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SMALL BUSINESS ADMINISTRATION

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Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA or the Agency) amends its regulations to implement a statutory requirement to certify Women-Owned Small Business Concerns (WOSBs) and Economically Disadvantaged Women-Owned Small Business Concerns (EDWOSBs) participating in the Procurement Program for Women-Owned Small Business Concerns (the Program). The certification requirement applies only to those businesses wishing to compete for set-aside or sole source contracts under the Program, and to those seeking to be awarded multiple award contracts for pools reserved for WOSBs and EDWOSBs. Once this rule is effective, WOSBs and EDWOSBs that are not certified will not be eligible for contracts under the Program. Other women-owned small business concerns that do not participate in the Program may continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs. For those purposes, contracting officers would be able to accept self-certifications without requiring them to verify any documentation. In this rule, SBA implements the statutory mandate to provide certification, to accept certification from certain identified government entities, and to allow certification by SBA-approved third-party certifiers. As part of the changes necessary to implement a certification program, this final rule amends SBA's regulations with regard

to continuing eligibility and program examinations. This rule also adjusts the economic disadvantage thresholds for determining whether an individual qualifies as economically disadvantaged. The new thresholds will be used for assessing the economic disadvantage of applicants to the 8(a) Business Development (BD) Program, as well as applicants seeking EDWOSB status.

DATES: This rule is effective on July 15, 2020, except for the amendments to §§ 127.300, 127.304, 127.305, the addition of § 127.351, and the amendments to §§ 127.400, 127.401, 127.403, 127.405, 127.504, 127.505, 127.603, and 127.604, which are effective on October 15, 2020. The addition of § 127.355 is delayed indefinitely and we will publish a document in the Federal Register announcing the effective date.

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SUPPLEMENTARY INFORMATION: As set forth in section 8(m) of the Small Business Act, 15 U.S.C. 637(m), the Program authorizes Federal contracting officers to restrict competition to eligible WOSBs or EDWOSBs for Federal contracts in certain industries. Section 825 of the National Defense Authorization Act for Fiscal Year 2015, Public Law 113-291, 128 Stat. 3292 (December 19, 2014) (2015 NDAA), amended the Small Business Act to grant contracting officers the authority to award sole source awards to WOSBs and EDWOSBs. In addition, section 825 of the 2015 NDAA amended the Small Business Act to create a requirement that a concern be certified as a WOSB or EDWOSB by a Federal agency, a State government, SBA, or a national certifying entity approved by SBA, in order to be awarded a set aside or sole source contract under the authority of section 8(m) of the Small Business Act. 15 U.S.C. 637(m)(2)(E). SBA believes that certification is

also required where an agency establishes a pool of WOSBs or EDWOSBs on a multiple award contract and intends to set-aside or reserve one or more orders for WOSBs or EDWOSBs.

On September 14, 2015, SBA published in the *Federal Register* a final rule to implement the sole source authority for WOSBs and EDWOSBs. 80 FR 55019 (effective October 14, 2015). SBA did not address the certification portion of the 2015 NDAA in that final rule because its implementation could not be accomplished by merely incorporating the statutory language into the regulations and would have delayed the implementation of the sole source authority. SBA notified the public that because it did not want to delay the implementation of the WOSB sole source authority, it would implement the certification requirement through a separate rulemaking.

As part of the process to draft the regulations governing the WOSB/EDWOSB certification program, SBA published an Advance Notice of Proposed Rulemaking in the Federal Register on December 18, 2015 (80 FR 78984) and a proposed rule in the *Federal Register* on May 14, 2019 (84 FR 21256). The proposed rule solicited public comments to assist SBA in drafting a final rule to implement a WOSB/EDWOSB certification program. SBA received 898 comments from 307 commenters in response to the proposed rule (Regulations.Gov Docket #SBA-2019-0003). SBA has reviewed all input from interested stakeholders while drafting this rule.

The proposed rule also revised § 124.104(c) to make the economic disadvantage requirements for the 8(a) BD Program consistent with the economic disadvantage requirements for women-owned small businesses seeking EDWOSB status. The proposed change eliminated the distinction in the 8(a) BD Program for initial entry into and continued eligibility for the program.

Economic Disadvantage

Currently, the economic disadvantage criteria for EDWOSBs is \$750,000, which is the same as the continuing eligibility threshold for the 8(a) BD program, but higher than the \$250,000 initial eligibility threshold for that program. A concern applying for EDWOSB and 8(a) BD status simultaneously could thus be found economically disadvantaged for EDWOSB purposes, but not economically disadvantaged for the 8(a) BD Program. This result would introduce unnecessary confusion and uncertainty into the application and certification processes. To remedy this, this final rule makes economic disadvantage consistent across programs.

SBA commissioned a study to assist the Office of Business Development in defining or establishing criteria for determining what constitutes “economic disadvantage” for purposes of firms applying to the 8(a) BD program. The study concluded that the available data support an economic disadvantage threshold between \$375,000 and \$1.2 million. This range reflects the complexity of establishing a threshold that considers the ability of disadvantaged business owners to compete in the free enterprise system, as well as those individuals’ access to credit and capital. That inherent complexity is evident in the varied economic disadvantage thresholds established by other Federal and state programs. For example, the Disadvantaged Business Enterprise Program (DBE), administered by agencies authorized by the U.S. Department of Transportation (DOT), uses a \$1.32 million economic disadvantage threshold. States with similar programs for “minority and women business enterprises” have economic disadvantage thresholds up to \$1.6 million. The study commissioned by SBA did not come to a definitive conclusion on which threshold the Agency should use. One suggestion was to use a \$1.1 million “unadjusted” (home and business equity included) personal net worth standard, which would be equal to a \$375,000 “adjusted” (home and business equity excluded) standard. The study did not, however, consider differences in economic disadvantage between applying to the 8(a) BD program and continuing in the program once

admitted, nor did it consider economic disadvantage in the context of EDWOSB eligibility. Because SBA believes that it is important to have the same economic disadvantage criteria for the 8(a) BD program as for the EDWOSB program to avoid confusion and inconsistency between the programs, SBA considered applying a \$375,000 net worth standard to both the 8(a) BD and EDWOSB programs. SBA requested comments on whether the \$375,000 net worth standard or the \$750,000 net worth standard should be used for the EDWOSB and 8(a) BD and Programs.

In response, SBA received 146 comments that supported \$750,000 as the appropriate economic disadvantage threshold. Of these, a substantial number explicitly expressed support for changing the regulations to make the economic disadvantage threshold consistent between programs, while the rest expressed support more broadly for maintaining EDWOSB's economic disadvantage threshold of \$750,000. SBA did not receive any comments supporting a common \$375,000 net worth standard for the EDWOSB and 8(a) BD programs. SBA also received four comments that offered alternative methods to establish an economic threshold. One argued that the standard should be variable and based on inflation, one thought the standard should be locality-based, and two suggested a tiered system. Three additional commenters opposed an economic disadvantage threshold of \$750,000. One recommended an economic disadvantage threshold of \$1 million, one opposed having an economic disadvantage threshold at all, and the third merely thought that \$750,000 was inappropriate. SBA believes that varying the economic disadvantage threshold depending on fluid external factors such as inflation, or applying different thresholds depending on locality, would introduce too much volatility and confusion into the application process and lead to inconsistency between programs. Increasing the economic disadvantage threshold to \$1 million or abolishing economic disadvantage thresholds altogether were not contemplated in the proposed rule and are not under consideration now. Based on the study's conclusion that SBA could set an

economic disadvantage threshold between \$375,000 and \$1.2 million, stakeholders' clear affirmation of a \$750,000 economic disadvantage threshold, and the preference for uniform standards across programs, SBA is keeping the EDWOSB economic disadvantage threshold and adjusting the 8(a) BD economic disadvantage thresholds accordingly.

SBA also received comments regarding how economic disadvantage would be assessed going forward. Specifically, commenters asked about whether there is any difference between the EDWOSB and the 8(a) BD regulations governing how retirement accounts are calculated when determining an economically disadvantaged individual's net worth, and if the change in the economic disadvantage threshold will affect that calculation. In light of this feedback, SBA has revised § 124.104(c)(2)(ii) and § 127.203(b)(3) in the final rule to note that retirement accounts will now be excluded from calculations of an economically disadvantaged individual's net worth, irrespective of the individual's age. SBA has previously contemplated this change, believing that it accords with the valuable public policy of incentivizing, rather than punishing, saving for retirement. It also expands the pool of potential EDWOSB and 8(a) BD participants because retirement-age small business owners will no longer be ineligible solely due to their retirement savings. Changing the EDWOSB and 8(a) BD net worth provisions now, in conjunction with the changes to the economic disadvantage threshold for both programs, furthers SBA's long-term aim of promoting regulatory consistency and continuity.

Women-Owned Small Business Certification Program

The 2015 NDAA amended the Small Business Act to require that concerns participating in the Program must be certified by SBA, a Federal agency, a state government, or an approved national certifying entity. In response, SBA proposed amending the regulations in part 127 to remove references to self-certification with respect to the award of WOSB/EDWOSB contracts. The

certification requirement applies only to participants wishing to compete for set-aside or sole source contracts under the Program. Once this rule is effective, WOSBs and EDWOSBs that are not certified will not be eligible for contracts under the Program. Other women-owned small business concerns that do not participate in the Program may continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs. The final rule adds a new § 127.200(c) to make clear that a concern may continue to self-certify as a WOSB for goaling purposes. Revised § 127.300 establishes options for small business concerns seeking certification as WOSBs or EDWOSBs: applying via SBA's free online application, submitting evidence of certification from another approved Government entity, or submitting evidence of certification from an approved third-party certifier.

