TABLE 5 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR PTAC AND PTHP—Continued

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: Products manufactured on and after
		>15,000 Btu/h	EER = 9.5 COP = 2.9	October 8, 2012.
	Non-Standard Size	<7,000 Btu/h	EER = 9.3 COP = 2.7	October 7, 2010.
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 10.8 − (0.213 × Cap[1]) COP = 2.9 − (0.026 × Cap[1])	October 7, 2010.
		>15,000 Btu/h	EER = 7.6 COP = 2.5	October 7, 2010.

[1] "Cap" means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG44

Small Business Size Standards: Support Activities for Mining

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for three industries in North American Industry Classification System (NAICS) Subsector 213, Support Activities for Mining, within NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction. NAICS Sector 21 contains four industries with receipts based standards and 19 industries with employee based size standards. As part of its ongoing comprehensive review of all size standards, in this proposed rule, SBA has evaluated the four industries that have the receipts based size standards in NAICS Sector 21 to determine whether they should be retained or revised. SBA will review the 19 industries that have the employee based standards in NAICS Sector 21 at a later date. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA has issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that ''Size Standards Methodology'' is available on its Web site at *www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology in determining changes to receipts based size standards in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction.

DATES: SBA must receive comments to this proposed rule on or before February 4, 2013.

ADDRESSES: Identify your comments by RIN 3245–AG44 and submit them by one of the following methods: (1) *Federal eRulemaking Portal: www.regulations.gov,* following the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

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

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

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. At least once every five years, SBA also reviews the effect of inflation on its size standards and makes necessary adjustments to its monetary based size standards. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

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

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. An NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in an NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

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

Size Standards Methodology

SBA has developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA has published the document on its Web site at *www.sba.gov/size* for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at *www.regulations.gov.* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate for every industry. For example, since all four industries in NAICS Sector 21 that are covered by this proposed rule have receipts based size standards, the methodology described here applies only to establishing a receipts based size standard. However, the methodology is available for review and comments in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; the docket number is SBA–2009–0008, or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov.* As of January 1, 2012, SBA has received 13 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov,* Docket ID: SBA–2009–0008. SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

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

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to receipts based size standards in NAICS Sector 21. This proposed rule affords the public an opportunity to review and to comment on SBA's proposals to revise size standards in NAICS Sector 21, as well as on the data and methodology it used to evaluate and revise the size standards.

Industry Analysis

For the current comprehensive size standards review, SBA established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, the Wholesale Trade NAICs Codes and their100 employee size standards do 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 SBA's nonmanufacturer rule (13 CFR 121.406(b)).

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

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

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 21, SBA developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary industry factors that SBA evaluates include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, and other program factors). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 21. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size*.

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

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

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

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

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

examines the average size of the four largest firms to determine a size standard.

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

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

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

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

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

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. SBA examines the volume and number of SBA's guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current 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/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by, Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts, and employment size classes.

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

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2009–2011.

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.*

Dominance in Field of Operation

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

Selection of Size Standards

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

Therefore, SBA proposes to apply one of eight receipts based size standards to each industry in NAICS Sector 21 reviewed in this rule. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of the large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. In NAICS Sector 21, the characteristics of the four industries with receipts based standards reviewed in this rule are not sufficiently alike to warrant a common size standard for all. Therefore, SBA is proposing to increase three of the size standards and retain the $7 million anchor for NAICS 213115, Support Activities for Nonmetallic Minerals (except Fuels).

Evaluation of Industry Structure

SBA evaluated the four industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

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

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

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

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

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, Average Characteristics of Receipts Based Comparison Groups, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

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

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

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

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

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

None of the four industries in NAICS Sector 21 with receipts based size standards averaged more than $100 million annually in Federal contracting during fiscal years 2008–2010. Therefore the Federal contracting factor was not considered in calculating the new size standard for them.

New Size Standards Based on Industry Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), below, shows the results of analyses of industry factors for each industry covered by this proposed rule. A number of NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard only if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, SBA does not estimate a standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 8 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 9 of Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars).

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

[Millions of dollars]

(1) NAICS code and NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coefficient	(8) Calculated size standard ($ million)	(9) Current size standard ($ million)
213112 Support Activities for Oil and Gas Operations	$7.9	$197.8	$5.2	27.9	$3,246.0	0.892	$35.5	$7.0
	35.5	35.5	35.5			$35.5		
213113 Support Activities for Coal Mining	7.7	47.9	....	44.4	219.2	0.786	19.0	7.0
	35.5	14.0			7.0	19.0		
213114 Support Activities for Metal Mining	11.7	63.0	....	57.9	205.8	0.790	19.0	7.0
	35.5	19.0			7.0	25.5		
213115 Support Activities for Nonmetallic Minerals (except Fuels)	2.2	12.2	....	24.4	30.9	0.622	7.0	7.0
	14.0	5.0				5.0		

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2009–2011 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 applicants. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS 21, Mining, Quarrying, and Oil and Gas Extraction, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Based on the analyses of industry and program data as discussed above, of the four industries in NAICS Sector 21 reviewed in this rule, SBA proposes to increase the size standard for three and retain the current size standard for one. SBA's proposed changes are summarized in Table 4, Summary of Proposed Size Standards Revisions, below.

