA's proposed changes to size standards in these industries on the grounds that the changes would expand eligibility for SBA's assistance to operators that were previously ineligible to participate in SBA's programs and to those who may have experienced economic hardships related to the COVID–19 pandemic.

#### SBA's Response

In the May 2021 proposed rule, SBA proposed to increase the size standards for NAICS 454210 and 454390 from \$12 million and \$8 million to \$18.5 million and \$13 million, respectively. For NAICS 445120 and 447110, in response to the unprecedented economic impacts of the ongoing COVID–19 pandemic on small businesses and Federal Government response, in the May 2021 proposed rule, SBA proposed to retain their size standards at \$32 million instead of decreasing them to \$8.5 million and \$21 million, respectively, based on analytical results. SBA agrees with the association that these changes will help more small businesses in these industries qualify for SBA's financial assistance. SBA believes that expanding the reach of its programs to include a greater number of small firms supports all small businesses and the overall economy as the Nation continues to recover from the economic challenges caused by the COVID–19 pandemic and small businesses remain in need of SBA's assistance as they recover from the pandemic. SBA believes that the proposed size standards for these industries are more reflective of the current economic characteristics of businesses in these industries and the latest trends in the economy. Thus, SBA is adopting its proposal to increase the size standards for NAICS 454210 and 454390 from \$12 million and \$8 million to \$18.5 million and \$13 million, respectively, and retain the size standards for NAICS 445120 and 447110 at \$32.0 million.

*Comment on the 500-Employee Size Standard Applicable to Nonmanufacturers for Purposes of Federal Contracting*

In response to its proposal to retain the nonmanufacturer size standard at 500 employees, SBA received one comment to the May 2021 proposed rule from the members of the U.S. House of Representatives Subcommittee on Contracting and Infrastructure requesting that SBA evaluate the current 500-employee size standard under its nonmanufacturer rule. Specifically, the comment expressed concern that because the level of revenue is immaterial to the determination of size under the 500-employee nonmanufacturer size standard, the current rule may allow a firm with billions of dollars in revenues to qualify as a small business. They suggested that SBA conduct an assessment of the nonmanufacturing industry based on revenue and/or other factors that may be more appropriate to determine what may be considered small for the size of a business qualifying as a nonmanufacturer. The comment also raised other issues outside the scope of the SBA’s proposed rule, such as reporting on SBA’s small business procurement scorecard and SBA’s process for granting waivers to the nonmanufacturing rule. SBA responded to the comments on those issues in a separate letter and addresses the comment regarding the 500-employee nonmanufacturer size standard below.

**SBA’s Response**

While the nonmanufacturer rule applies to firms primarily engaged in business activities within Sectors 42 and 44–45, SBA did not review the 500-employee nonmanufacturer size standard in its May 2021 proposed rule. However, in an upcoming proposed rule covering the manufacturing sector and industries with employee-based size standards in other sectors (except

Wholesale Trade or Retail Trade), SBA will examine whether the current 500-employee size standard for nonmanufacturers is appropriate and provide a detailed response to the Subcommittee’s comment. That rulemaking will be identified under RIN 3245–AH09. Interested parties will have an opportunity to review the SBA’s proposed rule and submit comments when the rule is published in the **Federal Register**. Thus, in this final rule, SBA is not evaluating the size standard for nonmanufacturers.

*Comment Opposed to SBA’s Proposed Changes*

SBA received one comment opposed to its proposed changes on the grounds that SBA’s size standards are generally too large and allow larger corporations to obtain small business status and to dominate the market. The commenter also recommended that SBA abolish the Davis-Bacon Act and other regulations that may place burdens on small businesses. The commenter also urged SBA to broadly define small businesses as those with less than 100 employees.

**SBA’s Response**

SBA believes that establishing a common industry size standard of less than 100 employees for all wholesale and retail trade firms would be contrary to the Small Business Act. Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA’s Administrator is responsible for establishing small business size definitions and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. The size standards adopted in this final rule are part of SBA’s efforts to meet its statutory responsibility. Moreover, SBA conducted its review of size standards according to its Size Standards

Methodology which was adopted through a notice and comment process. SBA considered all public comments in finalizing the revised Methodology, which included a detailed explanation of how these sectors would be analyzed.

SBA also does not agree with the comment urging SBA to abolish the Davis-Bacon Act and other regulations that may place burdens on small businesses. The Davis-Bacon Act requires contractors and subcontractors to pay laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area (Pub. L. 107–217, Sec. 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304). While the commenter did not specify which regulations would be included under the “other” category, SBA notes that it generally does not have the authority to repeal or override the regulations of other agencies or of Acts passed by Congress.

For the reasons above, in this final rule, SBA is adopting the proposed size standards from the May 2021 proposed rule without change, except for eight industries in Sector 42 for which SBA is increasing size standards instead of maintaining them in the proposed rule.

**Summary of Adopted Revisions to Size Standards**

Based on the evaluation of public comments it received on the May 2021 proposed rule and on its analyses of industry factors using the latest available relevant industry and program data when the proposed rule was prepared, SBA is increasing 57 size standards, including 22 employee-based size standards in NAICS Sector 42 and 35 receipts-based size standards in NAICS Sector 44–45. A summary of SBA’s size standards revisions in this rule can be found below in Table 2, Summary of Size Standards Revisions (Employees) and Table 3, Summary of Size Standards Revisions (Receipts).

**TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS**  
[Employees]

NAICS code	NAICS U.S. industry title	Current size standard (employees)	Calculated size standard (employees)	Adopted size standard (employees)
423110 ....	Automobile and Other Motor Vehicle Merchant Wholesalers .....	250	225	250
423120 ....	Motor Vehicle Supplies and New Parts Merchant Wholesalers .....	200	150	200
423130 ....	Tire and Tube Merchant Wholesalers .....	200	175	200
423140 ....	Motor Vehicle Parts (Used) Merchant Wholesalers .....	100	125	125
423210 ....	Furniture Merchant Wholesalers .....	100	50	100
423220 ....	Home Furnishing Merchant Wholesalers .....	100	75	100
423310 ....	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers .....	150	75	150
423320 ....	Brick, Stone, and Related Construction Material Merchant Wholesalers .....	150	100	150
423330 ....	Roofing, Siding, and Insulation Material Merchant Wholesalers .....	200	225	225
423390 ....	Other Construction Material Merchant Wholesalers .....	100	75	100
423410 ....	Photographic Equipment and Supplies Merchant Wholesalers .....	200	150	200

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS—Continued  
[Employees]

NAICS code	NAICS U.S. industry title	Current size standard (employees)	Calculated size standard (employees)	Adopted size standard (employees)
423420 ....	Office Equipment Merchant Wholesalers .....	200	200	200
423430 ....	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	250	225	250
423440 ....	Other Commercial Equipment Merchant Wholesalers .....	100	50	100
423450 ....	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers ...	200	200	200
423460 ....	Ophthalmic Goods Merchant Wholesalers .....	150	175	175
423490 ....	Other Professional Equipment and Supplies Merchant Wholesalers .....	150	125	150
423510 ....	Metal Service Centers and Other Metal Merchant Wholesalers .....	200	150	200
423520 ....	Coal and Other Mineral and Ore Merchant Wholesalers .....	100	200	200
423610 ....	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.	200	125	200
423620 ....	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	200	225	225
423690 ....	Other Electronic Parts and Equipment Merchant Wholesalers .....	250	225	250
423710 ....	Hardware Merchant Wholesalers .....	150	75	150
423720 ....	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.	200	150	200
423730 ....	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.	150	175	175
423740 ....	Refrigeration Equipment and Supplies Merchant Wholesalers .....	100	100	125
423810 ....	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.	250	200	250
423820 ....	Farm and Garden Machinery and Equipment Merchant Wholesalers .....	100	100	125
423830 ....	Industrial Machinery and Equipment Merchant Wholesalers .....	100	75	100
423840 ....	Industrial Supplies Merchant Wholesalers .....	100	100	125
423850 ....	Service Establishment Equipment and Supplies Merchant Wholesalers .....	100	100	125
423860 ....	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	150	175	175
423910 ....	Sporting and Recreational Goods and Supplies Merchant Wholesalers .....	100	50	100
423920 ....	Toy and Hobby Goods and Supplies Merchant Wholesalers .....	150	175	175
423930 ....	Recyclable Material Merchant Wholesalers .....	100	100	125
423940 ....	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers .....	100	100	125
423990 ....	Other Miscellaneous Durable Goods Merchant Wholesalers .....	100	50	100
424110 ....	Printing and Writing Paper Merchant Wholesalers .....	200	225	225
424120 ....	Stationery and Office Supplies Merchant Wholesalers .....	150	150	150
424130 ....	Industrial and Personal Service Paper Merchant Wholesalers .....	150	125	150
424210 ....	Drugs and Druggists' Sundries Merchant Wholesalers .....	250	250	250
424310 ....	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers .....	100	50	100
424320 ....	Men's and Boys' Clothing and Furnishings Merchant Wholesalers .....	150	125	150
424330 ....	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	100	75	100
424340 ....	Footwear Merchant Wholesalers .....	200	200	200
424410 ....	General Line Grocery Merchant Wholesalers .....	250	250	250
424420 ....	Packaged Frozen Food Merchant Wholesalers .....	200	150	200
424430 ....	Dairy Product (except Dried or Canned) Merchant Wholesalers .....	200	200	200
424440 ....	Poultry and Poultry Product Merchant Wholesalers .....	150	125	150
424450 ....	Confectionery Merchant Wholesalers .....	200	225	225
424460 ....	Fish and Seafood Merchant Wholesalers .....	100	50	100
424470 ....	Meat and Meat Product Merchant Wholesalers .....	150	100	150
424480 ....	Fresh Fruit and Vegetable Merchant Wholesalers .....	100	75	100
424490 ....	Other Grocery and Related Products Merchant Wholesalers .....	250	200	250
424510 ....	Grain and Field Bean Merchant Wholesalers .....	200	175	200
424520 ....	Livestock Merchant Wholesalers .....	100	100	125
424590 ....	Other Farm Product Raw Material Merchant Wholesalers .....	100	175	175
424610 ....	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers .....	150	125	150
424690 ....	Other Chemical and Allied Products Merchant Wholesalers .....	150	175	175
424710 ....	Petroleum Bulk Stations and Terminals .....	200	225	225
424720 ....	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	200	200	200
424810 ....	Beer and Ale Merchant Wholesalers .....	200	125	200
424820 ....	Wine and Distilled Alcoholic Beverage Merchant Wholesalers .....	250	225	250
424910 ....	Farm Supplies Merchant Wholesalers .....	200	175	200
424920 ....	Book, Periodical, and Newspaper Merchant Wholesalers .....	200	200	200
424930 ....	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers .....	100	50	100
424940 ....	Tobacco and Tobacco Product Merchant Wholesalers .....	250	250	250
424950 ....	Paint, Varnish, and Supplies Merchant Wholesalers .....	150	150	150
424990 ....	Other Miscellaneous Nondurable Goods Merchant Wholesalers .....	100	50	100
425110 ....	Business to Business Electronic Markets .....	100	100	125
425120 ....	Wholesale Trade Agents and Brokers .....	100	125	125

