

**§ 212.3 Application for the exercise of discretion under section 212(c).**

(a) \* \* \*

(2) The Immigration Court if the application is made in the course of proceedings under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997).

(b) \* \* \* All material facts or circumstances that the applicant knows or believes apply to the grounds of excludability, deportability, or inadmissibility must be described in the application. \* \* \*

\* \* \* \* \*

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability, deportability, or inadmissibility that were described in the application. An applicant who failed to describe any other grounds of excludability, deportability, or inadmissibility, or failed to disclose material facts existing at the time of the approval of the application, remains excludable, deportable, or inadmissible under the previously unidentified grounds. If the applicant is excludable, deportable, or inadmissible based upon any previously unidentified grounds a new application must be filed.

(e) \* \* \*

(1) An eligible alien may renew or submit an application for the exercise of discretion under former section 212(c) of the Act in proceedings before an Immigration Judge under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997), and under this chapter. \* \* \*

\* \* \* \* \*

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the Immigration Judge of this application in accordance with the provisions of § 3.38 of this chapter.

(f) \* \* \*

\* \* \* \* \*

(3) The alien is subject to exclusion or inadmissibility from the United States under paragraphs (3)(A), (3)(B), (3)(C), or (3)(E) or (9)(C) of section 212(a) of the Act (8 U.S.C. 1182);

(4) The alien has been convicted of an aggravated felony or felonies, as defined by section 101(a)(43) of the Act. 8 U.S.C. 1101(a)(43). With respect to pleas made prior to April 24, 1996, the alien is ineligible only if he or she has served a term of imprisonment of at least five years for such aggravated felony or felonies.

(g) *Availability of section 212(c) relief for aliens who pleaded guilty or nolo*

*contendere to certain crimes.* For purposes of this chapter, the date of the plea will be considered the date the plea was agreed to by the parties.

(1) *Pleas before April 24, 1996.*

Regardless of whether an alien is in exclusion, deportation, or removal proceedings, section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 shall not apply to any pleas made before April 24, 1996.

(2) *Pleas between April 24, 1996 and April 1, 1997.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien who pleaded guilty or nolo contendere and whose plea was made on or after April 24, 1996, and before April 1, 1997, may apply for relief under section 212(c) of the Act, as amended by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996.

(3) *Pleas on or after April 1, 1997.* Section 212(c) relief is not available with respect to pleas made on or after April 1, 1997.

**PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES**

5. The authority citation for part 240 continues to read as follows:

**Authority:** 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

6. In § 240.1, amend paragraph (a)(1)(ii) by adding at the end “, and former section 212(c) (as it existed prior to April 1, 1997);”.

Dated: August 6, 2002.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 02–20403 Filed 8–12–02; 8:45 am]

**BILLING CODE 4410–30–P**

**SMALL BUSINESS ADMINISTRATION****13 CFR Part 121****RIN 3245–AE99****Small Business Size Standards; Size Standards by 2002 North American Industry Classification System**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) proposes to amend its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB)

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 the subject of this proposed rule is noncontroversial and routine, and SBA anticipates no adverse comments to this proposal. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to achieve the same result, that is, to modify its Small Business Size Regulations as proposed here.

**DATES:** SBA must receive comments to this proposed rule on or before September 12, 2002.

**ADDRESSES:** Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW., Washington, DC 20416, via email to [sizestandards@sba.gov](mailto: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](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** SBA adopted 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) 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. This rule both incorporates the 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. Construction and wholesale trade are substantially changed. NAICS 2002 also modified a number of retail trade classifications and the organization of the information sector.

13 CFR 121.101(b) 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.

#### 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	The same size standard as for the NAICS 1997 industry or part.
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 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.

TABLE B—Continued

NAICS 1997		NAICS 1997 activity	NAICS 2002		NAICS 2002 industry
Code	Size std. (\$ million)		Code	Size std. (\$ million)	
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	( <sup>1</sup> )	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.

<sup>1</sup> 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

NAICS 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 NAICS 1997 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

SBA will consider all comments submitted to this proposed rule. Commenters should address whether they agree SBA should adopt NAICS 2002 and what they believe the impact on small businesses will be. SBA will carefully consider these comments prior to making a final decision on adopting the NAICS 2002.

#### Other Change

SBA also proposes to make 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 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 B, above. These activities are very specialized, and the Census Bureau does not publish data on 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 Regulations 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 standards in number of employees or million of dol- lars
* * * * *		
<b>Subsector 236—Construction of Buildings</b>		
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
<b>Subsector 237—Heavy and Civil Engineering Construction</b>		
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

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dol- lars
Except .....	Except Dredging and Surface Cleanup Activities .....	17.0 <sup>2</sup>
<b>Subsector 238—Specialty Trade Contractors</b>		
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 <sup>13</sup> .....	12.0 <sup>13</sup>

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 in their place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dol- lars
<b>Subsector 423—Merchant Wholesalers, Durable Goods</b>		
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
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

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dol- lars
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 standards in number of employees or million of dol- lars
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 standards in number of employees or million of dol- lars
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 standards in number of employees or million of dol- lars
<b>Subsector 515—Broadcasting (except Internet)</b>		
515111 .....	Radio Networks .....	\$6.0
515112 .....	Radio Stations .....	6.0
515120 .....	Television Broadcasting .....	12.0
515210 .....	Cable and Other Subscription Programming .....	12.5
<b>Subsector 516—Internet Publishing and Broadcasting</b>		
516110 .....	Internet Publishing and Broadcasting .....	12.5
<b>Subsector 517—Telecommunications</b>		
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 .....	21.0
<b>Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services</b>		
518111 .....	Internet Service Providers .....	21.0
518112 .....	Web Search Portals .....	6.0
518210 .....	Data Processing, Hosting, and Related Services .....	21.0
<b>Subsector 519—Information Services and Data Processing Services</b>		
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.

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 190

RIN 3038-AB31

### Denomination of Customer Funds and Location of Depositories

AGENCY: Commodity Futures Trading  
Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to adopt a new rule that would permit futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States