TABLE 4—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS code	NAICS industry title	Current size standard ($ million)	Proposed size standard ($ million)
213112	Support Activities for Oil and Gas Operations	$7.0	$35.5
213113	Support Activities for Coal Mining	7.0	19.0
213114	Support Activities for Metal Mining	7.0	19.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	7.0	7.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, for which it has proposed to increase size standards, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed individual size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.1 percent to 2.8 percent, with an average of 1.1 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. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether this is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks comment on whether the proposed size standards for NAICS Sector 21 are appropriate given the economic characteristics of each industry reviewed in this proposed rule. SBA also seeks comment and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

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

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

5. For NAICS 213112, Support Activities for Oil and Gas Operations, based on its analysis of industry and program data alone, SBA proposes to increase the existing size standards by a large amount, while for NAICS 213113 and NAICS 213114 the proposed increases are modest. SBA seeks comment on whether, as a policy, it should limit the increase to a size standard or establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

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

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

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866, Regulatory Planning and Review. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a ''major'' rule, however, under the Congressional Review Act (5 U.S.C. 800).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the proposed revisions to receipts based size standards for three industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, will better reflect the economic characteristics of small businesses in those industries and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that about 475 firms in the three industries for which it has proposed to increase size standards will become small and therefore eligible for these programs. That is about 8.5 percent of all firms classified as small under the current size standards in those industries. If adopted as proposed, this will also increase the small business share of total industry receipts in those industries within NAICS Sector 21 from about 13 percent to nearly 25 percent.

Three groups will benefit from the proposed size standards revisions in this rule, if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have larger pools of small businesses from which to draw for their small business procurement programs.

Because of limited Federal contracting activities in those industries, proposed increases will cause very minimal impact on Federal contracting programs under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC Programs, and other unrestricted procurements.

Under SBA's 7(a) and 504 Loan Programs, based on the 2009–2011 data, SBA estimates about five additional loans totaling about $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be 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 an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

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

In addition, newly eligible small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements.

The proposed revisions to the existing size standards for three industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

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

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups 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 size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, is consistent with Executive Order 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. It will revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, Federalism, 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 recordkeeping 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 NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction. As described above, this proposed rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What 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?

SBA has not reviewed the size standards for industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, since the early 1980s. Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sector 21. 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 recently enacted 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, SBA estimates that about 475 additional firms will become small because of increased size standards in three industries NAICS Sector 21. That represents 8.5 percent of total firms that are small under current size standards in those industries. This will result in an increase in the small business share of total industry receipts for the Sector from about 13 percent under the current size standard to nearly 25 percent under the proposed size standards. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

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

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden 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 § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

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

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

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

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, revise the entries for ''213112'', ''213113'', and ''213114'' to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
213112	Support Activities for Oil and Gas Operations	$35.5	
213113	Support Activities for Coal Mining	19.0	
213114	Support Activities for Metal Mining	19.0	
*	*	*	*

Dated: April 25, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–29353 Filed 12–5–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1223; Directorate Identifier 2012–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. This proposed AD was prompted by reports of the cockpit door falling off the hinges when it is being open or closed. This proposed AD would require replacing the striker and quick-release pin of the passive lock of the cockpit door, and replacing the upper and lower hinges of the cockpit door. We are proposing this AD to prevent the cockpit door from falling off the hinges, which could cause injury to airplane occupants.

DATES: We must receive comments on this proposed AD by January 22, 2013.

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

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

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos–SP–BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1223; Directorate Identifier 2012–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2012–08–02 and 2012–08–03, both effective September 5, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This [ANAC] AD was prompted by reports of cockpit door falling off the hinges when it is being opened or closed. If not corrected, this condition may cause injury to the occupants.
>
> * * * * *

Required actions include replacement of the passive lock striker, quick-release pin, and upper and lower hinges of the cockpit door. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued the following service bulletins to correct the unsafe condition identified in the MCAI. The actions described in the following service information are intended to correct the unsafe condition identified in the MCAI.

- EMBRAER Service Bulletin 170–52–0055, Revision 01, dated August 1, 2011 (for Model ERJ 170 airplanes).
- EMBRAER Service Bulletin 190–52–0038, Revision 01, dated August 1, 2011 (for Model ERJ 190 airplanes except for Model ERJ 190–100 ECJ airplanes).
- EMBRAER Service Bulletin 190LIN–52–0020, dated August 1, 2011 (for Model ERJ 190–100 ECJ airplanes).

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 253 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $129,030, or $510 per product.