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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AG84

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting, without change, its proposed revisions to small business size standards. With the adoption of the proposed changes, SBA incorporates the U.S. Office of Management and Budget's (OMB) North American Industry Classification System (NAICS) revision for 2017, identified as NAICS 2017, into its table of small business size standards. NAICS 2017 created 21 new industries by reclassifying, combining, or splitting 29 existing industries under changes made to NAICS in 2012 (NAICS 2012). SBA's size standards for these 21 new industries have resulted in an increase to size standards for six NAICS 2012 industries and part of one industry, a decrease to size standards for two, a change in the size standards measure from average annual receipts to number of employees for one, and no change in size standards for twenty industries and part of one industry.

DATES: This rule is effective October 1, 2017.

FOR FURTHER INFORMATION CONTACT: Dr. Jorge Laboy-Bruno, Office of Size Standards, (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION: Effective October 1, 2000, SBA adopted NAICS 1997 industry definitions as a basis for its table of small business size standards, replacing the 1987 Standard Industrial Classification (SIC) (65 FR 30836 (May 15, 2000)). Since then, OMB has issued four revisions to NAICS. SBA's table of size standards adopted the OMB's first revision, NAICS 2002, effective October 1, 2002 (67 FR 52597 (August 13, 2002)), the second revision, NAICS 2007, effective October 1, 2007 (72 FR 49639 (August 29, 2007)), and the third revision, NAICS 2012, effective October 1, 2012 (77 FR 49991 (August 20, 2012)).

OMB published its fourth and latest revision, NAICS 2017, "Notice of NAICS 2017 final decisions" in the Federal Register on August 8, 2016 (81 FR 52584). The OMB notice stated that Federal statistical establishment data published for reference years beginning on or after January 1, 2017, should be published using NAICS 2017.

As with the previous NAICS revisions, SBA is adopting the NAICS 2017 revision at the beginning of the new fiscal year (October 1, 2017) following the OMB's release of the NAICS revision for reasons as set forth under the Justification for the October 1, 2017 Effective Date section, below:

Changes in NAICS 2017

NAICS 2017 created 21 new NAICS industries by reclassifying, splitting, or merging 29 industries or their parts under NAICS 2012. Of those 21 new industries, five were created by merging two or more of thirteen NAICS 2012 industries in their entirety, while three were created by combining part of one industry with another industry. Three new industries were created by splitting two industries to two parts each with one part of each industry defined as a separate industry and combining other parts of the two

industries to form a separate new industry. One new industry was formed by designating part of one industry as a separate industry. OMB also changed 6-digit NAICS codes for eight industries without changing their definitions and titles and amended the title of one industry without changing its 6-digit code. Table 1, “NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries,” below, shows the changes from NAICS 2012 to NAICS 2017.

Complete information on the relationship between NAICS 2012 and NAICS 2017 is available on the U.S. Bureau of the Census (Census Bureau) website at <http://www.census.gov/eos/www/naics/>. The Census Bureau’s website also provides detailed documentation on Federal notices involving the replacement of SIC with NAICS, and all subsequent NAICS updates and revisions, including the August 8, 2016 “Notice of NAICS 2017 final decisions,” as well as concordances (i.e., correspondence tables) between SIC and NAICS 1997 and NAICS 2002, and between subsequent NAICS revisions.

Table 1
NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 code	NAICS 2012 industry title	Status code	NAICS 2017 code	NAICS 2017 industry title
211111	Crude Petroleum and Natural Gas Extraction			
	<i>crude petroleum extraction</i>		211120	Crude Petroleum Extraction
	<i>natural gas extraction</i>	pt.	211130	Natural Gas Extraction
211112	Natural Gas Liquid Extraction	pt.	211130	Natural Gas Extraction
212231	Lead Ore and Zinc Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining
212234	Copper Ore and Nickel Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining
333911	Pump and Pumping Equipment Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
333913	Measuring and Dispensing Pump Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
335221	Household Cooking Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing
335222	Household Refrigerator and Home Freezer Manufacturing.	pt.	335220	Major Household Appliance Manufacturing
335224	Household Laundry Equipment Manufacturing	pt.	335220	Major Household Appliance Manufacturing
335228	Other Major Household Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing
452111	Department Stores (except Discount Department Stores).	pt.	452210	Department Stores