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS—Continued  
[Employees]

NAICS code	NAICS U.S. industry title	Current size standard (employees)	Calculated size standard (employees)	Adopted size standard (employees)
441110 ....	New Car Dealers .....	200	150	200
454310 ....	Fuel Dealers .....	100	75	100

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS  
[Receipts]

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
441120 ....	Used Car Dealers .....	\$27.0	\$17.0	\$27.0
441210 ....	Recreational Vehicle Dealers .....	35.0	19.0	35.0
441222 ....	Boat Dealers .....	35.0	11.5	35.0
441228 ....	Motorcycle, ATV, and All Other Motor Vehicle Dealers .....	35.0	10.0	35.0
441310 ....	Automotive Parts and Accessories Stores .....	16.5	25.0	25.0
441320 ....	Tire Dealers .....	16.5	22.5	22.5
442110 ....	Furniture Stores .....	22.0	19.0	22.0
442210 ....	Floor Covering Stores .....	8.0	7.5	8.0
442291 ....	Window Treatment Stores .....	8.0	10.0	10.0
442299 ....	All Other Home Furnishings Stores .....	22.0	29.5	29.5
443141 ....	Household Appliance Stores .....	12.0	19.5	19.5
443142 ....	Electronics Stores .....	35.0	31.5	35.0
444110 ....	Home Centers .....	41.5	41.5	41.5
444120 ....	Paint and Wallpaper Stores .....	30.0	21.0	30.0
444130 ....	Hardware Stores .....	8.0	14.5	14.5
444190 ....	Other Building Material Dealers .....	22.0	14.0	22.0
444210 ....	Outdoor Power Equipment Stores .....	8.0	8.5	8.5
444220 ....	Nursery, Garden Center, and Farm Supply Stores .....	12.0	19.0	19.0
445110 ....	Supermarkets and Other Grocery (except Convenience) Stores .....	35.0	32.0	35.0
445120 ....	Convenience Stores .....	32.0	8.5	32.0
445210 ....	Meat Markets .....	8.0	7.0	8.0
445220 ....	Fish and Seafood Markets .....	8.0	7.0	8.0
445230 ....	Fruit and Vegetable Markets .....	8.0	7.5	8.0
445291 ....	Baked Goods Stores .....	8.0	14.0	14.0
445292 ....	Confectionery and Nut Stores .....	8.0	17.0	17.0
445299 ....	All Other Specialty Food Stores .....	8.0	9.0	9.0
445310 ....	Beer, Wine, and Liquor Stores .....	8.0	9.0	9.0
446110 ....	Pharmacies and Drug Stores .....	30.0	33.0	33.0
446120 ....	Cosmetics, Beauty Supplies, and Perfume Stores .....	30.0	28.0	30.0
446130 ....	Optical Goods Stores .....	22.0	26.0	26.0
446191 ....	Food (Health) Supplement Stores .....	16.5	20.0	20.0
446199 ....	All Other Health and Personal Care Stores .....	8.0	8.5	8.5
447110 ....	Gasoline Stations with Convenience Stores .....	32.0	21.0	32.0
447190 ....	Other Gasoline Stations .....	16.5	29.5	29.5
448110 ....	Men's Clothing Stores .....	12.0	22.5	22.5
448120 ....	Women's Clothing Stores .....	30.0	25.0	30.0
448130 ....	Children's and Infants' Clothing Stores .....	35.0	32.5	35.0
448140 ....	Family Clothing Stores .....	41.5	39.5	41.5
448150 ....	Clothing Accessories Stores .....	16.5	29.5	29.5
448190 ....	Other Clothing Stores .....	22.0	27.5	27.5
448210 ....	Shoe Stores .....	30.0	29.0	30.0
448310 ....	Jewelry Stores .....	16.5	18.0	18.0
448320 ....	Luggage and Leather Goods Stores .....	30.0	33.5	33.5
451110 ....	Sporting Goods Stores .....	16.5	23.5	23.5
451120 ....	Hobby, Toy, and Game Stores .....	30.0	31.0	31.0
451130 ....	Sewing, Needlework, and Piece Goods Stores .....	30.0	19.5	30.0
451140 ....	Musical Instrument and Supplies Stores .....	12.0	20.0	20.0
451211 ....	Book Stores .....	30.0	31.5	31.5
451212 ....	News Dealers and Newsstands .....	8.0	20.0	20.0
452210 ....	Department Stores .....	35.0	32.5	35.0
452311 ....	Warehouse Clubs and Supercenters .....	32.0	41.5	41.5
452319 ....	All Other General Merchandise Stores .....	35.0	35.0	35.0
453110 ....	Florists .....	8.0	6.5	8.0
453210 ....	Office Supplies and Stationery Stores .....	35.0	32.0	35.0
453220 ....	Gift, Novelty, and Souvenir Stores .....	8.0	12.0	12.0
453310 ....	Used Merchandise Stores .....	8.0	12.5	12.5
453910 ....	Pet and Pet Supplies Stores .....	22.0	28.0	28.0
453920 ....	Art Dealers .....	8.0	14.5	14.5

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS—Continued  
[Receipts]

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
453930 ....	Manufactured (Mobile) Home Dealers .....	16.5	16.5	16.5
453991 ....	Tobacco Stores .....	8.0	7.5	8.0
453998 ....	All Other Miscellaneous Store Retailers (except Tobacco Stores) .....	8.0	10.0	10.0
454110 ....	Electronic Shopping and Mail-Order Houses .....	41.5	33.0	41.5
454210 ....	Vending Machine Operators .....	12.0	18.5	18.5
454390 ....	Other Direct Selling Establishments .....	8.0	13.0	13.0

Table 4, Summary of Adopted Size Standards Revisions by Sector, summarizes the adopted changes to size standards by NAICS sector.

