Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0022]

RIN 0579–AC34

Citrus Canker; Movement of Fruit From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before August 7, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0022 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0022.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION: On June 21, 2007, we published in the **Federal Register** (72 FR 34180–34191, Docket No. APHIS–2007–0022) a proposal to amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. Under this proposed rule, we would eliminate the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead require that fruit produced in the quarantined area be treated with a surface disinfectant treatment in a packinghouse operating under a compliance agreement and that each lot of finished fruit be inspected at the packinghouse and found free of visible symptoms of citrus canker. We would, however, retain the current prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States.

Comments on the proposed rule were required to be received on or before July 23, 2007. We are reopening the comment period on Docket No. APHIS–2007–0022 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between July 24, 2007, and the date of this notice. We have allowed comments to be submitted through Regulations.gov (see **ADDRESSES** block) during that period.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 24th day of July 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–14530 Filed 7–26–07; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF60

Small Business Size Standards; Calculation of the Number of Employees

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to change the way it calculates a concern's number of employees in determining its small business size status. SBA proposes to alter the period used for calculating average number of employees from the current method, which uses a rolling average over the preceding 12 months, to an average over the last 3 completed calendar years. This proposal simplifies the calculation of the average number of employees, reduces the burden on small businesses, and better defines the size of a small business where number of employees is the measure for the size standard.

DATES: Comments must be received by SBA on or before September 25, 2007.

ADDRESSES: You may submit comments, identified by RIN 3245–AF60 by one of the following methods: (1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

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

SUPPLEMENTARY INFORMATION: SBA is proposing to revise its method of

calculating the number of employees of a business concern from a 12-month rolling average to an average over the last 3 completed calendar years. Calculation of size would be based on, and coincide with, a concern's calendar year submission of Form W–3, ''Transmittal of Wage and Tax Statement,'' to the Internal Revenue Service (IRS) (found at *http://www.irs.gov/pub/irs-pdf/fw3.pdf*). This policy would also coincide with the regulatory requirement for a concern to update its size status on an annually basis in the Central Contractor Registration (CCR) and On-line Certifications and Representations (ORCA) databases. Using the IRS W–3 Form would also give SBA a government-validated document to use in verifying employment size. Currently, SBA reviews a concern's payroll records to determine size where the size standard is number of employees. For receipts-based size standards, SBA requires concerns to submit their IRS tax returns (13 CFR 121.104). This method of validating receipts has worked well.

If a concern has been in business for less than 3 calendar years, average annual number of employees will be calculated based on an annualized figure for the time it has been in operation. For example, a concern that has been in business for 1 year and 3 months will divide its total number of employees by 1.25 (1 year + 3 months/12 months). For this calculation, the time period includes all completed pay periods as of the date of self-certification.

If a concern has not filed an IRS Form W–3 for a period that must be included within the period of measurement, SBA may calculate the concern's average annual using other information. SBA prefers to use other relevant government documents reporting the number of employee of a concern, such as IRS Form 941, Employer's Quarterly Federal Tax Return. In lieu of government documents, SBA will consider any other available information, such as payroll records, which show the total number of employees for the relevant period.

Why is SBA proposing a 3-year average: SBA is proposing to revise its method of calculating the number of employees of a business concern because it considers the current method to be burdensome to small businesses, and because of changes in the Federal procurement process regarding the development of e-government and the acquisition process. This proposal is also in the spirit of SBA's efforts to simplify its size standards where possible.

With the current system of calculating employees, a concern's size can fluctuate from pay period to pay period, necessitating a new calculation after each pay period. SBA's proposal to calculate the number of employees of a concern as an average over the concern's last 3 calendar years provides consistency and stability in calculating size. The proposed calculation, if adopted, would require a concern to calculate its employment size only once a year and it would apply until the beginning of the next calendar year. The time period for calculation would also be similar to the method used for calculating receipts for size purposes, *i.e.*, an average annual receipts over the concern's last 3 completed fiscal years. Furthermore, for those concerns with fiscal years that end at the calendar year, both employment and receipts averages would be calculated at the same time.

