



U.S. Small Business  
Administration

# Legislative & Regulatory Update

**For Small Business Government Contracting  
Programs**

August 12, 2021

# Executive Action

# Recent Executive Actions

1. Executive Order 13985 of January 20, 2021
  - **Advancing Racial Equity and Support for Underserved Communities Through the Federal Government**
2. Executive Order 14005 of January 25, 2021
  - **Ensuring the Future Is Made in All of America by All of America's Workers**
3. Executive Order 14017 of February 24, 2021
  - **America's Supply Chains**

# Recent SBA and FAR Regulatory Action

# Interim Final Rule: Extension of 8(a) Participation

[86 FR 2529](#), [Press Release](#), Effective 1/13/21

- Firms that were in the 8(a) program on March 13, 2020 through September 9, 2020 have the option to extend participation for a period of one year from the end of its program term.
- Terminated firms, early graduated firms, or firms that voluntarily withdrew during this period are not eligible.
- Automatic Extension for firms currently in the 8(a) program as of January 13, 2021, unless they decline.
- Graduated Firms can be readmitted by notifying SBA within 60 days of January 13, 2021 that they meet the 8(a) eligibility requirements.
- Business Activity Target for the extension will remain at 50 percent non-8(a) business.

# Final Rule: Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments

[85 FR 66146](#), Effective 11/16/20

- Combines 8(a) MPP and ASMPP
- Changes to M/P program
  - MPA generally will not count if terminated within 18 months
  - Does not require mentor good character in every instance
  - Mentor cannot submit competing offers
  - Does **not** adopt proposal to limit mentors to revenues less than \$100 million
  - Protégés from Puerto Rico don't count for 3 limit, up to 2 (NDAA 2019)
  - Eliminates reconsideration
  - Implements changes to M/P annual evaluations

# Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#), Effective 11/16/20

- Changes to joint venture rules:
  - Eliminates SBA approval for competitive 8(a) JV
  - 3-in-2 rule to 2 years
  - Measures to restrict changes in JV partners **not** adopted
  - Facility Security Officers may be administrative personnel
  - JV contract awards requiring a facility clearance
  - Clarification as to size of JV partners
- MACs, NAICS codes and eligibility
  - Assign single NAICS code to each order—must be included in underlying MAC
  - Except for FSS, eligibility for SB order on unrestricted MAC based on time of offer for order
    - Same for required order status that differs from the underlying contract
    - Final rule clarifies the use of reserves or pools – size and status flow down to orders

# Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#), Effective 11/16/20

## Changes to 8(a) rules:

- Defines follow-on requirement
  - Buying activity must notify SBA where work previously performed through 8(a) program will be performed through a different means
  - SBA Administrator may appeal a determination that work previously performed as 8(a) contract is "new"
- More clarity on immediate family member participation
- Prior-SBA approval for change of ownership not needed:
  - Insertion/deletion of holding company as between Participant and ANC/tribe
  - All non-DVDs involved in transaction own >20% before and after the change
  - DVD individual (entity) will increase his/her (its) ownership interest
- Appeal process for changes in primary NAICS code
- Re-apply after decline after 90 days
  - Final rule added 12 month waiting period where a concern has been declined 3 times within 18 months of the date of the first final agency decline decision



# Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#), Effective 11/16/20

## Changes to 8(a) rules (cont.):

- Eliminate provision that Participant cannot receive 8(a) BD benefits until SBA has approved business plan
  - Must submit business plan within 60 days of program admittance
  - Failure to do so will result in a program suspension
- Release
  - Requires SBA release for non-8(a) competition even where statutorily required and where buying activity seeks to resolicit work as an 8(a) order on a non-8(a) vehicle
  - Notification required where agency seeks to migrate 8(a) contract to a limited competition 8(a) vehicle

# Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#), Effective 11/16/20

## Changes to 8(a) rules (cont.):

- Bona fide place of business
  - Timeframes for bona fide place of business (at least 20 days before offer, review within 15 days of request).
  - Expands applicable geographic scope to include Metropolitan Statistical Areas and contiguous counties (in the same or a different state)
  - Allows a concern to submit an offer for a construction requirement if the request is made timely (i.e., at least 20 working days before offers are due) even if SBA approval has not occurred
  - Clarifies that BFPOB applies to competitive and sole source 8(a) construction contracts
- Limit on sole-source awards changed to \$100 million in all cases

# Corrections: Consolidation of Mentor Protégé Programs

[86 FR 38537](#), Effective 7/22/21

1. Joint ventures and time to determine size
2. Affiliation, time to determine size, and WOSB subcontracting
3. Size, bona fide place of business, capabilities/past performance/experience
4. Time to determine size, business activity targets

# Final Rule: WOSB Certification Program

[85 FR 27650](#), Effective 7/15/20 and 10/15/20

- The rule eliminates self-certification for WOSB/EDWOSB set-aside and sole-source contracts.
  - WOSB set-aside and sole-source contracts are procurements with a WOSB-eligible NAICS code.
  - EDWOSB set-aside and sole-source contracts are procurements with an EDWOSB-eligible NAICS code.
- To be eligible for a WOSB/EDWOSB sole-source contract, the firm must be certified through one of the three prescribed options (SBA, an authorized government entity, or an approved TPC).
- To compete for a WOSB/EDWOSB set-aside contract, the firm must either be certified or have submitted a complete application for certification. SBA will expedite review of applications for a firm that has a pending application and is the apparent successful offeror on a contract.

