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Karen G. Mills,

Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG25

Small Business Size Standards: Utilities

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is revising the size standards for 13 industries in North American Industry Classification System (NAICS) Sector 22, Utilities. Specifically, SBA has increased receipts based size standards for three industries and changed the basis for measuring business size from megawatt hours to number of employees for the 10 electric power generation, transmission, and distribution industries. In addition, SBA is removing Footnote 1 from SBA's Table of Size Standards that applies to all of the NAICS codes in electric power generation, transmission, and distribution. As part of its ongoing comprehensive size standards review, SBA evaluated all megawatt hour and receipts based size standards for industries in NAICS Sector 22 to determine whether they should be retained or revised. SBA did not review the employee based size standard for Natural Gas Distribution, NAICS 221210, in this rule, but will review it in the near future with other employee based size standards.

DATES: This rule is effective January 22, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. Jorge Laboy-Bruno, Economist, Office of Standards, by phone at (202) 205–6618 or email at *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative tangible net worth and net income based size standards. At the start of the current comprehensive review of SBA's small business size standards, there were 41 different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's Table of Size Standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, there are a total of 1,047 size standards, 533 of which are based on average annual receipts, 499 on number of employees, 10 on megawatt hours, and five on average assets.

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

SBA recognizes that changes in industry structure and Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supported by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing the size standards for groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all electric power generation, transmission and distribution industries with electric output (megawatt hours) based size standards and three industries with receipts based size standards in NAICS Sector 22, Utilities, to determine whether the existing size standards should be retained or revised. On July 19, 2012, SBA published a proposed rule in the **Federal Register** (77 FR 42441) seeking public comments on its proposal to revise the size standards for nine industries. In that rule, SBA did not review one industry, namely NAICS 221210, Natural Gas Distribution, with an employee based size standard which SBA will review at a later date together with other employee based size standards. The proposed rule was one of a series of rules that examines industries grouped by NAICS Sector.

In conjunction with the comprehensive size standards review, SBA developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA has published the document on its Web site at *www.sba.gov/size* for public review and comment and also included it as a supporting document in the electronic docket of the July 19, 2012 proposed rule at *www.regulations.gov.*

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size), and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry.

To develop the proposed rule, SBA analyzed the characteristics of each industry in NAICS Sector 22 that has either a megawatt hour or a receipts based size standard, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available) (*www.census.gov/econ/census07/*). To evaluate the structure of the electric power generation, transmission, and distribution industries, SBA also analyzed electric output data for investor-owned utilities and power marketers for 1974–2009, which it obtained from the U.S. Energy Information Agency (*http://www.eia.gov/electricity/data/detail-data.html*).

To evaluate Federal market conditions, SBA used Federal Procurement Data System—Next Generation (FPDS–NG) data for fiscal years 2008 to 2010 (*https://www.fpds.gov/fpdsng_cms/*) to evaluate the small business share of Federal contracts in each industry.

To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its 7(a) and 504 Loan Programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing electric output based size standards for electric power generation, transmission and distribution industries and receipts based size standards for three industries in NAICS Sector 22. SBA sought comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

SBA sought comments on its proposal to change an electric output based size standard of 4 million megawatt hours for electric power generation, transmission and distribution to an employee based size standard of 500 employees and to increase receipts based size standards for three industries in NAICS Sector 22. SBA also invited comments on its proposal to remove Footnote 1 from its table of size standards. Specifically, SBA requested comments on whether the size standards for those industries should be revised as proposed and sought feedback and suggestions on alternative size standards if the proposed size standards were not appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standard levels are appropriate, and whether it should adopt a common size standard for all industries involved in electric power generation, transmission, and distribution.

Summary of Comments

SBA received eight comments from individual businesses, trade associations, and non-profit electric cooperatives both in support of and in opposition to its proposed size standard changes in NAICS Sector 22. All eight comments focused on SBA's proposal to change the size standard for electric power generation, transmission, and distribution industries from 4 million megawatt hours to 500 employees and to remove Footnote 1 from the size standards table. There were no comments concerning the three proposed increases to receipts based size standards. These comments are summarized below.