With the advent of e-government systems in the Federal acquisition process, a concern must update its CCR and ORCA information at least once a year and every time its small business size status changes, which could occur many times during the year using the current employee calculation method. This is extremely burdensome on small businesses, especially if a concern has different pay periods for different types of employees (*e.g.*, bi-weekly for hourly employees and monthly for salaried employees).

The proposed method of calculation would also be less burdensome and costly to small businesses and the Federal Government. Currently, if a concern's small business size status is protested, the concern must provide to SBA its own, and all of its affiliates, extensive payroll records for the 12 months preceding the date of self-certification. By going to an average number of employees over a calendar year basis, a concern could supply SBA with copies of its own and its affiliates' IRS Form W–3, along with other requested documents as needed, that would show the concern's total number of employees for each of the 3 preceding calendar years.

What SBA is not proposing: On December 3, 2004, SBA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (69 FR 70197) that sought comments from the public on issues raised during the public comment period concerning SBA's withdrawn proposal to simplify and restructure its small business size standards (69 FR 13130, dated March 19, 2004). Many comments received as a result of the withdrawn proposal recommended that SBA modify its method for calculating the number of employees of a business concern. In the December 3, 2004, ANPRM, SBA sought additional comments on alternative methods of calculating the size of a business concern based on number of employees, including the feasibility of using full-time equivalents (FTEs). SBA also requested comments on whether the period for calculating average employment should be modified from SBA's current method, which uses a rolling average over the preceding 12 months. During June of 2005, SBA conducted 11 hearings throughout the country to receive additional comments on the ANPRM issues.

SBA received more than 5,000 comments addressing or mentioning the subject of calculating a concern's number of employees; however, only 10 commenters made substantive comments regarding this subject. The remaining commenters gave one-sentence responses without providing any reasoning for their position. All but 86 of the comments were from organizations that submitted as their own a form comment prepared by and representing the position of a particular small business association. Of the remaining 86 commenters, there were 11 business or trade associations, 2 Alaskan Native Corporations, 1 Community Development Corporation, and one large business prime contractor.

Many commenters misunderstood the request for comments on the employee issue to be a request for a single employee-based size standard to be used government-wide. SBA received recommendations of 25 employees and $100,000; 25 employees and $5 million; 50 employees; 75 employees; 100 employees; 500 employees, and 1,500 employees. One commenter recommended two size standards of 100 and 750 employees, but gave no reasoning for the selection of the two numbers.

Most of the comments received supported the concept of FTEs, with only three commenters discussing how to calculate FTEs. One commenter believed that FTEs should be based upon the number of man hours divided by the average work year for a small business within a given industry and recommended that a man-year equate to 1,080 hours. One commenter recommended SBA define FTEs for a week, month, or full-time year, because it would add consistency between companies. The other recommended that SBA use a 1,920 hours per year standard. The remainder of the commenters just stated their support for the idea.

Six commenters stated their opposition to FTEs. Of the six, four discussed their reasons. Two trade associations strongly opposed the use of FTEs because their industry relies heavily on part-time, temporary and seasonal employees. They believed that this change would place a tremendous administrative recordkeeping burden on their member firms. One of the other commenters believed the use of FTEs would lead to endless disputes and size status protest concerning how to compute the number of FTEs. Another believed that FTEs would create incentives to increase temporary jobs and reduce full time jobs. SBA did not receive any substantive comments on FTEs from concerns in industries that would be impacted by this change, *i.e.*, industries that calculate their size by number of employees. Rather, all of the substantive commenters that addressed FTEs were from concerns and trade associations in industries where the size standards are calculated in receipts and not employees.

Based on these comments, SBA has decided not to convert any industries where the size standard is measured by average annual receipts to employee-based size standards. Also, the voluminous supportive comments provided no basis for SBA to justify a significant change in policy of this nature. Therefore, SBA will not make any changes to the way it calculates number of employees to include FTEs.

Thirteen commenters advocated no change to the way SBA calculates the number of employees. Only one of the commenters gave a reason, *i.e.*, he believed the current method was not complex. SBA believes that the calculation is not complicated, but the current method is burdensome to small businesses, as they need to recalculate their size from pay period to pay period.

As part of SBA's review of comments from the ANPRM on the FTE issue, it explored alternative data sources besides payroll records by which to calculate a concern's number of employees. For the reasons discussed above, SBA believes the use of IRS Form W–3 is a viable alternative to payroll records and lessens the burdens on small businesses and the Federal Government. SBA had decided to propose this change pertaining to employment size rather than other changes offered by the commenters.