TABLE 4—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of Size standards decreased	Number of size standards maintained
42 .....	Wholesale Trade .....	71	22	0	49
44–45 .....	Retail Trade .....	66	35	0	31
Total .....	.....	137	57	0	80

**Evaluation of Dominance in Field of Operation**

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the adopted size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.4%, varying from 0.005% to 4.8%. These market shares effectively preclude a firm at or below the adopted size standards from exerting control on any of the industries.

**Alternatives Considered**

In response to the unprecedented economic impacts of the ongoing COVID–19 pandemic on small businesses and Federal Government response, SBA is adopting increases to size standards where the data suggests increases are warranted, and retaining all current size standards where the data suggested lowering of size standards is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current size standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 57 industries, decreasing them for 66 industries, and retaining them at their

current levels for 14 industries. Alternative Option Two was to retain all current size standards, including those for which the analytical results support increases.

SBA did not adopt Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially SBA’s financial assistance. Lowering size standards in the current environment would also run counter to various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing COVID–19 pandemic. Considering the impacts of the Great Recession and Federal Government actions that followed to support small businesses and the overall economy, SBA also adopted a policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

Under Alternative Option Two, given the current COVID–19 pandemic, SBA considered retaining the current level of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because the results discussed in the Regulatory

Impact Analysis section, below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 57 and retaining 80 size standards. Such benefits would include access to capital through SBA’s business loan, EIDL loan, and SBIC programs, and exemptions from paperwork and other compliance requirements.

**Compliance With Executive Order 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including: (1) A statement of the need for the regulatory action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the regulatory action and the alternatives considered.

*Regulatory Impact Analysis*

1. What is the need for this regulatory action?

SBA’s mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small.

Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA’s Administrator is responsible for establishing small business size definitions (or “size standards”) and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace.

The revisions to the existing size standards for 57 industries in NAICS Sectors 42 and 44–45 are consistent with SBA’s statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action

promotes the Administration’s goals and objectives and ensures that SBA complies with statutory requirements. One of SBA’s goals in support of promoting the Administration’s objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries can access Federal small business programs that are designed to assist them to become competitive and create jobs.

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

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. 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 promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

*Changes to Size Standards*

Based on the results from the analyses of the latest industry data, evaluation of the public comments on the proposed rule, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 pandemic on small firms and the overall economy, of the total of 137 industries in Sectors 42 and 44–45 evaluated in the proposed rule, SBA is adopting increases to size standards for 57 industries and maintaining current size standards for the remaining 80 industries.

*The Baseline*

For purposes of this regulatory action, the baseline represents maintaining the “status quo,” *i.e.*, making no changes to the current size standards. Using the number of small businesses and levels of small business benefits (such as SBA’s business loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available when this proposed rule was prepared), of a total of about 975,569 businesses in industries in Sectors 42 and 44–45, 97.4% are considered small under the current size standards. That percentage varies from 96.6% in Sector 42 to 97.9% in Sector 44–45.

Based on SBA’s internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 9,871 7(a) and CDC/504 loans in that period, totaling about \$5.4 billion, of which 82.6% was issued through the 7(a) program and 17.4% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 561 loans through SBA’s Economic Injury Disaster Loan (EIDL) program, totaling about \$28.3 million on an annual basis.<sup>2</sup> Table 5, Baseline for All Industries, provides these baseline results by sector.

The results of regulatory impact analyses SBA provided in the May 2021 proposed rule were based on SBA loan data for fiscal years (FYs) 2016–2018. In this final rule, SBA is updating the impact analysis results by using SBA loan data for fiscal years 2018–2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on SBA loans.

TABLE 5—BASELINE FOR ALL INDUSTRIES

	Sector 42	Sector 44–45	Total
Baseline all industries (current size standards) .....	71	66	137
Total firms (2012 Economic Census) .....	319,716	655,853	975,569
Total small firms under current size standards (2012 Economic Census) .....	308,710	641,995	950,705

<sup>2</sup> The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan

analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data

limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

TABLE 5—BASELINE FOR ALL INDUSTRIES—Continued

	Sector 42	Sector 44–45	Total
Small firms as % of total firms .....	96.6%	97.9%	97.5%
No. of 7(a) and CDC/504 loans (FY 2018–2020) .....	2,665	7,206	9,871
Amount of 7(a) and CDC/504 loans (\$ million) (FY 2018–2020) .....	\$1,706	\$3,732	\$5,438
No. of EIDL loans (FY 2018–2020)* .....	123	438	561
Amount of EIDL loans (\$million) (FY 2018–2020)* .....	\$7.4	\$20.9	\$28.3

\* Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

#### Increases to Size Standards

As stated above, of the 73-employee-based and 64 receipts-based size standards reviewed in NAICS Sectors 42 and 44–45, based on the results from analyses of latest industry data, impacts of size standards changes on small businesses, considerations of the impacts of the COVID–19 pandemic, and public comments to the proposed rule, SBA is adopting increases to size standards for 57 industries and maintaining size standards for the remaining 80 industries. Below are descriptions of the benefits, costs, and transfer impacts of the increases to size standards adopted in this final rule.

