



Billing Code: 8205-01

## SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AG49

Small Business Size Standards: Employee Based Size Standards in Wholesale Trade and Retail Trade

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to increase employee based size standards for 46 industries in North American Industry Classification System (NAICS) Sector 42, Wholesale Trade, and one industry in NAICS Sector 44-45, Retail Trade and retain the current size standards in the remaining industries in those sectors. SBA also proposes to retain the current 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule. As part of its ongoing comprehensive size standards review, SBA reviewed all 71 industries in NAICS Sector 42 as well as the two industries in NAICS Sector 44-45 that have employee based size standards. The proposed revisions, if adopted, will primarily affect eligibility for SBA's financial assistance programs. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector.

DATES: SBA must receive comments to this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by RIN 3245-AG49 by one of the following methods: (1) Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov), following

the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email except for confidential information.

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

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Office of Size Standards by phone at (202) 205-6618 or by email at [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

In an effort to remove possible public confusion, SBA would like to explain the changes made to the title of this rule. When SBA initially announced in the Fall 2012 Unified Agenda of Federal Regulatory and Deregulatory Actions, 78 FR 1636 at 1639 (January 8, 2013) (Item #391) that it intended to propose this rule, it was titled “Small Business Size Standards for Wholesale Trade” under Regulatory Information Number (RIN) 3245-AG49. SBA later realized that this rule also addresses two industries with employee based size standards in Retail Trade. As a result, the title of this proposed rule

is changed to read “Small Business Size Standards: Employee Based Size Standards in Wholesale Trade and Retail Trade.” SBA believes that this title change of the rule will make it easier for affected parties to understand the scope of its coverage and will engender more public comment and involvement.

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size – average annual receipts and number of employees. SBA also has used financial assets, electric output, and refining capacity to measure the size in a few specialized industries. In addition, SBA’s Small Business Investment Company, 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 standard to determine eligibility for these programs. The new alternative size standard, which was established under the Small Business Jobs Act of 2010 (Jobs Act), is tangible net worth of not more than \$15 million and average net income after Federal income taxes (excluding any carry-over losses) for the two latest fiscal years of not more than \$5 million.

At the start of the current comprehensive size standards review when the size standards were based on NAICS 2007, there were 41 different size levels, covering 1,141 NAICS industries and 18 subindustry activities (i.e., “exceptions” in SBA’s table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, under NAICS 2012, there are 28 different size standards covering 1,031 industries and 16“exceptions”. Of these,

533 are based on average annual receipts, 509 on number of employees (one of which also contains barrels per day total capacity), and five on average assets.

SBA has received comments periodically that its size standards have not kept up with changes in the economy and in the Federal contracting marketplace. The last time SBA conducted a comprehensive review of its size standards involving actual public involvement in the rulemaking process was from 1980 to 1984. After a series of Federal Register notices from 1980 to 1983, SBA adopted a detailed list of size standards based on individual industry codes. Since then, SBA's revisions to size standards have focused on inflationary adjustments to its monetary based size standards. SBA's latest inflationary adjustment to size standards was published in the Federal Register on July 18, 2008 (73 FR 41237). Besides inflation adjustment, SBA's reviews of size standards since the last comprehensive review have been limited to a few specific industries in response to public request.

When SBA established its size standard framework in 1984, it focused on having a common size standard for both its financial and Federal procurement programs. However, SBA made an exception for the Wholesale Trade industries and established the 100-employee size standard for SBA's financial programs and the 500-employee size standard for Federal procurement programs under the nonmanufacturer rule. The nonmanufacturer rule has been periodically updated and is presently codified in SBA's small business size regulations at 13 CFR 121.406. The nonmanufacturer rule also applies to Federal procurement for the industries within Retail Trade (NAICS Sector 44-45). On a Federal procurement opportunity reserved for small business concerns to provide supplies or goods, the 500-employee size standard under the nonmanufacturer

rule permits a firm that did not manufacture or produce those goods to qualify as small if it is at or below 500 employees and supplies the end item of a small domestic manufacturer. In effect, the nonmanufacturer rule has resulted in two sets of size standards for financial and Federal procurement programs for firms in industries in NAICS Sectors 42 and 44-45. In this proposed rule, SBA provides separate analyses of size standards for financial programs and the 500-employee nonmanufacturer size standard for Federal procurement programs.

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognized that the latest available data might no longer support some of its existing size standards. Thus, in 2007, SBA began a comprehensive size standards review to determine if they were consistent with the latest data and to adjust them where necessary. Subsequently, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all its size standards and to make appropriate adjustments to reflect market conditions (Sec.1344, Pub. L. 111-240, 124 Stat 2545). Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010). In addition, the Jobs Act requires that SBA review all size standards not less than once every five years thereafter. Reviewing existing size standards periodically and making appropriate adjustments based on the latest available data are also consistent with Executive Order 13563, which calls for periodic retrospective analyses of existing rules.

Rather than review all size standards at one time, SBA is reviewing them on a sector by sector basis. Most NAICS sectors consist of 25 to 75 industries, except for Manufacturing (NAICS Sector 31-33) which has more than 350 industries. Once SBA completes its review of size standards for industries in an NAICS sector, it issues for comments a proposed rule to revise some or all of the size standards it reviewed in the rule. The proposed rule provides the public with opportunity to comment on SBA's proposed size standards revisions. SBA also invites comments on size standards that the Agency had proposed to keep them at their current levels, if the public believes they should be revised as well.

Below is a discussion of the size standard methodology for establishing employee based size standards that SBA applied to this proposed rule. It focuses primarily on industry structure but also includes federal procurement considerations, the impact on SBA's loan programs, and whether the revised small business size standards (if adopted as proposed) would exclude dominant firms from being considered small.

#### Size Standards Methodology

SBA has developed and refined over time its "Size Standard Methodology" (methodology) for establishing, reviewing and revising, when necessary, its small business size standards. In conjunction with the current comprehensive size standards review, SBA has published a document explaining this methodology in detail on its website at [www.sba.gov/size](http://www.sba.gov/size) for public review and comment and has included it as a supporting document in the electronic docket of this proposed rule at [www.regulations.gov](http://www.regulations.gov). SBA does not apply all features of its methodology to all industries, however, because not all features are appropriate. For example, since all

industries in NAICS Sector 42 and two industries in NAICS Sector 44-45 covered by this rule have employee based size standards, the methodology relating to receipts based size standards does not apply to this rule.

SBA welcomes comments from the public on various issues concerning its methodology. These include, but are not limited to, whether there are better approaches to establishing a size standard; whether there are additional factors that SBA should consider; whether SBA's approach to its size standards makes sense in the current economic climate; whether there are gaps in SBA's methodology because the data it uses are not sufficiently current or comprehensive, and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's methodology should be submitted either via (1) the Federal Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov), using docket number SBA-2009-0008, and following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier to Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As with comments received to proposed rules, SBA will post all proposed rules on its methodology on [www.regulations.gov](http://www.regulations.gov). As of April 30, 2014, SBA had received 17 comments to its methodology. The comments are available to the public at [www.regulations.gov](http://www.regulations.gov). SBA continues to welcome comments on its methodology from interested parties. SBA, however, will not accept comments submitted by email.

Congress granted SBA's Administrator the discretion to establish detailed small business size standards in 15 U.S.C. 632(a) (2). Specifically 3(a)(3) of the Small Business Act states that "...the [SBA] Administrator shall ensure that the size standard varies from industry to industry to reflect the differing characteristics of the various

industries and consider other factors deemed to be relevant by the Administrator.”

15 U.S.C. 632(a)(3). Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics relating to its industry structure, as described below. In addition, SBA considers other factors, including current economic conditions, its mission and program objectives, the Administration’s current policies and priorities, suggestions from industry groups and Federal agencies, and public comments to proposed rules.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose revisions to a number of size standards in NAICS Sectors 42 and 44-45. The rule also explains why SBA has proposed to revise some size standards, but not others. This proposed rule affords the public an opportunity to review and comment on SBA’s proposal to revise certain size standards in NAICS Sectors 42 and 44-45, as well as the data and methodology the Agency used to evaluate and propose revisions to size standards in those sectors. SBA also invites comments on those industries for which it proposes to retain their size standards at the current levels.