# Final Rule: WOSB Certification Program (cont.)

[85 FR 27650](#), Effective 7/15/20 and 10/15/20

- A firm can:
  - Submit an application to SBA,
  - Submit documentation of certification by 8(a) or the VA's CVE, or
  - Submit an application to an SBA-approved third-party certifier (TPC)
- Self-certified WOSBs that want to be eligible for WOSB/EDWOSB awards should download their documentation housed in the WOSB Program Repository and submit an application for certification through one of the above options.
- Self-certified WOSBs performing on contracts posted before October 15, 2020 can perform on those for the life of the contract in accordance with SBA's rules for recertifying on long-term contracts.
- Self-certification remains for subcontracting credit and goaling purposes.

# Final Rule: WOSB Certification Program (cont.)

[85 FR 27650](#), Effective 7/15/20 and 10/15/20

The new regulations include:

- Procedures for how WOSBs/EDWOSBs will submit an application for certification and how they will maintain certification.
  - Three-year cycle.
- The timeline and process for firms seeking to re-apply after a declination.
  - A declination can't be appealed, but a firm that comes into compliance with program requirements can re-apply 90 days after a declination.
- New oversight procedures for third-party certifiers.

# Final Rule: WOSB Certification Program (cont.)

[85 FR 27650](#) , Effective 7/15/20 and 10/15/20

Other changes:

- Aligns the economic disadvantage thresholds between the EDWOSB and 8(a) Business Development Programs.
  - Established a \$750,000 personal net worth standard for economically disadvantaged individuals in the 8(a) program. This matches the standard in place for EDWOSBs.
  - Revised both programs' regulations so that qualified retirement accounts are backed out of the personal net worth calculation for an economically disadvantaged individual, regardless of age.
- 8(a) firms that are owned and controlled by one or more women are eligible for certification as EDWOSBs.

# Class Deviations: WOSB Certification Program

- Some agencies have issued Class Deviations to recognize WOSB certification
  - [Department of Defense](#)
  - [NASA](#)
- The deviations require CO to verify status in SBA's DSBS status when using WOSB/EDWOSB set-aside or sole source.
  - Firm can have application pending at offer on WOSB/EDWOSB set-aside
  - CO will email SBA to seek priority review for a pending application
- Other agencies may issue Class Deviations based on [CAAC Letter 2021-01](#).
  - [GSA](#)



# Final Rule: HUBZone Comprehensive Update

[84 FR 65222](#), Effective 12/26/19

- Requires firms to annually recertify.
- Once certified, a firm will be eligible for all HUBZone contracts for which it qualifies as small, for a period of one year from the date of certification.
  - Program exams are required at least every 3 years.
  - *Annual recertification requirement was suspended until 10/1/2020 due to COVID.*
- Requires firms to be HUBZone-certified in DSBS at time of **offer only** (not award).
  - Protests relate back to date of certification or most recent recertification.
- Requires firms performing a HUBZone contract to “attempt to maintain” 35% employment of HUBZone residents.
  - “Attempt to maintain” means at least 20%.
- Applications will be processed within 60 days of receipt of complete package.
  - *Expedited certification for COVID-19-related solicitations until March 31, 2021.*

## Direct Final Rule: HUBZone Governor-Designated Covered Areas

[84 FR 62447](#), Effective 1/1/20

- Added new type of HUBZone: “Governor-Designated Covered Area”
  - Non-urbanized areas with populations of 50,000 or less
  - Unemployment of at least 120% the state or US average
  - Opportunity Zones encouraged
  - Governors must petition SBA – limited to one petition per year
- Published November 11, 2019
- Effective January 1, 2020
- [Illinois](#) expansion granted on May 18, 2021

# Direct Final Rule: Extending HUBZone Map Freeze

[86 FR 23863](#), Effective 6/21/21

- Extends the HUBZone Map freeze until June 30, 2023
  - Qualified census tract data using the 2020 Census results will not be available until late 2022.
  - All current Redesignated Areas and Qualified Base Closure Areas, and most current Qualified Disaster Areas, will maintain such designation until June 30, 2023.
  - When SBA receives the Census data from HUD, SBA will post a list and/or produce a beta map identifying all areas designated as Qualified Census Tracts, Qualified Nonmetropolitan Counties, and Redesignated Areas under the 2020 Census data, so that firms can begin to plan accordingly.
  - HUBZone Map and certification approval letters will not be updated to reflect the new expiration date of those Redesignated Areas, applicable Qualified Disaster Areas, and Qualified Base Closure Areas scheduled for expiration in 2021, until the effective date of the direct final rule: June 21, 2021.
- Published May 5, 2021
- Effective June 21, 2021

