Done in Washington, DC, this 15th day of January 2016.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2016–01399 Filed 1–22–16; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600 and 606

RIN 3052–AD08

Organization and Functions; Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration; Organization of the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA, we, Agency or our) amended our regulations to reflect internal organization changes and to update a statutory citation for the Farm Credit Act. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 600 and 606 published on November 5, 2015 (80 FR 68427) is effective January 25, 2016.

FOR FURTHER INFORMATION CONTACT: Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056, or Jane Virga, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4071, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration amended our regulations to reflect internal organization changes and to update a statutory citation for the Farm Credit Act. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 25, 2016. (12 U.S.C. 2252(a)(9) and (10))

Dated: January 20, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–01398 Filed 1–22–16; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG49

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

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is increasing 47 small business size standards based on a concern's number of employees. These increases affect 46 industries in North American Industry Classification System (NAICS) Sector 42, Wholesale Trade, and one industry in NAICS Sector 44–45, Retail Trade. SBA retains the size standards for the remaining industries in those sectors and the 500-employee size standard for the Federal Government's procurement of supplies under the nonmanufacturer rule. As part of its comprehensive size standards review under the Small Business Jobs Act of 2010, SBA reviewed all 71 industries in NAICS Sector 42, as well as the two industries in NAICS Sector 44–45, that have employee based size standards. The revisions adopted in this rule primarily affect eligibility for SBA's financial assistance programs, and have no impact on Federal procurement programs.

DATES: This rule is effective on February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On May 19, 2014 (79 FR 28631), SBA proposed to increase employee based size standards for 46 industries in NAICS Sector 42, Wholesale Trade, and one industry in NAICS Sector 44–45, Retail Trade. The Agency proposed keeping the current size standards for the remaining industries in those sectors. SBA also proposed to retain the 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule (13 CFR 121.406).

The proposed rule sought comments from the public on the Agency's proposals and received seven comments. Generally, commenters opposed the proposed increases to the size standards in the wholesale trade industries. However, while some commenters appeared to be cognizant of the effects of the proposed increases and how they apply to various small business programs and their industries, others did not seem to be aware that the NAICS codes and size standards for the wholesale and retail trade industries do not apply to Federal Government procurement programs and the proposed increases would have no impact on size eligibility for Federal contracts.

What follows is a summary and discussion of the comments, their positions and the issues they raise, and SBA's responses. All comments are available for public review at the Federal Rulemaking Portal, *www.regulations.gov.*

Summary and Discussion of Public Comments to the May 19, 2014 Proposed Rule

Two parties submitted identical comments, opposing SBA's proposal to increase the size standards. The commenters stated that current size standards are already too high, and expanding them will make matters worse. The commenters contended that 98 percent of all businesses (including non-employer firms) have 1–19 employees, and those businesses mostly need loans of $50,000 to $250,000. Expanding the definition of ''small'' is crippling their ability to get loans, they added. The commenters maintained that the average size of SBA's loan increased from $182,000 in 2008 to $547,000 in 2013, while the share of loans under $100,000, which they claimed generally go to truly small businesses, decreased from 24 percent to 9 percent.

The European Union defines the smallest unit of small business as less than 10 employees, and Australia defines ''small'' as 1–14 employees under its Fair Work Act, the commenters noted. In addition, they stated that the U.S. Congress defines small business as 20–25 employees ''and rarely as high as 50.'' The commenters asked SBA to stop focusing on 2 percent of the largest small businesses and refocus on the remaining 98 percent of small businesses because they are the ones who really need the help. The higher size standards, if adopted, will put loan assistance out of reach for most small businesses, they argued.

Another commenter that offers startup workshops to entrepreneurs expressed concerns on how SBA defines small business. Specifically, the commenter stated that almost any business with up to 500 employees can qualify as small under the current size standards. The commenter maintained that ''this definition needs to be changed, but not in the direction SBA suggests, to 1,500 employees for some businesses.'' He suggested that the size standard should be revised down to 300 employees.

A Service-Disabled Veteran-Owned Small Business concern opposed the 500-employee nonmanufacturer size standard. The commenter stated that it provides an unfair advantage for larger small businesses. His small business cannot compete with the larger small businesses with up to 500 employees, the commenter added. The commenter noted that pricing is one of the reasons why larger small businesses have an advantage in the bidding process for work set aside for small businesses.

