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SUPPLEMENTARY INFORMATION: On March 28, 2006, FCA published a proposed rule in the *Federal Register* to amend regulations in parts 611, 612, 613, and 614 to reduce regulatory burden on System banks and associations. The comment period expired on May 30, 2006. See 71 FR 15343, March 28, 2006.

A member of the public has requested us to extend the comment period for at least an additional 30 days. In response to this request, we are reopening the comment period until July 17, 2006. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide comments on the proposed rule. We believe that a reopening of the comment period to allow all interested parties more time to provide comments is appropriate, but that the reopening should be no longer than 30 days.

Dated: June 8, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.
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SMALL BUSINESS ADMINISTRATION**13 CFR Parts 121, 125 and 127**

RIN: 3245-AE65

The Women-Owned Small Business Federal Contract Assistance Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations governing SBA's government contracting programs. This proposed rule would add a new part to implement the Women-Owned Small Business Federal Contract Assistance Program authorized under the Small Business Reauthorization Act of 2000. It would also make the relevant conforming amendments to SBA's regulations.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: You may submit comments, identified by Agency name and RIN

3245-AE65, by any of the following methods: (1) The Federal eRulemaking portal at <http://www.regulations.gov>; (2) E-mail (include RIN number in the subject line) to: Linda.Waters@sba.gov; Fax: (202) 205-6390; (3) Mail or Hand Delivery/Courier to Linda Waters, Procurement Analyst, Office of Federal Contract Assistance for Women Business Owners, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Linda Waters, Procurement Analyst, Office of Federal Contract Assistance for Women Business Owners, (202) 205-7315 or Linda.Waters@sba.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Women-owned businesses have been regarded as the fastest growing segment of the business community in the United States. Although between 1997 and 2002 the growth rate in the number of women-owned small businesses (WOSBs) was almost twice that of all firms, WOSBs have not received a commensurate increase in their share of Federal contracting dollars.

Several congressional and executive efforts over the years to increase Federal contracting with WOSBs have not enhanced the WOSB share of Federal contracting dollars as much as anticipated. For example, in 1979, when Executive Order 12138 charged Federal agencies with responsibility for providing procurement assistance to women-owned businesses, WOSBs received only 0.2 percent of all Federal procurements. More than 9 years later, the percentage of WOSB Federal procurements had grown to only one percent. Similarly, in 1988, the Women's Business Ownership Act, Public Law 100-588 (Oct. 25, 1988), was enacted to assist women in starting, managing and growing small businesses. This program has been successful in assisting thousands of women in obtaining business financing and in business formation, but has enjoyed less success in the Federal procurement arena.

Section 7106 of the Federal Acquisition Streamlining Act (FASA), Public Law 103-355 (Oct. 13, 1994), amended the Small Business Act (the Act) by establishing a target that would result in greater opportunities for women to compete for Federal contracts. FASA, among other things, amended the Small Business Act (the Act) by establishing a government-wide goal for participation by WOSBs in procurement contracts of not less than 5 percent of the total value of all prime

contract and subcontract awards for each fiscal year. FASA also directed that WOSBs, like other small businesses and small disadvantaged businesses (SDBs), have the maximum practicable opportunity to become subcontractors for Federal contracts exceeding \$100,000, and it mandated that WOSBs be included in subcontracting plans required under Section 8(d) of the Act, 15 U.S.C. 637(d).

Federal Procurement Data System (FPDS) data indicates that since fiscal year (FY) 1996, Federal agencies have not met the separate 5 percent government-wide WOSB goal for prime contracts and subcontracts. However, the share of Federal prime contracting dollars to WOSBs has increased over the years. For example, in FY 2000, WOSBs received 2.3 percent of the approximately \$200 billion in Federal prime contract awards. The share of WOSB prime contract awards increased to 2.49 percent in FY 2001, and again to 2.90, 2.98, and 3.03 percent in FYs 2002, 2003 and 2004, respectively. Nonetheless, the total percent of WOSB prime contract awards stills falls short of the statutory goal of 5 percent.

