

procedures include a requirement for a "mandatory hearing" at the repository construction authorization stage. The petitioner also asserts that, in 2004, when NRC revised its rules of practice, it reaffirmed the decision to hold a "mandatory," formal hearing for an HLW repository. (See, 69 FR 2182, 2204; January 14, 2004.)

The petitioner states that although 10 CFR 2.101(e)(8) requires that the notice of a "mandatory" hearing on a repository construction authorization "shall recite the matters specified in § 2.104(a) of this part," § 2.104(a) does not specify the matters of fact or law to be considered. The petitioner contrasts this provision with the notices of mandatory hearings for nuclear power reactors under § 2.104(b) that require the presiding officer to consider the evidence and make all safety and environmental findings required for issuance of the license, and to determine if the NRC staff's review of the application was adequate. The petitioner asserts this has resulted in a "regulatory gap" in the NRC's rules of practice.

The petitioner is concerned that the scope of issues to be considered must extend beyond admitted contentions "because otherwise the decision to hold a mandatory hearing would be nothing more than an empty gesture." The petitioner states that its proposed amendment is patterned after § 2.104(b) but notes that this provision currently applies only to nuclear power reactor proceedings. The petitioner believes that the recent notices of hearing for uranium enrichment facilities such as in the USEC, Inc. (American Centrifuge Plant), CLI-04-30, 60 NRC 426 (2004) proceeding offer an easier template to follow for a hearing. The petitioner also states that because there is no reason to distinguish the "mandatory" hearing for Yucca Mountain from the "mandatory" hearing for other HLW repositories subject to 10 CFR Part 60, its suggested amendments would apply to repository facilities subject to either Part 60 or Part 63.

#### The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR 2.101(e)(8) be amended by deleting the reference to § 2.104(a) and replacing it with a reference to § 2.104(f). The petitioner also requests that § 2.104 be amended by adding a new paragraph (f) to read as follows:

(f)(1) In the case of an application for a construction authorization for a high-level waste repository under parts 60 or 63 of this chapter, the notice of hearing will state that the matters of fact and law to be considered are whether the application complies with

the Nuclear Waste Policy Act of 1982, as amended, and the standards set forth in 10 CFR 60.10, 60.21, and 60.24(a), or 10 CFR 63.10, 63.21, and 63.24(a), as applicable, and whether the requirements of 10 CFR 60.31 or 10 CFR 63.31, as applicable, have been met.

(2) Regardless of whether the proceeding is contested or uncontested, the Atomic Safety and Licensing Board will determine the following, without conducting a de novo review of the application:

(i) Whether the application and record of the proceeding contain sufficient information, and whether the NRC staff's review of the application has been adequate, to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards with respect to the matters set forth in paragraph (f)(1) of this section; and

(ii) Whether the review conducted by the NRC Staff under 10 CFR part 51 has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the Atomic Safety and Licensing Board will, in its initial decision, under Subpart A of 10 CFR part 51, and the Nuclear Waste Policy Act of 1982, as amended:

(i) Determine whether the requirements of section 102(2)(A), (C), and (D) of NEPA, section 114(f) of the Nuclear Waste Policy Act of 1982, as amended, and subpart A of 10 CFR part 51 have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and

(iii) Determine whether the authorization should be issued, denied, or further conditioned to protect the environment.

(4) If the proceeding becomes a contested proceeding, the Board shall also make findings of fact and conclusions of law on admitted contentions within the scope of paragraphs (f)(1), (2), and (3) of this section. With respect to matters set forth in paragraph (f)(1) of this section but not covered by admitted contentions, the Atomic Safety and Licensing Board will make the determinations set forth in paragraph (f)(2) of this section without conducting a de novo evaluation of the application.

Lastly, the petitioner requests that 10 CFR 2.700 be amended by deleting "2.101(f)(8)" and replacing it with "2.104(f)."

The petitioner states that its proposed § 2.104(f)(2) would apply to both contested and uncontested proceedings. The petitioner explains that the safety findings required by this proposed amendment focus on the adequacy of the record of the proceeding, the license application, and the NRC staff's review. The petitioner states that limiting these findings to uncontested cases, as it believes was the NRC's prior practice, implies that these findings are irrelevant in litigating contested issues. However, the petitioner states that litigation and findings on contested issues necessarily

include findings on the adequacy of the record, the application, and the NRC staff's review, insofar as these are relevant to contested issues.

The petitioner also explains that proposed 2.104(f)(1) and (3) reference the Nuclear Waste Policy Act of 1982, as amended (NWPAct), "for completeness" and because of the National Environmental Policy Act provision in section 114(f) of the NWPAct. Lastly, the petitioner explains that proposed § 2.104(f)(4) includes a specific reference to paragraphs (f)(1)–(f)(3) of that section for clarity because these provisions define the scope of material issues that may be litigated. The petitioner requests that the NRC act expeditiously on these proposed amendments to 10 CFR Part 2 as detailed in this petition for rulemaking because the DOE intends to file a construction authorization license application for the Yucca Mountain facility with the NRC no later than June 30, 2008.

