

Distinguished Executive and Meritorious Executive to a Senior Executive Service (SES) career appointee are set forth in 5 U.S.C. 4507.

(b) To be eligible for a rank award, a senior executive must:

(1) Hold a career appointment in the SES, as defined at 5 U.S.C. 3132(a)(4), on the nomination deadline set by OPM;

(2) Be an employee of the agency, as defined at 5 U.S.C. 3132(a)(1), on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service at the SES level. Service need not be continuous.

(i) Qualifying service includes appointments in the SES, the Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems.

(ii) Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, and Senior-Level (SL) appointments.

(c) Each agency may nominate up to 9 percent of its SES career appointees for rank awards.

§ 451.302 Ranks for senior career employees.

(a) The circumstances under which the President may award the rank of Distinguished Senior Professional and Meritorious Senior Professional to a senior career employee are set forth in 5 U.S.C. 4507a.

(b) To be eligible for a rank award, a senior career employee must:

(1) Hold a career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 of this chapter and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM;

(2) Be an employee of the agency on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service above GS-15. Service need not be continuous. Qualifying service includes appointments that are not—

(i) Time-limited; or

(ii) To positions that are excepted from the competitive service because of their confidential or policy-making character.

(c) Each agency may nominate up to 9 percent of its career senior employees for rank awards.

§ 451.303 Restrictions.

(a) *Governmentwide limitations*—SES. During any fiscal year—

(i) The number of career SES appointees awarded the rank of

Meritorious Executive may not exceed 5 percent of the career SES; and

(ii) The number of career SES appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the career SES.

(b) *Governmentwide limitations*—Senior career employees. During any fiscal year—

(i) The number of career senior employees awarded the rank of Meritorious Senior Professional may not exceed 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions; and

(ii) The number of career senior employees awarded the rank of Distinguished Senior Professional may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

(c) *Frequency of awards.* Individuals awarded a Distinguished or Meritorious rank under this subpart shall not be entitled to be awarded that rank during the following 4 fiscal years.

§ 451.304 Payment of Rank Awards.

(a) Receipt of the Distinguished rank by an SES career appointee or a career senior employee entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(b) Receipt of the Meritorious rank by an SES career appointee or a career senior employee entitles such individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(c) Payment of rank awards must comply with the restrictions on annual aggregate compensation at 5 U.S.C. 5307.

§ 451.305 Responsibilities of the Office of Personnel Management.

(a) Annually, OPM shall establish criteria, including terms, conditions, and evaluation factors, for rank award nominations, in consultation with agencies and other stakeholders. Agencies shall nominate individuals for rank awards in accordance with OPM criteria and any other instructions.

(b) Annually, OPM shall review agency recommendations for Presidential Rank Awards for SES career appointees and senior career employees under 5 U.S.C. 4507 and 4507a, and recommend to the President which of

those individuals should receive rank awards.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF00

Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. These modifications are limited to industries in six (6) NAICS Sectors. The modifications result in a small number of size standard changes to certain NAICS activities.

SBA believes that this rule is noncontroversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to achieve the same result, that is, to modify its Small Business Size Regulations as contemplated in this direct final rule.

DATES: This rule is effective October 1, 2002, without further action, unless adverse comment is received by September 12, 2002. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416, via e-mail to sizestandards@sba.gov, or via facsimile, (202) 205–6390. SBA will make all public comments available to any person or concern upon request.

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

SUPPLEMENTARY INFORMATION: SBA adopted North American Industry Classification System (NAICS) industry definitions as a basis for its table of

small business size standards effective October 1, 2000. The final rule was published in the **Federal Register** on May 5, 2000 (65 FR 30836) (NAICS 1997) and states the SBA Administrator's determination that the industry descriptions in NAICS shall be the basis for small business size standards.

OMB restructured and modified parts of NAICS effective January 1, 2002 (66 FR 3825, January 16, 2001) (NAICS 2002). This rule incorporates OMB's restructuring and modifications into SBA's table of size standards. NAICS 2002 is the same as NAICS 1997 for sixteen of the twenty industry Sectors. Two Sectors, Construction and Wholesale Trade are substantially changed. OMB also modified a number of classifications in the Retail Trades Sector, and the organization of the Information Sector.