#### Industry Analysis

For the current comprehensive size standards review, SBA has established three base or anchor size standards as follows: \$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade and Retail Trade), and 100 employees for industries in the Wholesale Trade sector for SBA’s financial and all programs other than federal procurement. SBA generally compares the

characteristics of industries with the base or anchor size standard to other industries to determine whether they should have a higher or in some cases a lower size standard than the anchor.

Since currently all industries in Wholesale Trade share the 100-employee size standard for SBA's financial programs and the 500-employee size standard for Federal procurement programs under the nonmanufacturer rule, the 'anchor' size standard approach is difficult to apply. In its "Size Standards Methodology" White Paper, SBA created an implicit anchor group for the Wholesale Trade sector by grouping the middle half of the Wholesale Trade industries arranged in increasing order of average firm size. Based on its own review, SBA now believes that a quintile approach is more appropriate than the anchor approach in reviewing size standards in Wholesale Trade. In the quintile approach, to be detailed below, SBA measures and ranks every industry using the four industry factors, giving equal weight to each of them. The four industry factors are average firm size, average assets size as proxy for startup costs and entry barriers, industry concentration, and distribution of firms by size. Since NAICS codes in the Wholesale Trade sector do not apply to Federal contracting, the Federal contracting factor is not considered in reviewing industry based size standards.

As stated above, since 1986, the size standard for all industries in the Wholesale Trade sector has been 100 employees for SBA's financial assistance and for most Federal programs. However, the 100-employee size standard does not apply to Federal procurement programs. Rather, for Federal procurement, the size standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44-45) is 500 employees under the SBA's nonmanufacturer rule. SBA's

regulations also specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government acquisition for supplies. See 13 CFR 121.402(b). Instead, the applicable manufacturing code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406(b).

The long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptability. The anchors have been the basis for analyzing the industrial structure of industries, and for proposing and justifying revisions to size standards under the current comprehensive size standards review. However, as stated earlier, the anchor approach is difficult to implement in reviewing the size standards of industries in Wholesale Trade (NAICS Sector 42) because all industries in the sector share the same 100-employee size standard for SBA's financial programs and 500-employee size standard for the Federal procurement programs. In other words, there is no subset of industries within the sector with a distinct common size standard that in some sense could be considered the base or the anchor and be used as the basis for evaluating structure of other industries and revising their size standards. Thus, in this rule, SBA is using a quintile approach in which industries are ranked and compared using each industry factor based on where the factor of that industry falls within the five ranked quintiles (i.e., less than the 20<sup>th</sup> percentile, the 20<sup>th</sup> to less than the 40<sup>th</sup> percentile, the 40<sup>th</sup> to less than the 60<sup>th</sup> percentile, the 60<sup>th</sup> to less than the 80<sup>th</sup> percentile, and the 80<sup>th</sup> or higher percentile) to produce an implied size standard for each factor for each industry.

The implied size standards for each factor are then averaged to produce a calculated industry specific size standard. The five implied size standard levels are 50 employees, 100 employees, 150 employees, 200 employees, and 250 employees. If the value of an industry factor falls in the first quintile (i.e., less than the 20<sup>th</sup> percentile), that factor would support a size standard of 50 employees. If the value falls in the second quintile (i.e., the 20<sup>th</sup> to less than the 40<sup>th</sup> percentile), it would support 100 employees. Similarly, if the value falls in the fifth quintile (i.e., the 80<sup>th</sup> or higher percentile), the factor would support 250 employees.

SBA evaluates the four industry factors (viz., average firm size, average assets as proxy for startup costs and entry barriers, industry competition, and the distribution of firms by size). In addition, SBA evaluates a fifth factor, namely small business participation in Federal procurement programs under the current size standards. These are generally the five most important factors SBA examines when establishing or revising a size standard for an industry. In addition, SBA also considers and evaluates small business participation in SBA's financial programs, as well as other information that it believes is relevant to a particular industry, such as technological changes, growth trends, current economic conditions, and other program factors including present Administration policies and priorities. Below are brief descriptions of each of the five primary factors that SBA analyzed for evaluating, and revising where necessary, size standards for all industries in NAICS Sector 42 and two industries in NAICS Sector 44-45 that are reviewed in this proposed rule.

1. Average firm size. SBA computes two measures of average firm size: simple average and weighted average. For industries with employee based size standards, the

simple average is the total number of employees in the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different employee size classes, where weights are the shares of total industry employees in their respective size classes. The simple average weighs all firms equally within an industry regardless of size. The weighted average overcomes that limitation by giving more weight to larger firms. The size standards obtained from simple average and weighted average firm size are averaged to obtain a single size standard supported by the average firm size.

If an industry's average firm size is significantly higher than most other industries in the sector, this will support a higher size standard. Conversely, if the industry's firm size is appreciably lower than most other industries, a lower size standard will be justified.

2. Startup costs and entry barriers. Startup costs affect a firm's initial size in an industry and its capacity to grow to a competitive size. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering an industry under review have greater or lesser capital requirements than new firms in other industries in the same sector, this can suggest a higher or lower size standard for the industry. Since startup costs and data on entry barriers are difficult to obtain, SBA uses average assets as a proxy to measure the capital requirements for new entrants into an industry. To calculate average assets, SBA uses a ratio of sales/receipts to total assets for an industry from the Risk Management Association's Annual eStatement Studies. SBA then applies this ratio to the average receipts per firm in the industry to calculate the average assets per firm in the industry. Calculated average assets

per firm provide an estimate of entry barriers, with the larger the asset level per firm the greater the difficulty to enter into and be successful in an industry, warranting a higher size standard.

3. Industry competition. Industry competition is generally measured by the share of total industry receipts associated with the largest firms in an industry. While different measures can be used (and generally produce similar rankings), SBA evaluates the share of industry receipts of the four largest firms in the industry. This is referred to as the “four-firm concentration ratio,” a commonly used economic measure of industry concentration. If a higher share is concentrated among the largest four firms in the reviewed industry, this can suggest a higher size standard based on this factor. However, SBA does not consider this factor important to its assessment if the four-firm concentration ratio for the industry under review is less than 40 percent. If an industry’s four-firm concentration ratio is 40 percent or more, SBA then examines the average size (i.e., average number of employees for employee based size standards and average receipts for receipts based size standards) of the four largest firms for that industry and compares this figure with other industries.

4. Distribution of firms by size. SBA examines the share of industry receipts generated by firms of different employment size categories in an industry with an employee based size standard and receipts size categories for a receipts based size standard. This is another component of industry competition within an industry, and it complements the four-firm concentration ratio, which also measures industry competition. If most of an industry’s economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in the industry. This is

generally interpreted as supporting a relatively low size standard. Conversely, if most of an industry's economic activity is generated by larger firms, this indicates that small businesses are not particularly competitive in that industry and can support a relatively high size standard.

Concentration is a measure of inequality of distribution of economic activity. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient. For this, SBA first constructs the Lorenz curve for each industry using available data. The Lorenz curve portrays the cumulative percentages of firms along the horizontal axis, and the cumulative percentage of receipts along the vertical axis. (For further detail, see SBA's "Size Standards Methodology" on its website at [www.sba.gov/size](http://www.sba.gov/size).) The Gini coefficient values vary from zero to one. If an industry's total receipts are attributed to a single firm, the Gini coefficient would equal one. Conversely, if every firm received the exact same amount of revenues the Gini coefficient would approach zero.

In this rule, SBA compares the Gini coefficient value for an industry with that for other industries in NAICS Sector 42, Wholesale Trade. If the Gini coefficient value for an industry is higher than most industries in the sector, this suggests a relatively high size standard. Conversely, if an industry's Gini coefficient is lower than most industries, a relatively low size standard would be justified.

