



U.S. Small Business
Administration

Legislative & Regulatory Update

**For Small Business Government Contracting
Programs**

August 17, 2021

Legislative Action

Introduced in the House

- [H.R. 2949](#), to exempt certain contracts from the periodic inflation adjustments to the Miller Act dollar threshold
- [H.R. 3065](#), Expanding Contracting Opportunities for Small Businesses Act – to raise sole-source caps to \$10 million (manufacturing) and \$8 million (all other)

Consolidated Appropriations Act, FY21

[Pub. L. 116-260](#), signed 12/27/20

- **Division N – Additional Coronavirus Relief and Response**
- **Title III** - Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act
- **Sect. 330.** Extension of Participation in 8(a) Program. Allows 8(a) participants participating on or before Sept. 9, 2020 to extend their 8(a) participation for one year, regardless of whether they had suspended their program term; requires a rulemaking within 15 days.

National Defense Authorization Act for Fiscal Year 2021

[Pub. L. 116-283, H.R. 6395 \(Conference Report\)](#), passed over veto 1/1/21

- **Sect. 862.** Transfer of verification of small business concerns owned by veterans or service-disabled veterans to the Small Business Administration - Requires transfer of the certification program within two years.
- **Sect. 863.** Employment size standard requirements for small business concerns - Extends the averaging period for SBA's employee-based size standards from 12 months to 24 months, effective one year after enacted.
- **Sect. 864.** Maximum award price for sole source manufacturing contracts - Raises the statutory sole-source threshold for manufacturing contracts in the 8(a), WOSB, HUBZone, and SDVOSB programs to \$7 million.
- **Sect. 865.** Reporting requirement for expenditure amounts for the Small Business Innovation Research Program and the Small Business Technology Transfer Program - Require a report to Congress on SBIR/STTR agencies' program expenditures.
- **Sect. 866.** Small businesses in territories of the United States - Defines a covered territory and extends surplus property and mentor-protégé benefits to covered territories.

NDAA FY2021 (cont.)

[Pub. L. 116-283, H.R. 6395 \(Conference Report\)](#), passed over veto 1/1/21

- **Sect. 868.** Past performance ratings of certain small business concerns - Permits small businesses that performed contracts through a joint venture or as a first-tier subcontractor to use that past performance toward offers as a prime contractor.
- **Sect. 869.** Extension of participation in the 8(a) program - Allows 8(a) participants participating on or before Sept. 9, 2020 to extend their 8(a) participation for one year, regardless of whether they had suspended their program term.
- **Sect. 870.** Compliance of Offices of Small and Disadvantaged Business Utilization - Requires OSDBUGs to report remedial actions to Congress if found by GAO to be out of compliance with section 15(k) of the Small Business Act.
- **Sect. 871.** Category Management training - Requires SBA and OFPP to develop a training curriculum on category management and avoiding conflicts with the Small Business Act.

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](#)

- 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](#)

- 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

- 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](#)

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](#)

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](#)

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](#)

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

- 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

- 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](#)

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

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

- 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

- 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

- 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

- 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](#)

- 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](#)

- 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

- 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](#)

- 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](#)

- 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: Inflation Adjustment of Thresholds

85 FR 62485

- Subcontracting plan threshold raised from \$700,000 to \$750,000;
- 8(a) sole-source thresholds raised from \$7 million to \$7.5 million, and \$4 million to \$4.5 million;
- 8(a) sole-source J&A threshold raised from \$22 million to \$25 million;
- HUBZone sole-source thresholds raised from \$7 million to \$7.5 million, and \$4 million to \$4.5 million; and
- WOSB sole-source thresholds raised from \$6.5 million to \$7 million, and \$4 million to \$4.5 million.
- SDVOSB manufacturing sole-source threshold raised to \$7 million.

FAR Final Rule: Removal of Obsolete Definitions

85 FR 67615

- Removes the definitions of "annual receipts" and "number of employees" from the FAR coverage of Small Business Programs.
- Recognizes that the existing definitions are redundant and outdated because of [SBA's changes](#) to the definition of annual receipts.
- Moves the definition of "affiliates" from section 19.101 to 2.101, where most FAR definitions reside.

DFARS Interim Rule: Assessing Contractor Implementation of Cybersecurity Requirements (CMMC)

[85 FR 61505](#)

- Requires assessments of compliance with NIST 800-171.
 - Self-assessment for Basic; government assessment for Medium/High
- Phases in implementation of CMMC certification over 5 years.
- Applies to all DoD contracts, except below micropurchase threshold or COTS.
- Higher tier flowdown to subcontracts that involve covered defense information.

FAR Proposed Rule: Update of HUBZone Program

[86 FR 31468](#)

- Published June 14, 2021
- Comments due Aug. 13, 2021
- Implements SBA's comprehensive revision (84 FR 65222)
- Authorizes sole source awards under SAT

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

Upcoming FAR proposed rules

1. Proposed 2021-012, 8(a) program
2. Proposed 2021-011, Past Performance of First-Tier Subcontractors
3. Proposed 2021-010, Subcontracting to Puerto Rican and Other Small Businesses
4. Proposed 2021-009, Protests of Orders Set Aside for Small Business
5. Proposed 2021-007, Maximum Award Price for Certain Sole Source Manufacturing Contracts
6. Proposed 2020-016, Representation of Size and Socioeconomic Status
7. Proposed 2020-013, WOSB Certification
8. Proposed 2020-012, Scope of PCR review

Upcoming FAR proposed rules (cont.)

9. Proposed 2020-010, SBIR/STTR
10. Proposed 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns
11. Proposed 2019-008, Small Business Program Amendments

Upcoming FAR final rules

1. Final 2019-004, Good Faith in Small Business Subcontracting
2. Final 2018-020, Construction Contract Administration
3. Final 2017-019, Policy on Joint Ventures
4. Final 2016-011, Revision of Limitations on Subcontracting
5. Final 2016-002, Applicability of Small Business Regulations Outside the United States



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