452112	Discount Department Stores			
	<i>insignificant perishable grocery sales</i>	pt.	452210	Department Stores
	<i>significant perishable grocery sales</i>	pt.	452311	Warehouse Clubs and Supercenters
452910	Warehouse Clubs and Supercenters	pt.	452311	Warehouse Clubs and Supercenters
452990	All Other General Merchandise Stores	nc.	452319	All Other General Merchandise Stores
454111	Electronic Shopping	pt.	454110	Electronic Shopping and Mail-Order Houses
454112	Electronic Auctions	pt.	454110	Electronic Shopping and Mail-Order Houses
454113	Mail-Order Houses	pt.	454110	Electronic Shopping and Mail-Order Houses
512210	Record Production	pt.	512250	Record Production and Distribution
512220	Integrated Record Production/Distribution	pt.	512250	Record Production and Distribution
517110	Wired Telecommunications Carriers	nc.	517311	Wired Telecommunications Carriers
517210	Wireless Telecommunications Carriers (except Satellite).	nc.	517312	Wireless Telecommunications Carriers (except Satellite)
532220	Formal Wear and Costume Rental	nc.	532281	Formal Wear and Costume Rental
532230	Video Tape and Disc Rental	nc.	532282	Video Tape and Disc Rental
532291	Home Health Equipment Rental	nc.	532283	Home Health Equipment Rental
532292	Recreational Goods Rental	nc.	532284	Recreational Goods Rental
532299	All Other Consumer Goods Rental	nc.	532289	All Other Consumer Goods Rental

541711	Research and Development in Biotechnology			
	<i>nanobiotechnologies research and experimental development laboratories</i>	pt.	541713	Research and Development in Nanotechnology
	<i>except nanobiotechnologies research and experimental development laboratories</i>		541714	Research and Development in Biotechnology (except Nanobiotechnology)
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)			
	<i>nanotechnology research and experimental development laboratories</i>	pt.	541713	Research and Development in Nanotechnology
	<i>except nanotechnology research and experimental development laboratories</i>		541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)
721310	Rooming and Boarding Houses	nt.	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps

Key to Abbreviations

pt. = Part of 2017 industry.

nc. = 6-digit NAICS codes changed without changing industries' definitions and titles.

nt. = NAICS industry title amended without changing the 6-digit code.

Size Standards for New Industries in NAICS 2017

On October 22, 1999, SBA proposed to replace SIC with NAICS 1997 as the basis of industry definitions for its table of small business size standards (64 FR 57188). The proposed rule included a set of guidelines or rules that SBA applied to convert the size standards for industries under SIC to NAICS. The guidelines aimed to minimize the impact of applying a new industry classification system on SBA’s size standards and on small businesses that qualified as small under the SIC based size standards. SBA received no negative comments against the proposed guidelines. SBA published its final rule on May 15, 2000 (65 FR 30386) (corrected on September 5, 2000, 65 FR 53533) adopting the resulting table of size standards based on NAICS 1997, as proposed. To be consistent, SBA used the same guidelines when it updated its table of size standards to adopt NAICS 2002, NAICS 2007, and NAICS 2012 revisions. In those updates as well, SBA received no adverse comments on using those guidelines, or on the resulting changes to the size standards. For the April 18, 2017 proposed rule to adopt NAICS 2017 for its size standards table, SBA also generally followed the same guidelines, as shown below in Table 2, “General Guidelines to Establish Size Standards for New Industries under NAICS 2017.”

**Table 2
General Guidelines to Establish Size Standards for New Industries under
NAICS 2017**

	<u>If the NAICS 2017 industry is composed of:</u>	<u>The size standard for the NAICS 2017 industry code will be:</u>
1	A single NAICS 2012 industry or part of a single NAICS 2012 industry	The same size standard as for the NAICS 2012 industry or part.

