

# Rules and Regulations

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AG10

#### Surety Bond Guarantee Program; Size Standards

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is issuing this direct final rule to permanently adopt the temporary size standard implemented under the American Recovery and Reinvestment Act that is now in effect through September 30, 2010 for the Surety Bond Guarantee Program. The direct final rule provides that a business concern is small if such concern, combined with its affiliates, does not exceed the size standard for the North American Industry Classification System (NAICS) code that corresponds to the primary industry of the business concern combined with its affiliates.

**DATES:** This direct final rule is effective October 1, 2010 without further action, unless significant adverse comment is received by September 10, 2010. If significant adverse comment is received, SBA will publish a timely notice in the *Federal Register* to withdraw this direct final rule.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AG10 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street, SW., Washington DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business

information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit information to Ms. Barbara Brannan, Special Assistant, Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416 or send an e-mail to [Barbara.brannan@sba.gov](mailto:Barbara.brannan@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Brannan, Office of Surety Guarantees, 202-205-6545, e-mail: [Barbara.brannan@sba.gov](mailto:Barbara.brannan@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

The Administrator of the Small Business Administration (SBA) is authorized to establish size standards by which a business concern may be determined to be a small business concern for purposes of the Small Business Act and any other Act. 15 USC 632(a)(2)(A). The SBA Administrator is generally required to ensure that size standards vary from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. 15 U.S.C. 632(a)(2)(A).

Prior to the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Recovery Act), a business concern was deemed small under the Surety Bond Guarantee Program (SBG) if: (1) With respect to any construction (general or special trade) concern or concern performing a contract for services, its average annual receipts, together with its affiliates, did not exceed \$7 million (except as provided in (3) below); (2) with respect to any concern not specified in (1) above, the business concern met the size standard for the primary industry in which it, combined with its affiliates, was engaged; or (3) with respect to any construction (general or special trade) concern or concern performing a contract for services in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, the business concern, together with its affiliates, met either the size standard for the primary industry in which it, together with its affiliates, was engaged, or the size

standard set forth in (1) above, whichever was higher.

As required by section 508(c) of the Recovery Act, SBA amended its regulations with respect to the Surety Bond Guarantee Program to provide that, notwithstanding the size standards set forth above, from February 19, 2009, through September 30, 2010, a business concern would be eligible for assistance under the SBG Program only if it, together with its affiliates, did not exceed the size standard for the primary industry in which the business concern, together with its affiliates, was engaged. This change temporarily raised the size standard for many firms in the construction and service industries because, as described in (1) above, the size standard for most construction and service firms seeking surety bond guarantees prior to the Recovery Act was \$7 million. SBA has decided to permanently adopt the Recovery Act size standard. Without this action, approximately 8% of the businesses that qualified for assistance under the Recovery Act provision in fiscal year 2010 would be ineligible for bond guarantees after September 30, 2010, and the lack of access to bonding would jeopardize the continuity and growth of these businesses.

In addition, from February 17, 2009, until now, firms in service industries with size standards lower than \$7 million lost their eligibility for surety bond guarantees if their annual revenue exceeded the size standard for the industry in which the firm, together with its affiliates, was engaged. This change only affected service industry concerns because all construction size standards are \$7 million or higher. Although SBA does not anticipate that many firms wishing to provide services in the Presidentially-declared disaster areas resulting from Hurricanes Katrina, Rita or Wilma would be adversely affected by eliminating the alternative \$7 million size standard under (3) above, SBA has decided to retain this option to ensure that no firm wishing to do such business would be denied assistance through the SBG Program. For purposes of surety bonds in connection with these contracts, a concern will continue to be small if the concern, together with its affiliates, meets the size standard for the primary industry in which it, together with its affiliates, is engaged, or if its average

annual receipts do not exceed \$7 million, whichever is higher.

In accordance with 13 CFR 121.302(a), this rule will apply to applications for surety bond guarantees accepted for processing by SBA on or after October 1, 2010.

**II. Consideration of Comments**

SBA believes that this direct final rule is non-controversial since it simply adopts the temporary size standard established for the Surety Bond Guarantee Program under the Recovery Act, and would make the Surety Bond Guarantee Program size eligibility criteria consistent with SBA industry based standards. SBA also notes that it received no adverse comments to the temporary size standard that was published in the **Federal Register** on July 22, 2009 (74 FR 36110), and anticipates no significant adverse comments to this direct final rule. If SBA receives any significant adverse comments, it will publish a notice in the **Federal Register** for a timely withdrawal of this direct final rule.

**Section Analysis**

*Section 121.301(d)*. SBA is permanently adopting a temporary provision of the American Recovery and Reinvestment Act of 2009 that specifies that a concern is small if it, together with its affiliates, meets the size standard corresponding to the NAICS code for the primary industry in which it, together with its affiliates, is engaged. This direct final rule will make the SBG Program size eligibility criteria consistent with SBA industry based standards. It will expand the scope of eligible small businesses and will enable SBA to assist more small businesses to obtain the bonding necessary for them to bid on and perform contracts. SBA is retaining the \$7 million alternative size standard for construction or services contracts performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma.

*Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)*

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

**Executive Order 12988**

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

**Executive Order 13132**

For purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

**Paperwork Reduction Act, 44 U.S.C., Chapter 35**

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**Regulatory Flexibility Act, 5 U.S.C. 601–612**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of this rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are 18 Sureties that participate in the SBG Program, and no part of this direct final rule would impose any significant additional cost or burden on them.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 is revised to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 662(5) and 694a; Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

■ 2. Amend § 121.301 by revising paragraph (d) to read as follows:

**§ 121.301 What size standards are applicable to financial assistance programs?**

\* \* \* \* \*

(d) For Surety Bond Guarantee assistance—

(1) A business concern, combined with its affiliates, must meet the size standard for the primary industry in which such business concern, combined with its affiliates, is engaged.

(2) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, a construction (general or special trade) concern or concern performing a contract for services is small if it meets the size standard set forth in paragraph (d)(1) of this section, or the average annual receipts of the concern, together with its affiliates, do not exceed \$7 million, whichever is higher.

\* \* \* \* \*

Dated: August 5, 2010.

**Karen G. Mills,**  
*Administrator.*

[FR Doc. 2010–19741 Filed 8–10–10; 8:45 am]

**BILLING CODE 8025–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2010–0498; Airspace Docket No. 10–ASO–26]**

**Amendment of Class E Airspace; Pine Mountain, GA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E Airspace at Pine Mountain, GA, to accommodate the Standard Instrument Approach Procedures (SIAPs) developed for Harris County Airport.

**DATES:** Effective 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to