The Government Accountability Office (GAO) published a report in February 2001 discussing the trends and obstacles in Federal contracting with WOSBs since FY 1996. See *Trends and Challenges in Contracting With Women-Owned Small Businesses*, GAO-01-346. In that report, GAO noted that contracting officials complain that one of the primary obstacles in achieving the statutory five percent WOSB goal was the absence of a "targeted government program for contracting with WOSBs."

Section 811 of the Small Business Reauthorization Act of 2000, Public Law 106-554, provided such a mechanism. Section 811, enacted on December 21, 2000, amended the Act by adding a new section 8(m), 15 U.S.C. 637(m), authorizing contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. The new section 8(m) of the Act explicitly limits the contracting officer's authority to restrict competition to contracts not exceeding \$3 million (\$5 million for manufacturing). It further requires SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement and requires the head of any department or agency to provide SBA with any information that SBA deems necessary to conduct the study.

To be eligible as a WOSB under section 8(m) of the Act, the firm must be a "small business concern owned and controlled by women" as defined in section 3(n) of the Act, 15 U.S.C. 632(n). Section 8(m) also requires that such concerns be at least 51 percent owned by one or more women who are economically disadvantaged, except with respect to procurements in industries in which SBA has determined that WOSBs are substantially underrepresented in Federal contracting and has waived the requirement for economically disadvantaged women business owners.

Section 8(m) of the Act requires SBA to establish the standards for determining the eligibility of a concern as a WOSB or economically disadvantaged WOSB (EDWOSB). It also charges SBA with responsibility for verifying a concern's eligibility and it provides the penalties for a concern's misrepresentation of its status as an EDWOSB or WOSB.

To implement the new section 8(m) of the Act, this proposed rule would establish a WOSB Federal Contract Assistance Program (the Program) to be administered by SBA's Office of Government Contracting. Although the Program would be considered part of SBA's government contracting programs set forth under part 125 of title 13 of the Code of Federal Regulations (CFR), for ease of reference, the proposed WOSB regulations would be contained in a new part 127 of title 13.

As proposed, the regulations provide the general definitions applicable to the Program; specific eligibility requirements for qualification as an EDWOSB or WOSB; the certification procedures for the Program; the process for SBA to verify the continuing eligibility of a concern; the contract assistance available under the Program; the relevant protest and appeal procedures; and the applicable penalties. The proposed rule also provides conforming amendments necessary to integrate the Program into SBA's size and government contracting regulations.

SBA invites comment on all aspects of this proposed rule.

II. Section-by-Section Analysis

The following is a section-by-section analysis of the proposed rule.

A. Conforming Amendments to Parts 121 and 125

The authority citation for 13 CFR part 121 would be revised to include 15 U.S.C. 637(m), since part 121 would be amended to include references to the

WOSB Federal Contracting Assistance Program.

Section 121.401 would be amended to add the Program to the list of government procurement programs subject to size determinations. This would subject EDWOSBs and WOSBs to size protests and determinations under part 121 of title 13.

Section 121.1001 also would be amended by adding a new paragraph (a)(9) to describe who may initiate a size protest in connection with a particular requirement set aside under the Program. That section would provide that any concern that submits an offer for a specific requirement set aside under the Program, the contracting officer, or the Associate Administrator for Government Contracting or designee, may protest the size of another offeror for the particular requirement.

Section 121.1008 would be amended by adding a sentence that requires the SBA Government Contracting Area Director, or designee, to notify SBA's Assistant Administrator for Size Standards of receipt of a size protest involving a concern that is designated in the Central Contractor Registration (CCR) as a certified EDWOSB or WOSB.

Section 125.6 would be amended to provide that EDWOSBs and WOSBs awarded a set-aside contract under this Program must satisfy certain requirements if they intend to subcontract. These subcontracting limitations are applicable to small businesses awarded a contract as a result of their small business status. Similar to the existing § 125.6(b) governing set asides under the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, the proposed § 125.6(d) would allow an EDWOSB or WOSB prime contractor to utilize other WOSBs to help it meet the subcontracting requirements. This would afford WOSBs greater contracting opportunities.

B. Addition of a New Part 127

A new part 127 would be added to title 13 of the CFR to provide the policies, procedures and requirements governing the Program.

Subpart A provides background information concerning the Program. Specifically, §§ 127.100 and 127.101 describe the purpose, legal basis and assistance provided under the Program. Section 127.102 defines the relevant terms used in part 127. Many of those definitions are identical to or derived from the definitions provided in parts 121 and 124 of this title, governing SBA's size, 8(a) Business Development (BD) and SDB programs.

The proposed rule also uses several newly defined terms which SBA developed for ease of reference to various statutory requirements. For example, the proposed rule uses the term "economically disadvantaged WOSB" or "EDWOSB" to refer to the Act's requirement that certain WOSBs be not less than 51 percent owned and controlled by one or more women who are economically disadvantaged.

Subpart B describes the eligibility requirements for qualification as an EDWOSB or WOSB. Because the Program uses similar ownership, control and economic disadvantage criteria as used in the 8(a) BD and SDB programs, this proposed rule similarly requires that the concern be at least 51 percent unconditionally owned and controlled by one or more women who are United States citizens. One notable exception is with respect to the application of community property laws. The Act explicitly provides that ownership shall be determined without regard to any community property laws. As a result, § 127.201 precludes the application of community property laws in ownership determinations for purposes of the Program. For reasons of consistency, the economic disadvantage requirement in § 127.203 has the same \$750,000 threshold for personal net worth as does the 8(a) BD program and the SDB program for purposes of determining a program participant's continuing eligibility.

Subpart C of the proposed rule sets forth the certification requirements for concerns that submit offers on procurements set aside under the Program. Section 8(m)(2)(F)(i) of the Act authorizes certification by "a Federal agency, a State government, or a national certifying entity" approved by SBA. Consistent with that provision, subpart C of this proposed rule establishes the procedures for obtaining EDWOSB or WOSB certification from SBA.

It is noteworthy that Section 8(m)(2)(F)(ii) of the Act also authorizes concerns to self-certify their status directly to the contracting officer, provided that their self-certifications include adequate documentation in accordance with standards established by SBA. However, based on prevailing Supreme Court precedent, the likely disruption that such an approach would have on the acquisition process as well as the Agency's goal of reducing the risk of fraud associated with the Program, SBA has decided not to propose a self-certification process for procurements set aside under the Program. In its 1995 decision *Adarand v. Peña*, 515 U.S. 200 (1995), the Supreme Court questioned

the use of self-certifications in affirmative action contracting programs. In addition, by requiring the submission of the supporting documentation to the contracting officer for review, Section 8(m)(2)(F)(ii) essentially places the responsibility for policing self-certifications on contracting officers. That added responsibility would create extra work for acquisition officials and would likely result in delays and other administrative inconveniences in the procurement process. Moreover, SBA certification, as authorized in section 8(m)(2)(F)(i) and as proposed here, would reduce the likelihood of fraud and misrepresentation of WOSB status. As a result, this proposed rule requires certification by SBA in order for a concern to be eligible to receive an award set aside under this Program.

Specifically, § 127.300 of this proposed rule explains the purpose of EDWOSB or WOSB certification. That section indicates that SBA certification and designation of the concern on CCR as a certified EDWOSB or WOSB is necessary before a concern may submit an offer for an EDWOSB or WOSB requirement. The concern also must qualify as a small business for the particular procurement and must not have been subject to any material change in eligibility since its certification.

Sections 127.301 through 127.303 provide the specific procedures for obtaining EDWOSB and WOSB certification. As proposed, the procedures are intended to impose the least burdensome application requirements and to simplify the certification scheme by providing a single certification process through SBA. In particular, the proposed § 127.302 authorizes use of an SBA electronic application process, with the electronic application to be made available at a Web site to be determined when the final rule is published. To maximize the use of existing certification programs, § 127.303 describes the other program certifications SBA will accept as EDWOSB or WOSB certifications for purposes of the Program, based on SBA's determination of the certification's compliance with governing EDWOSB and WOSB eligibility requirements.

In an effort to minimize the burden on certified concerns, § 127.304 provides a three-year certification period, and § 127.305 sets forth streamlined recertification procedures and notification of change obligations. These requirements ensure the continuing eligibility of concerns designated on CCR as certified EDWOSBs and WOSBs.

SBA seeks comments on the proposed certification procedures under subpart C. SBA specifically invites commenters to discuss alternative procedures to better streamline the certification process. SBA also solicits comments on what, if any, additional safeguards SBA should adopt to further protect the integrity of the certification process.

Proposed §§ 127.400 through 127.405 under subpart D discuss the program examination process for determining the continuing eligibility of a firm that is designated on CCR as a certified EDWOSB or WOSB. Those sections explain when and how SBA will conduct the program examination and the decertification procedures SBA will follow when it is unable to verify that a concern qualifies as an EDWOSB or WOSB.

Proposed § 127.401 also explains the distinctions between the program examination process and the EDWOSB and WOSB protest mechanism provided under the proposed subpart F. The proposed § 127.401 makes clear that the program examination process is intended to verify the continuing EDWOSB or WOSB eligibility of a concern generally, while an EDWOSB or WOSB status protest is designed to determine the EDWOSB or WOSB eligibility of a concern for a specific procurement. The separate program examination procedures will assist in maintaining the integrity of the certification process by subjecting certified concerns to random examinations of their EDWOSB and WOSB eligibility. Consequently, program examinations will serve to supplement the protest mechanism by monitoring the continuing eligibility of firms that claim EDWOSB and WOSB status.

Moreover, § 127.401(a) further provides that if SBA is conducting a program examination on a concern that has submitted an offer on a pending EDWOSB or WOSB requirement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, SBA may file a protest under § 127.600 to challenge the concern's eligibility for award for the specific requirement.

The provisions governing the available Federal contract assistance under this program are set forth in proposed subpart E. Sections 127.500 through 127.502 discuss the industries in which contracting officers are authorized to restrict competition to EDWOSBs and WOSBs. As required under section 8(m) of the Act, § 127.500 explains that contracting officers may only restrict competition to EDWOSBs and WOSBs in industries in

which SBA has determined that WOSBs are either underrepresented or substantially underrepresented in Federal procurement. Sections 127.501 and 127.502 indicate how SBA will determine, identify and provide public notice of those industries.

Those sections, like section 8(m) of the Act, do not specify how SBA will determine whether WOSBs are underrepresented or substantially underrepresented in a particular industry. Instead, § 127.501 provides generally that at least every three years SBA, or another entity authorized to act on its behalf, will conduct a study to identify the underrepresented or substantially underrepresented industries. As provided under § 8(m) of the Act, § 127.501 also requires other Federal agencies to furnish SBA, or any other entity SBA may designate for that purpose, with data or information that SBA finds necessary to conduct the study. It also explains the effective date of SBA's designation of eligible industries. Section 127.502 indicates that SBA will post a list of the eligible industries on its Internet Web site.

SBA also proposes to publish a separate **Federal Register** notice, specifically detailing the methodology used to analyze the participation of WOSBs in Federal contracting and to designate the industries that will be eligible for restricted competition under the Program.

Section 127.503 addresses when a contracting officer is authorized to restrict competition under the Program. It establishes a similar "rule-of-two" standard as used in small business set asides. That section further makes clear that contracting officers may only allow certified WOSBs to submit offers for requirements in industries in which SBA has determined that WOSBs are substantially underrepresented and has waived the requirement for ownership and control of the firm by economically disadvantaged women.