2	Two or more NAICS 2012 industries; two or more parts of an NAICS 2012 industry; parts of two or more NAICS 2012 industries; or one or more NAICS 2012 industries and part(s) of one or more NAICS 2012 industries, and	
	2a. they all have the same size standard	The same size standard as for the NAICS 2012 industries or parts.
	2b. they all have the same size measure (<i>e.g.</i> , receipts, employees, <i>etc.</i>) but do not all have the same size standard	<p>The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or</p> <p>The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms.</p>
	2c. they have different size measures (<i>i.e.</i> , for example, some are based on receipts and others on employees) and hence do not all have the same size standard	<p>The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or</p> <p>The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms.</p> <p>To apply this rule, SBA converts all size standards to a single measure (<i>e.g.</i>, receipts, employees, <i>etc.</i>) using the size measure for the NAICS 2012 industry or part(s) that most closely match the economic activity described by the NAICS 2017 industry or using the size measure that applies to most of the NAICS industries or parts comprising the NAICS 2017 industry.</p>

In addition to the above general guidelines, in cases where a new industry is formed by merging multiple industries or their parts with substantially different levels or different measures of size standards, as detailed in the April 18, 2017 proposed rule, SBA also examined the relevant latest industry and Federal procurement data to determine an

appropriate size standard for the new industry. Developed based on the above guidelines and analyses of the relevant data, where necessary, SBA's size standards for the new industries under NAICS 2017 are shown in Table 3, "Size Standards for New Industries in NAICS 2017." Also shown in the table are the current size standards for the affected NAICS 2012 industries and their parts.

As shown in Table 3, the size standards for most of the affected NAICS 2012 industries are not impacted and therefore remain unchanged under NAICS 2017. The majority of the changes consist of revisions to industry codes or titles, or mergers of two or more NAICS 2012 industries or their parts to new industries without impacting their size standards. Of the 29 NAICS 2012 industries affected by the revision, adopting NAICS 2017 increases size standards for six industries and part of one industry and decreases for two. This would also result in changing the size standard measure for one industry from average annual receipts to number of employees. Size standards for twenty industries and part of one industry do not change.

Discussion of Comments

For the April 18, 2017 proposed rule, SBA provided a 60-day comment period for the public to comment on proposed changes to size standards from the adoption of the NAICS 2017, which ended on June 19, 2017. SBA received three comments to the proposed rule, two of which were outside the scope of the proposed rule as discussed below.

One commenter recommended that SBA change the size standard for the Military and Aerospace Equipment and Military Weapons exception to NAICS 541330 (Engineering Services) from average annual revenues to the number of employees.

Table 3
Size Standards for New Industries in NAICS 2017

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard (\$ million)	NAICS 2017 size standard (employees)	NAICS 2017 size standard (\$ million)	NAICS 2017 code	NAICS 2017 industry title
211111	Crude Petroleum and Natural Gas Extraction	1,250					
	<i>crude petroleum extraction</i>	1,250		1,250		211120	Crude Petroleum Extraction
	<i>natural gas extraction</i>	1,250		1,250		211130	Natural Gas Extraction
211112	Natural Gas Liquid Extraction	750					
212231	Lead Ore and Zinc Ore Mining	750		750		212230	Copper, Nickel, Lead, and Zinc Mining
212234	Copper Ore and Nickel Ore Mining	1,500					
333911	Pump and Pumping Equipment Manufacturing	750		750		333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
333913	Measuring and Dispensing Pump Manufacturing	750					
335221	Household Cooking Appliance Manufacturing	1,500		1,500		335220	Major Household Appliance Manufacturing
335222	Household Refrigerator and Home Freezer Manufacturing.	1,250					
335224	Household Laundry Equipment Manufacturing	1,250					
335228	Other Major Household Appliance Manufacturing	1,000					