5. Impact on Federal contracting and SBA loan programs. SBA examines the impact a size standard change may have on Federal small business assistance. This examination most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry under the current size standard. Differences between

small business shares of Federal contracting dollars and small business shares of industry total receipts can support a size standard different from the current size standard. In general, if the small business share of Federal contracting dollars is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the current size standard. However, SBA cannot measure differences between small business share of Federal contracts and corresponding share of industry receipts by industry for the Wholesale and Retail Trade industries. As described previously, SBA's small business size regulations state that federal agencies shall not use Wholesale or Retail Trade NAICS codes to classify Federal Government's acquisitions for supplies. Instead, procuring agencies must use the applicable manufacturing NAICS code that is most closely associated with the purchase. See 13 CFR 121.402(b). A Wholesale Trade or Retail Trade business concern submitting an offer on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees, and meets the other requirements of the nonmanufacturer rule (13 CFR 121.406(b), q.v.). This effectively precludes the gathering of Federal procurement statistics by industry in Wholesale and Retail Trade sectors. As a result, Federal procurement patterns cannot be used to evaluate the effect of the size standard on Federal procurements by NAICS code in these sectors, because the data on Wholesale and Retail trade nonmanufacturers are not gathered.

Besides the impact of a proposed or revised size standard on small business Federal contracting, SBA evaluates the impact on SBA's loan programs. For this, SBA examines the data on volume and number of 7(a) and 504 loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing,

proposed, or revised size standard for a particular industry would restrict the level of financial assistance to small firms. If existing size standards are found to have impeded financial assistance to small businesses, higher size standards may be justified. However, if small businesses under existing size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, SBA does not consider this factor when determining the size standard.

#### Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 Economic Census (see [www.census.gov/econ/census07/](http://www.census.gov/econ/census07/)) as prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. This special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, total annual payroll, and annual receipts of companies by sector (2-digit level), subsector (3-digit level), industry group (4-digit level), and industry (6-digit level). These data are arrayed by various classes of firm size based on the overall numbers of employees (receipts in a separate tabulation) of the entire enterprise including all establishments and affiliated firms regardless of industry. This special tabulation enables SBA to evaluate industries by average firm size, the four-firm concentration ratio, and the size distribution of firms by various receipts and employment size classes. Since wholesale industries use employee size standards (500 employees for the nonmanufacturer procurement based size standards, and 100 employees for the loan based size standards), the data that are arrayed by employee size of firms are reviewed in this rule to estimate industry structure and the

impact of size standard revisions on the eligibility of firms for SBA's financial assistance programs.

In some cases, where data were not available at the 6-digit industry level due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimates missing values using available relevant data or examines data at a higher level of industry aggregation, such as at the NAICS 2-digit (sector), 3-digit (subsector), or 4-digit (industry group) level. In some instances, where the data could not be obtained or estimated, SBA's analysis is based only on those factors for which data are available or estimates of missing values are possible.

To calculate average assets (i.e., proxy of startup costs and entry barriers), SBA used sales to total assets ratios from the Risk Management Association's Annual eStatement studies ([www.statementstudies.org](http://www.statementstudies.org)) from 2009 to 2011 and applied these ratios to sales data from the 2007 Economic Census.

To assess the impact on financial assistance to small businesses, SBA examined its internal data on the 7(a) and 504 loan programs for fiscal years 2010-2012.

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

#### Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as "one which is independently owned and operated and which is not dominant in its field of operation." SBA considers as part of its evaluation whether a business concern at or below a proposed or revised size standard would be considered

dominant within the industry description covered by the proposed size standard. A key component of this analysis is the market share of firms at the proposed or revised size standard. SBA also examines distribution of firms by size to ensure that a contemplated size standard derived from its size standards analysis excludes the largest firms within an industry. Market share, size distribution and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in which a significant number of business concerns are engaged. If a contemplated size standard includes dominant or largest firms in an industry, SBA will consider a lower size standard than the one suggested by the analytical results to exclude the dominant and largest firms from being defined as small.

#### Selection of Size Standards

Presently all industries in the Wholesale Trade sector have a common 100-employee size standard for SBA's loan programs. However, in this proposed rule, SBA proposes to vary size standards in that sector based on industry structure as required by the Small Business Act. For this, individual industries were ranked and placed within one of the five quintile groups for each industry factor, and one of the five size standard levels were assigned to correspond to each of the five quintile groups. These five levels are: 50 employees, 100 employees, 150 employees, 200 employees, and 250 employees. Besides being bases to vary size standards to reflect differences among the industries in the Wholesale Trade sector, these levels also include the current size standards for NAICS 441110, New Car Dealers (200 employees) and NAICS 454310, Fuel Dealers (50 employees), which are also reviewed in this proposed rule. The evaluation of the data on SBA's 7(a) and 504 loan programs, since the adoption of the new alternative size

standard, explained above, shows some wholesalers with 100 to 250 employees receiving these loans. The proposed levels would enable those firms to maintain their eligibility for SBA's 7(a) and 504 loan programs should the Agency decide to lower or discontinue the alternative size standard.

SBA assigns one of the above five size standard levels for each industry according to its ranking based on each industry factor. For example, if an industry's ranking for an industry factor falls within the first or lowest quintile, SBA will apply 50 employees as the size standard for that industry for that factor. Likewise, if an industry's ranking for a factor falls within the fifth or highest quintile, the 250-employee level will be assigned. SBA repeats this procedure for each industry factor.

#### Evaluation of Industry Structure

SBA determines differences in industry structure by comparing data on each of the four industry factors: average firm size, average assets size (as proxy of startup costs and entry barriers), industry competition, and distribution of firms by size.

SBA uses two measures of average firm size: the simple average and weighted average. Average firm size (whether simple average or weighted average) is likely to be positively related to minimum efficient firm size. This refers to the level of output at which firms in an industry are able to minimize their costs of production and remain competitive. In general, industries with high minimum efficient size tend to be dominated by larger firms and thus their average firm size tends to be large, thereby warranting a relatively higher size standard for those industries. The size standards derived from the two average firm size measures are then averaged to obtain a single size standard for average firm size.

Startup costs reflect the amount of capital requirements new firms must have to enter an industry and become competitive with existing firms. Relatively high average assets per firm in an industry would suggest high startup costs and a relatively high size standard; while relatively low assets per firm would suggest lower startup costs and a relatively low size standard. Given the lack of data on actual startup costs and other measures of entry barriers (such as degree of product differentiation, advertising expenses, economies of scale, etc.), as explained elsewhere in the rule, SBA uses average assets size as proxy for the levels of capital needs for a new firm entering an industry.

The third factor SBA evaluates is industry competition. A common method of analyzing industry competition is the measurement of the concentration of market power of the largest firms within the industry. While numerous measures have been proposed in the literature to measure industry competition, as explained previously, SBA uses the cumulative share of total industry receipts of the four largest firms ranked by order of market share, which is commonly referred to as the four-firm concentration ratio. However, SBA does not apply this factor to all industries. SBA only considers this factor to be important when the four largest firms account for 40 percent or more of an industry's total receipts. SBA further refines the process by using the average size of the four largest firms in the industry. SBA uses employees to calculate the average size of the four largest firms for employee based size standards and receipts for receipts based size standards. This produces a measure that is influenced both by the relative degree of concentration (the four-firm concentration ratio) and the absolute size of the four largest or most dominant firms in the industry. These latter criteria can result in a lower suggested size standard in an industry with a higher four-firm concentration ratio than in

an industry with a lower four-firm concentration ratio, simply because the latter industry's four largest firms are larger in absolute terms than the former industry's four largest firms.