The first commenter did not support any of the proposed increases in the size standards in NAICS Sector 22. The commenter interpreted the SBA's proposal to change the size standard for electric power generation, transmission, and distribution industries from 4 million megawatt hours to 500 employees as an increase. The commenter stated that at that level a business is no longer considered small and that it does not support the intent of small business programs. He further noted that with the increases in size standards, the banks will focus more on larger loans by ignoring small businesses the SBA's loan program is intended to help. The commenter, however, did not include any data or analysis to support his argument that this would be an increase to the size standard. In addition, under the tangible net worth and net income based alternative size standard implemented for SBA's 7(a) and 504 Loan Programs implemented under the Jobs Act, businesses much larger than the industry based size standards may now qualify for SBA's loans. Accordingly, SBA has not adjusted the proposed size standards changes based on this comment.

The next commenter also did not support the proposed 500-employee size standard. The commenter argued that it is difficult to cover employee benefits and costs for small businesses with fewer than 50 employees and that it would be much more difficult at 500 employees. He noted that at 500 employees a firm is a large business in the construction industry. The commenter did not provide any industry data or analysis supporting his or her argument. Moreover, the comment was directed to the size of a business in the construction industry, not for industries in NAICS Sector 22. Thus, SBA did not consider this comment in finalizing the proposed size standards in NAICS Sector 22.

The third comment was on behalf of a non-profit trade association representing the non-profit, publicly owned electric utilities in the U.S. While the association supported SBA's effort to account for changes in the electric power industry, it opposed its proposal to change the size standard for electric power generation, transmission and distribution utilities from the 4 million megawatt hours (MWh) to 500 employees. Among the three proposals SBA considered in the proposed rule, the association preferred the proposal to increase the size standard from 4 million megawatt hours to 8 million megawatt hours and retain Footnote 1 in the table of size standards. It also supported the proposed revisions to Footnote 1 and stated that the revised footnote removes the ambiguity about affiliates in determining the firm's primary industry and size and is sufficient for maintaining a MWh-based size standard for the electric power industry. The association noted further that it would support an employee based size standard rather than the hybrid option of adding an employee based size standard to the MhW-based size standard as, it stated, it would add unnecessary complexity in measuring firm size for electric utilities.

The association contended that the MWh-based measure is clear and unambiguous and widely used throughout the industry and by other Federal agencies that regulate the electric power industry. It added that electric output is less impacted by regional variation and market structure and that electric production data are readily available from the EIA for SBA to assess the appropriateness of the size standard for the electric industry. The association argued that an employee-based size standard would cause confusion, particularly for its members, and be very difficult to apply it to publicly owned utilities. Specifically, the association expressed concerns that in situations where the electric utility is a unit of the municipal government, and is overseen either by a city council or an independent utility board, all city employees would be counted towards the employee based size standard, even if they are not all involved in the provision of electric services. The association added that counting the number of employees involved in electric services would be equally difficult in instances where the city operates multiple utilities (such as electricity, water, gas, sewer, *etc.*) and where various agencies and departments are involved in one combined utility. It argued that if SBA decides to adopt the employee based size standard, only the employees (or only the portion of time allotted to the electric department when an employee is associated with multiple utilities) involved in the generation, transmission and distribution should be counted towards the employee threshold for publicly owned utilities. It also suggested that SBA should provide clear guidance on counting employees for publicly owned electric providers and firms engaged in multiple industries to determine whether or not they are a small business under the employee based size standard.