#### Benefits of Increasing Size Standards

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining that eligibility for such programs for a longer period. These include SBA's business loan

programs, such as the 7(a) and CDC/504 programs, and the EIDL loan program. SBA's regulations provide that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Federal Government acquisition for supplies (13 CFR 121.402(b)). As such, for purposes of Federal contracts set aside for small businesses, the size standard for all industries in the Wholesale Trade and Retail Trade sectors is 500 employees under the SBA's nonmanufacturer rule (see 13 CFR 121.406(b)). SBA is not evaluating the 500-employee the nonmanufacturer size standard in this final rule. Thus, the increases to size standards in this final rule will not impact the Federal market for contracts set aside for small businesses.

Besides the access to SBA's financial assistance programs discussed above, because of increases to size standards, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are

available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (the latest available when the proposed rule was prepared), SBA estimates that in 57 industries in NAICS Sectors 42 and 44–45 for which this final rule is increasing size standards, about 2,000 firms not small under the current size standards will become small under the adopted size standards increases and therefore become eligible for SBA's financial and other Federal non-procurement programs. That represents about 0.5% of all firms classified as small under the current size standards in industries for which SBA is adopting increases to size standards. Table 6, Impacts of Increasing Size Standards, provides impacts of increasing 57 and maintaining 80 size standards by NAICS sector.

TABLE 6—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 42	Sector 44–45	Total
No. of industries with increases to size standards .....	22	35	57
Total current small businesses in industries with increases to size standards (2012 Economic Census) .....	93,426	286,758	380,184
Additional firms qualifying as small under standards (2012 Economic Census) .....	308	1,694	2,002
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards .....	0.3%	0.6%	0.5%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY 2018–2020) .....	536	3,692	4,228
Total 7(a) and 504 loan amounts to small businesses in industries with increases to size standards (\$ million) (FY 2018–2020) .....	\$341	\$1,641	\$1,982
Estimated no. of 7(a) and 504 loans to newly-qualified small firms .....	2	23	25
Estimated 7(a) and 504 loan amounts to newly-qualified small firms (\$ million) .....	\$1.3	\$10.3	\$11.6
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards .....	0.4%	0.6%	0.6%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY 2018–2020)* .....	26	248	274
Total amount of EIDL loans to small businesses in industries with increases to size standards (\$ million) (FY 2018–2020)* .....	\$1.5	\$11.7	\$13.3
Estimated no. of EIDL loans to newly-qualified small firms* .....	1	2	3
Estimated EIDL loan amount to newly-qualified small firms (\$ million)* .....	\$0.06	\$0.09	\$0.2
% increase to EIDL loan amount relative to the total amount of disaster loans in industries with increases to size standards* .....	3.8%	0.8%	1.5%

\* Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

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 higher size standards, thereby enabling them to continue to benefit from the Federal small business assistance outside of the contracting programs.

Based on its internal loan data for fiscal years 2018–2020, SBA estimates that up to about 25 SBA 7(a) and CDC/504 loans totaling about \$11.6 million could be made to these newly-qualified small businesses in those industries under the adopted increases to size standards. That represents a 0.4% increase to the 7(a) and CDC/504 loan amount compared to the baseline (see Table 6).

Newly-qualified small businesses will also benefit from the SBA's EIDL program. Since the benefits provided through this program are 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 disaster loan program data, SBA estimates that, on an annual basis, the newly-defined small businesses under the increases to 57 size standards could receive three disaster loans (except physical disaster loans, which are unaffected by the changes in this rule), totaling about \$0.2 million (see Table 6).

Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

#### *Costs of Increasing Size Standards*

To the extent that newly-qualified small businesses could seek assistance from SBA's financial assistance programs, the adopted increases to size standards may entail some additional administrative costs to the Government for the 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 standards to establish eligibility for SBA's loans which many small businesses already qualify under. Moreover, this rule does not establish new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement and the latest data and other relevant factors. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms

are already in place to handle the additional requirements.

#### *Transfer Impacts of Increasing Size Standards*

The increases to size standards adopted in this final rule may result in some redistribution of SBA loans between the newly-qualified small businesses and small businesses under the current size standards. However, SBA estimates this impact to be de minimis because the vast majority of the SBA loans go to small businesses that are much smaller than the current or adopted size standards. Moreover, this rule would not have any impact on Federal contract dollars awarded to small businesses since SBA's regulations specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government procurement for supplies.

#### 3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider regulatory alternatives to the adopted changes in this final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative to the adopted change, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 57 industries for which the analytical results suggest raising them would be raised. However, the size standards of 66 industries for which the analytical results suggest lowering them, as shown in Table 4 of the May 2021 proposed rule, would be lowered. For the 14 remaining industries for which analysis suggested no changes, size standards would be maintained at their current levels. Alternative Option Two would propose retaining size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses benefits, costs, and the net impacts of each option.

#### *Alternative Option One: Adopting All Calculated Size Standards*

As discussed previously in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially SBA's financial assistance. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and the economic conditions that followed, SBA

adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-year comprehensive size standards review as well.

The primary benefits of adopting Alternative Option One would include: (1) SBA's management, technical, and financial assistance would be targeted to the most appropriate beneficiaries of such programs according to the analytical results; (2) Adopting the size standards based on the analytical results would also promote consistency and predictability in SBA's implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining Federal opportunities. Specifically, SBA sought public comment on the impact of adopting the size standards based on the analytical results.

As explained in the "Size Standards Methodology" white paper, in addition to adopting all results of the analysis of the primary factors, SBA evaluates other relevant factors as needed, such as the impact of the reductions or increases of size standards on the distribution of SBA resources intended for small businesses and may adopt different results with the intention of mitigating potential negative impacts.

We have already discussed the benefits, costs, and transfer impacts of increasing 57 and retaining 80 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 66, increasing 57, and maintaining 14 size standards based on the analytical results.