452111	Department Stores (except Discount Department Stores).		\$32.5				
452112	Discount Department Stores		\$29.5		\$32.5	452210	Department Stores
	<i>insignificant perishable grocery sales</i>		\$29.5				
452112	Discount Department Stores		\$29.5				
	<i>significant perishable grocery sales</i>		\$29.5		\$29.5	452311	Warehouse Clubs and Supercenters
452910	Warehouse Clubs and Supercenters		\$29.5				
452990	All Other General Merchandise Stores		\$32.5		\$32.5	452319	All Other General Merchandise Stores
454111	Electronic Shopping		\$32.5				
454112	Electronic Auctions		\$38.5		\$38.5	454110	Electronic Shopping and Mail-Order Houses
454113	Mail-Order Houses		\$38.5				
512210	Record Production		\$7.5				
512220	Integrated Record Production/Distribution	1,250		250		512250	Record Production and Distribution
517110	Wired Telecommunications Carriers	1,500		1,500		517311	Wired Telecommunications Carriers
517210	Wireless Telecommunications Carriers (except Satellite).	1,500		1,500		517312	Wireless Telecommunications Carriers (except Satellite)
532220	Formal Wear and Costume Rental		\$20.5		\$20.5	532281	Formal Wear and Costume Rental
532230	Video Tape and Disc Rental		\$27.5		\$27.5	532282	Video Tape and Disc Rental
532291	Home Health Equipment Rental		\$32.5		\$32.5	532283	Home Health Equipment Rental

532292	Recreational Goods Rental		\$7.5		\$7.5	532284	Recreational Goods Rental
532299	All Other Consumer Goods Rental		\$7.5		\$7.5	532289	All Other Consumer Goods Rental
541711	Research and Development in Biotechnology	1,000					
	<i>nanobiotechnologies research and experimental development laboratories</i>	1,000		1,000		541713	Research and Development in Nanotechnology
	<i>except nanobiotechnologies research and experimental development laboratories</i>	1,000		1,000		541714	Research and Development in Biotechnology (except Nanobiotechnology)
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)	1,000					
	<i>nanotechnology research and experimental development laboratories</i>	1,000		1,000		541713	Research and Development in Nanotechnology
	<i>except nanotechnology research and experimental development laboratories</i>	1,000		1,000		541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)
721310	Rooming and Boarding Houses		\$7.5		\$7.5	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps

Similarly, another commenter recommended that SBA consider changing the size standard for NAICS 488190 (Other Support Activities for Air Transportation) from revenues to employees. The commenters argued that the change would allow small businesses providing those services to continue to compete and succeed in a market dominated by large businesses which provide similar services as an ancillary function to their primary business. They provided an analysis of the Federal Procurement Data System – Next Generation (FPDS-NG) data to describe the competitive structure of their respective industries to support their recommendations.

Since NAICS 541330 and 488190 were not impacted by the NAICS 2017 revision, SBA did not review those industries nor did it propose any changes to their size standards in the April 2017 proposed rule. As part of the first five-year comprehensive review of size standards under the Small Business Jobs Act of 2010 (Jobs Act) (Public Law 111-240, September 27, 2010), in 2012, SBA increased the size standard for the Aerospace Equipment and Military Weapons exception to NAICS 541330 from \$27 million to \$35.5 million (77 FR 7489, (February 10 2012)) and increased the size standard for NAICS 488190 from \$7 million to \$30 million (77 FR 10943, (February 24, 2012)). In 2014, they were further increased to \$38.5 million and \$32.5 million, respectively, for inflation (79 FR 33647 (June 12, 2014)). SBA will review these size standards again in the coming years as part of the second five-year review of size standards, as required by the Jobs Act. Interested parties, including the commenters, will have an opportunity to comment when SBA publishes the proposed rule for their industries.

The third commenter recommended that SBA consider raising the small business size standard for the Home Health Equipment and Rental industry from \$32.5 million to \$35 million, an increase of 7.7 percent. The commenter argued the increase reflects the anticipated inflation and the cost of doing business over the next five years. The commenter also noted that a higher size standard for NAICS 532283 would allow some large firms to gain small business status and help some small firms retain their small business status into the future. Thus, as a result, that Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs, the commenter concluded.

The NAICS 2017 revision changed the 6-digit code for the Home Health Equipment and Rental industry from 532291 to 532283 without changing the industry definition. Accordingly, for new NAICS 532283, SBA applied the same \$32.5 million that currently applies to NAICS 532291. The adoption of NAICS 2017 led to changes in size standards only when the new industry was formed by merging the existing industries or industry parts with different size standards, not when only the 6-digit code changed.