Finally, as discussed above, SBA computes the Gini coefficient to measure distribution of firms by size by constructing the Lorenz curve. The Lorenz curve focuses on the arrangement of firms in order of increasing size (using receipts size for receipts based size standards and employee size for employee based size standards) and expresses inequality in terms of cumulative shares of industry's total receipts accounted for by various size categories. Cumulative percentages of units (firms) are on the horizontal axis and cumulative shares of industry's receipts are on the vertical axis. A diagonal line would represent perfect equality, which would mean that every firm in the industry has exactly the same share of industry receipts. The ratio of deviation from the diagonal serves as a measure of inequality. If an industry's receipts are perfectly equally distributed among all firms in the industry, then the Lorenz curve and the line of perfect equality become one and the Gini coefficient value approaches zero. Conversely, if an industry's total receipts are attributed to one firm, the Gini coefficient would equal one. Accordingly, the Gini coefficient values vary from zero to one, with zero implying perfect equality, and one perfect inequality. A high Gini coefficient value (closer to one) would thus suggest a relatively high size standard and a low value (closer to zero) would justify a relatively low size standard.

Table 1, Values of Industry Factors by Quintile and Supported Size Standards, portrays the various quintile ranges for each industry factor and supported size standards that will be applied to the industries in Wholesale Trade (NAICS Sector 42).

Table 1  
Values of Industry Factors by Quintile and Supported Size Standards

Quintile	Percentile (%)	Simple Average Firm Size (no. of employees)	Weighted Average Firm Size (no. of employees)	Average Assets Size (\$ million)	Avg. No. Employees of Largest Four Firms*	Gini Coefficient	Supported Size Standard (no. of employees)
1 <sup>st</sup> quintile	< 20%	< 13.5	< 78.0	< 2.8	< 700.0	< 0.680	50
2 <sup>nd</sup> quintile	20% to < 40%	13.5 to < 17.0	78.0 to < 141.0	2.8 to < 4.5	700.0 to < 1,096.3	0.680 to < 0.731	100
3 <sup>rd</sup> quintile	40% to < 60%	17.0 to < 20.8	141.0 to < 202.8	4.5 to < 6.5	1,096.3 to < 1,648.8	0.731 to < 0.786	150
4 <sup>th</sup> quintile	60% to < 80%	20.8 to < 26.0	202.8 to < 448.9	6.5 to < 8.8	1,648.8 to < 4,034.3	0.786 to < 0.844	200
5 <sup>th</sup> quintile	≥ 80%	≥ 26.0	≥ 448.9	≥ 8.8	≥ 4,034.3	≥ 0.844	250

\*Used only if four-firm concentration ratio is 40 percent or more.

### New Size Standards for SBA's Financial Programs

For each industry factor shown in Table 1, Values of Industry Factors by Quintile and Supported Size Standards, SBA derives a size standard for each industry based on where the industry falls in the quintile rankings based on that factor. For example, if an industry's simple average firm size is 15 employees, the industry would fall within the second quintile and support a size standard of 100 employees. Similarly, if an industry's four-firm ratio is above 40 percent and average size of the largest four firms in that industry is 1,250 employees, the industry would fall in the third quintile group with a supported size standard of 150 employees. This procedure is applied to each industry for each industry factor.

The results of size standards analysis for the industries in Wholesale Trade (NAICS Sector 42) are shown in Table 2, Size Standards Supported by Each Factor for Each Industry (Number of Employees), below. Columns 2, 3, 4, 6, and 7 show two numbers for each industry. The upper number is the value of the industry factor shown on the top of the column, and the lower number is the size standard supported by that factor, as specified in Table 1, Values of Industry Factors by Quintile and Supported Size Standards. For the four-firm concentration ratio, SBA estimates a size standard only for those industries for which its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, no size standard is derived for this factor. If the four-firm concentration ratio is 40 percent or higher, SBA indicates in column 6 the average firm size of the industry's largest four firms together with the size standard supported by that factor. Only 11 industries in NAICS Sector 42 had the four-firm concentration ratio of 40 percent or more and a size standard was derived for each of

them based on the average firm size of the industry's largest firms. Column 8 shows a calculated new size standard for each industry. This is the average of the size standards for each factor, rounded to the nearest level. However, size standards supported by the simple average and the weighted average firm size were averaged together to obtain one size standard for average firm size, and therefore received a single weight. Analytical details involved in the averaging procedures are further described in SBA's "Size Standards Methodology."

Table 2  
 Size Standards Supported by Each Factor for Each Industry (Number of Employees)  
 Upper Value = Calculated Factor, Lower Value = Size Standard Supported

