

# Rules and Regulations

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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

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(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]

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## 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