SBA agrees that electric output is the commonly used measure of business size in the electric industry and is aware that it is used by several Federal agencies for their regulatory purposes. SBA believes that Federal agencies use electric output mainly because many of them use SBA's electric output based size standard for their programs. During both the interagency review of the proposed rule and the public comment period, SBA did not receive any comments from Federal agencies against SBA's proposal to change the size standard for electric utilities from megawatt hours to the number of employees. SBA is very familiar with electric production data from EIA, which the Agency used to evaluate the structure of the industry in the current and previous reviews of these size standards. There are, however, two problems of using electric output as the size measure. First, as explained in the proposed rule, in situations where firms are engaged in electric power generation, transmission and/or distribution and in other industries as well, electric output cannot account for their total size. Similarly, in instances where a company is in the electric power generation, transmission, and/or distribution industry and is affiliated with another entity in a different industry, electric output will fail to account accurately for their aggregate size. Second, under an electric output based size standard, without Footnote 1, a large firm with very limited involvement in electric power generation, transmission, and/or distribution can qualify as small. However, requiring that a firm's primary industry be electric power generation, transmission, and/or distribution for it to qualify as small under the electric output size standard, disqualifies many firms that are engaged in electric power generation, transmission, and/or distribution and other industries, when electric power is not their primary industry. This is especially true among firms involved in electric power generation using renewable sources (such as solar, wind, biomass, geothermal) as well as other industries, where power generation is generally not their primary industry. Preventing them from Federal small business assistance simply because power generation is not their primary activity is counter to the Administration's programs and policies to promote renewable energy production in the country. For these reasons, SBA is adopting the employee based size standard for all electric power generation, transmission and distribution industries.

SBA does not agree with the association's suggestion that SBA should allow to count only the employees (or only the portion of time allotted to the electric department when an employee is associated with multiple utilities) involved in the generation, transmission and distribution towards the employee threshold for publicly owned utilities. In determining number of employees for size standards purposes, SBA counts a concern's total employees from all industries, not just the number of employees for each industry separately. This is true for all industries that currently have an employee based size standard and will also apply to electric power generation, transmission and distribution industries. SBA provides detailed guidance to determine the number of employees in 13 CFR 121.106.

It also appears that the association is not aware that a business concern has to be operated for profit to qualify as small under the SBA's size regulations (see 13 CFR 121.105). Accordingly, because publicly owned utilities are not-for-profit entities, they will not qualify as small, even if they meet the SBA's size threshold.

The next commenter applauded SBA's proposal to remove Footnote 1 and use a common 500-employee size standard for the electric production and distribution industries. He stated that the 500-employee size standard is appropriate for the renewable industries as they have a wide range of companies, from very large companies to single-person entities. The commenter questioned why SBA did not adopt the proposed size standards for the new NAICS codes for renewable energy industries created under NAICS 2012 when the Agency adopted them, although the changes to NAICS codes were made prior to that date. SBA did not do so because when SBA published the proposed rule on July 19, 2012, its size standards were based on NAICS 2007; and when SBA published the interim final rule to adopt NAICS 2012 on August 20, 2012 (effective October 1, 2012), the proposed rule was still open for comments and not finalized. SBA was, therefore, unable to adopt the proposed size standard for new NAICS codes for renewable energy effective October 1, 2012.

The next comment was from a national association representing non-profit rural electric cooperatives. The association supported the SBA's proposal to change the electric utility size standard from 4 million MWh to 500 employees for electric power generation and transmission industries, but it did not support applying the same 500-employee size standard to NAICS 221122, Electric Power Distribution. The commenter highlighted that the electric power industry has changed dramatically since 1974, when SBA first established a size standard for the industry. The electric power generation, transmission, and distribution industries, while functionally integrated, have evolved into stand-alone industries, each with a unique production function. While electric distribution and generation industries are both very capital intensive, distribution is much more labor intensive than the generation industry. This is because, the association explained, distribution utilities not only build and maintain electric distribution lines and the associated easements; they also read meters, process billing/payments, interact with customers, and provide many customer service functions. Thus, it concluded that applying a common size standard across all industries of the utility sector will not adequately control for the unique characteristics of each industry.

Based on its analysis of the electric output data for distribution utilities from EIA combined with revenues and employment data for firms in NAICS 221122, Electric Power Distribution, from the 2007 Economic Census, the association recommended a 1,000-employee size standard for electric distribution. Additionally, the association brought to SBA's attention that one of its member cooperatives, which currently distributes less than 4 million MWh annually and has more than 500 employees, will lose its small utility designation under the 500-employee size standard.