Every five years, SBA reviews all monetary based size standards for inflation and makes necessary adjustments. SBA's latest inflationary adjustment to size standards was in 2014, which resulted in an increase to the size standard for NAICS 532291 from \$30 million to \$32.5 million. SBA anticipates issuing the next inflationary adjustment of all monetary based size standards sometime in 2019 and interested parties will have an opportunity to comment at that time. Additionally, as part of the second five-year review of size standards under the Jobs Act, SBA will also review all size standards in the coming years against the latest available industry and Federal market data and make

appropriate adjustments. (In the first five-year review, SBA increased the size standard for NAICS 532291 from \$7 million to \$30 million (77 FR 58747 (September 24, 2012)). The commenter will have an opportunity to comment when SBA publishes the proposed rule for NAICS Sector 53, Real Estate and Rental and Leasing.

SBA considered each comment and determined that they were not germane to the purpose of the proposed rule, which was to adopt NAICS 2017 as a basis for its table of size standards. The intent and methodology of the proposed rule did not provide for changing the size standard for an industry whose NAICS code was not affected by the NAICS revision, nor did it provide for adjusting a size standard for inflation or the cost of doing business. Accordingly, SBA is not modifying its April 18, 2017 proposed rule based on the comments received and is adopting the proposed rule, as published.

Justification for the October 1, 2017 Effective Date

The Administrative Procedure Act (APA) requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the APA provision delaying the effective date of a rule for 30 days after publication is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth below, SBA finds that good cause exists to make this final rule become effective on October 1, 2017, less than 30 days after it is published in the Federal Register.

- In its August 8, 2016 notice, OMB stated that Federal statistical establishment data published for reference years beginning on or after January 1, 2017, should be published using NAICS 2017. October 1, 2017 is the start of the new Federal

Government fiscal year following OMB's adoption of NAICS 2017 effective January 1, 2017, and is consistent with SBA's adoption of previous NAICS revisions effective at the start of the next fiscal year after the OMB's effective date. Federal contracting data and related statistics will be more consistent and comparable with past data for analyzing future small business activity if the revised size standards are adopted at the beginning of a new fiscal year.

Similarly, users of size standards and Federal contracting data, such as Federal prime contractors developing their subcontracting plans, can have more consistent data to examine the past and future Federal contracting trends.

- Small business size standards apply to most Federal agencies and their programs involving small businesses; the time lag between the OMB's effective date and SBA's update to its size standards has already given them time to implement the changes and develop training tools, if necessary. For instance, in July 2017, SBA provided Integrated Award Environment with an advance copy of the updated size standards table to update the Federal contracting databases such as the System for Award Management.
- The rule is not significant under Executive Order 12866 and the impacts from changes to size standards due to the adoption of the NAICS 2017 are minimal. This final rule impacts size standards for less than 10 industries involving about 60 firms, with a vast majority of them gaining small business status under the revised size standards. Those firms will benefit from an earlier effective date.
- The impacted firms have had an opportunity to review the changes and submit comments during the notice and comment period for this rule. None of the three

comments SBA received on the April 18, 2017 proposed rule opposed the changes. The affected firms and other interested parties have had ample time to adjust their behavior, if necessary.

Compliance with Executive Orders 12866, 13563, 13771, 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

OMB has determined that this final rule is not a “significant regulatory action” for purposes of Executive Order 12866. This rule incorporates the OMB’s 2017 revisions of NAICS, which SBA uses to identify industries in the United States for purposes of establishing small business size standards. As discussed in the Supplementary Information above, the size standard of some industries would change because of the NAICS 2017 revisions. However, SBA has determined that virtually all businesses currently defined as small under the NAICS 2012 based size standards will continue to be small under the NAICS 2017 based size standards. This rule will also affect other Federal Government programs that provide a benefit for small businesses. In order to help explain the need of this rule and the rule’s potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This final rule is also not a “major rule” under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that adopting small business size standards based on NAICS 2017 is in the best interests of small businesses. SBA’s mission is to aid and assist small

businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes numerical definitions to determine which businesses are deemed eligible for Federal small business assistance. NAICS 2017 provides the latest industry definitions reflecting the latest changes in industry structure. The Small Business Act (the Act) provides SBA's Administrator with the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary from industry to industry reflecting differences among the various industries.