Dated at Rockville, Maryland, this 23rd day of August 2007.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E7-17106 Filed 8-28-07; 8:45 am]

BILLING CODE 7590-01-P

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AF68

#### Small Business Size Standards; Adoption of 2007 North American Industry Classification System for Size Standards

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) proposes to amend its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2007 modifications to the North American Industry Classification System (NAICS) in its table of small business size standards. These modifications are few in number and result in revisions to size standards for three industries and four activities within other industries.

SBA believes that this proposal is routine and non-controversial, and the Agency anticipates no significant adverse comment. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to expedite modifying its Small

Business Size Regulations as described in this proposed rule. If SBA receives any significant adverse comment to the direct final rule, it will withdraw it, and consider those comments in connection with this proposed rule.

**DATES:** SBA must receive comments to this proposed rule on or before September 28, 2007.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AF68, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD-ROM submissions:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

- *Hand Delivery/Courier:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please submit the information to Carl J. Jordan, Office of Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an email to [sizestandards@sba.gov](mailto:sizestandards@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA

should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

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

**SUPPLEMENTARY INFORMATION:** SBA adopted the NAICS industry definitions as a basis for its table of small business size standards effective October 1, 2000, as a replacement to the discontinued Standard Industrial Classification (SIC) System (65 FR 30836, May 15, 2000). Since that time, OMB has issued two updates modifying the NAICS. SBA incorporated OMB's first updated modifications, termed NAICS 2002 (66 FR 3825, January 16, 2001), in its table of size standards effective October 1, 2002 (67 FR 52597, August 13, 2002). OMB published its most recent updates, termed NAICS 2007, on May 16, 2006 (71 FR 28532). SBA is proposing adoption of those updated modifications in its table of small business size standards, as explained below.

For complete information on the relationship between NAICS 2002 and NAICS 2007, please see the U.S. Bureau of the Census (Census Bureau) Web site at <http://www.census.gov/epcd/www/naicsdoc.htm#fedreg>. That Census Bureau Web site provides complete information on its establishment and

implementation of NAICS 2007, including its notice of final action in the March 16, 2006 **Federal Register**. The Census Bureau also provides the following correspondence tables: (1) 2007 NAICS-US matched to 2002 NAICS-US; and (2) 2002 NAICS-US matched to 2007 NAICS-US.

#### How SBA Arrived at the Size Standards for NAICS 2007 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on the NAICS. SBA developed guidelines to transition from the SIC System to NAICS. The guidelines were intended to minimize the impact of a new industry classification system on SBA's small business size standards. Table 1, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published a final rule on May 5, 2000 (65 FR 3825) (corrected on September 5, 2000, 65 FR 53533) establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2007, SBA is proposing to apply the same guidelines in this rule.

TABLE 1

| If the NAICS 2007 Industry is composed of:                                                                                                                                                                                                    | The size standard for the NAICS Industry will be:                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. One NAICS 2002 industry or part of one NAICS 2002 industry .....                                                                                                                                                                           | The same size standard as for the NAICS 2002 industry or part.                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 2. More than one NAICS 2002 industry; parts of more than one NAICS 2002 industry; or one or more NAICS 2002 industry and part(s) of one or more NAICS 2002 industry, <i>and</i> they all have the same size standard.                         | The same size standard as for those NAICS 2002 industries or parts of NAICS 2002 industries.                                                                                                                                                                                                                                                                                                                                                                                          |
| 3. More than one NAICS 2002 industry; parts of more than one NAICS 2002 industry; or one or more NAICS 2002 industry and part(s) of one or more NAICS 2002 industry, <i>and</i> they do not all have the same size standard.                  | The same size standard as for the NAICS 2002 industry or NAICS 2002 industry part(s) that most closely matches the economic activity described by the NAICS 2007 industry.                                                                                                                                                                                                                                                                                                            |
| 4. One or more parts of an NAICS 2002 industry for which SBA has established specific size standards ( <i>i.e.</i> , further segmented).                                                                                                      | The same size standard as for that specific NAICS 2002 industry part.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 5. One or more NAICS 2002 industries and/or parts of NAICS 2002 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS. | SBA will (a) apply a size standard measure ( <i>e.g.</i> , number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding "anchor" size standard. The "anchor" size standards are \$6.5 million (effective December 6, 2005) for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule). |

#### Additions to and Deletions From NAICS 2002 for NAICS 2007

It is important to note the following:

1. NAICS 2007 changes affect 59 NAICS 2002 industries.
2. One NAICS 2002 Subsector and 12 NAICS 2002 industries were eliminated

and their activities reclassified in other more appropriate or new NAICS 2007 industries as listed in Table 2:

TABLE 2

| NAICS 2002 code     | NAICS 2002 industry description                                           |
|---------------------|---------------------------------------------------------------------------|
| NAICS 339111 .....  | Laboratory Apparatus and Furniture Manufacturing.                         |
| Subsector 516 ..... | Internet Publishing and Broadcasting.                                     |
| NAICS 516110 .....  | Internet Publishing and Broadcasting.                                     |
| NAICS 517211 .....  | Paging.                                                                   |
| NAICS 517212 .....  | Cellular and Other Wireless Telecommunications.                           |
| NAICS 517310 .....  | Telecommunications Resellers.                                             |
| NAICS 517510 .....  | Cable and Other Program Distribution.                                     |
| NAICS 517910 .....  | Other Telecommunications.                                                 |
| NAICS 518111 .....  | Internet Service Providers.                                               |
| NAICS 518112 .....  | Web Search Portals.                                                       |
| NAICS 525930 .....  | Real Estate Investment Trusts.                                            |
| NAICS 541710 .....  | Research and Development in the Physical, Engineering, and Life Sciences. |
| NAICS 561310 .....  | Employment Placement Agencies.                                            |

3. The following eight industries listed in Table 3 are new in NAICS 2007:

TABLE 3

| NAICS 2007 code    | NAICS 2007 industry description                                                                  |
|--------------------|--------------------------------------------------------------------------------------------------|
| NAICS 517210 ..... | Wireless Telecommunications Carriers (except Satellite).                                         |
| NAICS 517911 ..... | Telecommunications Resellers.                                                                    |
| NAICS 517919 ..... | All Other Telecommunications.                                                                    |
| NAICS 519130 ..... | Internet Publishing and Broadcasting and Web Search Portals.                                     |
| NAICS 541711 ..... | Research and Development in Biotechnology.                                                       |
| NAICS 541712 ..... | Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology). |
| NAICS 561311 ..... | Employment Placement Agencies.                                                                   |
| NAICS 561312 ..... | Executive Search Services.                                                                       |

#### Changes in Size Standards Resulting From SBA's Proposed Adoption of NAICS 2007

Most of the industries in NAICS 2002 remain unchanged under NAICS 2007. This proposal to adopt NAICS 2007 will change size standards for only three industries and four activities from parts of industries. Other changes in NAICS 2007 consist of revised industry descriptions or the reclassification of

industry activities in other industries having the same size standard.

Table 4 lists all of OMB's modifications to the NAICS 2002 industries. The first three columns show the modified NAICS 2002 industry's six-digit code, its current size standard, and its industry description. The last three columns show the NAICS 2007 industry (new, existing and revised) that incorporates the modified NAICS 2002

industry, its industry description, and new size standard. By comparing the modified NAICS 2002 industry and size standard with the related NAICS 2007 industry and size standard, a user can identify the size standard SBA proposes for the applicable NAICS 2007 industries. Following Table 4, SBA explains the basis for the limited number of cases that do result in a change to the size standard.

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES

| 2002 NAICS code | Current size standards | 2002 NAICS U.S. description                                                                       | 2007 NAICS code | 2007 NAICS U.S. description                        | New size standards |
|-----------------|------------------------|---------------------------------------------------------------------------------------------------|-----------------|----------------------------------------------------|--------------------|
| 111211 .....    | \$0.75 million .....   | Potato Farming.                                                                                   |                 |                                                    |                    |
| *111219 .....   | \$0.75 million .....   | Other Vegetable (except Potato) and Melon Farming— <i>sweet potato and yam farming</i> .          | 111211          | Potato Farming .....                               | \$0.75 million.    |
| *111219 .....   | \$0.75 million .....   | Other Vegetable (except Potato) and Melon Farming— <i>except sweet potato and yam farming</i> .   | 111219          | Other Vegetable (except Potato) and Melon Farming. | \$0.75 million.    |
| *111998 .....   | \$0.75 million .....   | All Other Miscellaneous Crop Farming— <i>except algae, seaweed, and other plant aquaculture</i> . | 111998          | All Other Miscellaneous Crop Farming.              | \$0.75 million.    |
| 112519 .....    | \$0.75 million .....   | Other Animal Aquaculture.                                                                         |                 |                                                    |                    |
| *111998 .....   | \$0.75 million .....   | All Other Miscellaneous Crop Farming— <i>algae, seaweed, and other plant aquaculture</i> .        | 112519          | Other Aquaculture .....                            | \$0.75 million.    |
| 314999 .....    | 500 employees .....    | All Other Miscellaneous Textile Product Mills.                                                    |                 |                                                    |                    |

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES—Continued

| 2002 NAICS code | Current size standards | 2002 NAICS U.S. description                                                                                                                                   | 2007 NAICS code | 2007 NAICS U.S. description                                                                                          | New size standards |
|-----------------|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------------------------------------------------------------------------------------------------|--------------------|
| *315211 .....   | 500 employees .....    | Men's and Boys' Cut and Sew Apparel Contractors— <i>embroidery contractors</i> .                                                                              | 314999          | All Other Miscellaneous Textile Product Mills.                                                                       | 500 employees.     |
| *315212 .....   | 500 employees .....    | Women's, Girls' and Infants' Cut and Sew Apparel Contractors— <i>embroidery contractors</i> .                                                                 |                 |                                                                                                                      |                    |
| *315211 .....   | 500 employees .....    | Men's and Boys' Cut and Sew Apparel Contractors— <i>except embroidery contractors</i> .                                                                       | 315211          | Men's and Boys' Cut and Sew Apparel Contractors.                                                                     | 500 employees.     |
| *315212 .....   | 500 employees .....    | Women's, Girls' and Infants' Cut and Sew Apparel Contractors— <i>except embroidery contractors</i> .                                                          | 315212          | Women's, Girls' and Infants' Cut and Sew Apparel Contractors.                                                        | 500 employees.     |
| *326199 .....   | 500 employees .....    | All Other Plastics Product Manufacturing— <i>except inflatable plastic boats</i> .                                                                            | 326199          | All Other Plastics Product Manufacturing.                                                                            | 500 employees.     |
| *326291 .....   | 500 employees .....    | Rubber Product Manufacturing for Mechanical Use— <i>except rubber tubing for mechanical use</i> .                                                             | 326291          | Rubber Product Manufacturing for Mechanical Use.                                                                     | 500 employees.     |
| *326299 .....   | 500 employees .....    | All Other Rubber Product Manufacturing— <i>except inflatable rubber boats</i> .                                                                               | 326299          | All Other Rubber Product Manufacturing.                                                                              | 500 employees.     |
| *326291 .....   | 500 employees .....    | Rubber Product Manufacturing for Mechanical Use— <i>rubber tubing for mechanical use</i> .                                                                    |                 |                                                                                                                      |                    |
| 333298 .....    | 500 employees .....    | All Other Industrial Machinery Manufacturing.                                                                                                                 | 333298          | All Other Industrial Machinery Manufacturing.                                                                        | 500 employees.     |
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>laboratory distilling equipment</i> .                                                                    |                 |                                                                                                                      |                    |
| 333415 .....    | 750 employees .....    | Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.                                          | 333415          | Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing. | 750 employees.     |
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>laboratory freezers</i> .                                                                                |                 |                                                                                                                      |                    |
| 333994 .....    | 500 employees .....    | Industrial Process Furnace and Oven Manufacturing.                                                                                                            | 333994          | Industrial Process Furnace and Oven Manufacturing.                                                                   | 500 employees.     |
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>laboratory furnaces and ovens</i> .                                                                      |                 |                                                                                                                      |                    |
| 333997 .....    | 500 employees .....    | Scale and Balance (except Laboratory) Manufacturing.                                                                                                          | 333997          | Scale and Balance Manufacturing.                                                                                     | 500 employees.     |
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>laboratory scales and balances</i> .                                                                     |                 |                                                                                                                      |                    |
| 333999 .....    | 500 employees .....    | All Other Miscellaneous General Purpose Machinery Manufacturing.                                                                                              | 333999          | All Other Miscellaneous General Purpose Machinery Manufacturing.                                                     | 500 employees.     |
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>laboratory centrifuges</i> .                                                                             |                 |                                                                                                                      |                    |
| *334220 .....   | 750 employees .....    | Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing— <i>except communications signal testing and evaluation equipment</i> . | 334220          | Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.                               | 750 employees.     |
| 334515 .....    | 500 employees .....    | Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.                                                                        | 334515          | Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.                               | 500 employees.     |
| *334220 .....   | 750 employees .....    | Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing— <i>communications signal testing and evaluation equipment</i> .        |                 |                                                                                                                      |                    |
| 336612 .....    | 500 employees .....    | Boat Building.                                                                                                                                                | 336612          | Boat Building .....                                                                                                  | 500 employees.     |
| *326199 .....   | 500 employees .....    | All Other Plastics Product Manufacturing— <i>inflatable plastics boats</i> .                                                                                  |                 |                                                                                                                      |                    |
| *326299 .....   | 500 employees .....    | All Other Rubber Product Manufacturing— <i>inflatable rubber boats</i> .                                                                                      |                 |                                                                                                                      |                    |
| 337127 .....    | 500 employees .....    | Institutional Furniture Manufacturing.                                                                                                                        |                 |                                                                                                                      |                    |

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES—Continued

| 2002 NAICS code | Current size standards | 2002 NAICS U.S. description                                                                                                                                               | 2007 NAICS code | 2007 NAICS U.S. description                                                                      | New size standards |
|-----------------|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------------------------------------------------------------------------------------|--------------------|
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>laboratory furniture (e.g., stools, tables, benches).</i>                                                            | 337127          | Institutional Furniture Manufacturing.                                                           | 500 employees.     |
| 339113 .....    | 500 employees .....    | Surgical Appliance and Supplies Manufacturing.                                                                                                                            |                 |                                                                                                  |                    |
| *339111 .....   | 500 employees .....    | Laboratory Apparatus and Furniture Manufacturing— <i>except laboratory furniture, scales, balances, furnaces, ovens, centrifuges, distilling equipment, and freezers.</i> | 339113          | Surgical Appliance and Supplies Manufacturing.                                                   | 500 employees.     |
| 517110 .....    | 1500 employees .....   | Wired Telecommunications Carriers.                                                                                                                                        |                 |                                                                                                  |                    |
| 517510 .....    | \$13.5 million .....   | Cable and Other Program Distribution.                                                                                                                                     |                 |                                                                                                  |                    |
| *518111 .....   | \$23.0 million .....   | Internet Service Providers— <i>broadband Internet service providers (e.g., cable, DSL).</i>                                                                               | 517110          | Wired Telecommunications Carriers.                                                               | 1500 employees.    |
| 517211 .....    | 1500 employees .....   | Paging.                                                                                                                                                                   |                 |                                                                                                  |                    |
| 517212 .....    | 1500 employees .....   | Cellular and Other Wireless Telecommunications.                                                                                                                           | 517210          | Wireless Telecommunications Carriers (except Satellite).                                         | 1500 employees.    |
| 517310 .....    | 1500 employees .....   | Telecommunications Resellers .....                                                                                                                                        | 517911          | Telecommunications Resellers.                                                                    | 1500 employees.    |
| 517910 .....    | \$13.5 million .....   | Other Telecommunications .....                                                                                                                                            | 517919          | All Other Telecommunications.                                                                    | \$23.0 million.    |
| *518111 .....   | \$23.0 million .....   | Internet Service Providers <i>ISPs providing services via client-supplied telecommunications connections.</i>                                                             |                 |                                                                                                  |                    |
| 516110 .....    | 500 employees .....    | Internet Publishing and Broadcasting .....                                                                                                                                | 519130          | Internet Publishing and Broadcasting and Web Search Portals.                                     | 500 employees.     |
| 518112 .....    | \$6.5 million .....    | Web Search Portals.                                                                                                                                                       |                 |                                                                                                  |                    |
| 519190 .....    | \$6.5 million .....    | All Other Information Services .....                                                                                                                                      | 519190          | All Other Information Services.                                                                  | \$6.5 million.     |
| 525990 .....    | \$6.5 million .....    | Other Financial Vehicles.                                                                                                                                                 |                 |                                                                                                  |                    |
| *525930 .....   | \$6.5 million .....    | Real Estate Investment Trusts— <i>hybrid or mortgage REITs primarily in underwriting or investing in mortgages.</i>                                                       | 525990          | Other Financial Vehicles.                                                                        | \$6.5 million.     |
| 531110 .....    | \$6.5 million .....    | Lessors of Residential Buildings and Dwellings.                                                                                                                           |                 |                                                                                                  |                    |
| *525930 .....   | \$6.5 million .....    | Real Estate Investment Trusts— <i>hybrid or equity REITs primarily leasing residential buildings and dwellings.</i>                                                       | 531110          | Lessors of Residential Buildings and Dwellings.                                                  | \$6.5 million.     |
| 531120 .....    | \$6.5 million .....    | Lessors of Nonresidential Buildings (except Miniwarehouses).                                                                                                              |                 |                                                                                                  |                    |
| *525930 .....   | \$6.5 million .....    | Real Estate Investment Trusts— <i>hybrid or equity REITs primarily leasing nonresidential buildings.</i>                                                                  | 531120          | Lessors of Nonresidential Buildings (except Miniwarehouses).                                     | \$6.5 million.     |
| 531130 .....    | \$23.5 million .....   | Lessors of Miniwarehouses and Self-Storage Units.                                                                                                                         |                 |                                                                                                  |                    |
| *525930 .....   | \$6.5 million .....    | Real Estate Investment Trusts— <i>hybrid or equity REITs primarily leasing miniwarehouses and self-storage units.</i>                                                     | 531130          | Lessors of Miniwarehouses and Self-Storage Units.                                                | \$23.5 million.    |
| 531190 .....    | \$6.5 million .....    | Lessors of Other Real Estate Property..                                                                                                                                   |                 |                                                                                                  |                    |
| *525930 .....   | \$6.5 million .....    | Real Estate Investment Trusts— <i>hybrid or equity REITs primarily leasing other real estate property.</i>                                                                | 531190          | Lessors of Other Real Estate Property.                                                           | \$6.5 million.     |
| *541612 .....   | \$6.5 million .....    | Human Resources and Executive Search Consulting Services— <i>except executive search consulting services.</i>                                                             | 541612          | Human Resources Consulting Services.                                                             | \$6.5 million.     |
| *541710 .....   | 500 employees .....    | Research and Development in the Physical, Engineering, and Life Sciences— <i>biotechnology research and development.</i>                                                  | 541711          | Research and Development in Biotechnology.                                                       | 500 employees.     |
| *541710 .....   | 500 employees .....    | Research and Development in the Physical, Engineering, and Life Sciences— <i>except biotechnology research and development.</i>                                           | 541712          | Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology). | 500 employees.     |
| 561310 .....    | \$6.5 million .....    | Employment Placement Agencies .....                                                                                                                                       | 561311          | Employment Placement Agencies..                                                                  | \$6.5 million.     |