SBA received over 400 comments on the proposed revisions to § 127.300(a) and (b), which detail the options for certification. Of these, 170 commenters expressed a general sentiment that there should be "a fair and unified set of requirements and application processes for all participants" and "the process of submitting an application...should be fully uniform and completed at certify.sba.gov." An additional sixteen commenters explicitly supported the proposed processes, and two commenters opposed them.

SBA shares the view that certification requirements must be fair and consistently applied. To ensure this consistency, SBA is the final authority for all of the certification processes. Congress' intent in allowing SBA to delegate certification to other authorized parties was to ensure that the public has access to the broadest range of certification options while at the same time ensuring that consistent Program eligibility requirements are met. There will naturally be differences between each of the processes because they will be administered by different entities, but the foundation for all the processes is SBA's Program eligibility requirements. Each applicant will be providing

evidence to SBA that it meets these requirements; the application processes outlined in §§ 127.300 – 127.305 differ primarily in what kind of documentation demonstrates eligibility.

Based on the comments received, SBA understands that many stakeholders harbor reservations about the fairness and uniformity of the application process. As such, the final rule will clarify in subpart C, “Certification of WOSB or EDWOSB Status,” that there is no distinction between “Certification by SBA” and “Certification by Third Party,” as written in the proposed rule. Instead, the regulations will refer to all the provisions covering the different application processes in §§ 127.300 – 127.305 as “Certification.” SBA also removed references to SBA in the headings for §§ 127.301 – 127.305 so that concerns understand that the regulations apply to all applicants, regardless of how they opt to seek certification. The rules for third-party certifiers, covered extensively in new §§ 127.350 – 127.356, will be labeled as “Requirements for Third-Party Certifiers.” SBA believes this will reaffirm that “Certification” is a unitary process, that all concerns must meet the same eligibility requirements, and that the only difference is in how they can present evidence that they have met those requirements.

SBA received four comments regarding the proposed change to § 127.300(a)(1), which specifies that concerns can apply for WOSB certification from SBA. Three commenters were supportive. The fourth opposed the provision because it believes that concerns should continue to have the option to self-certify. Because the statutory language mandates the methods for certification, SBA has no authority to retain self-certification as an option for concerns seeking to compete for WOSB and EDWOSB set-aside procurements (as noted above, concerns can still self-certify for non-WOSB and non-EDWOSB set-aside procurements, still self-identify as women-owned small businesses, and awards to firms self-identifying as WOSBs may be counted by a procuring agency towards its WOSB goal). SBA adopts the proposed language as final.

SBA received 12 comments that specifically touched on § 127.300(a)(2), which outlines the options for non-SBA, government-entity certification options. The proposed rule stated that a concern could submit evidence that it was a certified participant of the 8(a) BD Program or the DBE Program, or that it was certified as a Veteran-Owned or Service-Disabled Veteran-Owned Small Business by the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE). The Supplementary Information in the proposed rule also contemplated potentially accepting evidence that a concern participated in SBA's HUBZone Program.

The final rule removes reference to the 8(a) BD Program in § 127.300(a)(2) and instead includes it only in § 127.300(b)(2), which details EDWOSB certification. Every current 8(a) BD participant that is 51% owned and controlled by a woman or women is an EDWOSB because economic disadvantage is a component of 8(a) BD eligibility, and all EDWOSBs are WOSBs. As such, including this information in the EDWOSB certification sub-section covers both EDWOSB and WOSB participation.

The final rule also omits reference to the HUBZone Program in that section. While evidence of HUBZone participation would indicate a concern is small, it would not provide any of the other information to demonstrate WOSB/EDWOSB eligibility. Specifically, a firm need not demonstrate that it is owned and controlled by a specific individual in order to be eligible for the HUBZone program. Thus, such a certification does not include a finding by SBA of any ownership and control. The purpose of § 127.300(a)(2) and (b)(2) is to expand the options for concerns to demonstrate Program eligibility as efficiently as possible. A certification option that necessitates submitting documentation of all but one of the elements of Program eligibility does not meaningfully effectuate this purpose. Similarly, the final rule removes DBE certification from the list of options. After discussions with stakeholders, SBA concluded that evidence of DBE certification would not

provide the requisite level of certainty that a concern was eligible for the Program. While the DOT DBE regulations refer back to SBA's size regulations at 13 CFR part 121, concerns would still need to provide documentation to confirm they met SBA's distinct requirements for ownership and control by one or more women, or that they met SBA's economic disadvantage criteria if they were seeking EDWOSB certification. As with HUBZone Program participation, evidence of DBE participation would not help small businesses demonstrate eligibility as efficiently and easily as possible while still ensuring the requirements are met. In contrast, the governing regulations for the CVE program (38 CFR 74.2 - 74.4) refer to SBA's standards for size, socioeconomic status, ownership, and control. Documentation of CVE certification, along with confirmation that the concern was owned and controlled by one or more women, would demonstrate that a concern had met all the eligibility requirements for the Program. To help concerns better understand how to demonstrate their Program eligibility with their CVE certification, the final rule details the application process in § 127.303.

SBA received 188 comments on § 127.300(a)(3), which provides that a concern may submit evidence that it has been certified as an eligible Program participant by a Third-Party Certifier. Of these, 170 stated generally that SBA should have oversight of third-party certifiers and implement standards for certifiers. SBA agrees with these commenters and §§ 127.350 – 127.356, discussed below, detail requirements for third-party certifiers. These commenters also requested that SBA update SAM.gov to reflect that they are certified, including third-party certified. SBA does not oversee SAM.gov but will maintain its own internal records that will reflect up-to-date information and that information will be relayed to the General Services Administration, the agency that maintains SAM.gov.

Fifteen commenters opposed proposed § 127.300(a)(3) for a wide variety of reasons. One commenter stated that there should not be “required” third-party certification. SBA believes that this commenter misinterpreted the rule. As outlined in the rule, there are several different certification options, and concerns are not required to choose third-party certification. Which way to seek WOSB or EDWOSB certification is a business decision up to discretion of each firm. Three commenters said all certification should be handled by SBA, rather than by third-party certifiers that may have differing standards. In response, SBA notes that Congress specifically enumerated several different certification options in the statutory language, making clear that SBA should not be the sole entity processing certification applications. However, SBA retains responsibility for overseeing the Program eligibility requirements, and these requirements are the standards by which all applicants will be assessed. Certifiers will not be able to impose their own application standards for Program applicants.

Six commenters opposed third-party certification because of the associated fees, which commenters perceived as prohibitively expensive for many small businesses. Both Congress and SBA understand the importance of ensuring certification is available to every eligible concern. As such, Congress authorized several free certification options, and SBA will not distinguish between concerns based on how they were certified. No firm will be required to pay a fee for certification. Again, it is up to each firm seeking WOSB or EDWOSB certification to determine which method of certification makes sense for it. One commenter opposed third-party certification because of the “frequency of certification” associated with third-party certifiers. Currently, third-party-certified concerns are recertified annually. Under the new regulations, all concerns, whether certified directly by SBA or otherwise, will be required to attest to SBA annually that they remain eligible for the Program and undergo a full program examination every three years. As such, third-party-certified

concerns will not face a greater administrative burden than concerns certified via other processes. SBA updated subpart D to discuss the requirements for recertification, and these changes are discussed in greater detail below.

SBA received six comments on § 127.300(b), which discusses how SBA will certify concerns as EDWOSBs. One commenter supported having an array of certification options. Two others requested clarification about how SBA will accept certification from other government entities. SBA has provided additional detail about what applicants must submit in order to demonstrate certification via non-SBA government entity certifiers in § 127.303.

SBA received seven comments related to § 127.300(b)(2), which states that a woman- or women-owned business that is a certified 8(a) BD participant qualifies as an EDWOSB. One commenter said that EDWOSB should be a “sub-set” of the 8(a) BD Program. Another commenter said that EDWOSB certification should automatically confer 8(a) BD certification. There is significant overlap between the eligibility requirements of the two programs, but they are not identical. The most important difference is that a concern can participate in the WOSB Program for as long as it is eligible, whereas participation in the 8(a) BD Program is limited to nine years. Further, the 8(a) BD Program has unique eligibility requirements that do not apply to the WOSB Program. In particular, the 8(a) BD Program requires the principal of a business to be socially disadvantaged in order to qualify for participation, and women as a group are not presumed to be socially disadvantaged. An individual seeking to qualify as socially disadvantaged based on her status as a woman must demonstrate that she personally has suffered discrimination or bias that has adversely affected her entry into or advancement in the business world. Determining whether an individual woman can demonstrate social disadvantage requires fact-specific analysis and cannot be automatically presumed. Thus, EDWOSB qualification does not automatically confer 8(a) BD

qualification, even though the converse is true. In addition, the 8(a) BD certification process requires an applicant to demonstrate that it possesses the necessary “potential for success,” as defined in the 8(a) BD regulations, and WOSB certification has no corresponding requirement.