15 U.S.C. 632(a). By analyzing and reviewing size standards based on the latest NAICS definitions, SBA can more accurately and appropriately fulfill its mandate. If SBA does not use the latest industry definitions, size standards would not accurately reflect differences among industries. In addition, the Jobs Act requires SBA to review all size standards and make necessary adjustments to reflect current industry and market conditions at least every five years. To better serve this mandate, SBA needs to evaluate industry data based on the latest NAICS industry definitions available. In this final rule, SBA generally followed the same guidelines that the Agency used for adopting prior NAICS revisions for its size standards, as spelled out under the Supplemental Information section, above. For certain NAICS 2017 industries involving NAICS 2012 industries with substantially different size standards, SBA also analyzed the relevant industry and program data to determine the size standards for them. Size standards based on NAICS 2017 industry definitions and corresponding data will serve SBA's mission more effectively.

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

The vast majority of the changes from NAICS 2012 to NAICS 2017 consist of revisions to industry titles or 6-digit codes or mergers of some NAICS 2012 industries or their parts to form the industries in NAICS 2017 without impacting their size standards. Of the 29 affected NAICS 2012 industries or their parts, SBA's size standards using NAICS 2017 will result in increases to size standards for six NAICS 2012 industries and part of one industry, decreases for two industries, and the change of size standard from average annual receipts to number of employees for one industry. The size standards will remain unchanged for other affected industries or parts.

Based on the 2012 Economic Census data for the affected NAICS 2012 industries, SBA estimates that approximately 60 additional businesses would gain small business status under the revised size standards. That represents about 0.1 percent of the number of small businesses in the affected industries. For the two industries for which the size standard will decrease, SBA also estimates that fewer than five firms that qualify as small under current size standards under NAICS 2012 will no longer qualify. However, almost all of those firms do not currently participate in any small business programs.

The benefits of adopting NAICS 2017 and the resulting revisions to size standards will accrue to three groups in the following ways: (1) Some businesses that are above their current size standards may gain small business status, thereby becoming eligible to participate in Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses; (2) growing small businesses that are close to exceeding the current size standards for their NAICS 2012 industry may retain their small

business status under NAICS 2017, and can continue participating in the above programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs because they will be able to define more accurately the principal purposes of their procurements under NAICS 2017, as required by 13 CFR 121.402(b).

Additional firms gaining small business status under NAICS 2017 may benefit under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in Historically Underutilized Business Zones (HUBZones), Women Owned Small Businesses (WOSBs), and Service Disabled Veteran Owned Small Businesses (SDVOSBs). Added competition may also result in lower prices for some Federal contracts reserved for small businesses, although SBA cannot quantify this benefit. Based on data for fiscal years 2013-2015, SBA estimates that approximately \$700,000 in Federal contracts could be awarded to the newly defined small businesses under the size standards revisions due to the adoption of NAICS 2017.

Under SBA's 7(a) and 504 Loan Programs, SBA would be able to guarantee more loans, although, in this case too, the number and amount of additional loans cannot be estimated accurately. Based on the Agency 7(a) and 504 loan data for fiscal years 2014-2016, SBA estimates that about two additional loans, totaling approximately \$200,000, could be made to the newly defined small businesses under the NAICS 2017 size standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. Additionally, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for applicants that do not meet the size standards for their

industries. Specifically, section 1116 of the Jobs Act provides that if a firm applying for a 7(a) or 504 loan does not meet the size standard for its industry, it might still qualify if it has a tangible net worth that does not exceed \$15 million and an average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed \$5 million. Thus, the updated size standards may result in an increase in SBA's loan guarantees to small businesses in the affected industries, but SBA cannot quantify this impact.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of future EIDL benefit.

To the extent that newly defined small firms under NAICS 2017 could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. More firms may seek SBA's guaranteed loans. More will be enrolled in the SBA's Dynamic Small Business Search database. Since more firms will qualify as small, more may also seek certification as 8(a) or HUBZone firms, or qualify for WOSB, SDVOSB, and/or small disadvantaged business (SDB) status. It is important to point out that most business entities that are already registered in SAM will not be required to update their SAM profiles. However, it will be incumbent on registrants to review their profiles to ensure that they have the correct NAICS codes. SAM requires that registered companies review and update their profiles annually, and therefore, businesses will need to pay particular attention to the changes to determine if they might affect them. They will also have to verify and update, if necessary, their

Representations and Certifications in SAM. Further, firms are required to verify that their size representation in SAM is accurate prior to submitting an offer for a contract. FAR 52.204-8(d).

