



Federal Register

**Monday,
December 10, 2007**

Part XIX

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION (SBA)

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Semiannual regulatory agenda.

SUMMARY: The Regulatory Flexibility Act (RFA) and Executive Order 12866 require each agency to publish semiannually a regulatory agenda (agenda) that includes an inventory of all current and projected rulemakings, including regulations the agency expects to develop during the next 12 months and regulations completed since the last publication of the agency’s agenda. SBA is publishing this agenda to provide the public with notice about SBA’s regulatory activities and to provide specific information about those activities. This information will promote the public’s participation in SBA’s regulatory activities.

FOR FURTHER INFORMATION CONTACT: For additional information about specific regulatory actions listed in the agenda, you should direct your comments and inquiries to the appropriate agency contact identified in each entry. For general information about the agenda, you should direct your comments or inquiries to Martin “Sparky” Conrey, Assistant General Counsel for Legislation and Appropriations, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 619-0638, martin.conrey@sba.gov.

SUPPLEMENTARY INFORMATION:

This agenda announces the proposed regulatory actions that SBA plans for the next 12 months and those that were completed since the spring 2007 edition

of the agenda. As permitted by law, SBA is combining the publication of its agenda as required by statute and Executive order and conforming them to the Unified Agenda of Federal Regulatory and Deregulatory Actions format developed by the Regulatory Information Service Center.

The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, completed, or withdrawn by SBA. Accordingly, rulemaking action in SBA’s agenda is grouped according to its stage of development. The stages of development are prerulemaking, proposed rules, final rules, and rulemaking actions completed since the spring 2007 agenda. The agenda is intended to facilitate comments and views by interested members of the public. SBA encourages public participation in its rulemaking process through various mediums including www.regulations.gov. This website allows SBA to place rules on the website and receive public comments through that medium. SBA also provides a link from www.sba.gov to that website.

SBA’s regulations promote statutory mandates and Presidential directives linked to SBA’s goals to improve the economic environment for small business, increase small business success by bridging competitive opportunity gaps, restore homes and businesses affected by disaster, and to operate and manage SBA’s programs and resources efficiently and effectively.

Publication of proposed rulemaking actions in the agenda does not impose any obligation on SBA to take any final action with regard to any specific item. Furthermore, SBA is not precluded from rulemaking activities that are not listed

in this agenda. The dates listed in the timetables for specific actions are estimates and not commitments to act on or by the particular date.

For this edition of SBA’s regulatory agenda, the most important significant regulatory action and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

Beginning with the fall 2007 edition, the Internet will be the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), SBA’s printed agenda entries include only rules that are in the Agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including SBA’s regulatory plan.

Steven C. Preston,
Administrator.

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
448	Small Business Development Centers (SBDC) Program Revisions	3245-AE05
449	Small Business Lending Company and Lender Oversight Regulations (Reg Plan Seq No. 162)	3245-AE14
450	Women-Owned Small Business Federal Contract Assistance Procedures	3245-AF40
451	8(a) Business Development/Small Disadvantaged Business Status Determinations	3245-AF53
452	Amendment to the Small Business Innovation Research (SBIR) Program—A Policy Directive To Increase SBIR Award Amounts To Adjust for Inflation	3245-AF61
453	Small Business Size Standards for the Fuel Dealers Industries	3245-AF67

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

SBA

Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
454	Small Business Size Standards; Support Activities for Air Transportation	3245-AF29
455	Small Business Size Standards; Inflation Adjustment	3245-AF41
456	Definition of “Employee” for Purposes of the HUBZone Program	3245-AF44
457	Small Business Size Standards; Calculation of the Number of Employees	3245-AF60

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
458	HUBZone Empowerment Contracting Program	3245-AF13
459	Small Business Size Standards; Nonmanufacturer Size Standard	3245-AF27
460	Small Business Size Regulations; Small Business Innovation Research Program	3245-AF55
461	Small Business Size Standards—Professional, Scientific, and Technical Services	3245-AF59

Small Business Administration (SBA)

Proposed Rule Stage

448. SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM REVISIONS

Legal Authority: 15 USC 634(b)(6); 15 USC 648

Abstract: This rule would propose amendments to SBA’s SBDC program regulations for the purpose of conforming the regulations to existing statutory requirements. This rule would amend: (1) Procedures for approving and funding of SBDCs; (2) approval procedures for travel outside the continental U.S. and U.S. territories; (3) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (4) requirements for new and renewal applications for SBDC awards, including the requirements for electronic submission through the approved electronic Government submission facility; and (5) provisions regarding the collection and use of individual SBDC client data.