Two commenters said that SBA should adjust goaling requirements so that more 8(a) BD awards are apportioned for WOSBs/EDWOSBs. Goaling thresholds are set by Congress and SBA establishes them in a way that seeks to ensure that the statutory goal is met Government-wide. Although SBA has some discretion in the setting of a particular agency’s goals, SBA cannot establish goals that do not meet the overall Government-wide statutory goal. SBA is always seeking to enhance small business participation in Federal contracting and will continue to do so. One commenter suggested that the Program should mirror the outreach and public education efforts of the 8(a) BD Program because the contracting community is not aware of or familiar with WOSB and EDWOSB opportunities. SBA hopes that the increased public outreach during the rulemaking process has helped ameliorate this perceived lack of awareness and that the certification application process will further familiarize concerns with Program benefits and responsibilities. SBA adopts the proposed language as final.

One commenter opposed § 127.300(b)(3), specifically asking why veteran-owned small business that are owned and controlled by women could not be automatically certified as WOSBs, but rather had to submit additional information to SBA to be so designated. CVE eligibility is not based on gender and thus evidence of CVE certification would not automatically communicate that an applicant had necessarily satisfied all Program requirements, including 51% ownership and control by a woman or women. A CVE certification demonstrates that a firm is owned and controlled by one or more veterans or service-disabled veterans, but not necessarily by women veterans or women service-disabled veterans. The process for CVE-certified small businesses will

be to demonstrate that the individuals certified to own and control the business concern are women and, if they seek EDWOSB status, that they are economically disadvantaged. CVE certification alone would also not demonstrate an applicant's economic disadvantage, which is a necessary component of EDWOSB participation. SBA adopts the proposed language as final.

SBA did not receive any comments on proposed § 127.301, which provides guidance on when concerns should apply for Program certification. As such, SBA adopts it as final in this rule. SBA did, however, receive comments regarding who will be deemed certified as a WOSB or EDWOSB upon this rule becoming effective and, therefore, be immediately eligible to be awarded set-aside and sole source WOSB and EDWOSB contracts. SBA agrees that this is an important issue that should be clarified.

Pursuant to the underlying statutory authority, a concern must be certified as a WOSB or EDWOSB in order to be awarded a WOSB or EDWOSB set-aside or sole-source contract. The change in the regulations implementing that statutory provision does not affect contracts previously awarded through the Program, so a concern that was previously awarded a WOSB or EDWOSB contract may continue to perform that contract and the procuring agency may continue to count the contract towards its WOSB goal. Once this rule is effective, however, a concern performing on a long-term WOSB or EDWOSB contract (i.e., one in excess of five years) must represent that it is a certified WOSB or EDWOSB in order for the award to continue to count towards an agency's WOSB goal. For new WOSB and EDWOSB set-aside contracts, a concern must be able to demonstrate that it has applied for certification before the date it submitted a bid, and that it has not previously sought and been denied certification. For new WOSB or EDWOSB sole-source contracts, a concern must already be certified at the time it seeks to obtain the sole-source contract. In both situations, the concern must be certified prior to award. Concerns that are owned and

controlled by one or more women and certified through the 8(a) BD Program, concerns that are third-party certified, and concerns that were subject to a program examination or status protest and received a concomitant positive decision in the three years prior to the rule's effective date will all be considered certified the day the rule is effective. SBA trusts this information will help concerns plan for when and how to apply for certification so that they are ready to compete for new WOSB and EDWOSB set-aside contracts and able to continue working on existing set-aside contracts without interruption.

SBA received one comment on § 127.302, which provides that concerns will apply for certification on certify.sba.gov or any successor system. The commenter opposed having an electronic-only application process. SBA believes that an electronic process is the most efficient and timely way to process the number of applications SBA is expecting once the rule is effective. In today's business environment, SBA believes that every business concern seeking to contract with the Federal Government must have access to a computer and that this is the easiest and best way to transmit and process applications. SBA adopts the proposed language and will remove "from SBA" from the heading in the final rule.

SBA did not receive any comments on § 127.303, which outlines what documentation concerns must submit for certification. Based on questions and feedback received on related sections, SBA has expanded § 127.303 in the final rule. This section now refers to the documentation applicants must submit for each of the certification options detailed in § 127.300(a) and (b). This additional information is intended to help applicants better prepare their applications and will hopefully facilitate a more efficient process.

SBA received two comments on § 127.304, which discusses how SBA will process applications. Both commenters opposed the 90-day timeframe for making determinations after

receipt of a completed application. Neither commenter offered an alternative timeframe that would better suit the needs of the small business community. This 90-day processing time aligns with that of the 8(a) BD and HUBZone Programs, and SBA believes that is appropriate for the WOSB Programs as well. As such, SBA adopts the proposed language as final.

SBA received eight comments on §§ 127.305 and 127.306, which dealt with how and when applicants could reapply or seek recertification after being declined or decertified. Five commenters opposed the provisions, two were supportive, and one sought clarification. The commenters in opposition vigorously disagreed with the proposed one-year “cooling-off” period, during which time a concern could not reapply for Program certification. One commenter noted that not being able to appeal or rectify a negative certification decision until a year has passed was “the worst of both worlds.” In response to the comments, SBA has amended these provisions. The final rule removes proposed § 127.305 (reconsideration) and moves the language in proposed § 127.306 to that section. The final rule also amends the language in proposed § 127.306 (now § 127.305) to align with the HUBZone Program regulations, which do not have a reconsideration or appeal process and instead allow concerns to remedy their eligibility deficits and reapply after 90 days. In addition to responding to industry concerns, mirroring the HUBZone Program regulations has the added benefit of furthering SBA’s aim of promoting consistency between its programs.

Requirements for Third-Party Certifiers

SBA proposed to amend subpart C of part 127 to establish procedures for Third-Party Certification in the context of a required certification program. In § 127.350, SBA proposed that all Third-Party Certifiers must be approved by SBA. Under this rule, an approved third-party certifier need not be a non-profit entity. SBA also clarified that a third-party certifier is a non-governmental entity, in contrast to the governmental certifications (8(a) BD and VA CVE) that SBA will accept for

WOSB/EDWOSB certification purposes. The proposed rule also stipulated what concerns must do to be certified by a third-party certifier.

SBA received five comments on revised §§ 127.350 – 127.356. One commenter said that new third-party certifiers must be “credible.” SBA does not have concerns about the credibility of third-party certifiers. The statutory language stipulates that only SBA-approved third-party certifiers are authorized to certify concerns. There are currently four SBA-approved third-party certifiers. In advance of effectuating the final rule, SBA has focused on providing clarity and guidance on the certification process as a whole and not on third-party certifiers specifically, but foresees expanding the list of authorized third-party certifiers in the future. All third-party certifiers participating in the Program are required to abide by both the regulations in part 127, and their agreements with SBA. SBA communicates regularly with third-party certifiers, collects monthly data about the WOSBs and EDWOSBs they work with, and periodically reviews their application processes. This is all intended to ensure that SBA’s eligibility requirements are consistently applied. As such, SBA feels confident the third-party certifiers are, and will continue to be, credible partners in the certification process.

Three other commenters sought clarification on different provisions in this section. In response to § 127.353(b), one commenter suggested SBA provide language that third-party certifiers can use to advise applicants that SBA offers a free certification option. SBA agrees that providing that language would be helpful, but including it in the regulations would preclude the Agency from refining the language in response to feedback from applicants once the certification process is underway. SBA will plan to communicate with third-party certifiers in the coming months on what the advisory language should look like. Similarly, another commenter requested additional detail about what information SBA will require in reports from third-party certifiers under § 127.355(a). The proposed language was drafted deliberately to allow for SBA to make determinations about

what third-party certifiers will have to submit regularly once the certification program is underway and it becomes clear what type of information would be helpful. A third commenter asked for clarification on the timeline for periodic compliance reviews, which SBA believes is adequately spelled out in § 127.355(b)(1).

Finally, several commenters opposed this section on the grounds that SBA should not allow for-profit entities to certify concerns, that there will be too many discrepancies between third-party certification and certification via other entities, and that “SBA’s failure to act appropriately in the budgetary process” deprived the Program of the funds necessary to manage a certification process. On the first point, the authorizing legislation does not limit third-party certifier participation to entities that are non-profit, so going forward, SBA will not require third-party certifiers to maintain non-profit status. In response to the second concern, SBA reiterates that all certifying entities will assess applicants against the same eligibility requirements. The third point, which expressed concern that the certification program was not appropriately funded, was echoed by many commenters. All of these commenters used identical language to urge SBA to, “act immediately to move budgetary (taxpayer) funds from programs that have not been sanctioned by Congress towards the full and effective implementation of this nearly twenty-year-old Congressionally-mandated program and advise Congress of the full budget needed so that SBA may receive the necessary funding to assure this program is well run.” SBA appreciates these commenters’ sense of urgency about the implementation of the certification program and understands commenters’ frustrations. SBA notes, however, that the requirement that a concern must be certified as a WOSB or EDWOSB in order to be awarded a set-aside or sole source contract under the Program was enacted as part of 2015 NDAA. Further, the Agency’s ability to spend funds that “have not been sanctioned by Congress” is proscribed by law, and its ability to shift money between unrelated programs is limited.

SBA believes Congress is well-apprieved of the scope and breadth of the certification program. The plan continues to be to stand up Program certification by leveraging existing resources.