A small woman-owned company submitted a comment, opposing the proposed increase to the size standard for NAICS 423610 (Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers) from 100 employees to 200 employees. The commenter asked how increasing the size standard would assist with startup cost and entry barriers. The commenter stated that it took almost 30 years for her business to grow from one employee to 38 employees. The proposed 200-employee standard is too large for the industry, and no company with 200 employees need assistance, the commenter added. The commenter suggested that SBA should consider converting the size standard for NAICS 423610 from employees to receipts, because it would help the Agency to better collect data on assistance to actual small businesses. The commenter stated that her company is able to compete with similarly sized companies in the industry for work reserved for small businesses, but not with large businesses. The commenter maintained that the difference between a 200-employee size business and a 38-employee business is huge, mainly because a 200-employee size business has considerably more resources when competing for Federal Government contracts. The commenter concluded by stating that the size standard for NAICS 423610 should remain at 100 employees or be converted to gross receipts.

SBA received a collective comment from four parties, including two organizations representing women-owned businesses, a trade group representing small manufacturers, and an attorney representing Federal prime contractors and subcontractors, opposing the Agency's proposal to increase the size standards for some wholesale and retail trade industries. The commenters were concerned that with increasing size standards businesses that have outgrown size standards through SBA's programs will be redefined as small. This is completely unfair to truly small firms that are not able to compete against larger firms, win contracts and grow, they explained. This is contrary to SBA's mission and the purpose of the Small Business Act to provide small business owners with opportunities to compete for and win Federal contracts, the commenters added.

The commenters stated that 90 percent of U.S. businesses have fewer than 20 employees, and felt that increasing size standards would have a negative impact on those small businesses, and on the broader economy, especially on the under-served communities. ''What about the truly small businesses that often do not qualify for financial assistance because they don't meet funding qualifications, because they are too small, have insufficient capacity and resources, insufficient revenue and cash flow, and not enough relevant past performance?,'' the commenters asked. The commenters maintained that larger small firms have more resources, can get better pricing and are more likely to be eligible for loans, and beat out the small firms every time.

The commenters asserted that milestones and goals that are used to justify changing size standards (*i.e.*, number of loans awarded, number of contracts and dollars awarded to small businesses, number of people hired, etc.) should apply to truly small businesses. It is questionable as to how much of $83 billion awarded in fiscal year 2013 actually went to truly small businesses with 20 or fewer employees, they added. Going from 100 to 200 employees with unlimited revenue is a huge deal, and firms that size already have access to capital and do not need assistance, the commenters maintained. They argued that if the proposed rule is passed small businesses will be at even more risk of losing their companies because they will be competing with firms that generate 10 times their revenues and have 10 times their capacity. Accordingly, they suggested that size standards identified in the proposed rule, and generally, should be changed to gross revenues, because, they claimed, gross revenues is a better indicator of whether a business is small than number of employees. With employee based size standards without a revenue limit, a company with revenues of up to $100 million or $1 billion can qualify as small, the commenters noted. They pointed out that once a specialty trade contractors firm reaches $14 million (currently $15 million) in gross receipts, it is no longer small, but a distributor or wholesaler with 100 or 200 employees can have unlimited revenue and can still be considered small. In conclusion, the commenters recommended that SBA not approve the proposal to increase the size standards in NAICS Sectors 42 and 44–45 and that the Agency consider changing the standards to gross receipts.

Opposing the proposed increases to size standards for the wholesale and retail trade industries, a commenter stated that, according to the U.S. Census Bureau data, 98 percent of all U.S. firms have less than 100 employees, 89 percent have less than 20 employees, and the average American small business has approximately 10 employees. Small business size standards should more closely reflect the actual size of American small businesses, the commenter added. He noted that SBA's size standards allow firms up to 1,500 employees to qualify as small. The commenter maintained that current size standards have an adverse effect on small businesses because, as he claimed, they favor large businesses. He stated that large businesses, including Fortune 500 companies, abuse size standards and end up getting contracts set aside for small businesses. In addition, he argued that SBA's Office of Inspector General and the Government Accountability Office have found numerous instances of abuse of size standards and small business contracts that were awarded to large businesses.