## **Proposed Rule:** Size Standards for Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services

[85 FR 76390](#), Comments closed 1/26/21

- Reviewed 145 size standards in sectors 61, 62, 71, 72, and 81
- Proposed to increase 70 of them:
  - 14 industries in NAICS Sector 61 (Education Services)
  - 18 industries in Sector 62 (Health Care and Social Assistance)
  - 11 industries in Sector 71 (Arts, Entertainment and Recreation)
  - 4 industries in Sector 72 (Accommodation and Food Services)
  - 23 industries in Sector 81 (Other Services)

# **Proposed Rule:** Size Standards for Professional, Scientific and Technical Services; Management; Administrative and Support and Waste Management and Remediation Services

[85 FR 72584](#), Comments closed 1/20/21

- Reviewed Sectors 54, 55, 56
- No proposed decreases
- Reviewed 48 prof., sci., tech. servs. standards, proposed to increase 27
- Proposed to increase both management standards
- Reviewed 44 admin., support, waste management/remediation standards; proposed to increase 17
- Would add 2,600 small businesses

# **Proposed Rule:** Size Standards for Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction

[85 FR 62239](#), Comments closed 12/1/20

- Reviewed Sectors 11, 21, 22, 23
- No proposed decreases
- Reviewed 64 agricultural standards, proposed to increase 60
- Reviewed 4 mining/oil standards, proposed to increase 3
- Proposed to increase all 3 utilities standards reviewed
- Reviewed 32 construction standards, proposed to increase 2
- Would add 49,400 small businesses (almost all in agricultural)

# Proposed Rule: Size Standards for Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing

[85 FR 62372](#), Comments closed 12/1/20

- Reviewed Sectors 48-49, 51, 52, 53
- No proposed decreases in size standards
- Reviewed 43 transportation/warehousing standards, proposed to increase 25
- Reviewed 19 information standards, proposed to increase 8
- Reviewed 39 finance/insurance standards, proposed to increase 10
- Reviewed 25 real estate standards, proposed to increase 9
- Would add 1,790 small businesses (half from real estate)

# Proposed Rule: Size Standards for Wholesale Trade and Retail Trade

[86 FR 28012](#), Comments closed 7/26/21

- Proposed rule to increase 49 of 137 receipts-based and employee-based size standards in the NAICS sectors related to Wholesale Trade and Retail Trade
- Not used for government procurements
  - only the applicable manufacturing NAICS may be used



# Final Rule: Surplus Property for Veteran-owned, Puerto Rico, and Disaster-affected Small Businesses

[85 FR 69120](#), Effective 12/2/20

- Implements three provisions of the Small Business Act to give access to and manage the distribution of U.S.-owned surplus personal property to three additional groups of small businesses
  - small businesses owned and controlled by veterans,
  - small businesses located in major disaster areas, and
  - small businesses located in Puerto Rico.
- GSA operates the [Donation Program](#) through State Agencies for Surplus Property (SASPs).

# FAR Final Rule: Limitations on Subcontracting

[86 FR 44233](#), Effective 9/10/21

- Applies across all small business programs
- Calculated as a percentage of the overall contract amount to be spent by the prime contractor on subcontractors.
- Adds concept of a “similarly situated entity”—a small business subcontractor that has the same small business program status as that which qualified the prime contractor for the prime contract
- Nonmanufacturer rule does not apply to small business set-asides at or below the simplified acquisition threshold
- Waivers of the nonmanufacturer rule allowed for procurements under the HUBZone Program

# FAR Final Rule: Scope of PCR Review

[86 FR 44247](#), Effective 9/10/21

- COs must provide the PCR a copy of any proposed acquisition package, at the PCR's discretion
- PCRs may recommend the set-aside or sole-source award to a small business; the breakout of discrete components, items, and requirements for competition; and ways to improve competition

# FAR Final Rule: Good Faith in Small Business Subcontracting

[86 FR 44249](#), Effective 9/10/21

- Provides examples of activities that contracting officers may consider when evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan. Examples:
  - Soliciting SB subs early in the process
  - Negotiating in good faith with SB subs
  - Providing SB subs with adequate & timely info
  - Exceeding subk goals when unable to meet others
- Plus examples of failure to make a good faith effort:
  - Failure to submit acceptable ISR or SSR timely
  - Adoption of company policies that frustrate objectives of the subcontracting plan
  - Not providing CO with explanation of failures
  - Failure to pay SB subcontractors timely/as required
- Requires prime contractors with commercial subcontracting plans to include indirect costs, with certain exceptions, in their subcontracting goals

# Upcoming SBA proposed rules

1. NDAA 2020, Credit for Lower Tier Subcontracting and Other Amendments
2. Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade
3. HUBZone Program Updates and Clarifications

# Upcoming SBA final rules

1. NDAA 2020, Definition of Surviving Spouse for Service-Disabled Veteran Owned Small Businesses and Change to 8(a) Business Development Contracting Thresholds



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