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES—Continued

| 2002 NAICS code | Current size standards | 2002 NAICS U.S. description                                                                             | 2007 NAICS code | 2007 NAICS U.S. description | New size standards |
|-----------------|------------------------|---------------------------------------------------------------------------------------------------------|-----------------|-----------------------------|--------------------|
| *541612 .....   | \$6.5 million .....    | Human Resources and Executive Search Consulting Services— <i>executive search consulting services</i> . | 561312          | Executive Search Services.  | \$6.5 million.     |

\* Indicates that this activity within the identified NAICS 2002 code is now an activity within the related NAICS 2007 industry.

As shown in Table 4, the NAICS 2007 modifications lead to a proposed revision to the current size standard for a limited number of industries or activities. The basis for the revisions to seven size standards are discussed below:

1. NAICS 339111, “Laboratory Apparatus and Furniture Manufacturing,” (part) *laboratory freezers*. NAICS 2007 eliminated NAICS 339111. The various activities of NAICS 339111 are reclassified in other NAICS 2007 codes having the same 500 employee size standard, except for laboratory freezer manufacturing. Laboratory freezer manufacturing is reclassified in NAICS 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,” having a size standard of 750 employees. SBA proposes to retain the 750 employee size standard for NAICS 333415 because laboratory freezer manufacturing represents a small part of that industry (Rule #3).

2. NAICS 334220, “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” (part) *communications signal testing and evaluation equipment*. The current size standard for NAICS 334220 is 750 employees. The activity of “communications signal testing and evaluation equipment manufacturing” in NAICS 2007 is reclassified in NAICS 334515, “Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals,” having a size standard of 500 employees. SBA proposes to retain the 500 employee size standard for NAICS 334515 because “communications signal testing and evaluation equipment manufacturing” represents a small part of that industry (Rule #3).

3. NAICS 518111, “Internet Service Providers,” (part) *broadband Internet service providers (e.g., cable, DSL)*. The current size standard for NAICS 518111 is \$23.0 million in average annual receipts. The activity, “broadband Internet services providers (e.g., cable, DSL),” in NAICS 2007 is reclassified in

NAICS 517110, “Wired Telecommunications Carriers,” having a 1,500 employee size standard. SBA proposes to retain the 1,500 employee size standard for NAICS 517110 because broadband Internet services providers represent a small part of that industry (Rule #3).

4. NAICS 517510, “Cable and Other Program Distribution.” NAICS 2007 eliminated NAICS 517510. The current size standard for NAICS 517510 is \$13.5 million in average annual receipts. In NAICS 2007, all activities of NAICS 517510 are reclassified in 517110, “Wired Telecommunications Carriers,” having a 1,500 employee size standard. SBA proposes to apply the 1,500 employee size standard for NAICS 517110 because the Cable and Other Program Distribution industry is much smaller than the Wired Telecommunications Carriers industry (Rule #3).

5. NAICS 517910, “Other Telecommunications.” NAICS 2007 eliminated NAICS 517910. NAICS 2007 establishes a new industry titled “All Other Telecommunications,” NAICS 517919, comprising all activities of NAICS 517910 having a size standard of \$13.5 million and most activities from NAICS 518111, “Internet Service Providers (ISP),” having a size standard of \$23 million. As discussed in # 3 above, the activity of “broadband Internet services providers” in NAICS 518111 is reclassified in NAICS 517110. SBA proposes to apply the \$23 million size standard for that industry because ISP establishments providing services via client-supplied telecommunications connections represent the larger component of the new NAICS 517919 (Rule #3).

6. NAICS 518112, “Web Search Portals.” NAICS 2007 eliminated NAICS 518112 and NAICS 516110, “Internet Publishing and Broadcasting,” having size standards of \$6.5 million and 500 employees, respectively. NAICS 2007 combines these two industries to form a new six-digit industry—NAICS 519130, “Internet Publishing and Broadcasting and Web Search Portals.” SBA proposes to apply the 500 employee size standard

for NAICS 519130 because the Internet Publishing and Broadcasting industry is much larger than the Web Search Portals industry (Rule #3).