Alternative Methods for Calculating Number of Employees: As an alternative, SBA considered using a concern's total number of employees for only its last calendar year. This method would also lessen the burden and instability of the current method that fluctuates pay period to pay period. However, trends in the economy fluctuate over a period of years. SBA's use of a 3-year average for calculating receipts has always taken these fluctuations into account, which provides for a more stable measure of a concern's size. By extending the 3-year period to the calculations of number of employees, SBA is providing consistency in the way it determines size by both receipts and employees. For this reason, SBA has determined that a 3-year average for calculating the number of employees of a concern is more appropriate.

SBA welcomes public comments on its proposal to adopt a 3 calendar year average to calculate a concern's number of employees and the use of IRS Form W–3. Comments on alternatives, including the option of retaining the current method of calculating employment size, should explain why the alternative would be preferable to the proposed method of calculating the number of employees.

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)

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively 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 supplementary information section of this proposed rule explains SBA's reasons for revising the way it defines small businesses in industries where the size standards are employee-based. SBA believes that it can simplify the calculation of employee size and lessen the burden on small businesses.

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

The most significant benefit to businesses in industries that calculate their size in number of employees is the lessening of the burdens placed upon these businesses when they calculate their small business size status for eligibility for Federal small business assistance programs and retaining small business status for a longer period of time. These programs include SBA's financial assistance programs; economic injury disaster loans; and Federal procurement preference programs for small businesses, including 8(a) concerns, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), and service disabled veteran-owned small businesses. HUBZone small businesses are also eligible for Federal contracts awarded through full and open competition after application of the HUBZone price evaluation preference. Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable, and competitive businesses.

The benefits of redefining how the number of employees is calculated would accrue to two groups: businesses that use small business assistance programs and SBA officials that make formal size determinations. Besides reducing the burden on businesses, this proposed rule would reduce the burden on SBA officials performing size determinations. SBA officials could use a concern's IRS Form W–3 and not have to review a concern's payroll records, unless necessary.

SBA estimates that on average a business spends approximately 4 hours preparing size information in response to a size determination. In some cases where a concern must provide extensive payroll records to substantiate its employment size, preparation and copying expenses may be much greater than 4 hours. SBA's proposal to utilize the IRS W–3 Form could significantly reduce these expenses by allowing businesses to provide already prepared information. SBA estimates that preparation time may decrease by at least 1 hour for size determinations based on employment size. SBA would also expend less time on size determinations by use of the IRS W–3 Form rather than verifying and calculating employment size from payroll records. This may save from a few hours to a few days in review time,

depending on the complexity of the case.

3. What are the alternatives to this proposed rule?

SBA considered two alternative approaches to the proposed rule. First, it considered other sources of information on a concern's employment, such as from the U.S. Department of Labor and the Social Security Administration. SBA found that the IRS' W–3 Form provides the most reliable and cost effective alternative source of employment information from payroll records. In addition, SBA would require that a concern calculate both its average annual receipts and number of employees from information submitted to the same Federal agency—the IRS. Second, SBA considered calculating employment size on an annual basis instead of over a 3-year period as a viable alternative. As explained above, a 3-year period has the advantages of providing more stability in small business status and of achieving consistency in policy with the 3-year average used to calculate average annual receipts.

SBA's proposal could potentially impact up to 2,000 businesses, but the actual number is likely to be significantly less than this number. In the Dynamic Small Business Search, approximately 1,800 small businesses out of over 300,000 are near or above 500 employees that could grow or downsize to qualify as small under one of the SBA's employee-based size standards that range between 500 employees to 1,500 employees. In addition, another 200 businesses are near or slightly above the 150-employee size standard for information technology value added resellers. Employment levels of businesses tend to be more stable than revenues, which limits the number of businesses that may become small or retain small business status if this proposal were adopted. SBA invites comment on the impact this proposed rule would have on the number of firms that could potentially do business with the Federal Government or on data to estimate the effect this change would have on the Federal contracting programs.