Section 121.101(b) of Title 13 of the Code of Federal Regulations states "NAICS is described in the *North American Industry Classification Manual—United States, 1997* * * *." At the time SBA published the final rule in the **Federal Register**, the only description of NAICS available was the NAICS 1997 manual. However, with OMB's 2002 modification of NAICS 1997, SBA believes that retaining a definition in its regulations based on a

particular year is confusing and inconsistent with the SBA Administrator's determination in the May 5, 2000, **Federal Register** notice, which does not refer to any specific year.

Justification for October 1, 2002 Effective Date

SBA determined that NAICS 2002 should be implemented on October 1, 2002, because:

1. Federal Government recordkeeping and statistics will be collected more consistently and will be more comparable with other data for analyzing small business activity. The first Federal Government fiscal year after January 1, 2002, is October 1, 2002.

2. SBA and other users of size standards can collect data on their small business programs using the more recent NAICS format and can compare those data with future Federal statistics collected using NAICS 2002 industry classifications. The availability of such comparable data will ensure the credibility of analyses comparing program data with industry.

3. Small business size standards apply to most Federal agencies and their programs involving small businesses. Federal agencies that use NAICS and SBA's small business size standards will need time to determine how to

implement the new size standards and to develop training tools necessary to do so. SBA believes that publishing this rule now provides sufficient time for agencies to convert and update their databases and tracking systems for implementation by the beginning of FY 2003.

How SBA Arrived at the Size Standards for NAICS 2002 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 NAICS. SBA developed guidelines to transition from the Standard Industrial Classification System to NAICS. The guidelines were intended to minimize the impact on SBA's small business size standards. Table A, 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 its final rule on May 5, 2000 (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 2002, SBA is applying the same guidelines in this rule.

TABLE A

| If the NAICS 2002 industry is composed of: | The size standard for the NAICS industry would be: |
|--|--|
| 1. One NAICS 1997 industry or part of one NAICS 1997 industry 2. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they all have the same size standard. | The same size standard as for the NAICS 1997 industry or part. The same size standard as for those NAICS 1997 industries or parts of NAICS 1997 industries. |
| 3. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they do not all have the same size standard. | The same size standard as for the NAICS 1997 industry or NAICS 1997 industry part(s) that most closely matches the economic activity described by the NAICS 2002 industry. |
| 4. One or more parts of an NAICS 1997 industry for which SBA has established specific size standards (<i>i.e.</i> , further segmented). | The same size standard as for that specific NAICS 1997 industry part. |
| 5. One or more NAICS 1997 industries and/or parts of NAICS 1997 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 million [effective February 22, 2002] 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). |

Changes in Size Standards

Applying the guidelines to the NAICS 2002 restructuring and modifications results in a limited number of changes to current small business size standards. Specifically, there are 12 economic activities within nine (9) NAICS 1997 industries that reflect a size standard

change when related to NAICS 2002. Eight (8) of those 12 economic activities increase, three (3) decrease, and for the remaining activity the basis for the size standard changes from annual receipts to number of employees. For the balance of the NAICS 1997 codes and their size standards, there are no size standards

changes as a result of the NAICS 2002 reclassifications and recategorizations.

For complete information on the relationship between NAICS 1997 and NAICS 2002, please see the U.S. Bureau of the Census (Census Bureau) Web site at <http://www.census.gov/epcd/naics02/> That Web site contains complete

information on the establishment and implementation of NAICS 2002, including the January 16, 2001 (66 FR 3825) **Federal Register** notice of final decision to adopt NAICS 2002. The Census Bureau's Web site also contains

three correspondence tables: (1) 2002 NAICS-US matched to 1997 NAICS-US; (2) 1997 NAICS-US matched to 2002 NAICS-US; and (3) 2002 NAICS-US matched to 1987 Standard Industrial Classification.

Table B below identifies the twelve (12) NAICS 1997 industries and economic activities that have revised size standards in the new table based on industries as they are described in NAICS 2002.