Among the newly qualified 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. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards under NAICS 2017. With more businesses defined as small, Federal agencies might choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be a larger pool of small businesses to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small

businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone firms instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open procurement opportunities. Similarly, currently defined small businesses may receive fewer Federal contracts due to the increased competition from more businesses defined as small under NAICS 2017. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. SBA cannot estimate with precision the potential distributional impacts of these transfers.

SBA's adoption of NAICS 2017 and resulting revisions to size standards is consistent with SBA's statutory mandate to assist small business by providing access to capital and credit, Government contracts, and management and technical assistance. Updated size standards based on the latest industry definitions ensure that Federal small business assistance is more effectively targeted to its intended beneficiaries. The Small Business Act states that "the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries." 15 U.S.C. 632(a)(3). With the adoption of the latest industry definitions in NAICS 2017, SBA's size standards are more consistent with the differing characteristics among the various industries.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distribution impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

To engage interested parties in this action, SBA reached out to all Federal agencies advising them that the Agency plans to update its table of size standards to NAICS 2017, effective October 1, 2017, and that agencies must continue using the current size standards until that date. Adopting the updated size standards on October 1, 2017 is consistent with SBA's adoptions of previous NAICS revisions at the beginning of the new fiscal year following the OMB's January 1 effective date of NAICS revisions for Federal statistical agencies.

Unlike the previous NAICS revisions which SBA adopted for its size standards either through a direct final rule or through an interim final rule, for the adoption of NAICS 2017 revision, SBA issued a proposed rule, seeking comments to better engage the public in the process. SBA received no germane adverse comments to the proposed rule. SBA is adopting the updated table of size standards, effective October 1, 2017. SBA will also issue a press release on the publication of the final rule and update the "What's New with Size Standards" page on its website at www.sba.gov/size.

Executive Order 13771

This rule is not an EO 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 12988

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

Executive Order 13132

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

Paperwork Reduction Act

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

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have an impact on some small businesses in industries for which size standards have been revised. As described above, this rule may affect small businesses applying for Federal government contracts, loans under SBA's 7(a), 504, and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What 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, recordkeeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

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

The Small Business Act requires that small business size standards vary from industry to industry reflecting the differing characteristics of the various industries. SBA uses the latest NAICS as a basis of industry definitions for its table of size standards. As part of its five-year review of and revisions to NAICS industry definitions, OMB published its latest NAICS revision, NAICS 2017, on August 8, 2016. According to OMB's notice, Federal establishment and industry data for reference years beginning on or after January 1, 2017 should be published using NAICS 2017. This rule amends SBA's small business size regulations to incorporate NAICS 2017 into its table of size standards. This not only makes SBA's size standards more reflective of the latest industry differences but also makes them more consistent with latest industry data the Agency uses to establish, review or adjust size standards. Updating size standards to the latest industry definitions also serves the SBA's mandate to review all size standards and make appropriate adjustments to reflect market conditions under the Jobs Act.

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

With the update of size standards to the latest industry definitions under NAICS 2017, Federal small business assistance is more effectively targeted to its

intended beneficiaries. The adoption of NAICS 2017 will result in increases in size standards for six industries and part of one industry under NAICS 2012 and decreases for two. The size standards for the rest of the 29 affected industries will remain unchanged. In industries whose size standards have increased due to the adoption of NAICS 2017, about 60 firms above the current size standards will qualify as small under the updated size standards, thereby making them eligible for Federal small business assistance programs. Based on the recent data, SBA estimates that approximately \$700,000 in Federal contracts and about \$200,000 in SBA loans could be awarded to the newly defined small businesses under the updated size standards. The updated size standards will enable more small businesses to maintain their small business size status for a longer period. In the two NAICS 2012 industries for which the size standard will decrease, about 3-4 firms below the current size standards will lose their small business size status under the NAICS 2017 based size standards. However, the program data suggests that this will not cause much impact on them. Currently, they are not participating in any small business programs. Additionally, in both industries, Federal contracting and SBA's loan activities are quite insignificant.