SBA agrees with the association's comments and analysis that the electric power for size standards purposes the distribution industry need to be analyzed on its own rather than combining it with generation and transmission industries. As discussed elsewhere in this rule, SBA analyzed the 2007 Economic Census data for this industry using its size standards methodology to evaluate employee based size standards. The results of this analysis supported a 1,000-employee size standard for NAICS 221122, as recommended by the association.

The next commenter applauded SBA's effort to update the size standards for NAICS Sector 22 and agreed with its proposal to change the size standard for electric industries from megawatts hours to number of employees. He also agreed with the removal of Footnote 1. However, the commenter expressed concerns about SBA's proposal to apply the same size 500-employee size standard to renewable energy industries that it proposed for other electric power generation, transmission and distribution industries. The commenter stated that SBA's proposal violates the requirement that the size standard vary from industry to industry to reflect differing characteristics of the various industries. He added that the proposed size standard will incorrectly enable large renewable energy companies to qualify as small, thereby compromising the intent of SBA's mission to help small businesses.

The commenter recommended that SBA reevaluate NAICS 221119 separately using data only for renewable energy industries (such as solar, wind, *etc.*) rather than combining it with other power generation (such as nuclear, hydroelectric, and fossil fuel), transmission, and distribution industries. He added that renewable energy industries are comprised of many smaller companies with much smaller capital requirements compared to hydroelectric, nuclear and fossil fuel power generation industries. Arguing that NAICS 221119 cannot be likened to manufacturing as other electric power generation industries, the commenter opposed applying the 500-employee manufacturing anchor size standard for renewable energy industries. He argued that a receipts based size standard would be more appropriate for renewable energy industries because solar and wind energy systems generally involve assembly and installations of component parts and are more akin to NAICS 237130 (Power and Communication Line and Related Structures Construction) with a receipts based size standard. However, the commenter did not specify the value for the receipts based size standard to use nor did he provide specific industry data showing the similarities between NAICS 221119 and NAICS 237130 to justify the same receipts based size standard for both industries. In response to the comment, SBA has reevaluated NAICS 221119 only using the data for that industry from the 2007 Economic Census.

The same commenter also provided some data on industry and contracting factors for NAICS 221119, mostly pertaining to solar firms, in support of a receipts based size standard without suggesting a specific value for such a size standard. He opposed the proposed 500-employee size standard, because, as he claimed, it would classify very large renewable energy companies as small businesses. However, the commenter did not indicate if a smaller employee based size standard would be more appropriate, but he did not argue against using number of employees.

The next comment was from a solar industry association concerning the proposed size standard for NAICS 221119, Other Electric Power Generation. The association supported the SBA's proposal to change the current MWh-based size standard to an employee based or revenue based size standard. It stated that many companies in the solar industry sell power through power purchase agreements (PPA) and it might be difficult for them to accurately assess the total electric output for their fleet. In addition, it also supported the proposed elimination of Footnote 1. It added the requirement that a firm must be ''primarily engaged'' in the generation, transmission and/or distribution of electric energy for sale to be small might unfairly exclude solar companies that sell systems under PPA or lease.

However, like the previous commenter, the association expressed concerns about SBA's proposal to apply the same size 500-employee size standard to NAICS 221119 that it proposed for other electric power generation, transmission and distribution industries. It argued that renewable industries (solar, wind, *etc.*) are very different from the traditional hydroelectric, fossil fuel and nuclear power generation industries. The association added that while these traditional industries are multi-billion dollar industries with highly centralized facilities, renewable industries in NAICS 221119 are made of up many small and widely disbursed facilities. As the previous commenter, it also recommended that SBA reevaluate NAICS 221119 as a separate industry and not apply the same size standard proposed for traditional power generation industries. SBA agrees, and the industry data seem to support, the renewable energy industry is distinct from traditional electric utilities and it should be analyzed separately. The association argued that there exist similarities between the construction trade industry and the solar industry in determining the size of a business, but did not provide any data supporting its argument.