#### *Benefits of Decreasing Size Standards Under Alternative Option One*

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and current market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA's business loan and EIDL programs.

Decreasing size standards may reduce the administrative costs to the Federal Government, because the risk of providing SBA's loans to firms that do

not need them the most may diminish when the size standards reflect better the structure of the market. This may provide a better chance for smaller small firms to grow and benefit from the opportunities and resources available through SBA.

*Costs of Decreasing Size Standards Under Alternative Option One*

Table 7, Impacts of Decreasing Size Standards Under Alternative Option One, below, shows the various impacts of lowering size standards in 66

industries based solely on the analytical results. Based on the 2012 Economic Census, more than 5,500 (1.0%) firms would lose their small business status under Alternative Option One.

As shown in Table 7, decreasing size standards would have a relatively minor impact on small businesses applying for SBA’s 7(a) and CDC/504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that 67 of

SBA’s 7(a) and CDC/504 loans, totaling \$32.5 million, could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents a 1.1% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA’s 7(a) and CDC/504 loans under the tangible net worth and net income-based alternative size standard.

TABLE 7—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 42	Sector 44–45	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census) .....	38	28	66
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	184,837	343,639	528,476
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) .....	2,735	2,774	5,509
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards .....	1.5%	0.8%	1.0%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) .....	1,829	3,464	5,293
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) .....	\$1,176	\$1,856	\$3,032
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status .....	28	23	51
Estimated 7(a) and 504 loan amounts not available to firms that would have small status (\$ million) .....	\$18.0	\$14.5	\$32.5
% decrease to 7(a) and 504 loan amounts relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards .....	1.5%	0.8%	1.1%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) * .....	79	187	266
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) * .....	\$4.8	\$9.0	\$13.8
Estimated no. of EIDL loans not available to firms that would have lost small business status * .....	2	3	5
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) * .....	\$0.1	\$0.1	\$0.2
% decrease to EIDL loan amount relative to the baseline * .....	2.5%	1.5%	1.8%

\* Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Businesses losing small business status would also be impacted in terms of access to loans through the SBA’s EIDL program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. Additionally, most of those businesses were below the reduced size standards. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of this impact. However, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, on an annual basis, five EIDL loans, totaling about \$0.2 million, would be unavailable to firms that no longer qualify as small

under the decreases to size standards. Table 7 shows these results by sector.

Small businesses becoming other than small if size standards were decreased might lose the benefits of reduced fees, and paperwork and compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA’s size standards do not adequately serve the needs of their programs, they can establish a different size standard, with an approval from SBA, if they are required to use SBA’s size standards for such programs.

SBA may adopt mitigating measures to reduce the negative impact under the Alternative Option One. SBA could adopt one or more of the following three

actions: (1) Accept decreases in size standards as suggested by the analytical results; (2) Decrease size standards by a smaller amount than the calculated values; and (3) Retain the size standards at their current levels. For example, in response to the 2008 Financial Crisis, SBA adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, in this final rule, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-

year comprehensive size standards review as well.

Nevertheless, the impact on the overall loan activity is likely to be de minimis because SBA estimates that the majority of firms currently eligible for its loan programs would continue to remain eligible under the reduced size standards. SBA’s regulations specify that NAICS codes for the Wholesale Trade and Retail Trade industries shall not be used to classify Federal Government acquisition for supplies (13 CFR 121.402(b)). As such, for purposes of Federal contracting, the size standard for all industries in the Wholesale Trade and Retail Trade sectors is 500 employees under SBA’s nonmanufacturer rule (13 CFR 121.406(b)). Thus, SBA estimates that any decreases to size standards as part of this rulemaking will not impact the market for Federal contracts.

*Transfer Impacts of Decreasing Size Standards Under Alternative Option One*

If the size standards were decreased under Alternative Option One, it may

result in a redistribution of loans between the newly-qualified small businesses and small businesses under the current size standards. However, SBA estimates this impact to be de minimis as participants in SBA’s financial assistance programs are on average much smaller than their industry size standards and SBA’s loans are not disbursed based on a competitive process. Moreover, this rule would not have an impact on Federal contract dollars awarded to small businesses since SBA’s regulations specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government acquisition for supplies. While SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from this redistribution, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some SBA’s resources to be otherwise awarded to small businesses may be diverted to other uses or programs. However, since

the total benefit provided through this program is contingent on the availability of funds and the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact.

*Net Impact of Alternative Option One*

To estimate the net impacts of adopting Alternative Option One, SBA followed the same methodology used to evaluate the impacts of the increasing size standards (see Table 6). However, under Alternative Option One, SBA used the calculated size standards instead of the adopted increases to determine the impacts of changes to current thresholds. The impacts of the increases of size standards were already shown in Table 6. Similarly, the impacts of the decreases of size standards were also already presented in Table 7. Table 8, Net Impacts of Size Standards Changes under Alternative Option One, presents the net impacts of adopting the calculated size standards under Alternative Option One.