TABLE B

| NAICS 1997 | | NAICS 1997 activity | NAICS 2002 | | NAICS 2002 industry |
|--------------|------------------------|---|------------|------------------------|---|
| Code | Size std. (\$ million) | | Code | Size std. (\$ million) | |
| 213112 | \$6.0 | Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry). | 237120 | \$28.5 | Oil and Gas Pipeline and Related Structures Construction. |
| 213112 | 6.0 | Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry). | 238910 | 12.0 | Site Preparation Contractors. |
| 213113 | 6.0 | Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry). | 238910 | 12.0 | Site Preparation Contractors. |
| 213114 | 6.0 | Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry). | 238910 | 12.0 | Site Preparation Contractors. |
| 213115 | 6.0 | Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals Industry). | 238910 | 12.0 | Site Preparation Contractors. |
| 234990 | 28.5 | Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (Except Cranes) With Operator (three activities of the All Other Heavy Construction Industry). | 238910 | 12.0 | Site Preparation Contractors. |
| 234990 | 28.5 | Rental of Cranes With Operator (one activity of the All Other Heavy Construction Industry). | 238990 | 12.0 | All Other Specialty Trade Contractors. |
| 235810 | 12.0 | Water Well Drilling Contractors (Entire Industry) | 237110 | 28.5 | Water and Sewer Line and Related Structures Construction. |
| 235990 | 12.0 | Indoor Swimming Pools (one activity if the All Other Special Trade Contractors Industry). | 236220 | 28.5 | Commercial and Institutional Building Construction. |
| 235990 | 12.0 | Anchored Earth Retention Contractors (one activity if the All Other Special Trade Contractors Industry). | 237990 | 28.5 | Other Heavy and Civil Engineering Construction. |
| 514199 | 6.0 | Internet Broadcasting (one activity of the All Other Information Services Industry). | 516110 | (¹) | Internet Publishing and Broadcasting. |
| 561720 | 14.0 | Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry). | 238990 | 12.0 | All Other Specialty Trade Contractors. |

¹ 500 Emp.

The 12 activities with a size standard change moved to seven (7) NAICS 2002 industries. Tables 3 through 9 show the composition of these NAICS 2002 industries and discuss the basis for selecting their size standards.

1. NAICS 236220, Commercial and Institutional Building Construction, \$28.5 Million

This industry is the same as NAICS 233320 (NAICS 1997) with the addition of several activities from parts of three other construction (NAICS 1997) industries (see Table 1). Only one activity within the revised industry did not have a size standard of \$28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the \$28.5 million size standard for this industry is retained.

TABLE 1

| AICS 1997 activity | NAICS 1997 code (* = part) | Size standard (\$ million) |
|---|----------------------------|----------------------------|
| Barrack and Dormitory Construction (one activity of the Multifamily Housing Construction Industry) | 233220 | \$28.5 |
| Grain Elevators, Dry Cleaning Plants, and Manufacturing and Industrial Warehouses (activities of the Manufacturing and Industrial Building Construction Industry) | *233310 | 28.5 |
| Commercial and Institutional Building Construction (entire industry) | *233320 | 28.5 |
| Indoor Swimming Pools (one activity of the All Other Special Trade Contractors Industry) | *235990 | 12.0 |

2. NAICS 237110, Water and Sewer Line and Related Structures Construction, \$28.5 Million

This industry is the same as NAICS 234910 (NAICS 1997) with the addition of several heavy construction related activities and the Water Well Drilling industry (see Table 2). Water and sewer line activities constituted a large majority of the previously defined industry. The inclusion of the Water Well Drilling industry accounts for less than 15 percent of the revised industry. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the \$28.5 million size standard for this industry is retained.

TABLE 2

| NAICS 1997 activity | NAICS 1997 code (* = part) | Size standard (\$ million) |
|---|----------------------------|----------------------------|
| Water/Sewer Pumping Stations, Sewage Collection and Disposal Lines, Storm Sewers, Sewer/Water Mains and Lines, Water Storage Tanks and Towers, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry) | 234910 | \$28.5 |
| Irrigation Systems, Sewage Treatment and Water Treatment Plants, Construction Management of these Projects (activities of the All Other Heavy Construction Industry) | *234990 | 28.5 |
| Water Well Drilling Contractors (entire industry) | 235810 | 12.0 |

3. NAICS 237120, Oil and Gas Pipeline and Related Structures Construction, \$28.5 Million

This is a new industry under the Heavy and Civil Engineering Subsector. It is comprised of activities from parts of three NAICS 1997 industries (see Table 3). All but one activity comprising this new industry had a \$28.5 million size standard under NAICS 1997. Therefore, a \$28.5 million size standard is adopted for this industry.