The last commenter representing the solar industry commented on the proposed size standard for NAICS 221119. The commenter opposed the employee-based size standard in support of the current megawatt based size standard. He also supported revising Footnote 1 by broadening the ''primarily engaged'' requirement and clarifying the size determination method rather than changing the size standard. The commenter contended the proposed employee based size standard for power generation, including NAICS 221119, would drastically increase the number of firms that would qualify as small, many of which would not necessarily be experienced or capable of power generation. This would, as the commenter argued, cause small businesses currently engaged in power generation to lose work to other firms not currently engaged in power generation and increase the risk of non-performance. However, he did not provide any explanation or data to support these arguments.

To increase small business participation, this commenter recommended revising Footnote 1 by replacing the requirement that a firm be ''primarily engaged'' in power generation with the requirement that the firm obtain at least 40 percent of revenue from power generation. SBA does not accept this recommendation for two reasons. First, the commenter did not provide any analytical basis for choosing the 40 percent figure; it seems arbitrary. Second, the 40 percent revenue requirement will still exclude many firms that are involved in power generation as well as other industries, where power generation revenue accounts for less than 40 percent of the firm's total revenue. This is especially true in the case of renewable energy industries. Thus, for the reasons as explained in the proposed rule and elsewhere in this final rule, SBA is adopting an employee based size standard for all electric power generation, transmission and distribution industries and removing Footnote 1.

In response to the above comments, particularly the comments that the electric power distribution industry is different from the electric power generation industries and that the renewable energy industry (NAICS 221119) is different from the traditional electric power generation, transmission and distribution industries, SBA reanalyzed each of these industries separately. For this, SBA analyzed the 2007 Economic Census data for electric power generation, transmission and distribution data using its size standards methodology for employee based size standards to calculate industry factors and employee based size standards for each of those industries. The size standards derived from this analysis are summarized in Table 1, Employee Based size Standards for Electric Utilities Industries, below.

TABLE 1—EMPLOYEE BASED SIZE STANDARDS FOR ELECTRIC UTILITIES INDUSTRIES

NAICS code	U.S. industry title	Size standard (number of employees)
221111	Hydroelectric Power Generation	500
221112	Fossil Fuel Power Generation	750
221113	Nuclear Power Generation	750
221119	Other Electric Power Generation	250
221121	Electric Bulk Power Transmission and Control	500
221122	Electric Power Distribution	1,000

When SBA published the proposed rule on NAICS Sector 22, the SBA's table of size standards was based on NAICS 2007. In the NAICS 2012 updates, considering the recent growth of renewable power in the electric generation industries, the Office of Management and Budget (OMB) replaced NAICS 221119 (Other Electric Power Generation) with five new industries: namely NAICS 221114 (Solar Electric Power Generation), NAICS 221115 (Wind Electric Power Generation), NAICS 221116 (Geothermal Electric Power Generation), NAICS 221117 (Biomass Electric Power Generation), and NAICS 221118 (Other Electric Power Generation). OMB implemented NAICS 2012 beginning January 1, 2012 and SBA adopted it for its table of size standards beginning October 1, 2012.

Although OMB required all Federal statistical agencies to use 2012 NAICS effective January 1, 2012, data using the new classification are still not available. The 2012 Economic Census data collection is currently underway. SBA will be able to evaluate each renewable industry separately once it receives special tabulations from the 2012 Economic Census.

The 2007 Economic Census, which is the primary source of industry data for the current comprehensive size standards review, does not include data for each of these newly created industry codes under NAICS 2012; they are all combined into NAICS 221119 under NAICS 2007. Thus, given the lack of data, SBA has decided to apply the result for NAICS 221119 to each of those new NAICS codes. Additionally, SBA evaluated simple and weighted average number of employees and the Gini coefficient using the 2012 first quarter Quarterly Census of Employment and Wages (QCEW) data from the Bureau of Analysis for new NAICS codes 221114, 221115, 221116, 221117. These results also supported the same 250-employee size standard for each of these industries that SBA obtained for NAICS 221119 using the 2007 Economic Census data. Accordingly, SBA is adopting 250 employees as the size standard for NAICS 221114 to 221118.