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423110 Automobile and Other Motor Vehicle Merchant Wholesalers	21 200	160 150	\$27.1 250	53.5%	2,115 200	0.931 250	250	100
423120 Motor Vehicle Supplies and New Parts Merchant Wholesalers	21 150	197 150	\$6.5 200	31.3%		0.860 250	200	100
423130 Tire and Tube Merchant Wholesalers	24 200	207 200	\$6.6 200			0.780 150	200	100
423140 Motor Vehicle Parts (Used) Merchant Wholesalers	8 50	168 150	\$0.6 50			0.476 50	50	100
423210 Furniture Merchant Wholesalers	12 50	67 50	\$2.0 50	14.3%		0.681 100	50	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423220 Home Furnishing Merchant Wholesalers	15 100	97 100	\$3.4 100	22.1%		0.710 100	100	100
423310 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	24 200	261 200	\$5.2 150	15.5%		0.730 100	150	100
423320 Brick, Stone, and Related Construction Material Merchant Wholesalers	15 100	78 100	\$5.1 150	24.4%		0.775 150	150	100
423330 Roofing, Siding, and Insulation Material Merchant Wholesalers	32 250	212 200	\$7.9 200	30.0%		0.781 150	200	100
423390 Other Construction Material Merchant Wholesalers	18 150	132 100	\$3.2 100	28.3%		0.728 100	100	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423410 Photographic Equipment and Supplies Merchant Wholesalers	21 200	251 200	\$7.4 200	53.2%	1,374 150	0.844 250	200	100
423420 Office Equipment Merchant Wholesalers	49 250	2,705 250	\$4.4 100	45.4%	15,798 250	0.870 250	200	100
423430 Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	36 250	1,249 250	\$8.8 250	31.5%		0.891 250	250	100
423440 Other Commercial Equipment Merchant Wholesalers	13 50	89 100	\$1.8 50	10.6%		0.638 50	50	100
423450 Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	25 200	645 250	\$6.5 150	24.3%		0.889 250	200	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423460 Ophthalmic Goods Merchant Wholesalers	24 200	449 250	\$3.4 100	23.6%		0.739 150	150	100
423490 Other Professional Equipment and Supplies Merchant Wholesalers	16 100	203 200	\$3.4 100	43.6%	1,553 150	0.787 200	150	100
423510 Metal Service Centers and Other Metal Merchant Wholesalers	20 150	128 100	\$10.1 250	14.3%		0.749 150	200	100
423520 Coal and Other Mineral and Ore Merchant Wholesalers	11 50	38 50	\$14.5 250	30.8%		0.582 50	100	100
423610 Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	22 200	455 250	\$5.1 150	17.6%		0.811 200	200	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423620 Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	22 200	333 200	\$7.8 200	36.8%		0.813 200	200	100
423690 Other Electronic Parts and Equipment Merchant Wholesalers	26 250	469 250	\$8.0 200	20.5%		0.860 250	250	100
423710 Hardware Merchant Wholesalers	17 150	160 150	\$3.4 100	20.1%		0.747 150	150	100
423720 Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	22 200	333 200	\$7.8 200	36.8%		0.813 200	200	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423730 Warm Air Heating and Air- Conditioning Equipment and Supplies Merchant Wholesalers	25 200	201 150	\$5.0 150	29.7%		0.776 150	150	100
423740 Refrigeration Equipment and Supplies Merchant Wholesalers	17 150	184 150	\$2.8 100	27.1%		0.657 50	100	100
423810 Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	34 250	250 200	\$15.2 250	24.1%		0.817 200	250	100
423820 Farm and Garden Machinery and Equipment Merchant Wholesalers	16 100	53 50	\$4.1 100	25.8%		0.680 100	100	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423830 Industrial Machinery and Equipment Merchant Wholesalers	15 100	94 100	\$2.8 100	6.3%		0.682 100	100	100
423840 Industrial Supplies Merchant Wholesalers	16 100	78 100	\$3.8 100	22.9%		0.732 150	100	100
423850 Service Establishment Equipment and Supplies Merchant Wholesalers	14 100	128 100	\$1.6 50	19.9%		0.686 100	100	100
423860 Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	17 100	112 100	\$8.4 200	33.1%		0.786 200	150	100
423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers	10 50	66 50	\$2.7 50	11.2%		0.690 100	50	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423920 Toy and Hobby Goods and Supplies Merchant Wholesalers	15 100	148 150	\$4.9 150	43.9%	1,099 150	0.817 200	150	100
423930 Recyclable Material Merchant Wholesalers	17 100	104 100	\$3.8 100	16.1%		0.694 100	100	100
423940 Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	7 50	75 50	\$2.7 50	14.9%		0.472 50	50	100
423990 Other Miscellaneous Durable Goods Merchant Wholesalers	10 50	108 100	\$2.0 50	22.1%		0.729 100	100	100
424110 Printing and Writing Paper Merchant Wholesalers	25 200	254 200	\$11.1 250	41.9%	1,567 150	0.866 250	200	100
424120 Stationery and Office Supplies Merchant Wholesalers	19 150	593 250	\$2.6 50	30.4%		0.838 200	150	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
424130 Industrial and Personal Service Paper Merchant Wholesalers	17 150	103 100	\$4.5 150	32.7%		0.811 200	150	100
424210 Drugs and Druggists' Sundries Merchant Wholesalers	41 250	899 250	\$31.0 250	43.9%	4,655 250	0.950 250	250	100
424310 Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	10 50	51 50	\$2.3 50	11.5%		0.621 50	50	100
424320 Men's and Boys' Clothing and Furnishings Merchant Wholesalers	17 150	177 150	\$4.6 150	20.0%		0.762 150	150	100
424330 Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	14 100	161 150	\$3.1 100	13.4%		0.711 100	100	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
424340 Footwear Merchant Wholesalers	20 150	293 200	\$8.0 200	34.5%		0.833 200	200	100
424410 General Line Grocery Merchant Wholesalers	58 250	1,678 250	\$11.4 250	39.5%		0.919 250	250	100
424420 Packaged Frozen Food Merchant Wholesalers	28 250	301 200	\$6.8 200	22.3%		0.723 100	200	100
424430 Dairy Product (except Dried or Canned) Merchant Wholesalers	28 250	419 200	\$6.7 200			0.813 200	200	100
424440 Poultry and Poultry Product Merchant Wholesalers	26 200	105 100	\$4.8 150			0.719 100	150	100
424450 Confectionery Merchant Wholesalers	31 250	1,584 250	\$5.9 150			0.870 250	200	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
424460 Fish and Seafood Merchant Wholesalers	11 50	54 50	\$1.6 50	9.7%		0.462 50	50	100
424470 Meat and Meat Product Merchant Wholesalers	19 150	143 150	\$3.1 100	20.3%		0.731 150	150	100
424480 Fresh Fruit and Vegetable Merchant Wholesalers	23 200	166 150	\$2.5 50	8.8%		0.607 50	100	100
424490 Other Grocery and Related Products Merchant Wholesalers	29 250	1,019 250	\$6.9 200	21.6%		0.873 250	250	100
424510 Grain and Field Bean Merchant Wholesalers	19 150	129 100	\$16.4 250	27.3%		0.766 150	200	100
424520 Livestock Merchant Wholesalers	8 50	27 50	\$1.6 50	24.4%		0.258 50	50	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
424590 Other Farm Product Raw Material Merchant Wholesalers	9 50	46 50	\$6.0 150	29.2%		0.627 50	100	100
424610 Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	14 100	50 50	\$5.5 150	33.8%		0.735 150	150	100
424690 Other Chemical and Allied Products Merchant Wholesalers	18 150	192 150	\$6.9 200	14.5%		0.783 150	150	100
424710 Petroleum Bulk Stations and Terminals	23 200	70 50	\$20.8 250	31.9%		0.811 200	200	100
424720 Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	14 100	62 50	\$17.0 250	30.4%		0.787 200	200	100

(1) NAICS Code NAICS U.S. Industry Title	(2) Simple Average Firm Size (Number of Employees)	(3) Weighted Average Firm Size (Number of Employees)	(4) Average Assets Size (\$ Million)	(5) Four- Firm Ratio %	(6) Four-Firm Average Size (Number of Employees)	(7) Gini Coefficient	(8) Calculated Size Standard (Number of Employees)	(9) Current Size Standard (Number of Employees)
424810 Beer and Ale Merchant Wholesalers	61 250	273 200	\$10.0 250	14.0%		0.704 100	200	100
424820 Wine and Distilled Alcoholic Beverage Merchant Wholesalers	45 250	1,569 250	\$13.3 250	28.1%		0.852 250	250	100
424910 Farm Supplies Merchant Wholesalers	18 150	234 200	\$7.2 200	19.3%		0.779 150	200	100
424920 Book, Periodical, and Newspaper Merchant Wholesalers	31 250	556 250	\$5.8 150	33.8%		0.886 250	200	100
424930 Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	16 100	141 150	\$1.2 50	7.5%		0.589 50	100	100

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
424940 Tobacco and Tobacco Product Merchant Wholesalers	48 250	1,063 250	\$10.2 250	53.0%	4,554 250	0.870 250	250	100
424950 Paint, Varnish, and Supplies Merchant Wholesalers	17 150	152 150	\$4.6 150	42.3%	943 100	0.818 200	150	100
424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers	7 50	42 50	\$1.1 50	11.0%		0.585 50	50	100
425110 Business to Business Electronic Markets	7 50	40 50	\$9.3 250	63.7%	77 50	0.417 50	100	100
425120 Wholesale Trade Agents and Brokers	7 50	471 250	\$4.2 100	22.8%		0.563 50	100	100
441110 New Car Dealers	53 250	444 200	\$9.4 250	6.0%		0.594 50	200	200

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
NAICS Code NAICS U.S. Industry Title	Simple Average Firm Size (Number of Employees)	Weighted Average Firm Size (Number of Employees)	Average Assets Size (\$ Million)	Four- Firm Ratio %	Four-Firm Average Size (Number of Employees)	Gini Coefficient	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
454310 Fuel Dealers	15 100	219 200	\$1.6 50	16.4%		0.605 50	100	50

Size Standards for NAICS 441110, New Car Dealers and NAICS 454310, Fuel Dealers

As stated above, this proposed rule also covers NAICS 441110 (New Car Dealers) and NAICS 454310 (Fuel Dealers) that currently have employee based size standards in NAICS Sector 44-45 (Retail Trade). The size standards for these industries are, respectively, 200 employees and 50 employees for SBA's financial assistance and other federal nonprocurement programs. However, as explained elsewhere in this proposed rule, for Federal Government procurement of supplies or products, the applicable size standards for all industries in Retail Trade and Wholesale Trade is 500 employees under the nonmanufacturer rule and NAICS codes within these sectors do not apply to such procurements.

Because there are only two industries with employee based size standards in Retail Trade (Sector 44-45), it is not possible to rank and compare their characteristics with other industries in the sector, as done for Wholesale Trade (Sector 42). It is also not possible to determine whether they warrant a higher or lower employee based size standard relative to other industries, because the rest of the industries in the sector have receipts based size standards. The 200-employee size standard for NAICS 441110 and 50-employee size standard for NAICS 454310 are used for SBA's loan and other Federal nonprocurement programs as the 100-employee size standard for all industries in Wholesale Trade. SBA, therefore, derived the new size standards for these two Retail Trade industries by applying the same methodology that it applied for the Wholesale Trade industries. In other words, the two industries in Retail Trade were ranked with all industries in Wholesale Trade based on each industry factor. The results for each industry factor and supported size standards for NAICS codes 441110 and 454310 are

also shown in the last two rows of Table 2, Size Standards Supported by Each Factor for Each Industry (Number of Employees), above. The results support the current 200-employee size standard for NAICS 441110 and a higher 100-employee size standard for NAICS 454310.