SBA's response: From time to time, the U.S. Congress has used different thresholds, sometimes below the SBA's thresholds, to define small firms under certain laws or programs, but those thresholds apply only to those laws and programs and generally are of no relevance to SBA's size standards. In addition, what constitutes a small business in other countries does not apply and has no relevance to SBA's small business definitions and U.S. Government programs that use them. Depending on their economic and political realities, other countries have their own programs and priorities that can be very different from those in the U.S. Accordingly, small business definitions that other countries use for their Government programs can be vastly different from those established by SBA for U.S. Government programs.

SBA establishes size standards, in accordance with the Small Business Act, for purposes of establishing eligibility for Federal small business procurement and financial assistance programs. The primary statutory definition of a small business is that the firm is not dominant in its field of operation, and that a 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(3)(a)(3). Accordingly, rather than representing the smallest size within an industry, SBA's size standards generally designate the largest size that a business concern can be relative to other businesses in the industry and still qualify as small for Federal Government programs that provide benefits to small businesses. In the May 19, 2014 proposed rule, SBA fully explained its Size Standards Methodology (Methodology) to establish size standards. SBA has made the Methodology available on its Web site at *www.sba.gov/size*, as well as on the proposed rule (79 FR 28631 (May 19, 2014)) Docket (RIN 3245–AG49) at *www.regulations.gov.*

Although the smallest business unit may consist of less than 10 employees, SBA's small business size standards do not necessarily reflect the smallest size of businesses. It should be noted that SBA's size standards apply to most Federal programs that provide benefits to small businesses, including small business procurement programs. Accordingly, qualifications and capabilities that businesses need to perform Federal Government contracts are an important factor in determining which company qualifies as small within an industry. Size standards based on the smallest business size would be too small, and there would not be enough capable and qualified small businesses to meet Federal Government small business contracting needs. This would lead agencies to compete contracts on a full and open basis, thereby allowing large corporations to dominate the Federal market. It is imperative that small firms have room to grow and expand without losing their small business status until they are large enough to achieve a competitive size in their industry. Additionally, it is very important to note that while the size standards may appear to include a large segment of an industry in terms of the percentage of firms, small firms represent only about a third of total industry receipts and less than 25 percent of Federal contracting dollars.

SBA does not agree with, and the data does not support, the argument that businesses with 1–19 employees mostly need loans in the amount of $50,000 to $250,000. Based on the data on firms in all 71 industries in Sector 42 and the two industries in Sector 44–45 covered in this rule that received SBA's 7(a) and 504 loans in 2014, the median loan amount among firms with less than 20 employees was about $305,500. In addition, $250,000 or higher loans accounted for 62 percent of total number of loans and 85 percent of total loan volumes for those firms. SBA also does not agree with the argument that increases in average loan amounts and decreases in smaller loans are solely due to the increases in size standards for two reasons. First, with the passage of the Small Business Jobs Act in 2010 (Jobs Act) (Pub. L. 111–240, § 1116, Sep. 27, 2010), Congress increased the maximum loan amount for SBA's 7(a) loans from $2 million to $5 million, for CDC/504 loans from $1.5 million to either $5 million or $5.5 million, depending on the project. Second, at the same time, Congress also increased the tangible net worth and net income limits of the alternative size standard for those programs from $8.5 million and $3 million to $15 million and $5 million, respectively. 15 U.S.C. 632(3)(a)(5). Under the alternative size standard, businesses that are above their industry size standards can qualify for SBA guaranteed loans. These statutory changes may be important factors for the purported changes in SBA's lending. However, such changes do not necessarily mean that truly small businesses are getting fewer loans now than in 2008. For example, in industries covered by this rule, businesses with less than 20 employees received a total of $1.2 billion in loans through SBA's 7(a) and 504 programs in 2014, as compared to about $0.8 billion in 2008. That is an increase of 50 percent. Nearly 85 percent of total loans granted in those industries in 2014 went to firms with less than 20 employees.

The data does not support the argument that increasing small business size standards from 100 employees to 200 or 250 employees and thereby allowing larger businesses to qualify as small would affect the ability of truly small firms to obtain SBA's loans. For example, of the total loan amount disbursed under SBA's 7(a) and 504 programs to firms in Sector 42 during fiscal years 2012–2014, 63 percent went to firms with less than 20 employees, 89 percent to firms with less than 50 employees, and 96 percent to firms with less than 100 employees. Since the vast majority of firms that obtained SBA's loans are well below the current 100-employee size standard, the Agency does not believe that increasing it to 200 or 250 employees will have a significant negative impact on firms below the current size standard. Moreover, even if SBA decided to leave the size standard for all wholesale trade industries at the current 100-employee level, firms with more than 100 employees may still qualify as small for purposes of SBA's financial assistance. This is because, as stated above, for SBA's 7(a) and CDC/504 loan programs the Jobs Act established an alternative size standard making those firms that exceed their industry size standards eligible for SBA's 7(a) and 504 loans if their tangible net worth does not exceed $15 million and their average net income, after Federal income taxes, does not exceed $5 million over their preceding two fiscal years. Accordingly, firms whose annual receipts or number of employees are higher than their industry size standards may still qualify as small under the alternative size standard. In other words, any wholesaler that exceeded the 100-employee size standard would still be eligible for SBA's financial assistance if it met the alternative size standard. However, during fiscal years 2012–2014, less than 4 percent of total loan volume under SBA's 7(a) and 504 programs in Sector 42 went to firms with more than 100 employees. This further supports the earlier conclusion that the proposed increases to size standards in the wholesale and retail trade industries are unlikely to impact smaller firms seeking loans through SBA's financial assistance programs.

SBA does not agree with the comment that a 200-employee company with up to $1 billion in annual revenue will qualify as small under the proposed higher size standards and would compete with smaller firms for SBA's loans. It is very unlikely that a company with $1 billion in revenue will qualify for or need SBA's financial assistance. SBA provides business loan assistance only to those businesses for which the desired credit is not available on reasonable terms from non-Federal sources (13 CFR 120.101). A firm with that level of revenue would likely have access to credit with reasonable terms from non-Federal sources, making it ineligible for SBA's assistance.

With respect to the comment that truly small businesses are not able get SBA's loans, SBA has initiated fee relief for certain SBA-guaranteed loans to encourage more lending to smaller businesses. Since 2013, both the up-front guaranty fee and the lender's annual service fee for SBA's 7(a) loans of $150,000 or less have been set at zero. In addition, in 2014 the Agency introduced SBA Veterans Advantage, which reduced the up-front guaranty fee to zero on its Express loans of $150,001 up to $350,000 to qualified small businesses owned by veterans and other members of the military community. In October 2014, SBA Veterans Advantage was expanded to reduce the up-front guaranty fee by 50 percent on 7(a) loans (other than SBA Express) of $150,001 up to and including $5 million to qualified small businesses owned by veterans and other members of the military community. The fee relief provided on these loans helps remove impediments for some businesses looking to take out SBA-guaranteed loans. In 2014, SBA lending in its 7(a) program increased 7.4 percent over 2013. In 2014, SBA guaranteed 52,044 loans, up 12 percent from 2013. Nearly 60 percent of these loans were under $150,000. The number of loans of this size was up 23 percent in 2014, helped by the agency's decision to eliminate fees on loans below that level. SBA anticipates lending to continue rising, and the Agency will maintain these programs to encourage businesses in need of smaller loans to apply.

SBA does not agree with the commenters' assertion that certain milestones and goals provide impetus for changing size standards (*e.g.*, number of loans awarded, number of contracts and dollars awarded to small businesses, number of people hired, etc.). As explained in its Methodology, SBA uses industry factors (such as average firm size, industry concentration, and startup cost and entry barriers) and Federal market conditions (*e.g.*, small business share of total Federal contracts relative to small business share of industry receipts) as bases for changing size standards. In other words, the various milestones and goals identified by the commenters are not the reasons for changing size standards.

SBA finds it difficult to evaluate the suggestion that size standards should not exceed 300 employees, because the comment included no supporting data or analysis. Furthermore, the proposed changes would increase the standard to no more than 250 employees in any of the affected NAICS codes. As a result, this comment is not relevant to the proposed rule.

SBA does not accept the suggestion to change the basis for the size standards for wholesale trade industries from number of employees to annual receipts. In the May 19, 2014 proposed rule, SBA fully explained its Methodology, including why it uses the employee based size standards for certain industries, and receipts based size standards for others. For industries that are highly capital intensive, have low operational costs relative to their receipts, show a variation of firms within industry by stage of production or degree of vertical integration, and are more horizontally structured, SBA uses employee based size standards. Most mining, manufacturing and wholesale trade industries fall under this category. For most services retail trade, and others with more seasonal and part-time employment (such as hospitality related industries), SBA uses receipts based size standards. Because of a wide variation in values of products sold by different types of wholesalers and retailers covered by this rule, receipts are not an appropriate measure of size for those firms. Moreover, the commenters did not specify what level of receipts based size standards would be appropriate.