Timetable:

Action	Date	FR Cite
NPRM	03/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Antonio Doss, Associate Administrator/OSBDC, Small Business Administration, 409 Third Street SW, Washington, DC 20416

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RIN: 3245-AE05

449. SMALL BUSINESS LENDING COMPANY AND LENDER OVERSIGHT REGULATIONS

Regulatory Plan: This entry is Seq. No. 162 in part II of this issue of the **Federal Register**.

RIN: 3245-AE14

450. WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES

Legal Authority: 15 USC 637(m); 15 USC 637(d)

Abstract: This rule will establish regulations to implement procedures to increase procurement opportunities for Women-Owned Small Business Concerns in Federal procurement as authorized under section 8(m) of the Small Business Act, 15 U.S.C. section 637(m). On June 15, 2006, the SBA published in the Federal Register, 71 FR 34550, a proposed rule with request for comments to amend its regulations in accordance with section 8(m) of the Small Business Act. Based on SBA’s evaluation of the public comments, discussions with the Department of Justice and the Office of Federal Procurement Policy, and further examination of section 8(m), it has been

determined that the June 15, 2006, proposed rule requires significant changes that warrant further public comment and consideration. In addition, rather than propose a separate rulemaking, SBA believes it would be expeditious to include in this rule implementation of the SBA-commissioned RAND study results, which identified the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement. If SBA proposed an additional rule to implement the RAND Study results instead of combining the two rules into one comprehensive rule, any potential set-asides under the procedures could not be made until the RAND report rule had been finalized. Therefore, SBA’s action of combining the RAND report rule with this re-proposed June 15, 2006, rule, not only obviates the need for a separate rulemaking, but significantly will not delay the implementation of the WOSB procedures.

Timetable:

Action	Date	FR Cite
NPRM	06/15/06	71 FR 34550
NPRM Comment Period End	07/17/06	
Second NPRM	01/00/08	

Regulatory Flexibility Analysis Required: Yes

SBA

Proposed Rule Stage

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RIN: 3245-AF40

451. 8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

Legal Authority: 15 USC 637 (b) (6), 636 (j), 637 (2), 637 (d)

Abstract: This proposed rule amends the regulations governing the 8(a) Business Development (8(a) BD) program to: (1) Revise the requirements for certain sole source contracts to joint ventures between 8(a) concerns owned and controlled by Indian tribes or Alaska Native Corporations (ANCs) and other concerns; (2) implement statutory changes permitting Native Hawaiian Organizations (NHOs) to enter into sole source contracts with the Department of Defense (DOD) where such contract are in excess of the competitive threshold amounts; (3) provide more flexibility to the Agency in determining whether to admit a company for program participation where a family member of an individual claiming disadvantaged status for an applicant to the 8(a) program owns a concern already participating in the 8(a) program of a former participant; (4) clarify how agencies can receive credit towards their 8(a) prime contracting goals when placing orders under multiple award contracts; and (5) add

certain words that were inadvertently omitted from section 124.105(h)(2).

Timetable:

Action	Date	FR Cite
NPRM	06/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Joe Loddo, Director, Office of Business Development, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
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RIN: 3245-AF53

452. AMENDMENT TO THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM—A POLICY DIRECTIVE TO INCREASE SBIR AWARD AMOUNTS TO ADJUST FOR INFLATION

Legal Authority: 15 USC 638(i)

Abstract: SBA proposes to increase the award size thresholds for the SBIR program to adjust for inflation. The Agency is authorized by statute to adjust the award amounts once every 5 years to reflect economic adjustments and programmatic considerations. The current thresholds, set in 1992, are \$100,000 for Phase I awards and \$750,000 for Phase II awards.