TABLE 3

| NAICS 1997 activity | NAICS 1997 code (* = part) | Size standard (\$ million) |
|---|----------------------------|----------------------------|
| Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry) | *213112 | \$6.0 |
| Gas and Oil Pumping Stations, Gas and Oil Pipeline Construction, Gas Mains, Gas and Oil storage Tank Construction, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry) | *234910 | 28.5 |
| Petrochemical Plants, Refineries, and Construction Management of these Projects (activities of the Industrial Nonbuilding Structure Construction Industry) | *234930 | 28.5 |

4. NAICS 237990, Other Heavy and Civil Engineering Construction, \$28.5 Million

This industry is the same as NAICS 234990 (NAICS 1997) with a few minor changes (see Table 4). Two activities of parts of two construction industries were added to the previous (1997) NAICS industry and several activities were transferred from NAICS 234990 to other construction industries. Only one activity had a size standard different than \$28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the \$28.5 million size standard for this industry is retained.

TABLE 4

| NAICS 1997 activity | NAICS 1997 code (* = part) | Size standard (\$ million) |
|--|----------------------------|----------------------------|
| Tunnel Construction (one activity of the Bridge and Tunnel Construction Industry) | *234910 | \$28.5 |
| All Other Heavy Construction (Except Waste Disposal Plant Construction, Irrigation Systems, Sewage Treatment and Water Treatment Plants, Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental with Operator) | 234990 | 28.5 |
| Anchored Earth Retention Contractors (one activity of the Other Special Trade Contractors Industry) | *235810 | 12.0 |

5. NAICS 238910, Site Preparation Contractors, \$12.0 Million

This is a revised industry under the Special Trade Contractors Subsector. It is comprised predominately of two Special Trade Contractors industries. In addition, the revised industry includes one activity from parts of four mining support industries, several activities from part of one heavy construction industry, and several activities from parts of two other Special Trade Contractors industries (see Table 5). Because most of the activities of the revised industry are from NAICS 1997 Special Trade Contractors industries, a \$12.0 million size standard is adopted for this industry.

TABLE 5

| NAICS 1997 activity | NAICS 1997 code (* = part) | Size standard (\$ million) |
|--|----------------------------|----------------------------|
| Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry) | *213112 | \$6.0 |
| Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry) | *213113 | 6.0 |
| Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry) | *213114 | 6.0 |
| Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals (except Fuels) Industry) | *213115 | 6.0 |
| Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (except cranes) with Operator (Activities of the All Other Heavy Construction Industry) | *234990 | 28.5 |
| Septic Tank, Cesspool, and Dry Well Construction Contractors (Activities of the Plumbing, Heating, and Air-Conditioning Contractors Industry) | *235110 | 12.0 |
| Excavation Contractors (Entire Industry) | 235930 | 12.0 |
| Wrecking and Demolition Contractors (Entire Industry) | 235940 | 12.0 |
| Dewatering Contractors, Core Drilling for Construction, and Test Drilling for Construction (Activities of the All Other Special Trade Contractors Industry) | *235990 | 12.0 |

6. NAICS 238990, All Other Specialty Trade Contractors, \$12.0 Million

This industry is the same as NAICS 235990 under NAICS 1997 with a few minor changes. Several activities of the previous NAICS 1997 industry transferred to other construction industries and three activities from parts of three other industries were incorporated (see Table 6). The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the \$12.0 million size standard is retained.

TABLE 6

| NAICS 1997 activity | NAICS 1997 code (* = part) | Size standard (\$ million) |
|---|----------------------------|----------------------------|
| Rental of Cranes with Operator (one activity of the All Other Heavy Construction Industry) | *234990 | \$28.5 |
| Residential and Commercial Asphalt, Brick, and Concrete Paving) (one activity of the Concrete Contractors Industry) | *235710 | 12.0 |
| All Other Special Trade Contractors (except Indoor Swimming Pools, Earth Retention Contractors, Forming Contractors, Ornamental Metal Work, Building Equipment Contractors, Building Finishing Contractors, Dewatering Contractors, Core Drilling for Construction, and Test Boring for Construction) | *235990 | 12.0 |
| Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry) | *561720 | 14.0 |

7. NAICS 516110, Internet Publishing and Broadcasting, 500 Employees

This is a new industry under NAICS 2002. It is comprised of activities related to the publishing of materials via the Internet (see Table 7). All but one of these activities had a 500 employee size standard under NAICS 1997. Therefore, 500 employees is established for this industry because it represents the most prevalent size standard for the activities within this new industry.