SBA did not receive specific comments on § 127.354, but in light of the broader concerns expressed about discrepancies between third-party certification and certification by a government entity, the final rule revises the heading of this paragraph to emphasize that SBA will require third-party certifiers to follow detailed, uniform guidance to demonstrate capability to certify concerns.

Proposed § 127.357(a) permitted a concern found to be ineligible by a third-party certifier to request reconsideration and a redetermination. Proposed § 127.357(c) prohibited a declined concern from reapplying for WOSB or EDWOSB certification by SBA or a third-party certifier for a one-year period, and proposed § 127.357(d) prohibited concerns from reapplying through another third-party certifier during that time. In light of the changes to § 127.305, which shortens the reapplication timeframe from one year to 90 days, § 127.357 is omitted in the final rule. As discussed, SBA's aim is to ensure consistency and uniformity between the certification options, both as a policy matter and in response to the 168 commenters who stressed the importance of, "a fair and unified set of requirements and application processes for all participants." Allowing concerns that opt for third-party certification to seek reconsideration if they are declined would privilege them over concerns that apply for certification from SBA or another government entity, because the latter groups will not have a reconsideration option. Removing this proposed section better facilitates alignment between the certification options and is responsive to stakeholders' concerns.

SBA received eight comments on proposed § 127.400, which requires that concerns recertify eligibility every three years. Four commenters supported recertification every three years and four opposed. Of the four commenters opposed, three suggested annual recertification because that is what SBA's other programs require. SBA believes that a helpful comparison is to look at the

requirements of the HUBZone Program. Per the HUBZone Program regulations at § 126.500, SBA conducts a program examination and recertification of each HUBZone concern every three years, and concerns are required to represent annually that they continue to meet all program criteria. In contrast, proposed § 127.400 would only have required WOSBs and EDWOSBs to recertify every three years. In an effort to more closely align the WOSB Program regulations with other SBA regulations, and in response to the commenters concerned that recertification every three years is insufficient, the final rule revises § 127.400 to require concerns to annually attest to SBA that they meet the Program requirements, and undergo a full program examination and recertification every three years. SBA added two examples to this section to help illustrate the recertification requirements detailed in the final rule.

Proposed § 127.401 provided that all certified concerns have an affirmative duty to notify SBA of any material changes in writing. SBA did not receive any comments on this section and adopts the proposed language as final.

Proposed § 127.402 addressed the failure of a concern to recertify every three years or to notify SBA of a material change. SBA did not receive any comments on this section. In light of the changes to the rest of this subpart, § 127.402 is omitted in the final rule and the subsequent sections have been renumbered. The information detailed in proposed § 127.402 is included in § 127.405 (formerly § 127.406) in the final rule, which discusses the consequences if SBA is unable to determine a concern's eligibility or determines that a concern is no longer eligible for the Program.

Proposed § 127.403 detailed how SBA would conduct program examinations and specifically how program examinations would change after the certification process is implemented. SBA did not receive any comments on this section. To align with the changes discussed above, SBA has

renumbered sections §§ 127.403 – 127.406. Aside from renumbering, SBA adopts as final the language in proposed § 127.403 (now § 127.402).

Proposed § 127.404 detailed when SBA was authorized to conduct program examinations. SBA did not receive any comments on this section. SBA revised this section in the final rule to reflect that concerns will undergo program examinations every three years in accordance with the recertification process set forth in § 127.400. SBA also renumbered this section to § 127.403 in the final rule. SBA adopts as final the revised and renumbered paragraph.

Proposed § 127.405 authorized SBA to request additional information, in addition to material already submitted, when conducting a program examination. SBA did not receive any comments on this section. SBA renumbered this section to § 127.404 in the final rule. SBA adopts as final the proposed language and renumbered paragraph.

Proposed § 127.406 authorized SBA to decertify concerns that fail to provide or maintain the required certifications or documents. SBA did not receive any comments on this section. This section has been renumbered to § 127.405 in the final rule. SBA also revised this provision in the final rule to more clearly lay out the causes for which SBA can propose decertification, including a failure to follow the recertification processes in § 127.400. Paragraph (a) describes the steps SBA will take to propose decertification and how a concern must respond to a notice of proposed decertification. Paragraph (b) states that SBA's decision on decertification is final and cannot be appealed, and paragraph (c) permits concerns to reapply to the Program after decertification. SBA adopts as final the revised and renumbered paragraph.

The final rule revises § 127.503(h)(2) to confirm that if a concern cannot recertify as a WOSB or EDWOSB by the end of the fifth year of a long-term contract, the procuring agency can no longer count awards made pursuant to that contract as WOSB/EDWOSB awards. SBA's rules

have long required recertification of size for contracts with a duration of more than five years. If a concern is unable to recertify its size, the contracting officer could no longer consider awards to that concern towards the procuring agency's small business goals. The Agency's intent in drafting § 127.503(h)(2), and its corresponding paragraphs in §§ 124.1015(f), 125.18(f), and 126.601(i), was to mandate that contracting officers must request that a concern recertify its status on long-term contracts, including Multiple Award Contracts. If a concern were unable to recertify its status as a WOSB, for example, the contracting officer could no longer consider awards to that concern towards the procuring agency's WOSB goals. Procuring agencies understood this was SBA's intent in drafting §§ 124.1015, 125.18(e), 126.601(h), and 127.503(h)(2), and have read them accordingly. The revision to these paragraphs in the final rule confirms that agencies correctly deduced SBA's intent and brings the regulatory text into alignment with already-existing practice, which SBA believes will provide helpful clarity to small businesses and contracting officers.

SBA proposed to remove § 127.505, as the pertinent information in this provision was already detailed in § 121.406(b). SBA did not receive any comments on this proposed change and finalizes the deletion in the final rule.

SBA proposed to revise § 127.604(f)(4) to clarify that concerns found to be ineligible would need to reapply, rather than request a reexamination. SBA did not receive any comments on this change and adopts the proposed language as final, except for updating a citation to the appropriate regulation for reapplication procedures (formerly at § 127.306 and now at § 127.305).

Compliance with Executive Orders 12866, 13563, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act.

Regulatory Impact Analysis:

1. Is there a need for the regulatory action?

The U.S. Small Business Administration (SBA) is required by statute to administer the WOSB Federal Contract Program (WOSB Program). The Small Business Act (Act) sets forth the certification criteria for the WOSB Program. Specifically, the Act states that a WOSB or EDWOSB must, "be certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the SBA Administrator, as a small business concern owned and controlled by women." 15 U.S.C. 637(m)(2)(E).

The Federal Acquisition Regulation (FAR) and SBA regulations require that in order to be certified as a WOSB or EDWOSB a small business concern must provide documents supporting its WOSB or EDWOSB status to SBA. *See* 13 CFR 127.300 and FAR 19.1503(b)(3). The specific documents concerns are required to provide are outlined in § 127.303. The Act also states that the SBA is authorized to conduct eligibility examinations of any certified WOSB or EDWOSB, and to handle protests and appeals related to such certifications. 15 U.S.C. 637(m)(5)(A) and (5)(B).

Under the current system, WOSBs and EDWOSBs may be certified by third-party certifiers, or they may essentially self-certify and upload the required documents to sba.certify.gov. In order to award a WOSB set-aside or sole source contract, the contracting officer must document that the contracting officer reviewed the concern's certifications and documentation. 13 CFR 127.503(g); FAR 19.1503(b)(3). The lack of required certification, coupled with the requirement that the

contracting officer must verify that documents have been uploaded, may contribute to reluctance by procuring agencies to use the program, resulting in the failure to meet the statutory goal of 5% of all prime contract dollars being awarded to WOSBs. In FY 2018, the government-wide WOSB goal of 5% was not met with actual performance at 4.75% (\$22.9B). The government has only met the goal once (FY 2015). While the amount of dollars awarded to WOSBs under the set aside program is trending up, they still account for less than 0.016% of dollars awarded to WOSBs. A certification could help entice agencies to set aside more contracts for WOSBs, so that the government can meet the statutory 5% goal.

2. What are the potential benefits and costs of this regulatory action?

The benefit of this regulation is a significant improvement in the confidence of contracting officers to make Federal contract awards to eligible concerns. Under the existing system, the burden of eligibility compliance is placed upon the awarding contracting officer. Contracting officers must review the documentation of the apparent successful offeror on a WOSB or EDWOSB contract. Under this rule, the burden is placed upon SBA and/or third-party certifiers. All that a contracting officer needs to do is to verify that the concern is in fact a certified WOSB or EDWOSB in SAM. A contracting officer would not have to look at any documentation provided by a concern or prepare any internal memorandum memorializing any review. This will encourage more contracting officers to set aside opportunities for WOSB Program participants as the validation process will be controlled by SBA in both SAM and DSBS. Increased procurement awards to WOSB concerns can further close a gap of under-representation of women in industries where in the aggregate WOSB represent 12 percent of all sales in contrast with male-owned businesses that represent 79% of all sales (per SBA Office of Advocacy Issue Brief Number 13, dated May 31, 2017 <https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf>).

