



Federal Register

**Monday,
December 7, 2009**

Part XV

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 2009 edition

of the agenda. 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the agenda is to provide information to the public on regulations currently under review, being proposed, completed, or withdrawn by SBA.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 2009 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; drive business formation, job growth, and economic expansion, particularly in underserved markets; 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 publication, the Internet has become 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 agenda required by the RFA (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 RFA, 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 RFA’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.

Karen G. Mills,
Administrator.

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
442	Small Business Development Centers (SBDC) Program Revisions	3245-AE05
443	8(a) Business Development (Reg Plan Seq No. 158)	3245-AF53
444	Small Business Size Regulations; Business Status Determinations; Protest and Appeal Regulations	3245-AF65
445	Small Business Size Standards: Retail Trade Industries (Reg Plan Seq No. 159)	3245-AF69
446	Small Business Size Standards: Other Services (Reg Plan Seq No. 160)	3245-AF70
447	Small Business Size Standards: Accommodations and Food Service Industries (Reg Plan Seq No. 161)	3245-AF71
448	Women-Owned Small Business Federal Contract Assistance Procedures—Eligible Industries	3245-AF80
449	SBA Express Loan Program	3245-AF85
450	Implementation of Energy Independence and Security Act of 2007	3245-AF86

SBA

Small Business Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
451	Implementation of Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008	3245-AF87
452	Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Expedited Disaster Assistance Program	3245-AF88
453	Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Private Loan Disaster Program	3245-AF99
454	Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Immediate Disaster Assistance Program	3245-AG00
455	Interest Rate—Resetting Fixed Interest Rate	3245-AG03
456	504 Program Governance Regulations	3245-AG04
457	Small Business Size Standards for Loan, Investment, and Surety Programs	3245-AG05
458	Women-Owned Small Business Federal Contract Program (Reg Plan Seq No. 162)	3245-AG06

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

Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
459	Lender Oversight Program	3245-AE14

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
460	Definition of “Employee” for Purposes of the HUBZone Program	3245-AF44
461	Implementation of American Recovery and Reinvestment Act of 2009	3245-AF89

Small Business Administration (SBA)

Proposed Rule Stage

442. 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	08/00/10	

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

443. 8(A) BUSINESS DEVELOPMENT

Regulatory Plan: This entry is Seq. No. 158 in part II of this issue of the **Federal Register**.

RIN: 3245-AF53

444. SMALL BUSINESS SIZE REGULATIONS; BUSINESS STATUS DETERMINATIONS; PROTEST AND APPEAL REGULATIONS

Legal Authority: 15 USC 632; 15 USC 634

Abstract: SBA is proposing to standardize protest and appeal regulations across all small business programs and clarify the effect of a negative determination on the procurement in question. SBA’s proposed rule will clarify that an award should not be made to an ineligible concern, and in cases where an award

SBA

Proposed Rule Stage

has been made prior to an SBA final decision finding a business to be ineligible, the contracting agency shall either terminate the contract, not exercise an option, or not award further task or delivery orders to the ineligible concern. SBA is also proposing to clarify how contracting officers select NAICS codes for multiple award task and delivery order contracts. The changes recommended were prompted by recent bid protest litigation, a survey of cases handled by SBA's Government Contracting Area Offices, and recent rulings by SBA's Office of Hearings and Appeals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-7189

Fax: 202 205-6390

RIN: 3245-AF65

445. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES

Regulatory Plan: This entry is Seq. No. 159 in part II of this issue of the *Federal Register*.

RIN: 3245-AF69

446. SMALL BUSINESS SIZE STANDARDS: OTHER SERVICES

Regulatory Plan: This entry is Seq. No. 160 in part II of this issue of the *Federal Register*.

RIN: 3245-AF70

447. SMALL BUSINESS SIZE STANDARDS: ACCOMMODATIONS AND FOOD SERVICE INDUSTRIES

Regulatory Plan: This entry is Seq. No. 161 in part II of this issue of the *Federal Register*.

RIN: 3245-AF71

448. WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT 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, by the Omnibus Appropriations Act, 2009, Div. D, title V, section 522 (Mar. 11, 2009). SBA plans to withdraw this proposed rule and promulgate a new rule in order to establish and implement an effective WOSB procurement program. SBA is committed to moving forward to implement a successful WOSB procurement program.

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	02/00/10	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Dean R. Koppel, Acting Director for Government Contracting, 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

449. 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 loan 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	02/00/10	

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

450. 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	05/00/10	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6490

RIN: 3245-AF86

451. 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	03/00/10	

SBA

Proposed Rule Stage

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Dean R. Koppel, Acting Director for Government Contracting, 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**452. IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: EXPEDITED DISASTER ASSISTANCE PROGRAM****Legal Authority:** PL 110-246, sec 12085

Abstract: This proposed rule would establish and implement an expedited disaster assistance business loan program under which the SBA may, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business concern under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as added by this Act. Paragraph (9) of section 7(b) of the Small Business Act provides that if the President declares a major disaster, the Administrator of the SBA may declare eligibility for additional disaster assistance if certain conditions are satisfied.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: James E. Rivera, Acting Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619-0005
Fax: 202 205-7728
Email: james.rivera@sba.gov

RIN: 3245-AF88**453. • IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: PRIVATE LOAN DISASTER PROGRAM****Legal Authority:** PL 110-246, sec 12083

Abstract: This proposed rule would establish and implement a private loan disaster program under which the SBA

may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual. SBA may guarantee up to 85 percent of any loan under this program and the maximum amount of a loan under this program is \$2 million.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: James E. Rivera, Acting Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619-0005
Fax: 202 205-7728
Email: james.rivera@sba.gov

RIN: 3245-AF99**454. • IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: IMMEDIATE DISASTER ASSISTANCE PROGRAM****Legal Authority:** 15 USC 636(b), 636(c), 636(d)

Abstract: This proposed rule would establish and implement an immediate disaster assistance program under which the Administration participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if such balance is less than or equal to \$25,000 for businesses affected by a disaster. To receive a loan under section 42(a) of the Small Business Act, the applicant must also apply for, and meet basic eligibility standards for, a loan under section 7(b) or 7(c) of the Small Business Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: James E. Rivera, Acting Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619-0005
Fax: 202 205-7728

Email: james.rivera@sba.gov

RIN: 3245-AG00**455. • INTEREST RATE—RESETTING FIXED INTEREST RATE****Legal Authority:** 15 USC 634

Abstract: SBA currently offers either a fixed or variable interest rate for 7(a) loans. In addition to these rates, the Agency is working to develop a shorter term fixed interest rate with the ability to be re-set periodic intervals. This type of rate is currently available in the commercial market place and will help provide additional options for small business borrowers. By authorizing this option, SBA is recognizing a need to allow lenders to utilize market opportunities. For example, SBA recently revised section 120.214 to allow the use of LIBOR.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

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-AG03**456. • 504 PROGRAM GOVERNANCE REGULATIONS****Legal Authority:** 15 USC 695 et seq

Abstract: Title V of the Small Business Investment Act of 1958 (the "Act") authorizes SBA to assist development company financings of small businesses in order to foster economic development and to create or preserve job opportunities in both urban and rural areas. SBA intends to propose a regulatory framework by analyzing the best CDC structure to improve the growth of CDC's and their ability to provide capital to small businesses by reducing the regulatory burden while maintaining appropriate controls to mitigate risk, and to encourage the expansion of CDC financings into communities not currently served. As part of this project, SBA will review existing regulations to determine what will be deleted or amended based upon the proposed regulatory framework. Also, SBA will review existing CDC

SBA

Proposed Rule Stage

loan program regulations unrelated to CDC corporate governance to identify any needed technical changes and appropriate clarifications.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

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-AG04

Abstract: SBA currently sets different size standards for participation in its financial assistance programs. 7(a) borrowers use the standards set out for procurement programs or a temporary alternate standard; 504 borrowers may use the 7(a) standards or an alternate standard; SBIC investment may be made to small businesses that qualify through another standard; and Surety Bond program participants must meet still different requirements. As part of an overall Agency program, SBA will review financial program eligibility regulations in order to update size eligibility requirements among these programs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis

Required: Yes

Agency Contact: Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416

Phone: 202 205-7189

Fax: 202 205-6390

RIN: 3245-AG05

458. WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

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

RIN: 3245-AG06

457. • SMALL BUSINESS SIZE STANDARDS FOR LOAN, INVESTMENT, AND SURETY PROGRAMS

Legal Authority: Not Yet Determined

Small Business Administration (SBA)

Final Rule Stage

459. 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 conforms 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

Action	Date	FR Cite
NPRM Comment Period End	02/29/08	
Interim Final Rule	12/11/08	73 FR 75498
Interim Final Rule Comment Period End	03/11/09	
Interim Final Rule Effective	01/12/09	
Final Action	06/00/10	

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

Small Business Administration (SBA)

Completed Actions

460. DEFINITION OF "EMPLOYEE" FOR PURPOSES OF THE HUBZONE PROGRAM

Legal Authority: 15 USC 657 (a)

Abstract: The purpose of this 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

SBA

Completed Actions

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.

Completed:

Reason	Date	FR Cite
Final Action	11/03/09	74 FR 56699
Final Action Effective	05/03/10	

Regulatory Flexibility Analysis**Required:** Yes**Agency Contact:** Guy A. Torres

Phone: 202 205-7583

Email: guy.torres@sba.gov

RIN: 3245-AF44**461. 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.

Completed:

Reason	Date	FR Cite
Withdrawn—Duplicate	10/10/09	

Regulatory Flexibility Analysis**Required:** Yes**Agency Contact:** Eric R Zarnikow

Phone: 202 205-6657

Fax: 202 481-0797

Email: eric.zarnikow@sba.gov

RIN: 3245-AF89

[FR Doc. E9-28586 Filed 12-04-09; 8:45 am]

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