TABLE 8—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 42	Sector 44–45	Total
No. of industries with changes to size standards .....	60	63	123
Total no. of small business under the current size standards (2012 Economic Census) .....	278,263	630,397	908,660
Additional firms qualifying as small under size standards (2012 Economic Census) .....	-2,427	-1,080	-3,507
% of additional firms qualifying as small relative to total current small businesses .....	-0.9%	-0.2%	-0.4%
Total no. of 7(a) and 504 loans to small businesses (FY 2018–2020) .....	2,665	7,206	9,871
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020) .....	\$1,706	\$3,732	\$5,438
Estimated no. of additional 7(a) and 504 loans to newly- qualified small firms .....	-26	0	-26
Estimated additional 7(a) and 504 loan amount to newly- qualified small firms (\$ million) .....	-\$16.7	-\$4.2	-\$20.9
% increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses .....	-1.0%	-0.1%	-0.4%
Total no. of EIDL loans to small businesses (FY 2018–2020) * .....	123	438	561
Total amount of EIDL loans to small businesses (FY 2018–2020) * .....	\$7.4	\$20.9	\$28.3
Estimated no. of additional EIDL loans to newly-qualified small firms * .....	-1	-1	-2
Estimated additional EIDL loan amount to newly-qualified small firms (\$ million) * .....	-\$0.04	-\$0.01	-\$0.01
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses * .....	-0.5%	0.0%	0.01%

\* Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

As shown in Table 8, based on the 2012 Economic Census, SBA estimates that in 123 industries in NAICS Sectors 42 and 44–45 for which the analytical results suggested to change size standards, about 3,500 firms would lose their small business size status under Alternative Option One. That represents about 0.4% of all firms classified as small under the current size standards in those industries.

Based on SBA’s loan data for fiscal years 2018–2020, the total number of 7(a) and CDC/504 loans will decrease by 26 loans, while the total loan amount will decrease by about \$21 million. This

is a 0.4% decrease of the 7(a) and CDC/504 loan amounts relative to the baseline.

Firms’ participation under SBA’s EIDL loan program will be affected as well. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of this impact. However, based on the EIDL loan program data for fiscal years 2018–2020, SBA estimates that the number of EIDL loans will decrease by two loans, while the total loan amount will decrease by about \$0.01 million. This is a 0.01% decrease of the EIDL

loan amounts relative to the baseline. Table 8 provides these results by NAICS sector.

*Alternative Option Two: Retaining All Current Size Standards*

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators and SBA loans as well. When compared to the baseline, there is a net impact of zero (i.e., zero

benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (e.g., access to capital and other benefits) that become available to them under the option of increasing 57 and retaining 80 size standards adopted in this final rule. Moreover, retaining all size standards under this option would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

### Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### Final Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. This final rule may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses seeking loans under SBA's 7(a), CDC/504, and EIDL loan programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for, and objectives of the rule?; (2) What are significant issues raised by the public comments in response to the initial regulatory flexibility analysis,

assessment of the agency of such issues, and any changes made in the proposed rule as a result of such comments?; (3) What's the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and description of any change made to the proposed rule in the final rule as a result of the comments?; (4) What is SBA's description and estimate of the number of small businesses to which the rule will apply?; (5) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (6) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; (7) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the economic impact on small businesses?

#### 1. What is the need for, and objectives, of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many of the industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review every five years all size standards and make necessary adjustments to reflect market conditions.

#### 2. What are the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, assessment of the agency of such issues, and any changes made in the proposed rule as a result of such comments?

SBA did not receive any public comments to the initial regulatory flexibility analysis it provided in the proposed rule.

#### 3. What is the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and description of any change made to the proposed rule in the final rule as a result of the comments?

SBA did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

#### 4. What is SBA's description and estimate of the number of small businesses to which the rule will apply,

or an explanation of why no such estimate is available?

Based on data from the 2012 Economic Census, SBA estimates that there are about 380,184 small firms covered by this rulemaking under industries with adopted changes to size standards. Under this final rule, SBA estimates that an additional 2,000 businesses will be defined as small.

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

The size standard changes in this final rule impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the System for Award Management (SAM) and self-certify that they are small at least once annually (48 CFR 52.204–13 (the Federal Acquisition Regulation (FAR))). For existing contracts, small business contractors are required to update their SAM registration as necessary to ensure that they reflect the contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. Changes in small business size standards do not result in additional costs associated with SAM initial registration or annual recertification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

#### 6. What are the relevant Federal rules that 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)).

7. *What alternatives will allow SBA 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.

However, SBA considered two alternatives to increasing 57 and maintaining 80 size standards at their current levels. The first alternative SBA considered was adopting size standards revisions based solely on the analytical results. In other words, the size standards of 57 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 66 industries for which the analytical results suggest lowering them would be lowered. This would cause a significant number of small businesses to lose their small business status in both Sectors 42 and 44–45 (see Table 7). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results suggested increasing 57 and decreasing 66 size standards. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 57 and retaining 80 size standards. Postponing the adoption of the higher calculated size standards in 57 industries would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to SBA's financial assistance programs and exemptions from paperwork and other compliance requirements.

#### 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 Regulatory Impact Analysis under

Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this final rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act, which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all small business size standards, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled “Size Standards Methodology” and published a notification in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review. The “Size Standards Methodology” white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. The methodology also provides descriptions of methodologies SBA employs to adjust monetary-based size standards for inflation and to update size standards to adopt the OMB's quinquennial NAICS revisions. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this final rule. SBA received a total of nine comments to the proposed rule. In the Discussion of Comments section of this final rule, SBA summarizes comments received on the proposed rule and provides its responses.

#### Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce

burden. The action does not have retroactive or preemptive effect.

#### Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final 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 final rule has no federalism implications warranting preparation of a federalism assessment.

#### Paperwork Reduction Act

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

#### 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 amends 13 CFR part 121 as follows:

#### PART 121—SMALL BUSINESS SIZE REGULATIONS

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

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); 15 U.S.C. 9012.