The commenters opposing the application of the 500-employe size standard for NAICS 221119 suggested a revenue based size standard for that industry. However, in view of rapid growth and increased completion and their potential impacts on costs and in turn on revenues in renewable energy industries, SBA believes that the number of employees is a better measure of business size for firms in those industries. Moreover, the employee measure has the same advantages as the revenue measure over the MWh measure. Thus, SBA is adopting the employee based size standards for NAICS 221114 to 221118.

Since there were no comments against proposed increases to three receipts based size standards in NAICS Sector 22, SBA is adopting the increases as proposed.

All comments to the proposed rule are available for public review at *http://www.regulations.gov.*

Conclusion

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, SBA is changing the small business size standards for 10 industries in electric power generation, transmission, and distribution from megawatt hours to number of employees and increasing the receipts based size standards for three industries in North American Industry Classification System (NAICS) Sector 22, Utilities. In addition, SBA is removing Footnote # 1 from SBA's Table of Size Standards that applied to all of the NAICS codes in electric power generation, transmission and distribution. Those industries and their proposed and adopted size standards are shown in Table 2, Summary of Proposed and Adopted Size Standard Revisions in NAICS Sector 22, below.

TABLE 2—SUMMARY OF PROPOSED AND ADOPTED SIZE STANDARD REVISIONS IN NAICS SECTOR 22

NAICS code	U.S. industry title	Current size standards (NAICS 2012)	Proposed size standards (NAICS 2007)	Adopted size standards (NAICS 2012)
221111	Hydroelectric Power Generation	4 million megawatt hours	500 employees	500 employees.
221112	Fossil Fuel Electric Power Generation	4 million megawatt hours	500 employees	750 employees.
221113	Nuclear Electric Power Generation	4 million megawatt hours	500 employees	750 employees.
221119	Other Electric Power Generation		500 employees	
221114	Solar Electric Power Generation	4 million megawatt hours		250 employees.

TABLE 2—SUMMARY OF PROPOSED AND ADOPTED SIZE STANDARD REVISIONS IN NAICS SECTOR 22—Continued

NAICS code	U.S. industry title	Current size standards (NAICS 2012)	Proposed size standards (NAICS 2007)	Adopted size standards (NAICS 2012)
221115	Wind Electric Power Generation	4 million megawatt hours		250 employees.
221116	Geothermal Electric Power Generation	4 million megawatt hours		250 employees.
221117	Biomass Electric Power Generation	4 million megawatt hours		250 employees.
221118	Other Electric Power Generation	4 million megawatt hours		250 employees.
221121	Electric Bulk Power Transmission and Control	4 million megawatt hours	500 employees	500 employees.
221122	Electric Power Distribution	4 million megawatt hours	500 employees	1,000 employees.
221310	Water Supply and Irrigation Systems	$7.0 million	$25.5 million	$25.5 million.
221320	Sewage Treatment Facilities	$7.0 million	$19.0 million	$19.0 million.
221330	Steam and Air-Conditioning Supply	$12.5 million	$14.0 million	$14.0 million.

SBA did not review the 500-employee size standard for Natural Gas Distribution, NAICS Code 221210. SBA will retain that size standard until the Agency reviews it with other employee based size standards.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. To help explain the need of this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a ''major'' rule, under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that the revised size standards for a number of industries in NAICS Sector 22, Utilities, will better reflect the economic characteristics of small businesses and the Federal government marketplace in those industries. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information sections of the proposed rule and this final rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZones), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 10 industries for which SBA is changing the size standard from MWh to number of employees, SBA estimates that about 300 additional firms will obtain small business status and become eligible for these programs. Similarly, in the three industries for which SBA is increasing the receipts based size standard, about 100 firms, not small in the current size standard, will gain small business status. That represents approximately 8 percent of the total number of firms that are classified as small under the current standards in all industries within NAICS Sector 22 that are covered in this final rule. This will increase the small business share of total industry receipts from approximately 7 percent under the current size standards to 17 percent.