Another benefit of this rule is to reduce the cost associated with the time required for completing WOSB certification by replacing the WOSB Program Repository with Certify.SBA.gov (“Certify”) in the regulation. It is also anticipated that the WOSB certification methodology and likely increased use of WOSB/EDWOSB set asides will likely increase program participation levels. Under the prior WOSB Program Repository, SBA determined that the average time required to complete the process required by the WOSB Program Repository was two hours, whereas the use of Certify requires only one hour. Across an estimated 12,347 firms, the total cost savings is significant, as discussed below. Another potential benefit is the reduction of time and costs to WOSB firms through the reduction of program participation costs. By successfully leveraging technology, SBA has reduced the total cost of burden hours substantially.

Based on the calculations below, the total estimated number of respondents (WOSBs and EDWOSBs) for this collection of information varies depending upon the types of certification that a business concern is seeking. For initial certification, the total estimated number of respondents is 9,349. The total number was calculated using the two-year average number of business concerns that have provided information through Certify from March 2016 through February 2018. For annual updates and new certifications, the total number is 12,347. For examinations and protests, the total number is 130.

Type of certification	Number of respondents	Source
Initial certification	9,349	Average annual number of respondents to Certify between March 2016 and February 2018
New certifications each year	500	Program participation is expected to remain constant after initial year of certification, with 500 new certifications annually.
Annual updates to certification	11,847	Program participation is expected to remain constant after initial year of certification,

		with a reduction of 500 participants annually through attrition.
Total annual responses	12,347	Annual new certifications plus annual updates

Each respondent submits one response at the time of initial certification and one at the time of annual update. Estimated burden hours vary depending upon the type of certification that a WOSB or EDWOSB pursues. SBA conducted a survey among a sample of entities that assist WOSBs and EDWOSBs to provide information through Certify. The majority of those surveyed stated that for initial certifications the estimated time for completion is one hour per submission. For annual updates, because of the need to submit little if any additional information, the estimated burden is 0.5 hour per submission. For examinations and protests, the estimated burden is 0.25, which is much lower because firms have already provided the documentation referred to in 13 CFR § 127.303 through Certify. It is estimated that the initial certification will involve 9,349 existing participants and 2,998 new respondents in the first year. After the first year, initial certifications are expected for 500 new respondents annually with an additional 11,847 annual certifications for existing participants for a total of 12,347 participants in each succeeding year. The participant level is expected to remain stable at 12,347 participants annually with 500 new respondents and 500 attritions from the program annually. Based on the number of protests and appeals received in years past, 130 respondents are expected to participate in protests and appeals. The respondent's cost of burden hours for a five-year period and average is provided in the following table and detailed below.

Cost of Burden Hours - 5 Year Cost Estimate and Average					
Year	Initial – Existing	Initial – New Participants	Annual Updates	Protests and Appeals	Annual Totals
Year	1 hour at \$164.23 per participant	1 hour at \$164.23 per participant	.5 hour at \$164.23 per participant	.25 hour at \$164.23 per participant	
Number of Program Participants					
1	9,349	2,998		130	12,477
2		500	11,847	130	12,477
3		500	11,847	130	12,477
4		500	11,847	130	12,477
5		500	11,847	130	12,477
Costs					
1	\$1,535,386	\$492,362		\$5,337	\$2,033,085
2		\$82,115	\$972,816	\$5,337	\$1,060,269
3		\$82,115	\$972,816	\$5,337	\$1,060,269
4		\$82,115	\$972,816	\$5,337	\$1,060,269
5		\$82,115	\$972,816	\$5,337	\$1,060,269
5 Year Total:					\$6,274,161
Annual Cost Avg					\$1,254,832

Initial certification – transition of existing participants (one-time cost):

Estimated officer's salary = \$164.23/hour (based on General Schedule 15 Step 10, Washington-Baltimore- Northern Virginia area, plus an additional 100% to account for the cost of benefits and overhead, which would be equivalent to a senior manager in an average small business firm).

Total estimated burden: 9,349 x 1 hour x \$164.23/hour = \$1,535,386.

Initial certification – new participants (first year cost):

Estimated officer's salary = \$164.23/hour (based on General Schedule 15 Step 10, Washington-Baltimore- Northern Virginia area, plus an additional 100% to account for the costs of benefits and overhead, which would be equivalent to a senior manager in an average small business firm).

Total estimated burden: 2998 x 1 hour x \$164.23/hour = \$492,362.

Initial certification – new participants (cost for each succeeding year after initial year):

Estimated officer's salary = \$164.23/hour (based on General Schedule 15 Step 10, Washington-Baltimore- Northern Virginia area, plus an additional 100% to account for the cost of benefits and overhead, which would be equivalent to a senior manager in an average small business firm).

Total estimated burden: 500 x 1 hour x \$164.23/hour = \$82,115.

Annual update:

Estimated officer's salary = \$164.23/hour (based on General Schedule 15 Step 10, Washington-Baltimore- Northern Virginia area, plus an additional 100% to account for the cost of benefits and overhead, which would be equivalent to a senior manager in an average small business firm).

Total estimated burden: 11,847 x .5 hour x \$164.23/hour = \$72,816.

Examinations and Protests (each year):

Estimated officer's salary = \$164.23/hour (based on General Schedule 15 Step 10, Washington-Baltimore- Northern Virginia area, plus an additional 100% to account for the cost of benefits and overhead, which would be equivalent to a senior manager in an average small business firm).

Total estimated burden: 130 x .25 hour x \$164.23/hour = \$5,337.

Previously, the estimated respondents' cost of burden hours was determined to be \$4,066,170 for the initial year of certification and \$2,120,538 in subsequent years. By successfully leveraging technology, SBA has reduced the cost of burden hours substantially, from \$4,066,170 to \$2,033,085 in the initial year of certification, and from \$2,120,538 to \$1,060,269 in subsequent years. This results in annual savings of \$2,033,085 initially and \$1,060,269 each year thereafter, with a total five-year savings of \$6,274,161 for WOSBs to redirect as revenue generating resources to close the noted revenue disparity with male-owned businesses. SBA believes that there are no additional capital or start-up costs or operation and maintenance costs and purchases of services costs to respondents as a result of this rule because there should be no cost in setting up or maintaining systems to collect the required information. As stated previously, the information requested should be collected and retained in the ordinary course of business.

SBA estimates the cost to the government of implementing the certification program to be \$3,126,184 in the initial year of certification, and approximately \$2,704,140 annually thereafter. SBA is currently working to enhance its existing information technology infrastructure, Certify, to expand its capacity to support SBA's government contracting certification programs. The cost to develop the WOSB and EDWOSB certification processing systems in Certify is \$1,654,000. After the initial improvements, Certify should not require a substantial investment of capital. In FY2020, SBA hired a Program Lead, Team Lead, and two Analysts, and brought on via internal transfer a third Analyst and a Marketing and Outreach specialist. The total cost of bringing onboard the new

hires and backfilling the positions left vacant by the internal transfers is \$1,472,184 (based on General Schedule 13 Step 1 through General Schedule 15 Step 1, Washington-Baltimore-Northern Virginia area plus 100% to account for the cost of benefits and overhead). In the future, the Program hopes to hire an additional six FTEs to further support Program Operations, the cost of which would be \$1,231,956 (based on General Schedule 13 Step 1, Washington-Baltimore-Northern Virginia area plus 100% to account for the cost of benefits and overhead).

3. What are the alternatives to this rule?

This rule is required to implement specific statutory provisions which require promulgation of implementing regulations. One alternative considered would be to rely solely on third-party certifiers to certify WOSBs and EDWOSBs. However, there is a cost to small businesses for third-party certifiers. Firms submit the same documentation to third-party certifiers that would submit to SBA, but third-party certifiers charge on average \$380 annually. Consequently, the cost of relying completely on third-party certifiers would be \$3,552,620 a year (9,349 initial applicants x \$380). If third-party certifiers were used for the anticipated increase to 12,477 annual participants, the cost would be \$4,741,260. In addition, SBA maintains that certification for Federal procurement purposes is an inherently governmental function. Consequently, even if SBA utilized third-party certifiers for an initial or preliminary review, SBA or a governmental entity would still have to be involved in reviewing those certifications. In addition, there is an intended benefit of certification. The intent is to increase confidence in the eligibility of firms so that contracting officers and activities utilize the sole source authority. Although trending upwards, the government-wide WOSB goal of 5% was not met with actual performance at 4.75%. In addition, WOSB/EDWOSB set-aside and sole-source awards only accounted for 4.1% of total dollars awarded to WOSBs in FY 2018.

The Federal Government has met the statutory WOSB goal of 5% of total dollars awarded to WOSBs only once (FY 2015).

Executive Order 13563

A description of the need for this regulatory action and the benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866. As part of its ongoing efforts to engage stakeholders in the development of its regulations, SBA issued an Advance Notice of Proposed Rulemaking (ANPR) on December 18, 2015. 80 FR 78984. The ANPR solicited public comments to assist SBA in drafting a proposed rule to implement a WOSB/EDWOSB certification program. SBA received 122 comments in response to the ANPR. SBA issued a Proposed Rule in the *Federal Register* on May 14, 2019. 84 FR 21256. The Proposed Rule solicited public comments to assist SBA in drafting a final rule to implement a WOSB/EDWOSB certification program. SBA received 898 comments from 307 commenters in response to the Proposed Rule. SBA has reviewed all the comments while drafting this final rule.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government.

Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This rule is an Executive Order 13771 regulatory action with annualized net costs of \$1,514,179 and a net present value of \$21,631,135, both in 2016 dollars. Details on the estimated costs of this rule can be found in the rule’s economic analysis. Table 1 summarizes the savings and costs of the first three years of implementation, with the savings and costs in Year 3 expected to continue into perpetuity. Table 2 presents the annualized savings in perpetuity using a 7% discount rate, in 2016 dollars.

Table 1. Schedule of Costs/(Savings) Over 3 Year Horizon, Current Dollars

	<u>Savings</u>	<u>Costs</u>
<u>Year 1</u>	\$ (2,033,085)	\$ 3,126,184
<u>Year 2</u>	\$ (1,060,269)	\$ 2,704,140
<u>Year 3</u>	\$ (1,060,269)	\$ 2,704,140

Table 2: Annualized Savings in Perpetuity with 7% Discount Rate, 2016 Dollars

	<u>Estimate</u>
<u>Annualized Savings</u>	(1,058,441)
<u>Annualized Costs</u>	2,572,621
<u>Annualized Net Costs</u>	<u>1,514,179</u>

Paperwork Reduction Act, 44 U.S.C. Ch. 35

In carrying out its statutory mandate to provide oversight of certification related to SBA's WOSB Federal Contract Program, SBA is currently approved to collect information from the WOSB applicants or participants through SBA Form 2413, and for EDWOSB applicants or participants, through SBA Form 2414. (OMB Control Number 3245-0374, Certification for the Women-Owned Small Business Federal Contract Program). This collection of information also requires submission or retention of documents that support the applicant's certification. The information collected through Certify includes eligibility documents previously collected in the WOSB Repository, and information collected on SBA Form 2413 (WOSB) and SBA Form 2414 (EDWOSB). SBA revised this information collection in 2018 to establish that the Agency has discontinued these paper forms and will collect the information and supporting documents electronically through Certify, as well as to make minor changes to the requests for information.

As discussed above, this rule will fully implement the statutory requirement for small business concerns to be certified by a Federal agency, a State government, SBA, or a national certifying entity approved by SBA, in order to be awarded a set-aside or sole source contract under the WOSB program. As a result of these changes, the rule eliminates the option to self-certify for WOSB/EDWOSB set-aside and sole source contracts, permits applicants to provide their CVE certification, along with documentation that they meet Program eligibility requirements, as a certification option, and clarifies the third-party certification requirements.

The clarifications for authorized Third-party certifiers impose an additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. A summary description of the reporting requirement, description of respondents, and estimate of the annual burden is provided below.

Summary Description of Compliance Information: Third-party certifiers will be required to provide SBA with monthly reports that include the number of applications received, number of applications approved and denied, and other information that SBA determines may be helpful for ensuring that third-party certifiers are meeting their obligations or information or data that may be useful for improving the program.

Description of and Estimated Number of Respondents: There are four third-party certifiers authorized by SBA to certify WOSB and EDWOSB applicants. The four third-party certifiers will be required to submit reports to SBA monthly, for a total of 48 reports.

Respondents: 4

Responses per respondent: 12

Total annual responses: 48

Preparation hours per response: 0.5 hour

Total response burden hours: 24 hours

Cost per hour: \$67.78/hour (based on 2018 Median Pay for accountants and auditors, Bureau of Labor Statistics, plus an additional 100% to account for cost of benefits and overhead)

Total estimated annual cost burden: \$1,626.72

SBA will revise the information collection accordingly and resubmit to OMB for review and approval.

Regulatory Flexibility Act, 5 U.S.C. 601-612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a

substantial number of small entities. The RFA defines “small entity” to include “small businesses,” “small organizations,” and “small governmental jurisdictions.” This rule concerns various aspects of SBA’s contracting programs. As such, the rule relates to small business concerns, but would not affect “small organizations” or “small governmental jurisdictions.” SBA’s contracting programs generally apply only to “business concerns” as defined by SBA regulations, in other words, to small businesses organized for profit. “Small organizations” or “small governmental jurisdictions” are non-profits or governmental entities and do not generally qualify as “business concerns” within the meaning of SBA’s regulations.

As stated in the regulatory impact analysis, this rule will impact approximately 9,000-12,000 women-owned small businesses. These businesses will have to apply to be certified as WOSBs or EDWOSBs to SBA or third-party certifiers in order to be eligible to be awarded any WOSB or EDWOSB set-aside contract. However, SBA has minimized the impact on WOSBs by accepting certifications already conferred by SBA (through the 8(a) BD Program or a positive determination after a status protest or program examination), VA, and third-party certifiers. The costs to WOSBs for certification should be de minimis, because the required documentation (articles of incorporation, bylaws, stock ledgers or certificates, tax records, etc.) already exists. In addition, this information is already required to be provided either to third-party certifiers, governmental certifying entities, or to SBA through Certify. SBA expects WOSBs to see a reduction in burden because under the prior WOSB Program Repository, SBA determined that the average time required to complete the process required by the WOSB Program Repository was two hours, whereas the use of Certify results requires only one hour due to technological improvements. Thus, the Administrator certifies that the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small business, Technical assistance, Veterans.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small business.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR parts 124, 125, 126, and 127 as follows:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), and 644.

2. Amend § 124.104 as follows:

a. Remove the first two sentences of paragraph (c)(2) introductory text and add one sentence in their place;

b. Revise the first sentence of paragraph (c)(2)(ii);

c. Remove the first two sentences of paragraph (c)(3)(i) and add one sentence in their place;

and

d. Revise the first sentence of paragraph (c)(4).

The additions and revisions read as follows:

§ 124.104 Who is economically disadvantaged?

* * * * *

(c) * * *

(2) * * * The net worth of an individual claiming disadvantage must be less than \$750,000. *

* *

* * * * *

(ii) Funds invested in an Individual Retirement Account (IRA) or other official retirement account will not be considered in determining an individual's net worth. * * *

* * * * *

(3) * * * (i) SBA will presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the three preceding years exceeds \$350,000. * * *

* * * * *

(4) * * * An individual will generally not be considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) exceeds \$6 million. * * *

3. Amend § 124.1015 by adding a sentence at the end of paragraph (f)(2) to read as follows:

§ 124.1015 What are the requirements for representing SDB status, and what are the penalties for misrepresentation?

* * * * *

(f) * * *

(2) * * * If the business is unable to recertify its SDB status, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its SDB goals.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

4. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657(f), and 657r.

5. Amend § 125.18 by adding a sentence at the end of paragraph (e)(2) to read as follows:

§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?

* * * * *

(e) * * *

(2) * * * If the business is unable to recertify its SDVO status, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its SDVO goals.

* * * * *

PART 126—HUBZONE PROGRAM

6. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

7. Amend § 126.619 by adding a sentence at the end of paragraph (b) introductory text to read as follows:

§ 126.619 When must a certified HUBZone small business concern recertify its status for a HUBZone contract?

* * * * *

(b) * * * If the business is unable to recertify its HUBZone status, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals.

* * * * *

PART 127 - WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

8. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

9. Amend § 127.200 by adding paragraphs (c) and (d) to read as follows:

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

* * * * *

(c) *WOSB and EDWOSB certifications.* (1) A concern must be certified as a WOSB or EDWOSB pursuant to § 127.300 in order to be awarded a WOSB or EDWOSB set-aside or sole-source contract.

(2) Other women-owned small business concerns that do not seek WOSB or EDWOSB set-aside or sole-source contracts may continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs.

(d) *Suspension and debarment.* In order to be eligible for WOSB and EDWOSB certification and to remain certified, the concern and any of its owners must not have an active exclusion in the System for Award Management at the time of application or recertification.

10. Amend § 127.203 by revising the first sentence of paragraph (b)(3) to read as follows:

§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

* * * * *

(b) * * *

(3) Funds invested in an Individual Retirement Account (IRA) or other official retirement account will not be considered in determining an individual's net worth. * * *

* * * * *

Subpart C—[Amended]

11. Subpart C is amended by adding the undesignated center heading “Certification” above § 127.300.

12. Effective October 15, 2020, § 127.300 is revised to read as follows:

§ 127.300 How is a concern certified as an WOSB or EDWOSB?

(a) *WOSB certification.* (1) A concern may apply to SBA for WOSB certification. There is no cost to apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where the concern fails to cooperate with SBA or submit information requested by SBA.

(2) A concern may submit evidence to SBA that it is a women-owned and controlled small business that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation as a Service-Disabled Veteran Owned Business or Veteran-Owned Business.

(3) A concern may submit evidence that it has been certified as a WOSB by an approved Third-Party Certifier in accordance with this subpart.

(b) *EDWOSB certification.* (1) A concern may apply to SBA for EDWOSB certification. There is no cost to apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where the concern fails to cooperate with SBA or submit information requested by SBA.

(2) A concern that is a certified participant in the 8(a) BD Program and owned and controlled by one or more women qualifies as an EDWOSB.

(3) A concern may submit evidence to SBA that it is an economically disadvantaged women-owned and controlled small business that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation as a Service-Disabled Veteran Owned Business or Veteran-Owned Business.

(4) A concern may submit evidence that it has been certified as an EDWOSB by a Third-Party Certifier under this subpart.

(c) *SBA notification and designation.* If SBA determines that the concern is a qualified WOSB or EDWOSB, it will issue a letter of certification and designate the concern as a certified WOSB or EDWOSB on the Dynamic Small Business Search (DSBS) system, or successor system.

13. Sections 127.301 through 127.303 are revised to read as follows:

Sec.

* * * * *

- 127.301 When may a concern apply for certification?
- 127.302 Where can a concern apply for certification?
- 127.303 What must a concern submit for certification?

* * * * *

§ 127.301 When may a concern apply for certification?

A concern may apply for WOSB or EDWOSB certification and submit the required information whenever it can represent that it meets the eligibility requirements, subject to the restrictions of § 127.306. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

§ 127.302 Where can a concern apply for certification?

A concern seeking certification as a WOSB or EDWOSB may apply to SBA for certification via <https://certify.sba.gov> or any successor system. Certification pages must be validated electronically or signed by a person authorized to represent the concern.

§ 127.303 What must a concern submit for certification?

(a)(1) *SBA certification.* (i) To be certified by SBA as a WOSB or EDWOSB, a concern must provide documents and information demonstrating that it meets the requirements set forth in part 127, subpart B. SBA maintains a list of the minimum required documents that can be found at <https://certify.sba.gov> or any successor system. A concern may submit additional documents and information to support its eligibility. The required documents must be provided to SBA during the application process electronically. This may include, but is not limited to, corporate records, business and personal financial records, including copies of signed Federal personal and business tax returns, and individual and business bank statements.

(ii) A concern that is certified by the 8(a) BD Program and is owned and controlled by one or more women may use documentation of its most recent annual review, or documentation of its 8(a) acceptance if it has not yet had an annual review, in support of its application for certification.

(iii) A concern that is certified through a program examination or status protest may use the positive determination from SBA as evidence for certification.

(2) *CVE certification.* (i) To be certified as a WOSB, a concern that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation may submit documentation of its most recent certification, along with documentation confirming that it is owned and controlled by one or more women, in support of its application for certification.

(ii) To be certified as an EDWOSB, a concern that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation may submit documentation of its most recent certification, along with documentation confirming that it is owned and controlled by one or more women who are economically disadvantaged in accordance with § 127.203(b)(3), in support of its application for certification.

(3) *Third-Party Certifier certification.* A concern that is certified by a Third-Party Certifier must provide a current, valid certification from an entity designated as an SBA-approved certifier.

(b) In addition to the minimum required documents, SBA may request additional information from applicants in order to verify eligibility.

(c) After submitting the required documentation, an applicant must notify SBA of any changes that could affect its eligibility.

(d) If a concern was decertified or previously denied certification, it must include with its application for certification a full explanation of why it was decertified or denied certification, and

what, if any, changes have been made. If SBA is not satisfied with the explanation provided, SBA will decline to certify the concern.

(e) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to §127.401, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA will decline to certify the concern.

14. Effective October 15, 2020, §§ 127.304 and 127.305 are revised to read as follows:

§ 127.304 How is an application for certification processed?

(a) The SBA's Director of Government Contracting (D/GC) or designee is authorized to approve or decline applications for certification. SBA must receive all required information and supporting documents before it will begin processing a concern's application. SBA will not process incomplete applications. SBA will advise each applicant within 15 calendar days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will make its determination within ninety (90) calendar days after receipt of a complete package, whenever practicable.

(b) SBA may request additional information or clarification of information contained in an application or document submission at any time.

(c) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the business concern's eligibility or demonstrate a lack of eligibility in the area or areas to which the information relates.

(d) The applicant must be eligible as of the date it submitted its application and up until the time the D/GC issues a decision. The decision will be based on the facts contained in the application, any information received in response to SBA's request for clarification, and any changed circumstances since the date of application.

(e) Any changed circumstances occurring after an applicant has submitted an application will be considered and may constitute grounds for decline. After submitting the application and signed representation, an applicant must notify SBA of any changes that could affect its eligibility. The D/GC may propose decertification for any EDWOSB or WOSB that fails to inform SBA of any changed circumstances that affected its eligibility for the program during the processing of the application.

(f) If SBA approves the application, SBA will send a written notice to the concern and update <https://certify.sba.gov> or any successor system, and update DSBS and the System for Award Management (or any successor systems) to indicate the concern has been certified by SBA as a WOSB and/or EDWOSB.

(g) A decision to deny eligibility must be in writing and state the specific reasons for denial.

(h) SBA will send a copy of the decision letter to the electronic mail address provided with the application. SBA will consider any decision sent to this electronic mail address provided to have been received by the applicant concern.

(i) The decision of the D/GC to decline certification is the final agency decision. The concern can reapply for certification after ninety (90) days, as set forth in § 127.305.

§ 127.305 May declined or decertified concerns seek recertification at a later date?

(a) A concern that SBA or a third-party certifier has declined or that SBA has decertified may seek certification after ninety (90) days from the date of decline or decertification if it believes

that it has overcome all of the reasons for decline or decertification and is currently eligible. A concern that has been declined may seek certification by any of the certification options listed in § 127.300.

(b) A concern found to be ineligible during a WOSB/EDWOSB status protest or program examination is precluded from applying for certification for ninety (90) days from the date of the final agency decision (the D/GC's decision if no appeal is filed or the decision of SBA's Office of Hearings and Appeals (OHA) where an appeal is filed pursuant to § 127.605).

15. An undesignated center heading and § 127.350 are added to subpart C to read as follows:

Requirements for Third-Party Certifiers

§ 127.350 What is a third-party certifier?

A third-party certifier is a non-governmental entity that SBA has authorized to certify that an applicant concern is eligible for the WOSB or EDWOSB contracting program. A third-party certifier may be a for-profit or non-profit entity. The list of SBA-approved third-party certifiers may be found on SBA's website at sba.gov.

16. Effective October 15, 2020, § 127.351 is added to subpart C to read as follows:

§ 127.351 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?

In order for SBA to accept a third-party certification that a concern qualifies as a WOSB or EDWOSB, the concern must have a current, valid certification from an entity designated as an SBA-approved certifier. The third-party certification must be submitted to SBA through <https://certify.sba.gov> or a successor system.

17. Sections 127.352 through 127.356 are added to subpart C to read as follows:

Subpart C – Certification of EDWOSB or WOSB Status

* * * * *

Sec.

127.352 What is the process for becoming a third-party certifier?

127.353 May third-party certifiers charge a fee?

127.354 What requirements must a third-party certifier follow to demonstrate capability to certify concerns?

127.355 How will SBA ensure that approved third-party certifiers are meeting the requirements?

127.356 How does a concern obtain certification from an approved certifier?

§ 127.352 What is the process for becoming a third-party certifier?

SBA will periodically hold open solicitations. All entities that believe they meet the criteria to act as a third-party certifier will be free to respond to the solicitation.

§ 127.353 May third-party certifiers charge a fee?

(a) Third-party certifiers may charge a reasonable fee, but must notify applicants first, in writing, that SBA offers certification for free.

(b) The method of notification and the language that will be used for this notification must be approved by SBA. The third-party certifier may not change its method or the language without SBA approval.

§ 127.354 What requirements must a third-party certifier follow to demonstrate capability to certify concerns?

(a) All third-party certifiers must enter into written agreements with SBA. This agreement will detail the requirements that the third-party certifier must meet. SBA may terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same program eligibility requirements as set forth in subpart B of this part or if, upon review, SBA determines that the third-party certifier has demonstrated a pattern of certifying concerns that SBA later determines to be ineligible for certification.

(b) Third-party certifiers' certification process must comply with SBA-approved certification standards and track the WOSB or EDWOSB eligibility requirements set forth in subpart B of this part.

(c) In order for SBA to enter into an agreement with a third-party certifier, the entity must establish the following:

(1) It will render fair and impartial WOSB/EDWOSB Federal Contract Program eligibility determinations;

(2) It will provide the approved applicant a valid certificate for entering into the SBA electronic platform, and will retain documents used to determine eligibility for a period of six (6) years to support SBA's responsibility to conduct a status protest, eligibility examination, agency investigation, or audit of the third party determinations;

(3) Its certification process will require applicant concerns to register in SAM (or any successor system) and submit sufficient information as determined by SBA to enable it to determine whether the concern qualifies as a WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under the SBA size standard corresponding to the concern's primary industry, as defined in § 121.107 of this part;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(4) It will not decline to accept a concern's application for WOSB/EDWOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, marital or family status, or political affiliation.

§ 127.355 How will SBA ensure that approved third-party certifiers are meeting the requirements?

(a) SBA will require third-party certifiers to submit monthly reports to SBA. These reports will contain information including the number of applications received, number of applications approved and denied, and other information that SBA determines may be helpful for ensuring that third-party certifiers are meeting their obligations or information or data that may be useful for improving the program.

(b) SBA will conduct periodic compliance reviews of third-party certifiers and their underlying certification determinations to ensure that they are properly applying SBA's WOSB/EDWOSB requirements and certifying concerns in accordance with those requirements.

(1) SBA will conduct a full compliance review on every third-party certifier at least once every three years.

(2) At the conclusion of each compliance review, SBA will provide the third-party certifier with a written report detailing SBA's findings with regard to the third-party certifier's compliance with SBA's requirements. The report will include recommendations for possible improvements, and detailed explanations for any deficiencies identified by SBA.

(c) If SBA determines that a third-party certifier is not properly applying SBA's eligibility requirements, SBA may revoke the approval of that third-party certifier.

