



SMALL BUSINESS ADMINISTRATION

13 CFR Part 127

RIN 3245-AI11

Providing Discretion to Extend Women-Owned Small Business Program Recertification Where Appropriate.

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule contains amendments to the regulations governing the Women-Owned Small Business (WOSB) program. The U.S. Small Business Administration (SBA) is revising its regulations to specifically recognize that the SBA Administrator may extend the date of WOSB recertification where appropriate.

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AI11, and/or Docket Number SBA-2-24-0001 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> and follow the instructions for submitting comments.
- Mail (for paper, disk, or CD-ROM submissions): Harry T. Alexander Jr., Business Opportunity Specialist, Office of Contracting Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the comments to

Harry T. Alexander Jr. and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential.

FOR FURTHER INFORMATION CONTACT: Harry T. Alexander Jr., U.S. Small Business Administration, Office of Contracting Assistance, 409 Third Street SW, Washington, DC 20416; (202) 619-0314, harry.alexanderjr@sba.gov.

SUPPLEMENTARY INFORMATION: Section 127.400 of SBA's WOSB regulations specifies that any concern seeking to remain a certified WOSB or Economically Disadvantaged Women-Owned Small Business (EDWOSB) must undergo a program examination every three years. Currently, there is no discretion in postponing recertification beyond the three-year anniversary date of a firm's WOSB or EDWOSB certification. SBA believes that SBA should have the discretion to postpone a firm's recertification date in appropriate circumstances. SBA is not seeking to eliminate the requirement that a firm must demonstrate that it continues to be eligible for the WOSB program or that SBA must recertify the firm as eligible. This change would merely recognize that there may be appropriate circumstances in which SBA may permit recertification to occur beyond three years from the date of the last certification. This change will not have substantive effect on eligibility for or the award of contracts set-aside or reserved for WOSBs/EDWOSBs. Regardless of whether a recertification has recently occurred or not, a firm must qualify as a WOSB/EDWOSB on the date that it submits its initial offer, which includes price, for a WOSB/EDWOSB contract, reserve, or order issued under a contract that was not itself set-aside or reserved for WOSBs or EDWOSBs. Any interested party may protest the status of a WOSB or EDWOSB who has been identified as the apparent successful offeror. If a protested firm does not continue to qualify as a WOSB/EDWOSB as of the date of its initial offer which includes price, SBA will find the firm ineligible for award. This rule does not change or affect that process in any way.

To effectuate the discretion identified above, this rule adds a new § 127.400(c), which gives specific authority to SBA to postpone the date of WOSB/EDWOSB recertification where

appropriate circumstances exist. SBA's Administrator, or designee, will have the sole discretion in determining whether such circumstances exist and there will be no authority to appeal or challenge that decision.

Compliance with Executive Orders 12866, 12988, 13132, 13563, the Congressional Review Act (5 U.S.C. 801–808), 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 has determined that this rule is not a “significant regulatory action” under Executive Order No. 12866. This rule merely provides specific discretion to SBA's Administrator or designee to postpone the date of WOSB recertification where appropriate. It does not make any substantive changes to the WOSB program.

As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of \$200 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 13563

Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), requires agencies to adopt regulations through a process that involves public participation, and to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner

consistent with these requirements, and the public will have the opportunity to provide comments following the publication of this rule.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. It 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 levels of government, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

Congressional Review Act (5 U.S.C. 801–808)

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This rule is not a “major rule” under 5 U.S.C. 804(2).

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, requires Federal Government agencies to prepare an initial regulatory flexibility analysis (IRFA) to consider the potential impact of the regulations on small entities. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a regulatory flexibility analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This interim final rule provides discretion to SBA to postpone the date on which a firm must undergo a program examination and be recertified as an eligible WOSB or EDWOSB. Currently, SBA or a third-party certifier will conduct a program examination three years after the concern's initial WOSB or EDWOSB certification. This rule merely allows SBA to postpone that program examination and recertification process in appropriate, extraordinary circumstances. As such, SBA does not anticipate that this rule will have a significant economic impact on any small business. Therefore, the Administrator of SBA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 127 as follows:

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

1. 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.

2. Amend § 127.400 by adding paragraph (c) to read as follows:

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

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(c) The SBA Administrator or designee may postpone the program examination and recertification process in appropriate, extraordinary circumstances.

Isabella Casillas Guzman,
Administrator

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