Under SBA's 7(a) Guaranteed Loan Program, SBA estimates that potentially 10 additional loans totaling $8 million in new Federal loan guarantees could be made to businesses newly-defined as small or those retaining small business status. Additional loans under this program would likely be limited to businesses in the wholesale trade sector, which are subject to a 100-employee size standard. Using the relationships between SBA loan data and the 2002 Economic Census, approximately one-half of one percent of the 1,900 newly eligible small businesses will seek SBA financial assistance. On average, small businesses between 50 to 100 employees obtain 7(a) loans between $700,000 and $800,000 in value.

Any newly defined small businesses could also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

SBA's proposed simplification of the way it calculates small business size standards in terms of number of employees is 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 and related eligibility criteria, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

For purposes of Executive Order 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 Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a federalism assessment.

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

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in industries where the size standard is measured in number of employees. As described above, this rule may affect small entities seeking Federal contracts, SBA 7(a) Loans, SBA Economic Impact Disaster Loans, and assistance from other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which 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 is the need for and objective of the rule?

SBA believes a change in the method of calculating the number of employees will simplify size standards and lessen the burden on small businesses in calculating their size status.

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

The impact of this rule will almost exclusively be related to Federal contracting programs. The Dynamic Small Business Search contains more than 300,000 registrants. Of these, SBA's estimates that about 2,000 businesses near or above the current employee size standards may benefit from this proposal if adopted. However, the actual number is likely to be significantly less than this number because not all of these businesses will experience a sufficient change in size to alter their small business status or to have been awarded Federal contracts. SBA invites comment on the impact this proposed rule would have on the number of firms that could potentially do business with the Federal Government or on data to estimate the effect this change would have on these contracting programs.

3. What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A revised method of calculating the employment size of a concern does not impose any additional reporting, record keeping or compliance requirements on small entities. Changing the way the number of employees of a business is calculated 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?

This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under sec. 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. 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 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with established size standards.

Redefining the way size standards based on number of employees are calculated may also affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, however, SBA cannot estimate the impact of this proposed change on each Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

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

As an alternative, SBA considered using a concern's total number of employees for only its last calendar year. This method would also lessen the burden and instability of the current method that fluctuates pay period to pay period. However, trends in the economy fluctuate over a period of years. SBA's use of a 3-year average for calculating receipts has always taken these fluctuations into account, which provides for a more stable measure of a concern's size. By utilizing the 3-year period to calculate a concern's number of employees, SBA is providing consistency in the way it determines size by both receipts and employees. For this reason, SBA has determined that a 3-year average for calculating the number of employees of a concern is more appropriate.

List of Subjects in 13 CFR Part 121

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

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

2. Revise § 121.106 to read as follows:

§ 121.106 How does SBA calculate annual number of employees?

(a) *Employees* include all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employer organization or leasing concern. Part-time and temporary employees are counted the same as full-time employees. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) *Average annual number of employees.* (1) Where the size standard is number of employees, a concern's size is based on an average annual number of employees.

(2) Average annual number of employees means the total number of employees of the concern (including the employees of its domestic and foreign affiliates) for the preceding 3 calendar years divided by 3.

(3) Average annual number of employees for a concern that has been in business for less than 3 years means the total number of employees over the period the concern has been in business divided by the number of completed calendar years and fraction of the calendar year the concern has been in business. For example, a concern that has been in business for 1 year and 3 months divides its total number of employees by 1.25 (1 year +3 months/12 months).

(4) SBA will use a concern's IRS Form W–3, Transmittal of Wage and Tax Statement, and any corrections thereof, to calculate average annual number of employees. For purposes of counting employees obtained from a temporary employment agency, professional employer organization, or leasing concern, SBA will use contractual documents or invoices between the parties showing the number of individuals provided to the concern.

(5) Where a concern has not filed an IRS Form W–3 for a period which must be included within the period of measurement, SBA may calculate the concern's average annual number of employees using IRS Form 941, Employer's Quarterly Federal Tax Returns, other accredited governmental documents or any other available information, such as payroll records, which show the total number of employees for that relevant period.

(c) *Employees of Affiliates.* (1) The employee size of a business concern with affiliates is calculated by adding the average annual number of employees of the business concern with the average annual number of employees of each affiliate.

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(3) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

Dated: April 30, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–14492 Filed 7–26–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance on which costs incurred by