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## Panel assesses pros, cons of SBA recertification rule

BY [David Hubler](#)

**Published on Jan. 17, 2007** The new Small Business Administration recertification rule is designed to close some loopholes in long-term contracting. But it could likewise “cast a gray pallor” over small businesses by devaluing them and making them less attractive to mergers and acquisitions, according to a panel discussion today on the SBA final rule that was issued Nov. 15, 2006.

Dean Koppel, assistant administrator of the SBA Office of Policy and Research, said SBA recognized that loopholes had been in effect for some time especially for contracts “typically 15 to 20 years in duration, where small businesses grew to be other than small or were acquired, merged or for other reasons outgrew their size standard.”

He said the new rule “requires recertification on the part of the small business before the sixth year of the contract and then before the exercise of each option [year] thereafter.” It also applies at the time of a merger or acquisition.

The recertification must conform to the North American Industry Classification System code in the original contract and to the size standard in effect on the date of the company’s recertification, Koppel added.

“The reason we chose five years in the final rule was that was the natural break for most other federal procurements,” he said, which usually entail one base year and four option years. “We tried to smooth it out to the point where [the rule] wasn’t going to be onerous and it would catch whatever size changes took place.”

The rule gives contracting officers the discretion to request that a small business recertify its size for a task order, but it is not mandatory, he said. And if a contracting company loses its small-business status, Koppel added, the purchasing agency will determine whether to continue the contract.

The SBA rule will not require such a company to submit a subcontracting plan. “If the buying activity wants to impose that [recertification] requirement, that is at their discretion,” he said.

SBA chose to make the rule effective in June to give agencies time to figure out how they will collect the new data, he said.

Todd Overman, associate at the law firm of Hogan and Hartson, said the rule is broader than most people think it is.

He said small businesses must recertify their size status to the procuring agency within 30 days of an approved contract novation or asset purchase

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or within 30 days of a merger or acquisition becoming final. Contracting officers, on the other hand, have 120 days from the end of the contract's fifth year or the start of an option year to request recertification.

Overman said the rule is designed primarily for accounting purposes. "SBA is not out telling contracting officers they should terminate these contracts immediately if a small business can't certify that it is small," he said. "It's really [saying] that the agency should continue to exercise its discretion as to how it meets its procurement needs."

Procurement officers have the option to continue the contract or conduct another procurement. There is no requirement to terminate the contract, Overman said.

But in financial terms, the rule could reduce the value of a small company that is the object of a merger or acquisition, said Dennis Roberts, managing partner at The McLean Group, an investment-banking firm. "The actual answer is we don't know yet," he said, because each transaction is an individual action. But he added that the rule will nevertheless "cast a gray pallor" over small-business merger and acquisition activities if acquiring companies will be wondering whether they are getting their money's worth.

He said the biggest fear new owners have is that the company they acquire on Friday will be a different one on Monday. "But that's not going to happen," Roberts said. "When that uncertainty is there, you're going to find that the acquirer is getting some level of reassurance from the contracting officers that the acquired target is not going to lose its contracting rights."

The panelists also mentioned the possibility that Congress would attempt to shorten the recertification period from five years to annually. That "would be a compliance nightmare," Overman said, because agencies would have to know when each contract had reached its recertification date and track thousands of them a year.

Officials at the Information Technology Association of America, which sponsored the morning panel, said they will work to raise the threshold of SBA's definition of a small business.

Olga Grkavac, executive vice president of the public-sector group at ITAA, said the association's No. 1 goal is to raise the small-business size definitions from an average of \$23 million in revenue over three years to \$50 million.