SBA estimates that firms gaining small business status under the revised size standards could receive Federal contracts totaling $25 million to $30 million annually under SBA's small business Programs.

Three groups will benefit from the revised size standards: (1) Some businesses that are above the current size standards will gain small business status under the revised size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the revised size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

Under SBA's 7(a) Business and 504 Loan Programs, based on the fiscal years 2008 to 2010 data, SBA estimates that around 10 to 12 additional loans totaling about $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in an increase in small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly the extent of their number and total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it similarly difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

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

To the extent that those 400 newly defined additional small firms could become active in Federal procurement programs under the revised size standards, may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. In addition, there could be more firms seeking SBA guaranteed loans, more firms eligible for registration in the System of Award Management (SAM) Dynamic Small Business Search database and more firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

Additionally, the costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders, however, are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices. In addition, higher costs may result if more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone firms instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision. The revisions to the existing size standards for NAICS Sector 22, Utilities, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to the small business programs designed to assist them.

Executive Order 13563

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

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

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

The review of size standards in NAICS Sector 22, Utilities, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. As discussed previously, SBA's last comprehensive review of size standards was during the late 1970s and early 1980s. Since then, except for periodic adjustments of monetary based size standards for inflation, most reviews were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

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

Paperwork Reduction Act

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

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 22, Utilities. As described above, this rule may affect small entities seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

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

Most of the size standards in NAICS Sector 22, Utilities, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in the Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on its analysis of the latest data available, SBA believes that the proposed size standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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

Under the revised size standards, SBA estimates that 400 additional firms will become small because of revisions to size standards in 13 industries. That represents about 8 percent of total firms that are small under current size standards in all industries within NAICS Sector 22 covered by this final rule. This will result in an increase in the small business share of total industry receipts for those industries from about 7 percent under the current size standards to about 17 percent under the revised size standards. Under the revised size standards, more small businesses will be able to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the current size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; entities that are not small for any reason are ''other than small.''

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

The revised size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal programs requires that entities register in the System of Award Management (SAM) database and certify at least annually that they are small in SAM. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Changing size standards alters eligibility for SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

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

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

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

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

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

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

■ 2. In § 121.201, in the table, revise the entries for ''221111'', ''221112'', ''221113'', ''221114'' ''221115'', ''221116'', ''221117'', ''221118'', ''221121'', ''221122'', ''221310'', ''221320'', and ''221330'' to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
221111	Hydroelectric Power Generation		500
221112	Fossil Fuel Electric Power Generation		750
221113	Nuclear Electric Power Generation		750
221114	Solar Electric Power Generation		250
221115	Wind Electric Power Generation		250
221116	Geothermal Electric Power Generation		250
221117	Biomass Electric Power Generation		250
221118	Other Electric Power Generation		250
221121	Electric Bulk Power Transmission and Control		500
221122	Electric Power Distribution		1,000
*	*	*	*
221310	Water Supply and Irrigation Systems	25.5	
221320	Sewage Treatment Facilities	19.0	
221330	Steam and Air-Conditioning Supply	14.0	
*	*	*	*

■ 3. In § 121.201, at the end the table ''Small Business Size Standards by NAICS Industry,'' remove and reserve Footnote 1 to read as follows:.

* * * * *

FOOTNOTES

1. [Reserved].

* * * * *

Dated: August 16, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–30327 Filed 12–20–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0641; Airspace Docket No. 13–AGL–7]

Establishment of Class E Airspace; Sisseton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Sisseton, SD. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Sisseton Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, April 3, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 16, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Sisseton, SD, area, creating controlled airspace at Sisseton Municipal Airport (78 FR 49985) Docket No. FAA–2013–0641. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 10.7-mile radius of Sisseton Municipal Airport, Sisseton, SD, to contain aircraft executing new standard instrument approach procedures at the airport. Controlled airspace enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes