



Federal Register

**Monday,
November 24, 2008**

Part XVI

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 2008 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the agenda is to provide information to the public on regulations currently under review, being proposed, completed, or withdrawn by SBA.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 pre-rulemaking, proposed rules, final rules, and rulemaking actions completed since the spring 2008 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 the SBA’s regulatory agenda, the most important significant regulatory actions 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.

Sandy K. Baruah,
Acting Administrator.

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
424	Small Business Development Centers (SBDC) Program Revisions	3245-AE05
425	8(a) Business Development/Small Disadvantaged Business Status Determinations	3245-AF53
426	Small Business Size Standards; Calculation of the Number of Employees	3245-AF60
427	Small Business Size Standards: Retail Trade Industries	3245-AF69
428	Small Business Size Standards: Other Services	3245-AF70
429	Small Business Size Standards: Accommodations and Food Service Industries	3245-AF71

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Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
430	Lender Oversight Program (Reg Plan Seq No. 112)	3245-AE14
431	Small Business Size Standards; Support Activities for Air Transportation	3245-AF29
432	Definition of “Employee” for Purposes of the HUBZone Program	3245-AF44

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

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
433	Women-Owned Small Business Federal Contract Assistance Procedures	3245-AF40
434	Small Business Size Standards; Inflation Adjustment	3245-AF41
435	Small Business Size Standards for the Fuel Dealers Industries	3245-AF67

Small Business Administration (SBA)

Proposed Rule Stage

424. 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	09/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Antonio Doss, Director, Office of Small Business Development Centers, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-6766
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RIN: 3245-AE05

425. 8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

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

Abstract: This rule proposes to make a number of changes to the regulations governing the 8(a) BD and SDB programs, and several changes to SBA’s size regulations. Some of the changes involve technical issues. Other changes are more substantive and result from SBA’s experience in implementing the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/09	

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

426. 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	
Second NPRM	06/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary M. Jackson, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
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Email: gary.jackson@sba.gov

RIN: 3245-AF60

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Proposed Rule Stage

427. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES**Legal Authority:** 15 USC 632(a)

Abstract: A U.S. Small Business Administration project is the review of all SBA size standards over a 2-year period. This proposed rule is one of a series of proposals evaluating the size standards for industries within a specific North American Industry Classification System (NAICS) Industry Sector. This action proposes revisions to certain industries in the NAICS Retail Trade Industry Sector. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

Timetable:

Action	Date	FR Cite
NPRM	01/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary M. Jackson, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618
Fax: 202 205-6390
Email: gary.jackson@sba.gov

RIN: 3245-AF69**428. SMALL BUSINESS SIZE STANDARDS: OTHER SERVICES****Legal Authority:** 15 USC 632(a)

Abstract: A U.S. Small Business Administration project is the review of all SBA size standards over a 2-year period. This proposed rule is one of a series of proposals evaluating the size standards for industries within a specific North American Industry Classification System (NAICS) Industry Sector. This action proposes revisions to certain industries in the NAICS Other Services Industry Sector. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

Timetable:

Action	Date	FR Cite
NPRM	01/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary M. Jackson, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618
Fax: 202 205-6390
Email: gary.jackson@sba.gov

RIN: 3245-AF70**429. SMALL BUSINESS SIZE STANDARDS: ACCOMMODATIONS AND FOOD SERVICE INDUSTRIES****Legal Authority:** 15 USC 632(a)

Abstract: A U.S. Small Business Administration project is a review of all SBA size standards over a 2-year period. This proposed rule is one of a series of proposals evaluating the size standards for industries within a specific North American Industry Classification System (NAICS) Industry Sector. This action proposes revisions to certain industries in the NAICS Accommodations and Food Services Industry Sector. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

Timetable:

Action	Date	FR Cite
NPRM	01/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary M. Jackson, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
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RIN: 3245-AF71

Small Business Administration (SBA)

Final Rule Stage

430. LENDER OVERSIGHT PROGRAM

Regulatory Plan: This entry is Seq. No. 112 in part II of this issue of the Federal Register.

RIN: 3245-AE14**431. 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	12/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary M. Jackson, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
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RIN: 3245-AF29**432. 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

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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	08/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Mariana Pardo, Acting Director, Office of Hubzone, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
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Email: mariana.pardo@sba.gov

RIN: 3245-AF44

Small Business Administration (SBA)

Completed Actions

433. WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES

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

Abstract: On December 27, 2007, the U.S. Small Business Administration ("SBA") published in the Federal Register a proposed rule with request for comments to amend its regulations in accordance with section 8(m) of the Small Business Act, 15 U.S.C. section 637(m). This rule establishes regulations to implement procedures to increase Federal procurement opportunities for Women-Owned Small Businesses ("WOSBs"). More specifically, this rule authorizes contracting officers to restrict competition to eligible WOSBs for Federal contracts not exceeding \$3 million (\$5 million for manufacturing) in certain industries in which WOSBs are underrepresented or substantially underrepresented and in which the procuring agency has determined that the set-aside would satisfy constitutional requirements. The rule also sets forth the standards for determining the eligibility of a concern as a WOSB or economically disadvantaged WOSB ("EDWOSB") and would require any firm receiving a contract to be certified as a "small business concern owned and controlled by women" as defined in section 3(n) of the Small Business Act, 15 U.S.C. section 632(n). The rule also establishes standards for eligibility examinations and protest procedures, as well as identify the penalties that can be imposed for a concern's misrepresentation of its status as an EDWOSB or WOSB. Lastly, the rule makes the relevant conforming amendments to SBA's current procurement and appeal procedure regulations.

Completed:

Reason	Date	FR Cite
Final Action	10/01/08	73 FR 56940

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Linda Korbol
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RIN: 3245-AF40

434. SMALL BUSINESS SIZE STANDARDS; INFLATION ADJUSTMENT

Legal Authority: 15 USC 632(a)

Abstract: SBA adjusted 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 restored small business eligibility to businesses that have lost that status due to inflation. In addition, this rule changed 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 changed the date on which SBA determined the size status for purpose of EIDL applications for businesses located in disaster areas declared as a result of Hurricanes Katrina, Rita, and Wilma.

Completed:

Reason	Date	FR Cite
Final Action	07/18/08	73 FR 41237

Regulatory Flexibility Analysis Required: Yes

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RIN: 3245-AF41

435. SMALL BUSINESS SIZE STANDARDS FOR THE FUEL DEALERS INDUSTRIES

Legal Authority: 15 USC 632(a)

Abstract: This rule replaced the receipts based size standard for two fuel dealers industries with an employee-based size standard. The industries are Heating Oil Dealers (NAICS 454311) and 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.

Completed:

Reason	Date	FR Cite
Final Action	07/22/08	73 FR 42517

Regulatory Flexibility Analysis Required: Yes

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RIN: 3245-AF67

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