TABLE 7

| NAICS 1997 activity | NAICS 1997 code (* = part) | Size standard |
|---|----------------------------|----------------|
| Internet Newspaper Publishers (one activity of the Newspaper Publishers Industry) | *511110 | 500 employees. |
| Internet Book Publishers (one activity of the Book Publishers Industry) | *511120 | 500 employees. |
| Internet Periodical Publishers (one activity of the Periodical Publishers Industry) | *511130 | 500 employees. |
| (Internet Directory Publishers (one activity of the Directory and Database Publishers Industry) | *511140 | 500 employees. |
| Internet Greeting Card Publishers (one activity of the Greeting Card Publishers Industry) | *511191 | 500 employees. |
| All Other Internet Publishers (activities of the All Other Publishers Industry) | *511199 | 500 employees. |
| Internet Broadcasting (one activity of the All Other Information Services Industry) | *514199 | \$6.0 million. |

Alternatives To Adopting NAICS 2002 That SBA Considered

SBA considered retaining the NAICS 1997 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency with other Federal

agencies that adopt NAICS 2002 for their programs. More importantly, if SBA does not adopt NAICS 2002 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2002

industries will not be compatible with NAICS 1997 industry data. Without useful data SBA cannot properly analyze size standards and their effects on businesses.

An alternative to not adopting NAICS 2002 as a basis for size standards is to

adopt part(s) of NAICS 2002. SBA believes this alternative is impractical because of the inherent inconsistencies that would result in using industry definitions from two systems.

Consideration of Comments

This is a direct final rule, but SBA will consider all submitted comments. SBA believes that this rule is non-controversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this direct final rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to modify its Small Business Size Regulations as contemplated in this direct final rule. If SBA does receive adverse comments, it will consider the comment(s) before making a final decision. If SBA decides to adopt NAICS 2002 as proposed, or with limited modifications, it will publish a final rule which addresses the comments and explains the basis for its final decision.

Other Change

SBA is also making an administrative change to the heading of the size standards table. In the table titled "Small Business Size Standards by NAICS Industry" (13 CFR 121.201), SBA is removing "N.E.C. = Not Elsewhere Classified" from the heading. "N.E.C." is not used in NAICS because NAICS contains no unclassified industries, unlike the Standard Industrial Classification system.

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 rule is not a "significant" regulatory action for purposes of Executive Order (E.O.) 12866. This rule incorporates the latest revisions of the NAICS, which is being used by SBA to identify industries in the economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities will change as a result of the NAICS revisions. Almost all businesses currently defined as small under the NAICS 1997 industries will continue to be small under the NAICS 2002 industries. The rule also affects Federal Government programs that provide a benefit for businesses. SBA welcomes comments describing the

impact on small businesses of the size standard changes resulting from this rule.

Furthermore, SBA was made aware that some Federal Government programs had already begun to use, albeit improperly, the NAICS 2002 codes and assigned small business size standards to them. SBA believes that these actions indicate that Federal agencies expect to use and will readily accept the NAICS 2002 codes.

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 rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare a regulatory flexibility analysis describing the 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 analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this 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 modifications are the restructuring and recategorization of the construction and wholesale trade sectors, and a small number of industries in the retail and information sectors. The modifications result in size standards changes to a minimal number of activities within certain NAICS industries detailed above in the supplementary information, with little, if any, effect on small businesses. Those activities now relate to more appropriate NAICS codes.

As part of OMB's restructuring of certain NAICS industries, a small number of specific activities within certain NAICS 1997 codes were classified within NAICS 2002 industries that have size standards different from what they had been in NAICS 1997.

They are listed in Table 2, above. These activities are very specialized, and the Census Bureau does not publish data about these activities upon which to precisely assess the impact on small businesses. SBA believes that the impact on small businesses is minimal because these activities represent minor components of the NAICS 1997 industries from which they are derived. Only NAICS 235810, Water Well Drilling Contractors, is reclassified in its entirety to an industry with a different size standard, namely NAICS 237110, Water and Sewer Line and Related Structures Construction. Based on 1997 Economic Census data, there were only four water well drilling contractors out of a total of 3,795 that had annual receipts between \$12.0 million and \$28.5 million. SBA does not consider this number of businesses affected by a size standard change to be substantial.

List of Subjects in 13 CFR Part 121

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

For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulation 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(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Amend the first sentence of § 121.101(b) to remove "1997".