Timetable:

Action	Date	FR Cite
NPRM	06/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Edsel Brown, Division Chief for Technology, Office of Government Contracting/Business Development, Small Business

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RIN: 3245-AF61

453. • SMALL BUSINESS SIZE STANDARDS FOR THE FUEL DEALERS INDUSTRIES

Legal Authority: 15 USC 632(a)

Abstract: This rule proposes to replace the receipts based size standard for two fuel dealers industries with an employee-based size standard. The industries are Heating Oil Dealers, and (NAICS 454311), Liquefied Petroleum Gas (Bottled Gas) Dealers (454312). Petroleum prices have fluctuated greatly over the past several years and continued volatility is expected in the future. Because of the uncertain price fluctuations of petroleum, adopting an employee size standard will create a more stable size standard.

Timetable:

Action	Date	FR Cite
NPRM	10/31/07	72 FR 61574
NPRM Comment Period End	11/30/07	
Final Action	10/00/08	

Regulatory Flexibility Analysis Required: Yes

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RIN: 3245-AF67

Small Business Administration (SBA)

Final Rule Stage

454. SMALL BUSINESS SIZE STANDARDS; SUPPORT ACTIVITIES FOR AIR TRANSPORTATION

Legal Authority: 15 USC 632(a)

Abstract: This rule revises the \$6.5 million small business size standard applicable to airport operations and other support activities for air transportation. This rule was developed after an internal review conducted by SBA suggested that the size standard

did not reflect the structural characteristics of firms in this industry.

Timetable:

Action	Date	FR Cite
NPRM	05/17/06	71 FR 28604
NPRM Comment Period End	06/16/06	
Final Action	04/00/08	

Regulatory Flexibility Analysis Required: Yes

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RIN: 3245-AF29

SBA

Final Rule Stage

455. SMALL BUSINESS SIZE STANDARDS; INFLATION ADJUSTMENT**Legal Authority:** 15 USC 632(a)

Abstract: SBA is adjusting its monetary-based size standards (e.g., receipts, net income, net worth, and financial assets), for the effect of inflation that has occurred since the last inflation adjustment in February 2002. Since the last inflation adjustment, the general level of prices has increased 8.7 percent. This action restores small business eligibility to businesses that have lost that status due to inflation. In addition, this rule changes the process for determining the size of small business concerns applying for SBA Business Loans and Economic Injury Disaster Loans (EIDL) from a test considering only the primary industry of the applicant to a two-part test to consider also the primary industry of the applicant with affiliates. This rule also changes the date on which SBA determines size status for purpose of EIDL applications for businesses located in disaster areas declared as a result of Hurricanes Katrina, Rita, and Wilma.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/06/05	70 FR 72577
Interim Final Rule Comment Period End	01/05/06	
Final Action	01/00/08	

Regulatory Flexibility Analysis Required: Yes

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RIN: 3245-AF41**456. DEFINITION OF "EMPLOYEE" FOR PURPOSES OF THE HUBZONE PROGRAM****Legal Authority:** 15 USC 657 (a)

Abstract: The purpose of this final rule is to amend the definition of "employee" under 13 CFR 126.103. The definition of "employee" in part 126 is relevant to SBA's determination of whether a concern is eligible for certification as a HUBZone small business concern. On May 13, 2004, SBA issued an Advance Notice of Proposed Rulemaking requesting comments on, among other things, specific issues related to the definition of "employee," including the status of part-time, leased, and temporary employees, and the use of the term "full-time equivalent" in the definition of "employee." After careful consideration of the comments received, SBA has decided to amend the definition of "employee" to reflect current business operations, market conditions, and personnel practices within the small business community.