7. NAICS 525930, “Real Estate Investment Trusts,” (part) *hybrid or equity REITs primarily leasing miniwarehouses and self-storage units*. NAICS 2007 eliminated NAICS 525930. The various activities of NAICS 525930 are reclassified in NAICS 2007 codes having the same \$6.5 million size standard, except for the activity of hybrid or equity REITs primarily leasing miniwarehouses and self-storage units. That activity is reclassified in NAICS 531130, “Lessors of Miniwarehouses and Self-Storage Units,” having a \$23.5 million size standard. SBA proposes to retain the \$23.5 million size standard for NAICS 531130 because hybrid or equity REITs primarily leasing miniwarehouses and self-storage units represent a small part of that industry (Rule #3).

#### Alternatives to Adopting NAICS 2007 That SBA Considered

SBA considered retaining the NAICS 2002 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency among Federal agencies that adopt NAICS 2007 for their programs. More importantly, if SBA does not adopt NAICS 2007 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2007 industries will not be comparable with NAICS 2002 industry data. Without useful data, SBA cannot properly analyze size standards and their effects on businesses.

SBA considered segmenting the modified NAICS 2002 size standard for cases where the size standard changes instead of applying the guidelines used in previous NAICS revisions. SBA believes this alternative is impractical because it would complicate size standards for minor reasons. Furthermore, the application of the guidelines for NAICS 2007 results in the loss of eligibility for currently-defined small businesses in only one minor

industry activity. That occurs for “communications signal testing and evaluation equipment manufacturing,” a part of NAICS 334220, “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.” The size standard for that activity decreases from 750 employees to 500 employees. A search of the Dynamic Small Business Search (DSBS) reveals that there are 38 small businesses out of 2,200 small businesses registered in NAICS 334220 having more than 500 employees. However, it is unlikely that many of these businesses, if any, will be affected given the limited activity of “communications signal testing and evaluation equipment manufacturing.” All other activities in NAICS 334220 will continue to have a size standard of 750 employees.

#### Consideration of Comments

SBA will take in account all submitted comments on this proposed rule and on the alternatives it considered. SBA believes that this proposal is routine and non-controversial. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to expedite modifying its size standards as explained in this proposed rule. If SBA decides to adopt NAICS 2007 as proposed, or with limited modifications, it will publish a final rule that addresses the comments and explains the basis for its final decision.

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

OMB has determined that this proposed rule is not a “significant” regulatory action for purposes of Executive Order (E.O.) 12866. This proposed rule incorporates the latest revisions of the NAICS, which SBA uses to identify industries in the United States economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities would change because of the NAICS revisions. Almost all businesses currently defined as small under the NAICS 2002 industries would continue to be small under the NAICS 2007 industries, if adopted for size standards. The rule also affects Federal Government programs that provide a benefit for small businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

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

When an agency promulgates a proposed rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare an initial regulatory flexibility analysis (IRFA) describing the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this proposed rule as drafted, including the alternatives discussed in the supplementary information above, will not have a significant impact on a substantial number of small entities.

OMB’s NAICS 2007 modifications will result in size standards changes to a minimal number of activities within certain industries detailed above in the supplementary information, with little, if any, affect on small businesses. Those activities are now part of other, more appropriate or new NAICS codes and their industry descriptions. There will be no changes to the size standards for most NAICS industries and their economic activities. For those that would change, they would create a larger number of enterprises that can qualify for Federal government programs reserved for small businesses.

As stated above, a search of the Dynamic Small Business Search (DSBS) reveals that there are 38 small businesses out of 2,200 small businesses registered in NAICS 334220 having more than 500 employees. However, it is unlikely that many of these businesses, if any, will be affected given the limited activity of “communications signal testing and evaluation equipment manufacturing.” All other activities in NAICS 334220 will continue to have a size standard of 750 employees. Therefore, SBA believes that the impact on small businesses will be minimal because these activities represent relatively minor components of the NAICS 2002 industries.

When SBA published a direct final rule to replace the table of small business size standards based on NAICS 1997 with a new one based on NAICS 2002, it certified that for purposes of the Regulatory Flexibility Act, the rule would affect a significant number of small businesses, but that the impact on each business would not be substantial. (67 FR 52597 to 52606, 62292, 67253 and 67102) SBA received no comments to the contrary. No changes have occurred since then. Adopting NAICS 2007 to replace NAICS 2002 as the basis for its table of size standards would have, SBA believes, an even smaller impact.

#### 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 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), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, Sec. 401, *et seq.*, 111 Stat. 2592.