3. Amend § 121.201 as follows:

a. In the table "Small Business Size Standards by NAICS Industry," remove the heading "Description (N.E.C. = Not Elsewhere Classified)" and add in its place "NAICS U.S. industry title".

b. In the table "Small Business Size Standards by NAICS Industry," remove the following three (3) Subsectors together with all entries within those Subsectors: Subsector 233—Building, Developing and General Contracting, Subsector 234—Heavy Construction, and Subsector 235—Special Trade Contractors, and add in their place the following:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

| NAICS codes | NAICS U.S. industry title | Size standard in number of employees or million of dollars |
|---|--|--|
| Subsector 236—Construction of Buildings | | |
| 236115 | New Single-Family Housing Construction (except Operative Builders) | 28.5 |
| 236116 | New Multifamily Housing Construction (except Operative Builders) | 28.5 |
| 236117 | New Housing Operative Builders | 28.5 |
| 236118 | Residential Remodelers | 28.5 |
| 236210 | Industrial Building Construction | 28.5 |
| 236220 | Commercial and Institutional Building Construction | 28.5 |
| Subsector 237—Heavy and Civil Engineering Construction | | |
| 237110 | Water and Sewer Line and Related Structures Construction | 28.5 |
| 237120 | Oil and Gas Pipeline and Related Structures Construction | 28.5 |
| 237130 | Power and Communication Line and Related Structures Construction | 28.5 |
| 237210 | Land Subdivision | 6.0 |
| 237310 | Highway, Street, and Bridge Construction | 28.5 |
| 237990 | Other Heavy and Civil Engineering Construction | 28.5 |
| Except | Except Dredging and Surface Cleanup Activities ² | 17.0 |
| Subsector 238—Specialty Trade Contractors | | |
| 238110 | Poured Concrete Foundation and Structure Contractors | 12.0 |
| 238120 | Structural Steel and Precast Concrete Contractors | 12.0 |
| 238130 | Framing Contractors | 12.0 |
| 238140 | Masonry Contractors | 12.0 |
| 238150 | Glass and Glazing Contractors | 12.0 |
| 238160 | Roofing Contractors | 12.0 |
| 238170 | Siding Contractors | 12.0 |
| 238190 | Other Foundation, Structure, and Building Exterior Contractors | 12.0 |
| 238210 | Electrical Contractors | 12.0 |
| 238220 | Plumbing, Heating, and Air Conditioning Contractors | 12.0 |
| 238290 | Other Building Equipment Contractors | 12.0 |
| 238310 | Drywall and Insulation Contractors | 12.0 |
| 238320 | Painting and Wall Covering Contractors | 12.0 |
| 238330 | Flooring Contractors | 12.0 |
| 238340 | Tile and Terrazzo Contractors | 12.0 |
| 238350 | Finish Carpentry Contractors | 12.0 |
| 238390 | Other Building Finishing Contractors | 12.0 |
| 238910 | Site Preparation Contractors | 12.0 |
| 238990 | All Other Specialty Trade Contractors | 12.0 |
| Except | Base Housing Maintenance ¹³ | 12.0 |

c. In the table "Small Business Size Standards by NAICS Industry," remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 421 Wholesale Trade Durable Goods and Subsector 422 Wholesale Trade Nondurable Goods, and add their place the following:

| NAICS codes | NAICS U.S. industry title | Size standard in number of employees or million of dollars |
|--|--|--|
| Subsector 423—Merchant Wholesalers, Durable Goods | | |
| 423110 | Automobile and Other Motor Vehicle Merchant Wholesalers | 100 |
| 423120 | Motor Vehicle Supplies and New Parts Merchant Wholesalers | 100 |
| 42313 | Tire and Tube Merchant Wholesalers | 100 |
| 423140 | Motor Vehicle Parts (Used) Merchant Wholesalers | 100 |
| 423210 | Furniture Merchant Wholesalers | 100 |
| 423220 | Home Furnishing Merchant Wholesalers | 100 |
| 423310 | Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers | 100 |
| 423320 | Brick, Stone, and Related Construction Material Merchant Wholesalers | 100 |
| 423330 | Roofing, Siding, and Insulation Material Merchant Wholesalers | 100 |
| 423390 | Other Construction Material Merchant Wholesalers | 100 |
| 423410 | Photographic Equipment and Supplies Merchant Wholesalers | 100 |
| 423420 | Office Equipment Merchant Wholesalers | 100 |