SBA does not agree with the argument that the proposed increase in size standards for the wholesale and retail trade industries would affect the ability of firms to compete and win Federal contracts set aside for small businesses, because the increases only apply to SBA's financial programs and other federal programs that use SBA's size standards. As stated in the proposed rule, the increases to the size standards for the wholesale and retail trade industries do not apply to Federal Government procurement programs. Similarly, the proposed increases to size standards for wholesale and retail trade industries will have no effects on size standards in other industries. None of the proposed size standards was over 250 employees. The 1,500-employee size standard that the commenters pointed out only applies to a few industries comprised of firms that are significantly larger than those in most other industries. Such examples would be Petroleum Refineries, Aircraft Manufacturing, Air Transportation, and Telecommunications Carriers. Small business size standards define businesses as small, relative to the size of all firms in the industry. In industries where enterprises are very large, a much higher size standard than for most other industries is warranted. Such industries and size standards were not the subject of the proposed rule that this rule finalizes. The commenter who opposed the SBA's proposal to retain the 500-employee size standard under the nonmanufacturer rule, except for stating that his business cannot compete with larger small businesses with up to 500 employees, did not provide any industry or Federal market data to support this point.

As stated in the proposed rule, firms in Wholesale Trade and Retail Trade industries generally carry multiple items from different industries as inventory, and therefore identify themselves with multiple NAICS codes. Different size standards for individual industries in Wholesale Trade and Retail Trade under the nonmanufacturer rule would further complicate the contracting decision process, which already entails the decision to establish an applicable manufacturing industry, along with its size standard, associated with manufacturing, production, or processing of the product being procured. SBA believes the current 500-employee size standard makes sense because Wholesale and Retail Trade firms have to compete with manufacturers for supply or product contracts set aside for small businesses, and the anchor and most common size standard for the manufacturing industries is 500 employees. SBA believes that it is appropriate to retain the current 500-employee size standard in the nonmanufacturer rule in order to keep Wholesale and Retail Trade firms competitive with manufacturers.

The revised size standards will have no impact on the ability of small businesses to continue participating in Federal Government procurement programs because their competitive status will not change. Wholesalers, dealers, distributors, retailers, *etc.*, up to 500 employees will continue to be eligible to bid on small business set-asides under the nonmanufacturer rule, as discussed below. The 500-employee nonmanufacturer size standard helps small businesses to compete with larger suppliers so they can sell products or supplies to the Federal Government. In addition, businesses that exceed the revised size standards but have 500 employees or less and qualify under the nonmanufacturer rule are eligible for SBA's financing directly and primarily relating to the performance of that procurement. See 13 CFR 121.305. The increased size standards in this rule will not affect their eligibility for financing in that regard either. Therefore, under the revised size standards adopted in this rule, there will be no adverse impact on small businesses that participate in the Federal Government's small business procurement programs.

To qualify as small on supply or product contracts set aside for small businesses, a business concern must either: (1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States) itself; (2) qualify as a ''nonmanufacturer;'' or (3) be considered a kit assembler. See 13 CFR 121.406. In general, to qualify as a small business nonmanufacturer the concern must: (i) Have no more than 500 employees; (ii) be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; (iii) take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and (iv) supply the end item of a small business manufacturer, processor or producer made in the United States, or obtain a waiver of such requirement pursuant to SBA's regulations at 13 CFR 121.1201–1204. See 13 CFR 121.406. On a small business set-aside, absent a waiver, the product must be the product of another small business, located in the United States. On a contracting opportunity set aside for small businesses, in the event an unsuccessful offeror believes that the successful bidder is not compliant with the nonmanufacturer rule, the company can and should protest the eligibility of the successful bidder to the Contracting Officer. See 13 CFR 121.1001 *et seq.*

It seems that there exist misconceptions about whether industry size standards for Sectors 42 and 44–45 apply to Federal Government procurement programs. As stated elsewhere in this rule, the industry size standards adopted in this rule do not apply to Federal procurements. Under 13 CFR 121.402, Federal agencies may not use NAICS codes and their size standards in Sector 42 (Wholesale Trade) or Retail Trade (Sector 44–45) for procurement of goods or supplies. Those codes and size standards apply, rather, to SBA's small business lending programs and other Federal Government programs, but not to Federal procurements. For the Federal Government's procurement of manufactured goods, supplies, or other products, the Contracting Officer must use the NAICS code and size standard for the industry that manufactures, produces, or processes the products or supplies being procured. Any nonmanufacturer firm with up to 500 employees that meets the requirements of the nonmanufacturer rule may bid as a small business on those opportunities. See 13 CFR 121.406.

