

2009 Top 10 Rules for Review and Reform

Rule	Agency	Description / Current Status
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New for 2009

Remove the “Foreign Exemption” from Federal Contracting

Contact: Major Clark
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FAR
 Council

Remove the “foreign exemption” from federal procurement policy, increasing federal agencies’ incentive to award government contracts to small and disadvantaged businesses seeking to work outside of the U.S. According to the nominator, these businesses lose over \$20 billion worth of work outside of the U.S. each year because of the foreign exemption.

Eliminate Duplicative Background Checks for Commercial Truck Drivers

Contact: Bruce Lundegren
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TSA

TSA should eliminate the current requirement that a commercial truck driver who holds a valid Transportation Worker Identification Credential (TWIC) must undergo a duplicative security background check when they apply for a hazardous materials endorsement. According to the nominator, this duplicative background check needlessly adds as much as \$28 million to the costs truckers must pay each year.

Nominated in 2008

Update Air Monitoring Rules for Dry Cleaners to Reflect Current Technology.

EPA should revise outdated or inaccurate testing requirements so that modern dry cleaners can have a valid method for demonstrating compliance.

Contact: Keith Holman
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EPA

Revising the New Source Performance Standard (NSPS) for petroleum dry cleaning equipment is a priority for EPA. When implemented, the NSPS revision will update emission testing requirements to work with modern dry cleaning machines.

Flexibility for Community Drinking Water Systems. EPA should consider expanding the ways for small communities to qualify to meet alternative drinking water standards, provided that the alternative standards are protective of human health and are approved by state authorities.

Contact: Kevin Bromberg
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EPA

On March 2, 2006, EPA announced a review of the affordability criteria for small systems (<http://edocket.access.gpo.gov/2006/pdf/06-1917.pdf>, 71 *Federal Register* 10671). EPA has not announced when it will complete the review.

Clearly Define “Oil” in Oil Spill Rules. EPA should clarify the definition of “oil” in its oil spill program, so that small facilities that store nonpetroleum-based products are not unintentionally captured by spill prevention program requirements.

Contact: Kevin Bromberg
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EPA

On May 30, 2008, EPA and representatives of the U.S. Coast Guard met with small business stakeholders. EPA has not formally announced its intention to review its definition of “oil” in its oil spill program.

2009 Top 10 Rules for Review and Reform (continued)

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<p>Eliminate Duplicative Financial Requirements for Architect-Engineering Services Firms in Government Contracting. The duplicative retainage requirement should be removed or reduced in architect-engineering services contracts, as has been done for other services.</p> <p>Contact: Major Clark major.clark@sba.gov</p>	<p>FAR Council</p>	<p>The Office of Federal Procurement Policy (OFPP) submitted Advocacy's r3 retainage proposal to the FAR Council. The FAR case number assigned to this issue is 2008-015. The FAR finance team issued a report indicating the council's next steps regarding the proposed FAR change. (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=af578f0605dcf172475b4fe29b115955&rgn=div6&view=text&node=48:1.0.1.1.1.5&idno=48) On January 7, 2009, a proposed rule implementing the change was sent to OFPP for approval (www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf).</p>
<p>Simplify the Home Office Business Deduction. The IRS should revise their rules to permit a standard deduction for home-based businesses, which constitute 53 percent of all small businesses.</p> <p>Contact: Dillon Taylor dillon.taylor@sba.gov</p>	<p>IRS</p>	<p>On March 14, 2008, the IRS informed Advocacy that this issue has been assigned to IRS attorneys for review (www.sba.gov/advo/r3/irs08_0314.pdf). On July 30, 2008, the Deputy Commissioner of the IRS's Small Business/Self-Employed Division testified on this issue before the House Small Business Subcommittee on Regulations, Healthcare, and Trade (www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/IRS.pdf). The IRS is continuing to review this issue, including exploring opportunities to simplify the rules and make Form 8829, Expenses for Business Use of Your Home, (www.irs.gov/pub/irs-pdf/f8829.pdf) easier to use. On February 5, 2009, Advocacy hosted a roundtable on important tax issues, including the Home Office Business Deduction. A representative from the Internal Revenue Service's Taxpayer Advocate Service made a presentation demonstrating the current complexity of the deduction and the need to simplify it.</p>
<p>Update MSHA Rules on Use of Explosives in Mines to Reflect Modern Industry Standards. MSHA should update its current rules to be consistent with modern mining industry explosives standards.</p> <p>Contact: Bruce Lundegren bruce.lundegren@sba.gov</p>	<p>DOL/ MSHA</p>	<p>The group that nominated this issue testified before the House Small Business Subcommittee on Regulations, Healthcare and Trade on July 30, 2008. (www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/Santis.pdf). On November 6, 2008, MSHA committed in a letter to Chairman Gonzalez of the House Subcommittee on Regulations, Healthcare and Trade that MSHA would review the rule (www.sba.gov/advo/r3/gonzalez08_1106.pdf). Subsequently, MSHA listed this rule in the Fall 2008 <i>Unified Agenda and Regulatory Plan</i> and indicated that the rule would be reviewed under Section 610 of the Regulatory Flexibility Act (www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291765).</p>

2009 Top 10 Rules for Review and Reform (continued)

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<p>Update OSHA’s Medical/Laboratory Worker Rule. The current rule should be reviewed to determine whether it can be made more flexible in situations where workers do not have potential exposure to bloodborne pathogens.</p> <p>Contact: Bruce Lundegren bruce.lundegren@sba.gov</p>	DOL/ OSHA	<p>On October 22, 2008, OSHA noted in a letter to Chairman Gonzalez of the House Small Business Subcommittee on Regulations, Healthcare and Trade that this rule was being considered for review (www.sba.gov/advo/r3/resgonzalez08_1022.pdf). Subsequently, OSHA listed this rule in the Fall 2008 <i>Unified Agenda and Regulatory Plan</i> and indicated that the rule would be reviewed under Section 610 of the Regulatory Flexibility Act (www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291742).</p>
<p>Update Reverse Auction Techniques for Online Procurement of Commercial Items. The current reverse auction techniques should be reviewed to determine whether a government-wide rule is necessary to create a more consistent and predictable online process.</p> <p>Contact: Major Clark major.clark@sba.gov</p>	OFPP	<p>On October 4, 2006 the Office of Federal Procurement Policy (OFPP) announced a review to determine the appropriate course of action for this acquisition tool (www.sba.gov/advo/r3/ofpp06_1004.pdf). OFPP has completed surveys of vendors (http://edocket.access.gpo.gov/2007/pdf/07-1967.pdf) and users (http://edocket.access.gpo.gov/2007/pdf/07-4065.pdf). The surveys were targeted for government buyers who have never done a procurement using a reverse auction (www.dau.mil/performance_support/mdcsurvey/pros/pros.htm), and government buyers with experience using reverse auctions (www.dau.mil/performance_support/mdc-survey/govtexp/govtexp.htm). The outcome of this review should be a FAR reverse auction regulation establishing conditions of applicability. This regulatory framework will be supplemented by a detailed “best practice” guide for the acquisition community.</p>

2008 Rules Reformed by Federal Agencies

<p>Simplify the Rules for Recycling Solid Wastes. Advocacy requested that EPA simplify the rules for recycling useful materials that, because of their classification, had to be handled, transported, and disposed of as hazardous wastes. EPA’s 2008 rule changes are estimated to have saved small entities \$48 million each year.</p>	EPA	<p>On October 28, 2003, EPA issued a proposal to revise the definition of solid waste (www.epa.gov/fedrgstr/EPA-WASTE/2003/October/Day-28/f26754.pdf). The agency issued a supplemental proposal on March 26, 2007 (www.epa.gov/fedrgstr/EPA-WASTE/2007/March/Day-26/f5159.pdf). The final rule was promulgated by EPA on October 30, 2008. The rule and other relevant information can be found at www.epa.gov/epawaste/hazard/dsw/rulemaking.htm#2008.</p>
<p>Update Flight Rules for Washington, D.C. Regional Area. Advocacy asked FAA and other agencies to review the flight restriction rule for the region surrounding Washington, D.C., to determine if they could be revised to avoid harming the region’s small airports. The FAA rule changes enacted in 2008 are responsible for small entity savings of \$300 million over 10 years.</p>	DOT/ FAA	<p>On March 19, 2008, the FAA notified Advocacy by letter (www.sba.gov/advo/r3/faa08_0319.pdf) that it expected to finalize the flight restriction rules by January 2009. FAA indicated in the letter that the agency would work with Advocacy to ensure a transparent review of the rule’s impact on small entities. FAA issued its final rule on December 16, 2008. The final rule reduced the economic impact on small entities by reducing the size of the restricted airspace and providing greater flexibility. (http://edocket.access.gpo.gov/2008/pdf/E8-29711.pdf).</p>