Timetable:

Action	Date	FR Cite
NPRM	01/26/07	72 FR 3750
NPRM Comment Period End	02/26/07	
Final Action	02/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Michael P. McHale, Director, Office of HUBZone, Small Business Administration, 409 Third Street SW, Washington, DC 20416
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RIN: 3245-AF44**457. SMALL BUSINESS SIZE STANDARDS; CALCULATION OF THE NUMBER OF EMPLOYEES****Legal Authority:** 15 USC 632

Abstract: The U.S. Small Business Administration proposes a technical change to the manner in which it calculates the number of employees to determine a firm's small business size status by revising the method for calculating an average number of employees. The current method uses a rolling average of the pay periods over the preceding 12 months.

Timetable:

Action	Date	FR Cite
NPRM	07/27/07	72 FR 41239
NPRM Comment Period End	09/25/07	
Final Action	07/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary M. Jackson, Division Chief, Division of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
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RIN: 3245-AF60

Small Business Administration (SBA)

Completed Actions

458. HUBZONE EMPOWERMENT CONTRACTING PROGRAM**Legal Authority:** 15 USC 657a

Abstract: SBA published an Advance Notice of Proposed Rulemaking (ANPRM) requesting comments regarding the HUBZone Program and agricultural commodities purchased by the U.S. Department of Agriculture (USDA). According to the Small Business Act, in the case of a contract for the procurement by the USDA of agricultural commodities, a qualified

HUBZone small business concern may not purchase the commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government. SBA sought comments on how to define "substantially the final form" with respect to this statutory requirement. Additionally, SBA sought comments on the implementation of a statutory provision regarding HUBZone set-asides and the definition of "employee."

Completed:

Reason	Date	FR Cite
Withdrawn	08/10/07	

Regulatory Flexibility Analysis Required: Yes

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RIN: 3245-AF13

SBA

Completed Actions

459. SMALL BUSINESS SIZE STANDARDS; NONMANUFACTURER SIZE STANDARD**Legal Authority:** 15 USC 632(a)

Abstract: This rule would have proposed revising the 500 employee small business size standard applicable to nonmanufacturers supplying manufactured products to the Federal Government (see 13 CFR 121.406 (b)). The proposed revision would have addressed concerns that the current size standard adversely affects Federal contracting opportunities for small businesses and that businesses no longer disadvantaged due to size benefit from the size standard.

Completed:

Reason	Date	FR Cite
Withdrawn	08/10/07	

Regulatory Flexibility Analysis**Required:** Yes**Agency Contact:** Gary M. Jackson

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RIN: 3245-AF27**460. SMALL BUSINESS SIZE REGULATIONS; SMALL BUSINESS INNOVATION RESEARCH PROGRAM****Legal Authority:** 15 USC 632

Abstract: The U.S. Small Business Administration (SBA) would have revised its small business size regulations regarding ownership and control of Small Business Innovation Research (SBIR) Program awardees. Currently, to be eligible for an SBIR award, an awardee must meet the following ownership and control criteria: (a) Be a for-profit concern that is at least 51 percent of the United States, or permanent resident aliens in the United States, or (b) be a concern that is at least 51 percent owned and controlled by another business concern that is itself at least 51 percent owned and controlled by individuals who are citizens of or permanent resident aliens in the United States, or (c) be a joint venture in which each entity to the venture must meet the requirements set forth in (a) or (b) above. In addition, an SBIR awardee, together with its affiliates, can not have more than 500 employees. The proposed rule sets forth changes to the ownership and control provisions of 13 CFR 121.702 to allow for expanded VCOC (Venture Capital Operating Company) ownership (as VCOC is defined by the Department of Labor).

Completed:

Reason	Date	FR Cite
Withdrawn	08/10/07	

Regulatory Flexibility Analysis**Required:** Yes**Agency Contact:** Edsel Brown

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RIN: 3245-AF55**461. SMALL BUSINESS SIZE STANDARDS—PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES****Legal Authority:** 15 USC 632

Abstract: This rule would have proposed establishing a special size standard category for Federal contracts consisting of a combination of three or more professional, scientific, and technical services.

Completed:

Reason	Date	FR Cite
Withdrawn	08/10/07	

Regulatory Flexibility Analysis**Required:** Yes**Agency Contact:** Gary M. Jackson

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RIN: 3245-AF59

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