#### Size Standard for Federal Procurement

The previous sections presented SBA's analyses of size standards for all industries in Wholesale Trade and two industries in Retail Trade for firms seeking SBA's financial assistance. SBA proposed replacing the common 100-employee size standard currently in place for financial programs for all industries in Wholesale Trade (NAICS Sector 42) with separate size standards based on characteristics of individual industries within the sector. For purposes of Federal procurement programs, however, SBA proposes to retain the single size standard for nonmanufacturers instead of breaking the sector into separate, industry specific size standards. SBA's regulation requires that a Wholesale Trade or Retail Trade business concern submitting an offer or quote on a supply acquisition as a nonmanufacturer is deemed small if it, along with its affiliates, has 500 or fewer employees. Under the regulation, NAICS codes in Wholesale Trade and Retail Trade sectors cannot be used for classifying Federal Government acquisitions for supplies or products. Instead, the applicable manufacturing NAICS code associated with manufacturing, production, or processing of the product being procured shall be used.

SBA believes that a single size standard is more appropriate than separate size standards to determine eligibility of Wholesale or Retail Trade firms that compete for a small business supply acquisition as nonmanufacturers, regardless of which Wholesale or

Retail Trade NAICS codes they belong to. Moreover, the current 500-employee single size standard under the nonmanufacturer rule has gained general public acceptability and seems to be working well in practice. Firms in Wholesale Trade and Retail Trade industries generally carry multiple items from different industries as inventory, and therefore identify themselves with multiple NAICS codes. Different size standards for individual industries in Wholesale Trade and Retail Trade under the nonmanufacturer rule would further complicate the contracting decision process, which already entails the decision to establish an applicable manufacturing industry, along with its size standard, associated with manufacturing, production, or processing of the product being procured.

While SBA supports a single size standard for Wholesale and Retail Trade firms bidding for Federal procurements of supplies or products as nonmanufacturers, in this proposed rule, the Agency still examined whether the current 500-employee size standard is appropriate. For this, SBA compared the average industry factors (*i.e.*, average firm size, average assets, industry concentration, and distribution of firms by size) of all Wholesale and Retail Trade industries combined with those of the manufacturing industries in the 500-employee size standard group by applying the Agency's "Size Standards Methodology" for employee based size standards. SBA believes this makes sense because Wholesale and Retail Trade firms have to compete with manufacturers for supply or product contracts set aside for small businesses. Moreover, the 500-employee size standard that currently applies to nonmanufacturers is also the anchor and most common size standard for the manufacturing industries. The results supported the current 500-employee size standard under the nonmanufacturer rule.

Proposed Changes to Size Standards

The results from Table 2, Size Standards Supported by Each Factor for Each Industry (Number of Employees), are summarized in Table 3, Summary of Size Standards Analysis, below. The summary pertains to the size standards that apply for SBA’s financial assistance programs. Of the 71 industries in Wholesale Trade, the results might support increases in size standards for 47 industries, decreases for nine industries, and no changes for 16 industries. Of the two Retail Trade industries that SBA reviewed in this proposed rule, the results support an increase in size standard for one and no change in other.

Table 3  
Summary of Size Standards Analysis

NAICS Code	NAICS U. S. Industry Title	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	250	100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	200	100
423130	Tire and Tube Merchant Wholesalers	200	100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers	50	100
423210	Furniture Merchant Wholesalers	50	100
423220	Home Furnishing Merchant Wholesalers	100	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	150	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	150	100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	200	100
423390	Other Construction Material Merchant Wholesalers	100	100

NAICS Code	NAICS U. S. Industry Title	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423410	Photographic Equipment and Supplies Merchant Wholesalers	200	100
423420	Office Equipment Merchant Wholesalers	200	100
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	250	100
423440	Other Commercial Equipment Merchant Wholesalers	50	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	200	100
423460	Ophthalmic Goods Merchant Wholesalers	150	100
423490	Other Professional Equipment and Supplies Merchant Wholesalers	150	100
423510	Metal Service Centers and Other Metal Merchant Wholesalers	200	100
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	200	100
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	200	100
423690	Other Electronic Parts and Equipment Merchant Wholesalers	250	100
423710	Hardware Merchant Wholesalers	150	100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	200	100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	150	100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100	100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	250	100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100	100

NAICS Code	NAICS U. S. Industry Title	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423830	Industrial Machinery and Equipment Merchant Wholesalers	100	100
423840	Industrial Supplies Merchant Wholesalers	100	100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	150	100
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	50	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	150	100
423930	Recyclable Material Merchant Wholesalers	100	100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	50	100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100	100
424110	Printing and Writing Paper Merchant Wholesalers	200	100
424120	Stationery and Office Supplies Merchant Wholesalers	150	100
424130	Industrial and Personal Service Paper Merchant Wholesalers	150	100
424210	Drugs and Druggists' Sundries Merchant Wholesalers	250	100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	50	100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	150	100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100	100
424340	Footwear Merchant Wholesalers	200	100
424410	General Line Grocery Merchant Wholesalers	250	100
424420	Packaged Frozen Food Merchant Wholesalers	200	100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	200	100

NAICS Code	NAICS U. S. Industry Title	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
424440	Poultry and Poultry Product Merchant Wholesalers	150	100
424450	Confectionery Merchant Wholesalers	200	100
424460	Fish and Seafood Merchant Wholesalers	50	100
424470	Meat and Meat Product Merchant Wholesalers	150	100
424480	Fresh Fruit and Vegetable Merchant Wholesalers	100	100
424490	Other Grocery and Related Products Merchant Wholesalers	250	100
424510	Grain and Field Bean Merchant Wholesalers	200	100
424520	Livestock Merchant Wholesalers	50	100
424590	Other Farm Product Raw Material Merchant Wholesalers	100	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	150	100
424690	Other Chemical and Allied Products Merchant Wholesalers	150	100
424710	Petroleum Bulk Stations and Terminals	200	100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	200	100
424810	Beer and Ale Merchant Wholesalers	200	100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	250	100
424910	Farm Supplies Merchant Wholesalers	200	100
424920	Book, Periodical, and Newspaper Merchant Wholesalers	200	100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100	100
424940	Tobacco and Tobacco Product Merchant Wholesalers	250	100
424950	Paint, Varnish, and Supplies Merchant Wholesalers	150	100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	50	100

NAICS Code	NAICS U. S. Industry Title	Calculated Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
425110	Business to Business Electronic Markets	100	100
425120	Wholesale Trade Agents and Brokers	100	100
441110	New Car Dealers	200	200
454310	Fuel Dealers	100	50

Although the results might support lowering size standards for some industries, as shown in the above table, SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since before World War II. The economy lost more than eight million non-farm jobs during 2008-2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate is still high at 6.3 percent in April 2014 ([www.bls.gov](http://www.bls.gov)) and is forecast to remain around this level at least through the end of 2014 ([http://www.federalreserve.gov/monetarypolicy/mpr\\_20140211\\_part3.htm](http://www.federalreserve.gov/monetarypolicy/mpr_20140211_part3.htm)).

In 2010, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts, among many other measures to help small businesses grow and create jobs, more capital into the hands of entrepreneurs and small business owners. A proposal to reduce size standards will have an immediate impact on jobs, and it would be contrary to the expressed will of the President and the Congress.

Lowering size standards would decrease the number of firms that participate in SBA's financial assistance programs for small businesses. It would also affect small businesses that are now exempt or receive some form of relief from other Federal programs that use SBA's size standards. That impact could take the form of increased fees, extra paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. In the nine industries for which analytical results might have supported lowering their size standards, about 875 businesses would lose their small business eligibility for SBA's financial assistance if their size standards were lowered. That would run counter to what SBA and the Federal government are doing to help small businesses and create jobs. Reducing size eligibility for Federal small business assistance, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not intend to reduce size standards for any industries. Accordingly, for industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards.

