

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 613

RIN 3052-AC33

#### Eligibility and Scope of Financing; Processing and Marketing; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under part 613 on May 28, 2008 (73 FR 30460) amending our regulation governing financing of processing and marketing operations by Farm Credit System institutions under titles I and II of the Farm Credit Act of 1971, as amended. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 17, 2008.

**DATES:** *Effective Date:* The regulation amending 12 CFR part 613 published on May 28, 2008 (73 FR 30460) is effective July 17, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Barry Mardock, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4456, TTY (703) 883-4434, or

Michael J. Duffy, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102-5090, (952) 854-7151, TTY (952) 854-2239, or

Howard I. Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4029, TTY (703) 883-4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: July 17, 2008.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E8-16772 Filed 7-21-08; 8:45 am]

**BILLING CODE 6705-01-P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 121

RIN 3245-AF67

#### Small Business Size Standards: Fuel Oil Dealers Industries

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** This rule revises the small business size standard for the Heating Oil Dealers industry (North American Industry Classification System (NAICS) code 454311) from \$11.5 million in average annual receipts to 50 employees, and the size standard for the Liquefied Petroleum Gas (Bottled Gas) Dealers industry (NAICS code 454312) from \$6.5 million in average annual receipts (AAR) to 50 employees. These revised size standards stabilize the definition of the size of a small business in these industries based on a review of the latest available data on industry characteristics and other relevant information.

**DATES:** *Effective Date:* This rule is effective on August 21, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Diane Heal, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** On October 31, 2007, SBA published in the **Federal Register** (72 FR 61574) a proposed change in the measure of the small business size standards for the Heating Oil Dealers from \$11.5 million in AAR to 50 employees, and for the Liquefied Petroleum Gas (LPG) (bottled gas) Dealers from \$6.5 million in AAR to 50 employees. Based on SBA's evaluation of the public comments received to its October 31, 2007 proposed rule and on SBA's size standards analysis described in the proposed rule, SBA concludes that the proposed change to 50 employees is appropriate. Accordingly, this final rule adopts the proposed size standard of 50

employees for the heating oil and LPG dealers industries.

#### Evaluation of Comments

In response to its proposed rule, SBA received comments from one individual and three advocacy groups for the affected industries.

One commenter recommended that SBA use an annual volumetric delivery to measure a heating oil dealer's size instead of revenues or employees. The commenter believes that not applying the same standard for all industries could potentially fail the disparate treatment justification, result in equal protection clause challenges, and encourage employment reductions by some businesses to remain an eligible small business for reduced hazardous material transportation registration fees.

SBA is concerned that using a volumetric delivery measure would require heating oil dealers to keep separate records for size determination purposes. Also, that type of information is not independently verifiable in the case of an SBA size determination. The only data collected by government agencies regarding heating oil dealers are average weekly costs obtained from a random survey by state energy agencies and provided to the U.S. Department of Energy. Businesses in other industries where SBA uses size measures other than receipts or employees (e.g., megawatt hours for electric utilities, assets for financial institutions, and barrels of refined petroleum products for petroleum refineries) are legally required to report these data using those measures to an appropriate Federal agency. The use of volumetric delivery measure would also fail to capture other activities of the business and affiliation with other businesses in determining size. Because of these concerns, SBA believes that number of employees is a better measure of size than volumetric delivery and, therefore, does not adopt this recommendation.

Comments from three advocacy groups for these two industries supported the conversion of the size measure from average annual receipts to average number of employees. Two of these advocacy groups, however, recommended that the size standard for heating oil dealers be increased from the proposed 50 employees to 100 employees. They believe that heating oil dealers with up to 100 employees are

small given the labor-intensive operations of heating oil dealers and the need for multiple branch offices to serve their customers. However, these two groups did not provide any evidence or statistical data to support their assertion.

The purpose of this rule is to convert the size standard to employees from the current measure in receipts, not increase the size standard. As explained in the proposed rule, the current size standard of \$11.5 million for the heating oil dealers industry converts to 50 employees. Furthermore, at that size, more than 90 percent of heating oil dealers are classified as small and they account for approximately 53 percent of total industry sales. SBA concludes that a 50-employee size standard for heating oil dealers is a viable size standard and, therefore, declines to adopt the recommended 100-employee size standard. SBA will give further consideration to the heating oil and LPG dealers' size standards when it receives more current industry data from the U.S. Bureau of the Census in 2009.

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

For purposes of Executive Order 12866, the Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action. In addition, this rule is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a federalism assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose new reporting or recordkeeping requirements. Although the measure of size changes from receipts to number of employees, business concerns must maintain records on employees (such as payroll records) in the course of business. Providing information to SBA on the number of employees would occur only as a result of a request for a size determination related to an application for small business assistance.

**Final Regulatory Flexibility Analysis**

Under the Regulatory Flexibility Act, this rule may have a significant impact on a substantial number of small entities in the heating oil and LPG dealers industries. This rule may affect the eligibility of heating oil and LPG dealers seeking SBA 7(a) Loans, SBA Economic Impact Disaster Loans, reduced U.S. Department of Transportation's Hazardous Materials (HAZMAT) Registration Program fees, and assistance from other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What is the reason for this action, (2) what are the objectives and legal basis for the rule, (3) what are SBA's description and estimate of the number of small entities to which the rule will apply, (4) what are the significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis in the October 31, 2005 proposed rule, (5) will this rule impose any additional reporting or recordkeeping requirements on small business entities, (6) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule, and (7) what alternatives did SBA consider?