Conclusion

Based on the results of the analysis of industry data provided in the proposed rule and evaluation of public comments on the proposed rule as discussed above, SBA is adopting all changes to the employee based size standards in Sectors 42 and 44–45, as published in the May 19, 2014 proposed rule.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. To help explain the need for this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis as it did in the May 19, 2014 proposed rule. This 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?

The revised size standards in Wholesale Trade and Retail Trade sectors better reflect the economic characteristics of small businesses in the affected industries and maximize the benefits they receive from Federal programs, other than from Federal procurement programs. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (the Act) (15 U.S.C. 632(3)(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 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Public Law 111–240, sec. 1344, Sep. 27, 2010. The supplementary information section of the May 19, 2014 proposed rule explained SBA's Methodology for analyzing the size standards of industries covered by this rule. SBA makes the Methodology available on its Web site at *www.sba.gov/size*, as well as the on the Docket for the proposed rule at *www.regulations.gov*. The Methodology complies with the Small Business Act requirements and SBA's regulations that govern the establishment of size standards.

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

The most significant benefit to businesses becoming small under these increases is that they are now eligible for SBA's financial assistance programs. In addition, growing small businesses that are close to exceeding the current size standards can retain their small business status under the higher size standards, thereby enabling them to continue their participation in those programs. These include SBA's 7(a), CDC/504, and Economic Injury Disaster Loan (EIDL) programs.

SBA estimates that in the 47 industries in Sector 42 and Sector 44–45 whose size standards are being revised, nearly 4,000 firms, previously not small, will become small under the revised size standards, and therefore eligible for SBA's financial assistance programs and other Federal programs, except for procurement. That is a 1.1 percent increase to the number of firms classified as small under the current employee based size standards in those sectors. For the industries reviewed in this rule, the data indicate that it is mostly businesses much smaller than the current size standards that use the SBA's 7(a) and 504 loan programs. Based on the fiscal years 2012–2014 data, SBA estimates up to about 40 loans totaling between $20 million and $25 million could be made under its 7(a) and CDC/504 programs to these newly defined small businesses under the new size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in those industries, but it is impractical to try to estimate exactly the number and total volumes of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these size standards on its 7(a) and 504 loan programs.

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

Because NAICS codes in the Wholesale Trade and Retail Trade sectors and their industry size standards do not apply to Federal procurement programs, and because SBA is making no change to the 500-employee size standard under the nonmanufacturer rule, this rule will not affect participation in Federal procurement programs. However, retaining the current 500-employee size standard under the nonmanufacturer rule will, in fact, enable firms in Wholesale and Retail Trade industries to maintain their eligibility for Federal supply procurements intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as the 8(a) Business Development (BD) program, Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB) and economically-disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB).

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

To the extent that those 4,000 newly defined additional small firms under the revised size standards become active in seeking SBA's financial assistance, the changes may entail some additional administrative costs to the Government because of more businesses being eligible for the assistance. For example, there may be more firms seeking SBA's guaranteed loans. It will not, however, increase the number of firms eligible to enroll in the System of Award Management (SAM) database, because applicants to SBA's loans are not required to register in SAM. It also will not increase the number of firms eligible to seek certification as 8(a) BD, HUBZone, WOSB, EDWOSB, SDVOSB, or SDB status, because revisions to industry size standards in the Wholesale Trade and Retail Trade sectors do not apply to Federal procurement. Among those newly defined small businesses seeking SBA's financial assistance, there could be some additional costs associated with compliance and verification of small business status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

The revisions to the existing employee based size standards in Sector 42 and Sector 44–45 are consistent with SBA's statutory mandate to assist those businesses that it considers small. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Although these revised standards will not increase access to Federal contracts, they will ensure that intended beneficiaries have access to other small business programs designed to assist them.