- 2. In § 121.201, amend the table “Small Business Size Standards by NAICS Industry” by revising entries “423140,” “423330,” “423460,” “423520,” “423620,” “423730,” “423740,” “423820,” “423840,” “423850,” “423860,” “423920,” “423930,” “423940,” “424110,” “424450,” “424520,” “424590,” “424690,” “424710,” “425110,” “425120,” “441310,” “441320,” “442291,” “442299,” “443141,” “444130,” “444210,” “444220,” “445291,” “445292,” “445299,” “445310,” “446110,” “446130,” “446191,” “446199,” “447190,” “448110,” “448150,” “448190,” “448310,” “448320,” “451110,” “451120,” “451140,” “451211,” “451212,” “452311,” “453220,” “453310,” “453910,” “453920,” “453998,” “454210,” and “454390” to read as follows:

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

\* \* \* \* \*

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
<b>Sector 42—Wholesale Trade</b>			
* * * * *			
<b>Subsector 423—Merchant Wholesalers, Durable Goods</b>			
* * * * *			
423140	Motor Vehicle Parts (Used) Merchant Wholesalers		125
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers		225
423460	Ophthalmic Goods Merchant Wholesalers		175
423520	Coal and Other Mineral and Ore Merchant Wholesalers		200
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.		225
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers		175
423740	Refrigeration Equipment and Supplies Merchant Wholesalers		125
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers		125
423840	Industrial Supplies Merchant Wholesalers		125
423850	Service Establishment Equipment and Supplies Merchant Wholesalers		125
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers		175
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers		175
423930	Recyclable Material Merchant Wholesalers		125
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers		125
* * * * *			
<b>Subsector 424—Merchant Wholesalers, Nondurable Goods</b>			
424110	Printing and Writing Paper Merchant Wholesalers		225
424450	Confectionery Merchant Wholesalers		225
424520	Livestock Merchant Wholesalers		125
424590	Other Farm Product Raw Material Merchant Wholesalers		175
424690	Other Chemical and Allied Products Merchant Wholesalers		175
424710	Petroleum Bulk Stations and Terminals		225

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Subsector 425—Wholesale Electronic Markets and Agents and Brokers</b>			
425110	Business to Business Electronic Markets		125
425120	Wholesale Trade Agents and Brokers		125
<b>Sector 44—Retail Trade</b>			
<b>Subsector 441—Motor Vehicle and Parts Dealers</b>			
441310	Automotive Parts and Accessories Stores	\$25.0	
441320	Tire Dealers	22.5	
<b>Subsector 442—Furniture and Home Furnishings Stores</b>			
442291	Window Treatment Stores	10.0	
442299	All Other Home Furnishings Stores	29.5	
<b>Subsector 443—Electronics and Appliance Stores</b>			
443141	Household Appliance Stores	19.5	
<b>Subsector 444—Building Material and Garden Equipment and Supplies Dealers</b>			
444130	Hardware Stores	14.5	
444210	Outdoor Power Equipment Stores	8.5	
444220	Nursery, Garden Center, and Farm Supply Stores	19.0	
<b>Subsector 445—Food and Beverage Stores</b>			
445291	Baked Goods Stores	14.0	
445292	Confectionery and Nut Stores	17.0	
445299	All Other Specialty Food Stores	9.0	
445310	Beer, Wine, and Liquor Stores	9.0	
<b>Subsector 446—Health and Personal Care Stores</b>			
446110	Pharmacies and Drug Stores	33.0	
446130	Optical Goods Stores	26.0	
446191	Food (Health) Supplement Stores	20.0	
446199	All Other Health and Personal Care Stores	8.5	
<b>Subsector 447—Gasoline Stations</b>			
447190	Other Gasoline Stations	29.5	
<b>Subsector 448—Clothing and Clothing Accessories Stores</b>			
448110	Men's Clothing Stores	22.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
448150	Clothing Accessories Stores	29.5	
448190	Other Clothing Stores	27.5	
448310	Jewelry Stores	18.0	
448320	Luggage and Leather Goods Stores	33.5	
<b>Subsector 451—Sporting Good, Hobby, Book and Music Stores</b>			
451110	Sporting Goods Stores	23.5	
451120	Hobby, Toy, and Game Stores	31.0	
451140	Musical Instrument and Supplies Stores	20.0	
451211	Book Stores	31.5	
451212	News Dealers and Newsstands	20.0	
<b>Subsector 452—General Merchandise Stores</b>			
452311	Warehouse Clubs and Supercenters	41.5	
<b>Subsector 453—Miscellaneous Store Retailers</b>			
453220	Gift, Novelty, and Souvenir Stores	12.0	
453310	Used Merchandise Stores	12.5	
453910	Pet and Pet Supplies Stores	28.0	
453920	Art Dealers	14.5	
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	10.0	
<b>Subsector 454—Nonstore Retailers</b>			
454210	Vending Machine Operators	18.5	
454390	Other Direct Selling Establishments	13.0	

\* \* \* \* \*

**Isabella Casillas Guzman,**  
*Administrator.*  
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**DEPARTMENT OF TRANSPORTATION**  
**Federal Aviation Administration**  
**14 CFR Part 39**  
**[Docket No. FAA-2022-0085; Project Identifier MCAI-2021-00498-T; Amendment 39-22072; AD 2022-12-01]**  
**RIN 2120-AA64**  
**Airworthiness Directives; Bombardier, Inc., Airplanes**  
**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.  
**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD-700-1A10 and BD-700-1A11 airplanes. This AD was prompted by reports of oxygen leaks caused by cracked, brittle, or broken oxygen hoses that were found during scheduled maintenance tests of the airplane oxygen system. This AD requires an inspection of the oxygen hose assembly to determine if an affected part number is installed, and replacement of affected oxygen hoses. For certain airplanes, this AD allows repetitive testing of the oxygen system