1. *What is the reason for this action?* Significant increases and fluctuations in crude oil costs render a receipts-based size standard for the heating oil and LPG dealers industries an unsuitable measure of a dealer's level of business activity. Converting the existing receipts-based size standard to an employee-based size standard provides a more accurate measure of the operations of a heating oil dealer and LPG dealer, ensuring a more stable small business designation to dealers of these fuel products.

2. *What are the objectives and legal basis for the rule?* The purpose of this rule is to convert the existing receipts-based size standard to an employee-based size standard to provide a more stable designation and accurate measure of the operations of a heating oil dealer and LPG dealer. Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Under the current measure, heating oil or LPG dealers are abruptly exceeding the size standard due to large and unpredictable increases in crude oil costs, even though they continue to deliver the same quantity of fuel products. This occurs because dealers pass through the increased costs to their customers in the form of higher prices. Therefore,

dealers' receipts are considerably increased through outside forces.

3. *What are SBA's description and estimate of the number of small entities to which the rule will apply?* Based on data from the SBA's special tabulation of the U.S. Bureau of the Census's 2002 Economic Census, there were 3,729 small heating oil dealers and 2,005 small LPG dealers under the existing size standards. Taking into account historical trends of residential heating oil and propane prices between 2002 and 2007, 349 heating oil dealers and 269 LPG dealers may exceed the existing size standard due solely to higher receipts generated by higher prices. Establishing the employee-based size standard for these two industries will restore the small business eligibility of those dealers.

4. *What are the significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis in the October 31, 2007, proposed rule?* The public raised no significant issues in response to the Initial Regulatory Flexibility Analysis in the October 31, 2007, proposed rule. There were four commenters to the proposed rule. Three commenters supported the conversion of the size standard from receipts-based to employee-based. SBA has summarized the comments above in the supplemental information.

5. *Will this rule impose any additional reporting or recordkeeping requirements on small business entities?* Establishing an employee-based size standard for heating oil and LPG dealers does not impose any additional reporting, recordkeeping, or compliance requirements on small entities. Although the measure of size changes from receipts to number of employees, business concerns must maintain records on employees in the course of business. In response to a request for a size determination related to an application for small business assistance, small businesses must provide information on receipts or number of employees. This final rule does not create a new requirement to provide size information, only what type of information that is requested in reviewing a business concern's size.

Section 212 of the Small Business Regulatory Fairness Act (Pub. L. 104–121) requires an agency to publish one or more “small entity compliance guides” to assist small entities in complying with its rules. Although there are not new compliance requirements associated with small business size standards, there may be some small businesses not acquainted with small business size standards and their application to Federal

procurement and other Federal government programs. Therefore, SBA has published both its "Small Business Size Regulations" and its "Guide to Size Standards" to provide this assistance. Both of these are available on SBA's Web site at <http://www.sba.gov/size> by selecting on the right hand side of the page "Size Regulations" and "Guide to Size Standards."

6. *What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?* This rule does not overlap with other Federal rules that use SBA's size standards to define a small business. Under Section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. The Federal Acquisition Regulation (FAR), Part 19, governs Federal procurement and the use of the various available small business programs. All Federal agencies must follow FAR Part 19 in their procurement activities, in the absence of statutory authority to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. If such a case exists where an SBA size

standard is not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.902–903). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing size standards for its programs. (13 CFR 121.903(3)).

7. *What alternatives did SBA consider?* As discussed in the proposed rule, SBA considered using the already established 500-employee size standard for the manufacturing sector or the 100-employee size standard for the wholesale sector. In addition, two of the comments recommended that SBA establish a 100-employee size standard for heating oil dealers. SBA analyzed the heating oil dealers industry, and 500- and 100-employee size standards would represent significant increases to the size standard for the heating oil dealers industry. At this time, industry data do not support higher standards. At 50 employees, more than 90 percent of heating oil dealers qualify as small and they obtained more than half of total industry sales.

SBA also considered one commenter's recommended use of annual volumetric delivery as a measure for the size standard. Using this measure would require companies to keep separate records which are not verifiable for size determination purposes. The only data collected by government agencies regarding heating oil and LPG are the average weekly costs, which is performed using a random survey by state agencies which forward the data to the U.S. Department of Energy.

Therefore, there is no reliable data measuring a firm's annual volumetric delivery. Also, that measure would not capture the activities of the business outside of heating oil and LPG deliveries or the size of any affiliates. For these reasons, SBA did not adopt this recommendation.

#### List of Subjects in 13 CFR part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

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

#### PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

■ 2. In § 121.201, in the table "Small Business Size Standards by NAICS Industry," under the heading "Sector 44–45—Retail Trade," "Subsector 454—Nonstore Retailers," revise the entries for 454311 and 454312 to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

#### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * *	* * *	*	*
<i>Sector 44–45—Retail Trade</i>			
* * *	* * *	*	*
<i>Subsector 454—Nonstore Retailing</i>			
* * *	* * *	*	*
454311 .....	Heating Oil Dealers .....	.....	50
454312 .....	Liquefied Petroleum Gas (Bottled Gas) Dealers .....	.....	50
* * *	* * *	*	*

\* \* \* \* \*

Dated: July 15, 2008.

**Jovita Carranza,**

*Acting Administrator.*

[FR Doc. E8-16658 Filed 7-21-08; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30618; Amdt. No. 3278]

#### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes STANDARD Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 22, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 22, 2008.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Availability—**All SIAPs and Takeoff Minimums and ODPs are Available online free of charge. Visit [nfdc.faa.gov](http://nfdc.faa.gov) to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:**

Harry J. Hodges, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulators' description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. This way, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the Associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its

location, the procedure, and the amendment number.

#### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

#### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.