



# Federal Register

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**Monday,  
May 11, 2009**

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**Part XV**

## **Small Business Administration**

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**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 fall 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the agenda is to provide information to the public on regulations currently under review, being proposed, completed, or withdrawn by SBA.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 prerulemaking, proposed rules, final rules, and rulemaking actions completed since the fall 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](http://www.regulations.gov). This Web site allows SBA to place rules on the Web site and receive public comments through that medium. SBA also provides a link from [www.sba.gov](http://www.sba.gov) to that Web site.

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.

Since the fall 2008 edition, the Internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at [www.reginfo.gov](http://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.

**Darryl K. Hairston,**  
*Acting Administrator.*

Small Business Administration—Proposed Rule Stage

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 278             | Small Business Development Centers (SBDC) Program Revisions .....   | 3245–AE05                    |
| 279             | 8(a) Business Development .....   | 3245–AF53                    |
| 280             | Small Business Size Standards: Retail Trade Industries .....  | 3245–AF69                    |
| 281             | Small Business Size Standards: Other Services .....   | 3245–AF70                    |
| 282             | Small Business Size Standards: Accommodations and Food Service Industries .....                                   | 3245–AF71                    |
| 283             | SBA Express Loan Program .....  | 3245–AF85                    |
| 284             | Implementation of Energy Independence and Security Act of 2007 .....  | 3245–AF86                    |
| 285             | Implementation of Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 ..... | 3245–AF87                    |
| 286             | Implementation of Small Business Disaster Response and Loan Improvements Act of 2008 .....                        | 3245–AF88                    |

**SBA****Small Business Administration—Final Rule Stage**

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 287             | Lender Oversight Program .....   | 3245-AE14                    |
| 288             | Definition of “Employee” for Purposes of the HUBZone Program .....                         | 3245-AF44                    |
| 289             | Women-Owned Small Business Federal Contact Assistance Procedures—Eligible Industries ..... | 3245-AF80                    |
| 290             | Implementation of American Recovery and Reinvestment Act of 2009 .....                     | 3245-AF89                    |

**Small Business Administration—Completed Actions**

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 291             | Small Business Size Standards; Support Activities for Air Transportation ..... | 3245-AF29                    |
| 292             | Small Business Size Standards; Calculation of the Number of Employees .....    | 3245-AF60                    |

**Small Business Administration (SBA)****Proposed Rule Stage****278. 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   | 02/00/10 |         |

**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

Email: antonio.doss@sba.gov  
**RIN:** 3245-AE05

**279. 8(A) BUSINESS DEVELOPMENT**

**Legal Authority:** 15 USC 634(b)(6), 636(j), 637(a) and (d)

**Abstract:** This rule proposes to make a number of changes to the regulations governing the 8(a) BD Program and several changes to SBA’s size regulations. Some of the changes involve technical issues, such as changing the term “SIC code” to “NAICS code” to reflect the national conversion to the North American Industry Classification system. SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unfairly preclude firms from being admitted to the program. In other cases, SBA has determined that a rule is too expansive or indefinite and has sought to restrict or clarify that rule. Changes are also being proposed to correct past public or agency misinterpretation. Also, new situations have arisen that were not anticipated when the current rules were drafted and the proposed rule seeks to cover those situations. Finally, one of the changes, involving Native Hawaiian Organizations, implements recently enacted legislation.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 06/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Joe Loddo, Associate Administrator, Office of Business Development, Small Business Administration, 409 3rd Street SW, Washington, DC 20416  
Phone: 202 205-7550  
Email: joe.loddo@sba.gov

**RIN:** 3245-AF53

**280. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES**

**Legal Authority:** 15 USC 632(a)

**Abstract:** A U.S. Small Business Administration project is the review and update 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   | 07/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

## SBA

## Proposed Rule Stage

**Agency Contact:** Carl J. Jordan, Acting Division Chief, Division of Size Standards, Office of Gov't Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-6618

Fax: 202 205-6390

**RIN:** 3245-AF69

### 281. 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. Other Services include, for example, repair and maintenance services, personal and laundry services, and religious, grant making, civic, and professional services. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 07/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Carl J. Jordan, Acting Division Chief, Division of Size Standards, Office of Gov't Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-6618