Executive Order 13563

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

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

Individuals and business persons who have expressed interest in the size standards for one or more NAICS sectors receive a copy of SBA proposed and final rules. SBA sent copies of the May 19, 2014 proposed rule to the interested individuals, seeking their comments on proposed changes to employee based size standards for a number of wholesale trade and retail trade industries, and the Agency's proposal to retain the 500-employee nonmanufacturer size standard. SBA also published the proposed rule in the **Federal Register** and invited comments from any interested members of the public. SBA received seven comments on the proposed rule and has addressed them thoroughly.

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

The review of employee based size standards in NAICS Sector 42 and Sector 44–45 is consistent with Executive Order 13563, Sec. 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards was in the late 1970s and early 1980s. Since then, except for periodic adjustments for inflation to monetary based size standards (most recently, effective July 14, 2014; see 79 FR 33647), most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act 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 than once every five years thereafter. Public Law 111–240, sec. 1344, Sep. 27, 2010.

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 rule does 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 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 rule does not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small businesses in Sector 42, Wholesale Trade, and some small businesses in Sector 44–45, Retail Trade. As described above, this rule may affect small businesses seeking loans under SBA's 7(a), 504/CDC, and Economic Injury Disaster Loan (EIDL) programs, and assistance under other Federal small business programs, except procurement.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this 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?

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

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

SBA estimates that nearly 4,000 more firms in Sector 42 and Sector 44–45 will become small for financial assistance under the revised employee based size standards. That represents 1.1 percent of total firms that are small under current employee based size standards in all such industries in those sectors. The adopted rule will enable more small businesses to retain their small business status for a longer period. Additionally, many firms that may have exceeded the current size standards and lost their eligibility for SBA's financial assistance and other Federal programs for small businesses will regain eligibility for those programs under the revised employee based size standards.

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

The size standard changes impose no additional reporting or recordkeeping requirements on small businesses. Qualifying for SBA's financial assistance does not require that businesses register in the System for Award Management (SAM) database and certify in SAM that they are small at least once annually. However, some newly qualified small businesses under the revised size standards may want to participate in the Federal Government procurement and other programs that require firms to register and certify in SAM. Small businesses may become aware from this rule that they have been eligible to sell goods and supplies to the Federal Government under the 500-employee nonmanufacturer size standard. Therefore, to participate as a prime contractor, those businesses 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 assistance programs and other Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

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

However, the Small Business Act (15 U.S.C. 632(3)(a)(2)(C)) and SBA's regulations (13 CFR 121.903) 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. The SBA's regulations (see 13 CFR 121.903(c)) authorize a Federal agency to establish an alternative small business definition for the sole purpose of performing a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601(3)), after consultation with the Office of Advocacy of the U.S. Small Business Administration.

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

§ 121.201 What size standards has SBA identified by North American Industry Classification 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
*	* * * *	*	*
423110	Automobile and Other Motor Vehicle Merchant Wholesalers		250
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers		200
423130	Tire and Tube Merchant Wholesalers		200
*	* * * *	*	*
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers		150
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers		150
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers		200
*	* * * *	*	*
423410	Photographic Equipment and Supplies Merchant Wholesalers		200
423420	Office Equipment Merchant Wholesalers		200
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers		250
*	* * * *	*	*
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers		200
423460	Ophthalmic Goods Merchant Wholesalers		150
423490	Other Professional Equipment and Supplies Merchant Wholesalers		150
423510	Metal Service Centers and Other Metal Merchant Wholesalers		200
*	* * * *	*	*
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.		200
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.		200
423690	Other Electronic Parts and Equipment Merchant Wholesalers		250
423710	Hardware Merchant Wholesalers		150
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers		200
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers		150
*	* * * *	*	*
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.		250
*	* * * *	*	*
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers		150
*	* * * *	*	*
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers		150
*	* * * *	*	*
424110	Printing and Writing Paper Merchant Wholesalers		200
424120	Stationery and Office Supplies Merchant Wholesalers		150
424130	Industrial and Personal Service Paper Merchant Wholesalers		150
424210	Drugs and Druggists' Sundries Merchant Wholesalers		250
*	* * * *	*	*
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers		150
*	* * * *	*	*
424340	Footwear Merchant Wholesalers		200
424410	General Line Grocery Merchant Wholesalers		250
424420	Packaged Frozen Food Merchant Wholesalers		200
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers		200
424440	Poultry and Poultry Product Merchant Wholesalers		150
424450	Confectionery Merchant Wholesalers		200
*	* * * *	*	*
424470	Meat and Meat Product Merchant Wholesalers		150
*	* * * *	*	*
424490	Other Grocery and Related Products Merchant Wholesalers		250
424510	Grain and Field Bean Merchant Wholesalers		200
*	* * * *	*	*
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers		150
424690	Other Chemical and Allied Products Merchant Wholesalers		150
424710	Petroleum Bulk Stations and Terminals		200