| NAICS codes | NAICS U.S. industry title | Size standard in number of employees or million of dollars |
|--|---|--|
| 423430 | Computer and Computer Peripheral Equipment and Software Merchant Wholesalers | 100 |
| 423440 | Other Commercial Equipment Merchant Wholesalers | 100 |
| 423450 | Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers | 100 |
| 423460 | Ophthalmic Goods Merchant Wholesalers | 100 |
| 423490 | Other Professional Equipment and Supplies Merchant Wholesalers | 100 |
| 423510 | Metal Service Centers and Other Metal Merchant Wholesalers | 100 |
| 423520 | Coal and Other Mineral and Ore Merchant Wholesalers | 100 |
| 423610 | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | 100 |
| 423620 | Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers | 100 |
| 423690 | Other Electronic Parts and Equipment Merchant Wholesalers | 100 |
| 423710 | Hardware Merchant Wholesalers | 100 |
| 423720 | Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers | 100 |
| 423730 | Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers | 100 |
| 423740 | Refrigeration Equipment and Supplies Merchant Wholesalers | 100 |
| 423810 | Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers | 100 |
| 423820 | Farm and Garden Machinery and Equipment Merchant Wholesalers | 100 |
| 423830 | Industrial Machinery and Equipment Merchant Wholesalers | 100 |
| 423840 | Industrial Supplies Merchant Wholesalers | 100 |
| 423850 | Service Establishment Equipment and Supplies Merchant Wholesalers | 100 |
| 423860 | Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers | 100 |
| 423910 | Sporting and Recreational Goods and Supplies Merchant Wholesalers | 100 |
| 423920 | Toy and Hobby Goods and Supplies Merchant Wholesalers | 100 |
| 423930 | Recyclable Material Merchant Wholesalers | 100 |
| 423940 | Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers | 100 |
| 423990 | Other Miscellaneous Durable Goods Merchant Wholesalers | 100 |
| Subsector 424—Merchant Wholesalers, Nondurable Goods | | |
| 424110 | Printing and Writing Paper Merchant Wholesalers | 100 |
| 424120 | Stationery and Office Supplies Merchant Wholesalers | 100 |
| 424130 | Industrial and Personal Service Paper Merchant Wholesalers | 100 |
| 424210 | Drugs and Druggists' Sundries Merchant Wholesalers | 100 |
| 424310 | Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers | 100 |
| 424320 | Men's and Boys' Clothing and Furnishings Merchant Wholesalers | 100 |
| 424330 | Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers | 100 |
| 424340 | Footwear Merchant Wholesalers | 100 |
| 424410 | General Line Grocery Merchant Wholesalers | 100 |
| 424420 | Packaged Frozen Food Merchant Wholesalers | 100 |
| 424430 | Dairy Product (except Dried or Canned) Merchant Wholesalers | 100 |
| 424440 | Poultry and Poultry Product Merchant Wholesalers | 100 |
| 424450 | Confectionery Merchant Wholesalers | 100 |
| 424460 | Fish and Seafood Merchant Wholesalers | 100 |
| 424470 | Meat and Meat Product Merchant Wholesalers | 100 |
| 424480 | Fresh Fruit and Vegetable Merchant Wholesalers | 100 |
| 424490 | Other Grocery and Related Products Merchant Wholesalers | 100 |
| 424510 | Grain and Field Bean Merchant Wholesalers | 100 |
| 424520 | Livestock Merchant Wholesalers | 100 |
| 424590 | Other Farm Product Raw Material Merchant Wholesalers | 100 |
| 424610 | Plastics Materials and Basic Forms and Shapes Merchant Wholesalers | 100 |
| 424690 | Other Chemical and Allied Products Merchant Wholesalers | 100 |
| 424710 | Petroleum Bulk Stations and Terminals | 100 |
| 424720 | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals) | 100 |
| 424810 | Beer and Ale Merchant Wholesalers | 100 |
| 424820 | Wine and Distilled Alcoholic Beverage Merchant Wholesalers | 100 |
| 424910 | Farm Supplies Merchant Wholesalers | 100 |
| 424920 | Book, Periodical, and Newspaper Merchant Wholesalers | 100 |
| 424930 | Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers | 100 |
| 424940 | Tobacco and Tobacco Product Merchant Wholesalers | 100 |
| 424950 | Paint, Varnish, and Supplies Merchant Wholesalers | 100 |
| 424990 | Other Miscellaneous Nondurable Goods Merchant Wholesalers | 100 |
| Subsector 425—Wholesale Electronic Markets and Agents and Brokers | | |
| 425110 | Business to Business Electronic Markets | 100 |
| 425120 | Wholesale Trade Agents and Brokers | 100 |