Fax: 202 205-6390

**RIN:** 3245-AF70

### 282. 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   | 07/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Carl J. Jordan, Acting Division Chief, Division of Size Standards, Office of Gov't Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-6618

Fax: 202 205-6390

**RIN:** 3245-AF71

### 283. • SBA EXPRESS LOAN PROGRAM

**Legal Authority:** 15 USC 636(a)(31)

**Abstract:** SBA plans to issue regulations for the SBA Express loan program codified in section 7(a)(31) of the Small Business Act. The SBA Express program reduces the number of Government mandated forms and procedures, streamlines the processing and reduces the cost of smaller, less complex SBA loans. SBA Express loans carry a maximum SBA guaranty of 50 percent.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 08/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416

Phone: 202 205-7562

Email: grady.hedgespeth@sba.gov.

**RIN:** 3245-AF85

### 284. • IMPLEMENTATION OF ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

**Legal Authority:** 15 USC 636(a)(32)

**Abstract:** SBA plans to issue regulations to implement the small

business energy provisions in the Energy Independence and Security Act of 2007. The new regulations will provide guidance on several program changes, including larger 504 loan limits to help small businesses develop energy efficient technologies, investments in energy saving small businesses, and an energy saving debenture program.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 05/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James W. Hammersley, Director, Office of Loan Policy, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-6490

**RIN:** 3245-AF86

### 285. • IMPLEMENTATION OF MILITARY RESERVIST AND VETERAN SMALL BUSINESS REAUTHORIZATION AND OPPORTUNITY ACT OF 2008

**Legal Authority:** 15 USC 632(q); 15 USC 636(j)

**Abstract:** SBA plans to issue regulations to implement section 205 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act. These regulations will provide guidance on tolling of time limitations for veteran-owned small businesses.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 08/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dean R. Koppel, Assistant Administrator, Office of Policy, Planning, and Liaison, Small Business Administration, 409 3rd Street SW, Washington, DC 20416

Phone: 202 205-7322

Fax: 202 481-1540

**RIN:** 3245-AF87

### 286. • IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENTS ACT OF 2008

**Legal Authority:** 15 USC 636(b); 636(c); 636(d)

## SBA

## Proposed Rule Stage

**Abstract:** SBA plans to issue regulations to implement the Small Business Disaster Response and Loan Improvements Act of 2008, located in subtitle B of the Food, Conservation, and Energy Act of 2008. The new regulations will make conforming changes to existing regulations and establish three new programs: The Private Disaster Loan program, the Immediate Disaster Assistance program, and the Expedited Disaster Assistance

program for businesses. Additional new regulations will provide guidance on expanded assistance during catastrophic disasters and address coordination with the Federal Emergency Management Agency (FEMA).

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 06/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Steven G Smith, Chief, Executive Office of Disaster Strategic Planning & Operations, Small Business Administration, 409 3rd St SW, Washington, DC 20416  
Phone: 202 205-7192  
Fax: 202 292-3778  
Email: steven.smith@sba.gov

**RIN:** 3245-AF88

## Small Business Administration (SBA)

## Final Rule Stage

**287. LENDER OVERSIGHT PROGRAM**

**Legal Authority:** 15 USC 634(b)(6),(b)(7),(b)(14),(h), and note; 687(f),697(e)(c)(8), and 650.

**Abstract:** This rule implements the Small Business Administration's (SBA) statutory authority under the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) to regulate Small Business Lending Companies (SBLCs) and non-federally regulated lenders (NFRLs). It also would conform SBA rules to various changes in the section 7(a) Business Loan Program and the Certified Development Company (CDC) Program.

In particular, this rule (1) Defines SBLCs and NFRLs; (2) clarifies SBA's authority to regulate SBLCs and NFRLs; (3) authorizes SBA to set certain minimum capital standards for SBLCs, to issue cease and desist orders, and revoke or suspend lending authority of SBLCs and NFRLs; (4) establishes the Bureau of Premier Certified Lender Program Oversight in the Office of Credit Risk management; (5) transfers existing SBA enforcement authority over CDCs from the Office of Financial Assistance to the appropriate official in the Office of Capital Access; and (6) defines SBA's oversight and enforcement authorities relative to all SBA lenders participating in the 7(a) and CDC programs and intermediaries in the Microloan program.

**Timetable:**

| Action                       | Date     | FR Cite     |
|------------------------------|----------|-------------|
| NPRM                         | 10/31/07 | 72 FR 61752 |
| NPRM Comment Period Extended | 12/20/07 | 72 FR 72264 |
| NPRM Comment Period End      | 02/29/08 |             |
| Interim Final Rule           | 12/11/08 | 73 FR 75498 |

| Action                       | Date     | FR Cite |
|------------------------------|----------|---------|
| Interim Final Rule           | 03/11/09 |         |
| Comment Period End           |          |         |
| Interim Final Rule Effective | 01/12/09 |         |
| Final Action                 | 12/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Bryan Hooper, Director, Office of Credit Risk Management, Small Business Administration, 409 3rd Street SW, Washington, DC 20416  
Phone: 202 205-3049  
Fax: 202 205-6831  
Email: bryan.hooper@sba.gov

**RIN:** 3245-AE14

**288. 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            | 02/00/10 |            |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mariana Pardo, Acting Director, Office of Hubzone, Small Business Administration, 409 3rd Street SW, Washington, DC 20416  
Phone: 202 205-2985  
Email: mariana.pardo@sba.gov

**RIN:** 3245-AF44

**289. • WOMEN-OWNED SMALL BUSINESS FEDERAL CONTACT ASSISTANCE PROCEDURES—ELIGIBLE INDUSTRIES**

**Legal Authority:** Not Yet Determined

**Abstract:** The U.S. Small Business Administration (SBA) is prohibited from using funding in Fiscal Year 2009 to implement the program relating to Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures published on October 1, 2008, but the Omnibus Appropriations Act, 2009, Div. D, title V, section 522 (March 11, 2009). SBA plans to withdraw this proposed rule and promulgate a new rule in order to establish and implement and effective WOSB procurement program. SBA is committed to moving forward to implement a successful WOSB procurement program.

## SBA

## Final Rule Stage

**Timetable:**

| Action                      | Date     | FR Cite     |
|-----------------------------|----------|-------------|
| NPRM                        | 10/01/08 | 73 FR 57014 |
| NPRM Comment Period End     | 10/31/08 |             |
| Reopening of Comment Period | 01/12/09 | 74 FR 1153  |
| Comment Period End          | 03/13/09 |             |
| Withdrawal and New Rule     | 07/00/09 |             |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dean R. Koppel, Assistant Administrator, Office of Policy, Planning, and Liaison, Small Business Administration, 409 3rd Street SW, Washington, DC 20416  
Phone: 202 205-7322  
Fax: 202 481-1540

**RIN:** 3245-AF80

**290. • IMPLEMENTATION OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

**Legal Authority:** 15 USC 636; 15 USC 683(b); 15 USC 686(a); 15 USC 695,697

**Abstract:** SBA plans to issue regulations to implement the American Recovery and Reinvestment Act of 2009. The new regulations will make conforming changes to existing regulations and establish several new programs. These programs include a secondary market guarantee program for 504 first mortgages, a refinancing program for community development loans, a business stabilization loan program for small businesses experiencing immediate financial hardship, and a program to make loans to systemically important SBA secondary market broker-dealers. In addition, new regulations will increase

the maximum leverage limits for small business investment companies, and will increase the maximum contract amount in the Surety Bond Guarantee program.

**Timetable:**

| Action             | Date     | FR Cite |
|--------------------|----------|---------|
| Interim Final Rule | 04/00/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Eric R Zarnikow, Associate Administrator, Office of Capital Access, Small Business Administration, 409 3rd Street SW, Washington, DC 20416  
Phone: 202 205-6657  
Fax: 202 481-0797  
Email: eric.zarnikow@sba.gov

**RIN:** 3245-AF89

## Small Business Administration (SBA)

## Completed Actions

**291. 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.

**Completed:**

| Reason    | Date     | FR Cite |
|-----------|----------|---------|
| Withdrawn | 02/26/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Gary M. Jackson  
Phone: 202 205-6618  
Fax: 202 205-6390  
Email: gary.jackson@sba.gov

**RIN:** 3245-AF29

**292. 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.

**Completed:**

| Reason    | Date     | FR Cite |
|-----------|----------|---------|
| Withdrawn | 02/27/09 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Gary M. Jackson  
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**RIN:** 3245-AF60

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