§ 127.356 How does a concern obtain certification from an approved certifier?

(a) A concern that seeks WOSB or EDWOSB certification from an SBA-approved third-party certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier.

(b) The concern must register in the System for Award Management (SAM), or any successor system.

(c) The approved certifier must ensure that all documents used to determine that a concern is approved for certification are uploaded in <https://certify.sba.gov> or any successor system.

18. Effective October 15, 2020, §§ 127.400 and 127.401 are revised to read as follows:

§ 127.400 How does a concern maintain its WOSB or EDWOSB certification?

(a) Any concern seeking to remain a certified WOSB or EDWOSB must annually represent to SBA that it continues to meet all WOSB/EDWOSB eligibility criteria.

(1) Except as provided in paragraph (b) of this section, unless SBA has reason to question the concern's representation of its continued eligibility, SBA will accept the representation without requiring the certified WOSB or EDWOSB to submit any supporting information or documentation.

(2) The concern's recertification must be submitted within 30 days of the anniversary date of its original certification. The date of certification is the date specified in the concern's certification letter. If the concern fails to recertify, SBA may propose the concern for decertification pursuant to § 127.405.

(b) Any concern seeking to remain a certified WOSB or EDWOSB must undergo a program examination and recertify its continued eligibility to SBA every three years.

(1) SBA or a third-party certifier will conduct a program examination three years after the concern's initial WOSB or EDWOSB certification (whether by SBA or a third-party certifier) or three years after the date of the concern's last program examination, whichever date is later.

(i) *Example 1.* Concern A is certified by SBA to be eligible for the WOSB program on July 20, 2021. Concern A must recertify its eligibility to SBA between June 20, 2022 and July 19, 2022. Concern A will continue to be a certified WOSB that is eligible to receive WOSB contracts (as long

as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2023. Concern A must recertify its eligibility to SBA between June 20, 2023 and July 19, 2023. Concern A will continue to be a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2024. Concern A must recertify its eligibility to SBA between June 20, 2024 and July 19, 2024. Because three years have elapsed since its application and original certification, SBA will conduct a program examination of Concern A at that time. In addition to its representation that it continues to be an eligible WOSB, Concern A must provide additional information as requested by SBA to demonstrate that it continues to meet all the eligibility requirements of the WOSB Program.

(ii) *Example 2.* Concern B is certified by a third-party certifier to be eligible for the WOSB program on September 27, 2021. Concern B must recertify its eligibility to SBA between August 28, 2022 and September 26, 2022. Concern B will continue to be a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2023. On March 31, 2023, Concern B is awarded a WOSB set-aside contract. Subsequently, Concern B's status as an eligible WOSB is protested. On June 28, 2023, Concern B receives a positive determination from SBA confirming that it is an eligible WOSB. Concern B's new certification date is June 28, 2023. Concern B must recertify its eligibility to SBA between May 29, 2024 and June 27, 2024. Concern B will continue to be a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through June 27, 2025. Concern B must recertify its eligibility to SBA between May 29, 2025 and June 27, 2025. Concern B will continue to be a certified WOSB that is eligible to receive WOSB contracts (as long as it is

small for the size standard corresponding to the NAICS code assigned to the contract) until June 27, 2026. Concern B must recertify its eligibility to SBA between May 29, 2026 and June 27, 2025. Because three years have elapsed since its certification date of June 28, 2022, Concern B must seek a program examination, by SBA or a third-party certifier, between May 29, 2025 and June 27, 2026. In addition to its representation that it continues to be an eligible WOSB, Concern B must provide additional information as requested by SBA or a third-party certifier to demonstrate that it continues to meet all the eligibility requirements of the WOSB Program.

(2) The concern must either request a program examination from SBA or notify SBA that it has requested a program examination by a third-party certifier no later than 30 days prior to its certification anniversary. Failure to do so will result in the concern being decertified.

§ 127.401 What are a WOSB's and EDWOSB's ongoing obligations to SBA?

Once certified, a WOSB or EDWOSB must notify SBA of any material changes that could affect its eligibility within 30 calendar days of any such change. Material change includes, but is not limited to, a change in the ownership, business structure, or management. The notification must be in writing and must be uploaded into the concern's profile with SBA. The method for notifying SBA can be found on <https://certify.sba.gov>. A concern's failure to notify SBA of such a material change may result in decertification and removal from SAM and DSBS (or any successor system) as a designated certified WOSB/EDWOSB concern. In addition, SBA may seek the imposition of penalties under § 127.700.

19. Section 127.402 is revised to read as follows:

§ 127.402 What is a program examination, who will conduct it, and what will SBA examine?

(a) A program examination is an investigation by SBA officials or authorized third-party certifier that verifies the accuracy of any certification of a concern issued in connection with the

concern's WOSB or EDWOSB status. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a WOSB or EDWOSB contract.

(b) Examiners may review any information related to the concern's eligibility requirements. SBA may also conduct site visits.

(c) It is the responsibility of program participants to ensure the information provided to SBA is kept up to date and is accurate. SBA considers all required information and documents material to a concern's eligibility and assumes that all information and documentation submitted are up to date and accurate unless SBA has information that indicates otherwise.

20. Effective October 15, 2020, § 127.403 is revised to read as follows:

§ 127.403 When will SBA conduct program examinations?

(a) SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is a certified WOSB or EDWOSB.

(b) SBA will conduct program examinations periodically as part of the recertification process set forth in § 127.400.

21. Section 127.404 is revised to read as follows:

§ 127.404 May SBA require additional information from a WOSB or EDWOSB during a program examination?

At the discretion of the D/GC, SBA has the right to require that a WOSB or EDWOSB submit additional information at any time during the program examination. SBA may draw an

adverse inference from the failure of a concern to cooperate with a program examination or provide requested information.

22. Effective October 15, 2020, § 127.405 is revised to read as follows:

§ 127.405 What happens if SBA determines that the concern is no longer eligible for the program?

If SBA believes that a concern does not meet the program eligibility requirements, the concern fails to recertify in accordance with the requirements in § 127.400, or the concern has failed to notify SBA of a material change, SBA will propose the concern for decertification from the program.

(a) *Proposed decertification.* The D/GC or designee will notify the concern in writing that it has been proposed for decertification. This notice will state the reasons why SBA has proposed decertification, and that the WOSB or EDWOSB must respond to each of the reasons set forth.

(1) The WOSB or EDWOSB must respond in writing to a proposed decertification within 20 calendar days from the date of the proposed decertification.

(2) If the initial certification was done by a third-party certifier, SBA will also notify the third-party certifier of the proposed decertification in writing.

(b) *Decertification.* The D/GC or designee will consider the reasons for proposed decertification and the concern's response before making a written decision whether to decertify. The D/GC may draw an adverse inference where a concern fails to cooperate with SBA or provide the information requested. The D/GC's decision is the final agency decision.

(c) *Reapplication.* A concern decertified pursuant to this section may reapply to the program pursuant to § 127.305.

23. Amend § 127.503 by adding a sentence at the end of paragraph (h)(2) to read as follows:

§ 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?

* * * * *

(h) * * *

(2) * * * If the business is unable to recertify its WOSB/EDWOSB status, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

* * * * *

24. Effective October 15, 2020, amend § 127.504 by revising paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and adding a new paragraph (b).

The revision and addition read as follows:

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

(a) In order for a concern to submit an offer on a specific EDWOSB or WOSB set-aside requirement, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract, and either be a certified EDWOSB or WOSB pursuant to § 127.300, or represent that it has submitted a complete application for WOSB or EDWOSB certification to SBA or a third-party certifier and has not received a negative determination regarding that application from SBA or the third party certifier.

(1) If a concern becomes the apparent successful offeror while its application for WOSB or EDWOSB certification is pending, either at SBA or a third-party certifier, the contracting officer for the particular contract must immediately inform SBA's D/GC. SBA will then prioritize the concern's WOSB or EDWOSB application and make a determination regarding the firm's status as a

WOSB or EDWOSB within 15 calendar days from the date that SBA received the contracting officer's notification. Where the application is pending with a third-party certifier, SBA will immediately contact the third-party certifier to require the third-party certifier to complete its determination within 15 calendar days.

(2) If the contracting officer does not receive an SBA or third-party certifier determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer may presume that the apparently successful offeror is not an eligible WOSB or EDWOSB and may make award accordingly, unless the contracting officer grants an extension to the 15-day response period.

(b) In order for a concern to seek a specific sole source EDWOSB or WOSB requirement, the concern must be a certified EDWOSB or WOSB pursuant to § 127.300 and qualify as small under the size standard corresponding to the requirement being sought.

* * * * *

§ 127.505 [Removed and Reserved]

25. Effective October 15, 2020, remove and reserve § 127.505.

§ 127.603 [Amended]

26. Effective October 15, 2020, amend § 127.603 by removing the next to last sentence in paragraph (d).

27. Effective October 15, 2020, amend § 127.604 by revising paragraph (f)(4) to read as follows:

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

* * * * *

(f) * * *

(4) A concern that has been found to be ineligible will be decertified from the program and may not submit an offer as a WOSB or EDWOSB on another procurement until it is recertified. A concern may be recertified by reapplying to the program pursuant to § 127.305.

Jovita Carranza,
Administrator.

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