##### § 121.201 [Amended]

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

a. Revise the industry description of NAICS code 112519 “Other Animal Aquaculture” to read “Other Aquaculture.”

b. Revise the heading “Sector 21—Mining” to read “Sector 21—Mining, Quarrying, and Oil and Gas Extraction.”

c. Revise the industry description of NAICS code 238210, “Electrical Contractors,” to read “Electrical Contractors and other Wiring Installation Contractors.”

d. Revise the industry description of NAICS code 316999, “All Other Leather Good Manufacturing,” to read “All Other Leather Good and Allied Product Manufacturing.”

e. Revise the industry description of NAICS code 322221, “Coated and Laminated Packaging Paper and Plastics Film Manufacturing,” to read “Coated and Laminated Packaging Paper Manufacturing.”

f. Revise the industry description of NAICS code 326111, “Unsupported Plastics Bag Manufacturing,” to read

“Plastics Bag and Pouch Manufacturing.”

g. Revise the industry description of NAICS code 333997, “Scale and Balance (except Laboratory) Manufacturing,” to read “Scale and Balance Manufacturing.”

h. Remove the entry NAICS code 339111, “Laboratory Apparatus and Furniture Manufacturing.”

i. Revise the industry description of NAICS code 441221, “Motorcycle

Dealers,” to read “Motorcycle, ATV, and Personal Watercraft Dealers.”

j. Revise the heading “Sectors 48—49—Transportation” to read “Sectors 48—49—Transportation and Warehousing.”

k. Revise the industry description of NAICS code 492110, “Couriers,” to read “Couriers and Express Delivery Services.”

l. Remove the heading “Subsector 516—Internet Publishing and

Broadcasting” and the entry for NAICS code 516110, “Internet Publishing and Broadcasting.”

m. Remove the entries for NAICS codes 517211, “Paging;” 517212, “Cellular and Wireless Telecommunications;” and, 517310 “Telecommunications Resellers” and add in their place the following:

|              |                                                               |  |       |
|--------------|---------------------------------------------------------------|--|-------|
| 517210 ..... | Wireless Telecommunications Carriers (except Satellite) ..... |  | 1,500 |
|--------------|---------------------------------------------------------------|--|-------|

n. Remove the entries for NAICS codes 517510, “Cable and Other Program Distribution,” and 517910,

“Other Telecommunications,” and add in their place the following:

|              |                                    |        |       |
|--------------|------------------------------------|--------|-------|
| 517911 ..... | Telecommunications Resellers ..... |        | 1,500 |
| 517919 ..... | All Other Telecommunications ..... | \$23.5 |       |

o. Revise the heading “Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services” to read “Subsector 518—Data

Processing, Hosting, and Related Services.”

p. Remove the entries for NAICS codes 518111, “Internet Service

Providers,” and 518112, “Web Search Portals”.

q. Add immediately after entry for NAICS code 519120, “Libraries and Archives” the following:

|              |                                                                   |  |     |
|--------------|-------------------------------------------------------------------|--|-----|
| 519130 ..... | Internet Publishing and Broadcasting and Web Search Portals ..... |  | 500 |
|--------------|-------------------------------------------------------------------|--|-----|

r. Revise the heading “Subsector 523—Financial Investments and Related Activities” to read “Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities.”

s. Revise the industry description of NAICS code 541612, “Human Resources and Executive Search Consulting Services,” to read “Human Resources Consulting Services.”

t. Remove the entry NAICS code 541710, “Research and Development in the Physical, Engineering, and Life Sciences,” and add in its place the following:

|               |                                                                                                                                    |  |                   |
|---------------|------------------------------------------------------------------------------------------------------------------------------------|--|-------------------|
| 541711 .....  | Research and Development in Biotechnology <sup>11</sup> .....                                                                      |  | <sup>11</sup> 500 |
| 541712 .....  | Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology) <sup>11</sup> ....                 |  | <sup>11</sup> 500 |
| Except, ..... | Aircraft .....                                                                                                                     |  | 1,500             |
| Except, ..... | Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts .....                                                           |  | 1,000             |
| Except, ..... | Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts. |  | 1,000             |

u. Remove the entry for NAICS code 561310, “Employment Placement

Agencies,” and add in its place the following:

|              |                                     |       |  |
|--------------|-------------------------------------|-------|--|
| 561311 ..... | Employment Placement Agencies ..... | \$6.5 |  |
| 561312 ..... | Executive Search Services .....     | 6.5   |  |

v. Revise the industry description of NAICS code 561422, “Telemarketing Bureaus,” to read “Telemarketing Bureaus and Other Contact Centers.”

w. Revise the industry description of NAICS code 722212, “Cafeterias,” to read “Cafeterias, Grill Buffets, and Buffets.”

x. Revise the heading “Sector 81—Other Services” to read “Sector 81—Other Services (except Public Administration).”

y. Amend footnote 11 by removing “NAICS code 541710” and adding in its place “NAICS codes 541711 and 541712.”

Dated: August 23, 2007.

Steven C. Preston,  
Administrator.

[FR Doc. E7-17150 Filed 8-28-07; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2007-28529; Airspace Docket No. 07-ANM-12]

#### Proposed Modification of Class E Airspace; Tucson, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.