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

as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

As discussed above, lowering small business size standards will be inconsistent with what the Federal government is doing to stimulate the economy and would discourage job growth for which Congress established the Recovery Act and Jobs Act. In addition, it would be inconsistent with the Small Business Act requiring the Administrator to establish size standards based on industry analysis and other relevant factors such as current economic conditions. Thus, of the 73 industries (71 in Sector 42 and two in Sector 44-45) reviewed in this rule, SBA proposes to increase size standards for 47 industries and retain the current size standards for 26 industries, including nine for which the results might support lowering their size standards. The proposed size standards are in Table 4, Summary of Proposed Size Standards Revisions, below.

Table 4  
Summary of Proposed Size Standards Revisions

NAICS Code	NAICS U. S. Industry Title	Proposed Size Standard (Number of Employees)	Current Size Standard (Number of Employees)
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	250	100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	200	100
423130	Tire and Tube Merchant Wholesalers	200	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	150	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	150	100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	200	100
423410	Photographic Equipment and Supplies Merchant Wholesalers	200	100

423420	Office Equipment Merchant Wholesalers	200	100
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	250	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	200	100
423460	Ophthalmic Goods Merchant Wholesalers	150	100
423490	Other Professional Equipment and Supplies Merchant Wholesalers	150	100
423510	Metal Service Centers and Other Metal Merchant Wholesalers	200	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	200	100
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	200	100
423690	Other Electronic Parts and Equipment Merchant Wholesalers	250	100
423710	Hardware Merchant Wholesalers	150	100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	200	100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	150	100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	250	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	150	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	150	100
424110	Printing and Writing Paper Merchant Wholesalers	200	100
424120	Stationery and Office Supplies Merchant Wholesalers	150	100
424130	Industrial and Personal Service Paper Merchant Wholesalers	150	100

424210	Drugs and Druggists' Sundries Merchant Wholesalers	250	100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	150	100
424340	Footwear Merchant Wholesalers	200	100
424410	General Line Grocery Merchant Wholesalers	250	100
424420	Packaged Frozen Food Merchant Wholesalers	200	100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	200	100
424440	Poultry and Poultry Product Merchant Wholesalers	150	100
424450	Confectionery Merchant Wholesalers	200	100
424470	Meat and Meat Product Merchant Wholesalers	150	100
424490	Other Grocery and Related Products Merchant Wholesalers	250	100
424510	Grain and Field Bean Merchant Wholesalers	200	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	150	100
424690	Other Chemical and Allied Products Merchant Wholesalers	150	100
424710	Petroleum Bulk Stations and Terminals	200	100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	200	100
424810	Beer and Ale Merchant Wholesalers	200	100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	250	100
424910	Farm Supplies Merchant Wholesalers	200	100
424920	Book, Periodical, and Newspaper Merchant Wholesalers	200	100
424940	Tobacco and Tobacco Product Merchant Wholesalers	250	100
424950	Paint, Varnish, and Supplies Merchant Wholesalers	150	100
454310	Fuel Dealers	100	50

Maintaining current size standards when the analytical results suggested lowering them is consistent with SBA's recent final rules on NAICS Sector 44-45, Retail Trade (75 FR 61597 (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604 (October 6, 2010)); NAICS Sector 81, Other Services (75 FR 61591 (October 6, 2010)); NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)); NAICS Sector 48 49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)); NAICS Sector 51, Information (77 FR 72702 (December 6, 2012)); NAICS Sector 53, Real Estate and Rental and Leasing (77 FR 88747 (September 24, 2012)); NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (77 FR 72691 (December 6, 2012)); NAICS Sector 61, Educational Services (77 FR 58739 (September 24, 2012)); and NAICS Sector 62, Health Care and Social Assistance (77 FR 58755 (September 24, 2012)); NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting (78 FR 37398 (June 20, 2013)); NAICS Subsector 213, Support Activities for Mining (78 FR 37404 (June 20, 2013)); NAICS Sector 52, Finance and Insurance and Sector 55, Management of Companies and Enterprises (78 FR 37409 (June 20, 2013)); NAICS Sector 71, Arts, Entertainment and Recreation (78 FR 37417 (June 20, 2013)); and NAICS Sector 23, Construction (78 FR 77334) (December 23, 2013)). In each of those final rules, SBA retained the existing size standards for those that it could have reduced.

SBA also proposes to retain the current 500-employee size standard under the nonmanufacturer rule.

### Evaluation of Dominance in Field of Operation

SBA has determined that for the industries for which it has proposed to increase size standards in this proposed rule, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, if adopted, the small business share of total industry receipts among those industries for which SBA has proposed to increase their size standards is, on average, 0.5 percent, varying from a minimum of 0.02 percent to a maximum of 7.8 percent. These market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

### Request for Comments

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

1. SBA proposes to replace the current 100-employee common size standard for SBA's financial programs for all industries in Wholesale Trade with five separate industry specific size standards, namely 50 employees, 100 employees, 150 employees, 200 employees, and 250 employees. SBA invites comments on whether replacing the 100-employee level with these five different levels is necessary and appropriate. SBA also welcomes suggestions, along with supporting data and analysis, on different size standards levels if the commenters believe they will be more appropriate.

2. Of the 73 industries (71 in Sector 42 and 2 in Sector 44-45) reviewed in this proposed rule, SBA proposes to increase size standards for 47 and retain the current size standards for remaining 26, including the nine for which the results might support

lowering their size standards. SBA seeks comments on whether the proposed increases are appropriate given the industry data. SBA also invites comments on whether its proposal to retain the current size standards for 26 industries is appropriate, including the nine for which the analytical results supported lower size standards. SBA welcomes suggestions, along with supporting data and analysis, on different size standards if they would be more appropriate.

3. While SBA proposes to replace the current 100-employee size standard for Wholesale Trade industries with separate industry specific size standards for its financial programs, the Agency proposes to retain the current 500-employee size standard for firms in Wholesale and Retail Trade industries to qualify as nonmanufacturers for the Federal government procurement of supplies or products. SBA invites comments on whether it should continue using a common size standard under its nonmanufacturer rule and on whether the current 500-employee size standard is appropriate. SBA also welcomes suggestions, with supporting data, on whether a different size standard would be more appropriate for the nonmanufacturer rule.

4. For several industries in NAICS Sector 42, based on industry structure, SBA proposes relatively large increases for some industries, while for others the proposed increases are modest. SBA seeks feedback on whether, as a policy, the Agency should limit the increase or decrease of a size standard, or establish minimum or maximum values for its size standards. SBA also invites suggestions on alternative levels of changes to size standards and on their minimum or maximum levels if commenters think they are more appropriate.

5. SBA's proposed size standards for its financial programs are based on the evaluation of four industry factors – average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, and the distribution of firms by size. SBA welcomes comments on the appropriateness of these factors, and/or suggestions of other factors that it should consider when evaluating or revising size standards. SBA also seeks information on alternative data sources, if the data it used have weaknesses or issues.

6. SBA gives equal weight to each industry factor in all industries in this rule. These include average firm size (as measured by the average of the simple average and the weighted average), startup cost and entry barriers as measured by average asset size per firm in an industry, industry competition as measured by the four-firm concentration ratio, and the size distribution of economic activity as measured by the Gini coefficient of receipts within employee firm size distributions within an industry. SBA seeks feedback on whether it should continue giving equal weights to each factor, or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggested weights for each factor along with supporting information.