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

The size standard changes due to the adoption of NAICS 2017 impose no additional reporting or recordkeeping requirements on small businesses. However, qualifying for Federal small business contracting and other programs may require businesses to register in SAM and recertify in SAM that they are small at least once annually. Therefore, the newly qualified small businesses opting to participate in those

programs must comply with SAM requirements. There are no costs associated with either SAM registration or annual recertification. 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 size standards 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 generally use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the Federal Register a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). The 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)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or updating size standards.

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 levels of

size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards. SBA considered continuing to use NAICS 2012 as a basis of industry definitions for its table of size standards. However, that would render SBA's table of size standards incompatible with Federal industry and establishment statistics and other databases.

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

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

- a. Remove the entries for 211111 and 211112;
- b. Add entries for 211120 and 211130;
- c. Remove the entries for 212231 and 212234;
- d. Add an entry for 212230;
- e. Remove the entry 333911;
- f. Remove the entry 333913;
- g. Add an entry for 333914;

- h. Add an entry for 335220;
- i. Remove the entries for 335221, 335222, 335224, and 335228;
- j. Remove the entries for 452111, 452112, 452910, and 452990;
- k. Add entries for 452210, 452311, and 452319;
- l. Add an entry for 454110;
- m. Remove the entries for 454111, 454112, and 454113;
- n. Remove the entries for 512210 and 512220;
- o. Add an entry for 512250;
- p. Remove the entries for 517110 and 517210;
- q. Add entries for 517311 and 517312;
- r. Remove the entries for 532220, 532230, 532291, 532292, and 532299;
- s. Add entries for 532281, 532282, 532283, 532284, and 532289;
- t. Remove the entry for 541711;
- u. Remove the entry for 541712;
- v. Add entries for 541713 and 541714;
- w. Add an entry for 541715;
- x. Revise the NAICS industry title of the entry for 721310 to read, “Rooming and Boarding Houses, Dormitories, and Workers’ Camps”; and
- y. Revise footnote 11 at the end of the table.

The additions and revisions read as follows:

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

Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size Standards in millions of dollars	Size standards in number of employees
* * * * *			
211120	Crude Petroleum Extraction		1,250
211130	Natural Gas Extraction		1,250
* * * * *			
212230	Copper, Nickel, Lead, and Zinc Mining		750
* * * * *			
333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing		750
* * * * *			
335220	Major Household Appliance Manufacturing		1,500
* * * * *			
452210	Department Stores	\$32.5	
452311	Warehouse Clubs and Supercenters	\$29.5	
452319	All Other General Merchandise Stores	\$32.5	
* * * * *			
454110	Electronic Shopping and Mail-Order Houses	\$38.5	
* * * * *			
512250	Record Production and Distribution		250
* * * * *			
517311	Wired Telecommunications Carriers		1,500
517312	Wireless Telecommunications Carriers (except Satellite)		1,500
* * * * *			
532281	Formal Wear and Costume Rental	\$20.5	
532282	Video Tape and Disc Rental	\$27.5	
532283	Home Health Equipment Rental	\$32.5	
532284	Recreational Goods Rental	\$7.5	
532289	All Other Consumer Goods Rental	\$7.5	
* * * * *			
541713	Research and Technology in Nanotechnology ¹¹		1,000 ¹¹
541714	Research and Technology in Biotechnology (except Nanobiotechnology) ¹¹		1,000 ¹¹

541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) ¹¹		1,000 ¹¹
Except,	Aircraft, Aircraft Engine and Engine Parts ¹¹		1,500 ¹¹
Except,	Other Aircraft Parts and Auxiliary Equipment ¹¹		1,250 ¹¹
Except,	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts ¹¹		1,250 ¹¹
* * * * *			

Footnotes

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11. NAICS codes 541713, 541714, and 541715 -

(a) “Research and Development” means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(c) For purposes of the Small Business Innovation Research (SBIR) and Small Business Transfer Technology (STTR) programs, the term “research” or “research and development” means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements. See 15 U.S.C. 638(e)(5) and section 3

of the SBIR and STTR policy directives available at www.sbir.gov. For size eligibility requirements for the SBIR and STTR programs, see § 121.702 of this part.

(d) “Research and Development” for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

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Dated: September 8, 2017.

Linda E. McMahon,
Administrator.

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