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).		200
424810	Beer and Ale Merchant Wholesalers		200
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers		250
424910	Farm Supplies Merchant Wholesalers		200
424920	Book, Periodical, and Newspaper Merchant Wholesalers		200
* * *	* * *	*	*
424940	Tobacco and Tobacco Product Merchant Wholesalers		250
424950	Paint, Varnish, and Supplies Merchant Wholesalers		150
* * *	* * *	*	*
454310	Fuel Dealers		100
* * *	* * *	*	*

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Dated: January 15, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–01411 Filed 1–22–16; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG60

Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule finalizes, without change, the U.S. Small Business Administration's (SBA or Agency) June 12, 2014 interim final rule that adjusted monetary small business size standards (*i.e.,* receipts, assets, net worth, and net income) for inflation that has occurred since the last inflation adjustment in 2008. Specifically, the interim final rule increased by 8.73 percent all industry specific monetary small business size standards (except the $750,000 receipts based size standard for agricultural enterprises established by the Small Business Act). The interim final rule also increased by the same rate the tangible net worth and net income based alternative size standard for the Small Business Investment Company (SBIC) Program and receipts based size standards for Sales of Government Property (Other Than Manufacturing) and Stockpile Purchases. This final rule adopts those increases, without change.

DATES: This rule is effective on January 25, 2016.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Inflation Adjustment

SBA's small business size regulations require that the Agency examine the impact of inflation on monetary size standards (*e.g.,* receipts, tangible net worth, net income, and assets) and make necessary adjustments at least once every five years. (13 CFR 121.102(c)). Accordingly, on June 12, 2014, SBA published an interim final rule (IFR) that increased by 8.73 percent all industry specific monetary small business size standards (except the $750,000 receipts based size standard for agricultural enterprises established by the Small Business Act) (79 FR 33647). Previous to the June 12, 2014 interim final rule, SBA had last updated size standards for inflation on August 18, 2008 (see 73 FR 41237 (July 18, 2008)).

In addition, the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, sec. 1344, Sep. 27, 2010, requires SBA to review all size standards every five years and make necessary adjustments to reflect current industry and Federal market conditions.

In accordance with the Jobs Act, SBA has completed a review of all industry specific monetary based size standards using the latest industry and Federal contracting data available. As part of that review, SBA did not take into consideration inflation that had occurred since 2008. In the IFR, SBA provided reasons for not considering inflation as part of the comprehensive review. Specifically, SBA could not combine static industry data with the fluctuating inflation during the course of the review that produced a series of rules for different sectors at different times. Trying to do so would have resulted in different inflation factors for different industries, thereby making size standards inconsistent among industries.

Summary and Discussion of Public Comments on the June 12, 2014 IFR

On June 12, 2014, SBA issued an IFR (79 FR 33647), increasing by 8.73 percent all industry specific monetary small business size standards (except the $750,000 receipts based size standard for agricultural enterprises established by the Small Business Act). The adjustment represented inflation, as measured by the Gross Domestic Product (GDP) price index, since the previous inflation adjustment published in July 2008. The 8.73 percent increase was applied to 492 industry specific size standards (487 receipts based and five assets based) and three program specific size standards, namely: (1) Tangible net worth and net income based alternative size standards for the SBIC Program (13 CFR 121.301(c)); (2) Sales of Government Property Other Than Manufacturing (13 CFR 121.502); and (3) Stockpile Purchases (13 CFR 121.512). For the reasons SBA provided in the June 12, 2014 IFR, SBA did not increase the tangible net worth and net income based alternative size standards for SBA's 504 and 7(a) Loan Programs (13 CFR 121.301(b)). Increases became effective July 14, 2014.

The IFR requested comments from the public on SBA's methodology of using the GDP price index for adjusting size standards and suggestions for alternative measures of inflation, on whether SBA should adjust employee based size standards for labor productivity growth and technical changes similar to adjusting monetary