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

Public comments on the above issues are very valuable to SBA for validating its proposed size standards revisions and size standards methodology that the Agency

applied in this proposed rule. Commenters addressing size standards for specific industries or a group of industries should include relevant data and/or other information supporting their comments or suggestions. If comments relate to using size standards for federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, the size of businesses that can undertake the contracts, startup costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

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

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

#### Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed revisions to employee based size standards in Wholesale Trade and Retail Trade sectors will better reflect the economic characteristics of small businesses in those sectors and maximize benefits small businesses receive from Federal programs. SBA’s mission is to aid and assist small businesses through a variety

of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The Small Business Jobs Act of 2010 also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing the size standards of industries covered by this rule.

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

The most significant benefit to businesses obtaining small business status because of proposed increases in employee based size standards in this proposed rule, if adopted, is gaining eligibility for SBA's financial assistance programs. These include SBA's 7(a), CDC/504, and Economic Injury Disaster Loan (EIDL) programs. The following groups would benefit from the proposed size standards revisions in this rule, if adopted as proposed: (1) some businesses that are above the current size standards would gain small business status under the higher size standards, thereby enabling them to participate in SBA's financial assistance programs; and (2) growing small businesses that are close to exceeding the current size standards would be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in those programs.

SBA estimates that in 47 industries for which it proposes to increase employee based size standards in Sectors 42 and 44-45, nearly 4,000 firms, not small under the

existing size standards, will become small under the proposed size standards, if adopted, and therefore will become eligible for SBA's financial assistance programs. That is an increase of 1.1 percent of all firms classified as small under the current employee based size standards in those sectors. For the industries reviewed in this rule, the data indicate that it is mostly businesses much smaller than the current size standards that use the SBA's 7(a) and 504 loan programs. Based on the fiscal years 2010-2012 data, SBA estimates up to about 50 loans totaling about \$20 million could be made under its 7(a) and CDC/504 Programs to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in those industries, but it is impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard, explained above, for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's EIDL program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

Since NAICS codes in Wholesale Trade and Retail Trade sectors and their industry specific size standards do not apply to Federal procurement programs and SBA has proposed no change to the 500-employee size standard under the nonmanufacturer rule, the proposed changes in industry specific size standards would have no impact on

Federal procurement dollars. However, SBA's proposal to retain the current 500-employee size standard under the nonmanufacturer rule will enable firms in Wholesale and Retail Trade industries to maintain their eligibility for Federal supply procurements intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB).

More businesses will benefit from a variety of Federal regulatory and other programs that use SBA's size standards. Such benefits may include, but are not limited to, reduced fees, less paperwork, or exemption from compliance or other regulatory requirements.

To the extent that those 4,000 newly defined additional small firms under the proposed employee based size standards become active in seeking Federal assistance, the proposed changes, if adopted, may entail some additional administrative costs to the government as a result of more businesses being eligible for Federal small business programs. For example, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the System of Award Management (SAM) database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, EDWOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small

business status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

The proposed revisions to the existing employee based size standards in Sectors 42 and 44-45 are consistent with SBA's statutory mandate to assist those businesses that it considers small. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

#### Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

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

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

The review of employee based size standards in NAICS Sectors 42 and 44-45 is consistent with E.O. 13563, Sec. 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act of 2010 requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, it requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment, and do a complete review of all size standards not less than once every five years thereafter.

### Executive Order 12988

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

### Executive Order 13132

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

### Paperwork Reduction Act

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

### Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in Sector 42, Wholesale Trade, and some small businesses in Sectors 44-45, Retail Trade. As described above, this rule may affect small businesses seeking loans under SBA's 7(a), 504, and Economic Injury Disaster Loan Programs, and assistance under other federal small business programs.

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

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

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in Sectors 42 and 44-45. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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

If the proposed rule is adopted in its present form, nearly 4,000 more firms in Sectors 42 and 44-45 will become small for financial assistance under the revised employee based size standards. That represents 1.1 percent of total firms that are small under current employee based size standards in all industries within those sectors that are

covered by this proposed rule. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Additionally, many firms that may have exceeded the current size standards and lost their eligibility for SBA's financial assistance and other Federal programs for small businesses will regain eligibility for those programs under the proposed employee based size standards, if adopted.

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

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. Qualifying for SBA's financial does not require that businesses register in the Systems of Award Management (SAM) database and certify in SAM that they are small at least once annually. However, some newly qualified small businesses under the proposed size standards may want to participate in the federal government procurement and other programs that require firms to register and certify in SAM. Therefore, those businesses must comply with SAM requirements. There are no costs associated with either SAM registration or annual certification. Changing size standards alters the access to SBA's financial and other Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless

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

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

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

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

#### List of Subjects in 13 CFR Part 121

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

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

PART 121 – SMALL BUSINESS SIZE REGULATIONS

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

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

2. In § 121.201, in the table “Small Business Size Standards by NAICS Industry” revise the entries for “423110”, “423120”, “423130”, “423310”, “423320”, “423330”, “423410”, “423420”, “423430”, “423450”, “423460”, “423490”, “423510”, “423610”, “423620”, “423690”, “423710”, “423720”, “423730”, “423810”, “423860”, “423920”, “424110”, “424120”, “424130”, “424210”, “424320”, “424340”, “424410”, “424420”, “424430”, “424440”, “424450”, “424470”, “424490”, “424510”, “424610”, “424690”, “424710”, “424720”, “424810”, “424820”, “424910”, “424920”, “424940”, “424950”, and “454310” to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry

Classification 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
* * * * *			
423110	Automobile and Other Motor Vehicle Merchant Wholesalers		250
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers		200
423130	Tire and Tube Merchant Wholesalers		200
* * * * *			
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers		150

423320	Brick, Stone, and Related Construction Material Merchant Wholesalers		150
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers		200
* * * * *			
423410	Photographic Equipment and Supplies Merchant Wholesalers		200
423420	Office Equipment Merchant Wholesalers		200
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers		250
* * * * *			
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers		200
423460	Ophthalmic Goods Merchant Wholesalers		150
423490	Other Professional Equipment and Supplies Merchant Wholesalers		150
423510	Metal Service Centers and Other Metal Merchant Wholesalers		200
* * * * *			
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers		200
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers		200
423690	Other Electronic Parts and Equipment Merchant Wholesalers		250
423710	Hardware Merchant Wholesalers		150
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers		200
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers		150
* * * * *			
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers		250
* * * * *			

423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers		150
* * * * *			
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers		150
* * * * *			
424110	Printing and Writing Paper Merchant Wholesalers		200
424120	Stationery and Office Supplies Merchant Wholesalers		150
424130	Industrial and Personal Service Paper Merchant Wholesalers		150
424210	Drugs and Druggists' Sundries Merchant Wholesalers		250
* * * * *			
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers		150
* * * * *			
424340	Footwear Merchant Wholesalers		200
424410	General Line Grocery Merchant Wholesalers		250
424420	Packaged Frozen Food Merchant Wholesalers		200
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers		200
424440	Poultry and Poultry Product Merchant Wholesalers		150
424450	Confectionery Merchant Wholesalers		200
* * * * *			
424470	Meat and Meat Product Merchant Wholesalers		150
* * * * *			
424490	Other Grocery and Related Products Merchant Wholesalers		250
424510	Grain and Field Bean Merchant Wholesalers		200
* * * * *			
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers		150

424690	Other Chemical and Allied Products Merchant Wholesalers		150
424710	Petroleum Bulk Stations and Terminals		200
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)		200
424810	Beer and Ale Merchant Wholesalers		200
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers		250
424910	Farm Supplies Merchant Wholesalers		200
424920	Book, Periodical, and Newspaper Merchant Wholesalers		200
* * * * *			
424940	Tobacco and Tobacco Product Merchant Wholesalers		250
424950	Paint, Varnish, and Supplies Merchant Wholesalers		150
* * * * *			
454310	Fuel Dealers		100
* * * * *			

Dated, May 5, 2014.

Maria Contreras-Sweet,  
Administrator.

[FR Doc. 2014-11269 Filed 05/16/2014 at 8:45 am; Publication Date: 05/19/2014]