d. In the table "Small Business Size Standards by NAICS Industry," remove the entry 452110, and add in its place the following:

| NAICS codes | NAICS U.S. industry title | Size standard in number of employees or million of dollars |
|--------------|---|--|
| 452111 | Department Stores (except Discount Department Stores) | \$23.0 |
| 452112 | Discount Department Stores | 23.0 |

e. In the table "Small Business Size Standards by NAICS Industry," remove the entry 454110, and add in its place the following:

| NAICS codes | NAICS U.S. industry title | Size standard in number of employees or million of dollars |
|--------------|---------------------------|--|
| 454111 | Electronic Shopping | \$21.0 |
| 454112 | Electronic Auctions | 21.0 |
| 454113 | Mail-Order Houses | 21.0 |

f. In the table "Small Business Size Standards by NAICS Industry," revise the heading "Subsector 511—Publishing Industries" to read "Subsector 511—Publishing Industries (except internet)."

g. In the table "Small Business Size Standards by NAICS Industry," in

NAICS 511140 revise "Database and Directory Publishers" to read "Directory and Mailing List Publishers."

h. In the table "Small Business Size Standards by NAICS Industry," remove the following two (2) Subsectors together with all entries within those

Subsectors: Subsector 513—Broadcasting and Telecommunications and Subsector 514 Information Services and Data Processing Services, and add in their place the following:

| NAICS codes | NAICS U.S. industry title | Size standard in number of employees or million of dollars |
|---|--|--|
| Subsector 515—Broadcasting (except Internet) | | |
| 515111 | Radio Networks | \$6.0 |
| 515112 | Radio Stations | 6.0 |
| 515120 | Television Broadcasting | 12.0 |
| 515210 | Cable and Other Subscription Programming | 12.5 |
| Subsector 516—Internet Publishing and Broadcasting | | |
| 516110 | Internet Publishing and Broadcasting | 12.5 |
| Subsector 517—Telecommunications | | |
| 517110 | Wired Telecommunications Carriers | 1,500 |
| 517211 | Paging | 1,500 |
| 517212 | Cellular and Other Wireless Telecommunications | 1,500 |
| 517310 | Telecommunications Resellers | 1,500 |
| 517410 | Satellite Telecommunications | 12.5 |
| 517510 | Cable and Other Program Distribution | 12.5 |
| 517910 | Other Telecommunications | 12.5 |
| Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services | | |
| 518111 | Internet Service Providers | 21.0 |
| 518112 | Web Search Portals | 6.0 |
| 518210 | Data Processing, Hosting, and Related Services | 21.0 |
| Subsector 519—Information Services and Data Processing Services | | |
| 519110 | News Syndicates | 6.0 |
| 519120 | Libraries and Archive | 6.0 |
| 519190 | All Other Information Services | 6.0 |

Dated: August 5, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02-20357 Filed 8-12-02; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-02-506]

RIN 2115-AA97

Security Zone: Lake Erie, Perry, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the Captain of the Port Cleveland zone for the Perry Nuclear Power Plant. This security zone is necessary to protect the Perry Nuclear Power Plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. This security zone is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: This rule is effective from 10 a.m. August 1, 2002 until 10 a.m. October 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09-02-506 and are available for inspection or copying at U.S. Coast Guard Marine Safety Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937-0111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers, this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorists

strikes against public and governmental targets. A similar attack was conducted against the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

On May 24, 2002 we published a notice of proposed rulemaking (NPRM) (67 FR 36554) giving the public the chance to comment on our proposal to make permanent a security zone adjacent to the Perry nuclear power plant. We anticipate this temporary final rule will shortly be removed by a final rule which will respond to any public comment received during the comment period for the NPRM.

Background and Purpose

A temporary security zone is necessary to ensure the security of the Perry nuclear power plant, as a result of the terrorist attacks on the United States on 11 September 2001. The security zone consists of all navigable waters of Lake Erie bound by a line drawn between the following coordinates beginning at 41° 48.187' N, 081° 08.818' W; due north to 41° 48.7' N, 081° 08.818' W; due east to 41° 48.7' N, 081° 08.455' W; due south to the south shore of Lake Erie at 41° 48.231' N, 081° 08.455' W; thence westerly following the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (see **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions