

U.S. SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

Overview

The U.S. Small Business Administration's (SBA) mission is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses and by assisting in economic recovery of communities after disasters. In order to accomplish this mission, SBA focuses on improving the economic and regulatory environment for small businesses, especially those in areas that have significantly higher unemployment and lower income levels than the Nation's averages and those in traditionally underserved markets. The agency also focuses on providing timely, effective financial assistance to businesses – including non-profit organizations, homeowners, and renters affected by disasters.

SBA is committed to:

- Working with its financial partners to improve small businesses' access to capital through SBA's loan and venture capital programs;
- Providing technical assistance to small businesses through its resource partners;
- Increasing contracting and business opportunities for small businesses;
- Providing affordable, timely and easily accessible financial assistance to businesses, homeowners and renters after a disaster; and
- Measuring outcomes, such as revenue growth, job creation, business longevity, and recovery rate after a disaster, to ensure that SBA's programs and services are delivered efficiently and effectively.

SBA's regulatory actions reflect the goals and objectives of the agency and are designed to provide the small business and residential communities with the information and guidance they need to succeed as entrepreneurs and restore their homes or other property after disaster. In the coming year, SBA's regulatory priorities will focus on increasing procurement opportunities for Women-Owned Small Business Concerns (WOSBs). This proposed rule would further SBA's overall goal to increase contracting and business opportunities for small businesses by giving contracting officers the ability to restrict competition to WOSBs in industries in which SBA has determined that WOSBs are

underrepresented and substantially underrepresented and where certain threshold determinations are made by an agency.

In addition, SBA has prioritized changes to the regulations governing the Section 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and to SBA's size determinations. The amendments in this proposed rule will prevent large businesses as well as other non-8(a) firms from being able to reap the benefits of sole source contracts intended for tribally-owned or Alaska Native Corporation-owned 8(a) Participants. The proposed rule will also benefit eligible business by clarifying SBA's requirements, removing confusion, and eliminating or easing restrictions that are unnecessary.

Finally, SBA will focus its regulatory priorities on reviewing and updating its size standards for small businesses to ensure that SBA's size standards are consistently evaluated using the latest available data. In particular, SBA intends to publish three proposed rules to revise the size standards for business in certain industries classified under the North American Industry Classification System (NAICS): Retail Trade Industry Sector; Accommodations and Food Services Industry Sector; and Other Services Industry Sector, which include, for example, repair and maintenance services, personal and laundry services, and religious, grant making, civic, and professional services.

SBA

PROPOSED RULE STAGE

158. 8(A) BUSINESS DEVELOPMENT

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6), 636(j), 637(a) and (d)

CFR Citation:

13 CFR 124

Legal Deadline:

None

Abstract:

This rule proposes to make a number of changes to the regulations governing the 8(a) Business Development (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.

Statement of Need:

Sections 8(a) and 7(j) of the Small Business Act authorize the SBA to administer the 8(a) BD program and assist eligible small disadvantaged business concerns compete in the American economy through business development. The 8(a) BD program provides procurement, financial, management and technical assistance to foster the business growth and development of 8(a) BD program participants. The proposed regulatory action is necessary to implement changes to the regulations governing the 8(a) BD program, the Small Disadvantaged Business (SDB) programs, and to the SBA size regulations. The changes are proposed as a result of the continuing need to ensure that SBA is effectively delivering the 8(a) BD program in accordance with the Small Business Act. In addition, the regulatory action is needed to enable SBA to institute the proper internal controls that will ensure effective monitoring and oversight of the 8(a) BD Program.

Summary of Legal Basis:

This rule proposes to make some changes that involve technical issues, correct some rules governing the 8(a) BD program that are too restrictive, and others that require clarification. The rule change will address new situations have arisen that were not anticipated when the current rules were drafted. Finally, there is one change that implements a statutory change.

Alternatives:

SBA will analyze and consider the impact of any comments received from the public as a result of the proposed

regulations being published in the Federal Register. Where relevant and appropriate, the regulations will be revised to incorporate these comments.

Anticipated Cost and Benefits:

It is difficult to estimate the costs and benefits to the various classes of firms affected by this rule as it is impossible to foresee which future contracts above the competitive thresholds would be awarded based on the various options available to contracting officers. SBA believes that the benefits of the proposed rule exceed its costs and exceed the benefits of continuing the status quo. SBA believes that increased clarity and easing of restrictions in the overall proposed changes set forth in this rule are beneficial to 8(a) applicants and Participants.

Risks:

Because the 8(a) Program is a business development program—not a contracting program—it is intended to foster the 8(a) firm's growth (through various forms of technical, management, procurement and financial assistance) and viability during the Participant's 9-year term.

The regulatory action is intended to mitigate any risks associated with program procedures and internal controls by ensuring clear and concise regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/28/09	74 FR 55694
NPRM Comment Period End	12/28/09	
Final Action	04/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SBA

159. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES

Priority:

Other Significant

Legal Authority:

15 USC 632(a)

CFR Citation:

13 CFR 121

Legal Deadline:

None

Abstract:

An SBA 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. The Retail Trade Industry Sector includes companies engaged in retailing merchandise and rendering services incidental to the sale of merchandise. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

Statement of Need:

SBA's small business size standards are used to establish eligibility for financial assistance and Federal contracting opportunities for small businesses. SBA is conducting a comprehensive review of all small business size standards to ensure that they accurately reflect industry structure, Federal government procurement practices and current economic conditions so that Federal programs are able to effectively assist small businesses. This rule reviews SBA size standards for industries within NAICS Sector 44-45, Retail Trade, and revises size standards for certain industries in the sector. The last such review of size standards for retail trade industries was in the early 1980s.

Summary of Legal Basis:

The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions, commonly referred to as size standards. The Act requires that such definitions vary to reflect industry differences.

Alternatives:

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry, no practical alternative exists to the systems of numerical size standards.

Anticipated Cost and Benefits:

The rule has proposed to increase size standards for 48 industries within Sector 44-45, enabling about 8,800 additional firms to obtain small business status and become eligible for Federal small business assistance. This could potentially increase the small business share of Federal contracting dollars by up to between \$80 million and \$100 million annually. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	10/21/09	74 FR 53924
NPRM Comment Period End	12/21/09	
Final Action	04/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SBA**160. SMALL BUSINESS SIZE STANDARDS: OTHER SERVICES****Priority:**

Other Significant

Legal Authority:

15 USC 632(a)

CFR Citation:

13 CFR 121

Legal Deadline:

None

Abstract:

An SBA 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.

Statement of Need:

SBA's small business size standards are used to establish eligibility for financial assistance and Federal contracting opportunities for small businesses. SBA is conducting a comprehensive review of all small business size standards to ensure that they accurately reflect industry structure, Federal government procurement practices and current economic conditions so that Federal programs are able to effectively assist small businesses. This rule reviews SBA size standards for industries within NAICS Sector 81, Other Services, and revises size standards for certain industries in the sector. The last such review of size standards for other services industries was in the early 1980s.

Summary of Legal Basis:

The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions, commonly referred to as size standards. The Act requires that such definitions vary to reflect industry differences.

Alternatives:

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry, no practical alternative exists to the systems of numerical size standards.

Anticipated Cost and Benefits:

The rule has proposed to increase size standards for 18 industries within Sector 81, enabling about 1,400 additional firms to obtain small business status and become eligible for Federal small business assistance. This could potentially increase the small business share of Federal contracting dollars by up to between \$25 million and \$30 million annually. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	10/21/09	74 FR 53941
NPRM Comment Period End	12/21/09	
Final Action	04/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SBA**161. SMALL BUSINESS SIZE STANDARDS: ACCOMMODATIONS AND FOOD SERVICE INDUSTRIES****Priority:**

Other Significant

Legal Authority:

15 USC 632(a)

CFR Citation:

13 CFR 121

Legal Deadline:

None

Abstract:

An SBA 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. The Accommodations and Food Services Industry Sector includes companies that provide lodging and/or prepare meals, snacks, and beverages for immediate consumption. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

Statement of Need:

SBA's small business size standards are used to establish eligibility for financial assistance and Federal contracting opportunities for small businesses. SBA is conducting a comprehensive review of all small business size standards to ensure that they accurately reflect industry structure, Federal government procurement practices and current economic conditions so that Federal programs are able to effectively assist small businesses. This rule reviews SBA size standards for industries within NAICS Sector 72, Accommodation and Food Service, and revises size standards for certain industries in the sector. The last such review of size standards for industries in the accommodation and food service sector was in the early 1980s.

Summary of Legal Basis:

The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions, commonly referred to as size standards. The Act requires that such definitions vary to reflect industry differences.

Alternatives:

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry, no practical alternative exists to the systems of numerical size standards.

Anticipated Cost and Benefits:

The rule has proposed to increase size standards for five industries within Sector 72, enabling about 2,050 additional firms to obtain small business status and become eligible for Federal small business assistance. This could potentially increase the small business share of Federal contracting dollars by up to between \$75 million annually. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	10/21/09	74 FR 53913
NPRM Comment Period End	12/21/09	
Final Action	04/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SBA**162. WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM****Priority:**

Other Significant

Legal Authority:

15 USC 637(m)

CFR Citation:

13 CFR 121; 13 CFR 125; 13 CFR 127; 13 CFR 134

Legal Deadline:

None

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). In the future, 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. This rule will establish regulations to implement the Women-Owned Small Business (WOSB) Federal Contract Assistance Program, authorized under section 8(m) of the Small Business Act. Section 8(m) was enacted as part of Public Law 106-554 to provide a targeted procurement mechanism to assist Federal agencies in achieving the statutory goal of 5 percent for contracting with WOSBs. In accordance with section 8(m), the new regulations would authorize contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. Also consistent with section 8(m), the authority to restrict competition would be limited to contracts not exceeding \$3 million, or \$5 million in the case of manufacturing contracts. In implementing section 8(m) the proposed regulations would further provide: the eligible industries in which WOSBs are underrepresented or substantially underrepresented; the specific eligibility requirements for WOSBs to qualify for program participation; the procedures for concerns to certify their eligibility; the

process for SBA to verify the continuing WOSB eligibility; the contractual and business development assistance available under the program; the relevant protest and appeal procedures; and the applicable penalties.

Statement of Need:

“Although the growth rate in the number of women-owned small businesses (WOSBs) was almost twice that of all firms between 1997 and 2002, WOSBs have not experienced a proportional increase in their share of Federal contracting dollars.” LaLa Wu and Kate Collier, The National Plan of Action: Then and Now, Bella Abzug Leadership Institute, November 2007 (hereinafter “The National Plan of Action”). “Between 1997 and 2002, the numbers of women-owned firms overall increased by 19.8 percent and of women-owned employer firms, by 8.3 percent.” SBA Office of Advocacy. “Women in Business: 2006. A Demographic Review of Women’s Business Ownership,” 2007. Most tend to be small; only 1.8 percent of WOSBs have receipts over \$1 million and less than 0.1 percent had more than 500 employees. See The Utilization of Women-Owned Small Business in Federal Contract, Kauffman-RAND Institute, 2007. Firms owned by women increased employment by 70,000 and those by men lost 1 million employees. See id. In addition, in 2002, women-owned firms accounted for 28.2 percent of all non-farm firms in the United States. See id. Despite this growth, the share of WOSB prime contract awards was 3.39 percent in FY 2008.

Several congressional and executive efforts over the years to increase Federal contracting with WOSBs have not enhanced the WOSB share of Federal contracting dollars as much as anticipated. For example, in 1979, when Executive Order 12138 “charged Federal agencies with responsibility for providing procurement assistance to women-owned businesses, WOSBs received only 0.2 percent of all Federal procurements.” The National Plan of Action. In 9 years, the percentage of WOSB Federal procurements had grown to only one percent. See id. Similarly, in 1988, the Women’s Business Ownership Act, Public Law 100-588 (Oct. 25, 1988), “was enacted to assist women in starting, managing and growing small businesses.” Id. “While this program has assisted thousands of women in obtaining business financing and information, it has had less success in the Federal procurement arena.” Id.

Subsequently, in 1994, section 7106 of the Federal Acquisition Streamlining Act (FASA), Public Law 103—355, “amended the Small Business Act by establishing a target that was aimed at increasing opportunities for women to compete for Federal contracts.” Id. “FASA, among other things, established a Governmentwide goal for participation by WOSBs in procurement contracts of not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.” Id.

Federal Procurement Data System (FPDS) data indicates that since fiscal year (FY) 1996, Federal agencies have not met the separate 5 percent Governmentwide WOSB goal for prime contracts and subcontracts. However, the share of Federal prime contracting dollars to WOSBs has increased over the years. For example, in FY 2000, WOSBs received 2.3 percent of the approximately \$200 billion in Federal prime contract awards. The share of WOSB prime contract award dollars increased to 2.49 percent in FY 2001, and again to 2.90, 2.98, and 3.03 percent in FYs 2002, 2003 and 2004, respectively. In FY 2005, WOSB prime contract award dollars increased to 3.18 percent, in FY 2006, increased again to 3.41 percent of prime contract award dollars, in FY 2007 it remained at 3.41 percent and in FY 2008 it dropped slightly to 3.39 percent. Although this increase shows a growing amount of contract of dollars going to WOSBs, SBA anticipates the WOSB Program will serve to quicken the increase of that percentage or perhaps give impetus to the development of new WOSBs.

The foregoing historical data demonstrates the need for targeted government action to facilitate participation by WOSBs in Federal government contracting. Congress enacted section 811 of the Small Business Reauthorization Act of 2000, Public Law 106-554, to provide that mechanism.

Summary of Legal Basis:

Section 811 of the Small Business Reauthorization Act of 2000, amended the Small Business Act (Act) by adding a new section 8(m), 15 U.S.C. 637(m), authorizing contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. The new section 8(m) of the Act explicitly limits the contracting officer's authority to restrict competition to contracts not exceeding \$3 million (\$5 million for manufacturing). It further requires SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement and requires the head of any department or agency to provide SBA information that SBA deems necessary to conduct the study.

Alternatives:

This proposed rule implements statutory provisions for the purpose of facilitating participation by WOSBs in Federal Government contracting.

Anticipated Cost and Benefits:

Implementing these statutory provisions may impose additional costs on the Federal Government and small businesses. The costs and benefits of this proposed rule will be analyzed in the rule's regulatory impact analysis and its initial regulatory flexibility analysis.

Risks:

This proposed rule poses no risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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