Sections 127.504 and 127.505 describe the additional requirements a concern must satisfy to submit an offer on an EDWOSB or WOSB requirement. Section 127.504 indicates that in addition to the certification requirements under subpart C, offerors on EDWOSB or WOSB requirements must also certify that they are small under the size standard for the procurement and that they will comply with the limitations on subcontracting rule set forth in § 125.6 of this title. Section 127.505 explains that an EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b), may submit an offer for an

EDWOSB or WOSB requirement if it meets the requirements of § 121.406(b).

Proposed § 127.506 provides the rules governing joint venture relationships involving WOSBs. That section provides joint venture provisions that are modeled after the SDB joint venture regulations contained in § 124.1002(f).

The proposed Subpart F sets forth the procedures for protesting the status of a concern as an EDWOSB or WOSB, including the procedures for filing protests, for rendering protest determinations and for appealing those determinations to SBA's Associate Deputy Administrator for Government Contracting and Business Development (ADA/GC&BD). Sections 127.600 through 127.602 describe who is authorized to file and decide EDWOSB and WOSB status protests and the permissible grounds for filing protests.

Sections 127.603 through 127.606 prescribe the applicable deadlines for filing and determining EDWOSB and WOSB protests and for appealing SBA's protest determinations. Unlike program examinations under the proposed subpart D, protests are time sensitive because they are tied to a particular procurement. As a result, §§ 127.604 and 127.605 prescribe filing and decision deadlines to minimize undue interruptions in the underlying procurement.

The final section of the proposed part 127, subpart G, § 127.700, prescribes the applicable penalties that may be imposed on any person or concern that misrepresents the status of a concern as an EDWOSB or WOSB for purposes of receiving a benefit under the Program.

Compliance with Executive Orders 12866, 12988, and 13132, 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 under Executive Order 12866. The Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis

1. Necessity of Regulation

This regulatory action is needed to implement section 8(m) of the Act, which was enacted as part of section 811 of the Small Business Reauthorization Act of 2000, Public Law 106–554. Section 8(m) authorizes the creation of the WOSB Program. Under this Program certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially

underrepresented in Federal procurement may be restricted to WOSBs that meet certain requirements. This rule will establish such requirements and the procedures necessary to administer the Program.

2. Alternative Approaches to Proposed Rule

Before proposing this rule, SBA evaluated the estimated costs and benefits of the alternatives. The primary alternative SBA considered in implementing section 8(m) of the Act was with respect to the provisions relating to the certification of firms that claim EDWOSB or WOSB status. In particular, section 8(m)(2)(F) provides that participants of the WOSB Program must be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by economically disadvantaged women.

In developing proposed regulations to implement those provisions, SBA considered the legislative provision under section 8(m)(2)(F)(ii) of the Small Business Act. That section authorizes firms to self-certify their status as EDWOSB and WOSB concerns and submit the necessary supporting documentation directly to the contracting officer for the particular procurement. SBA has decided not to adopt that approach because of the possible constitutional infirmities associated with self-certification, the probable delay in requiring contracting officers to review the supporting documentation and the Agency's desire to reduce the risk of fraud. SBA determined that the alternative approach proposed is the most cost-effective for both the government and WOSBs. The proposed approach provides for a simplified electronic application process and for SBA to accept other Federal program certifications that it determines comply with the EDWOSB and WOSB eligibility requirements. The approach also is consistent with SBA's statutory responsibilities under section 8(m) of the Act to establish certification standards and procedures.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no Federalism

implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this proposed rule imposes two new reporting requirements. The titles, descriptions of respondents and the information collections, along with an estimate of the annual reporting burdens are discussed below. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. As required by the Paperwork Reduction Act, SBA will also submit the two information collections to OMB for review.

SBA invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, and to Linda Waters, Procurement Analyst, Office of Federal Contract Assistance for Women Business Owners, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A. Application for Certification

Title: Application for the Women-Owned Small Business (WOSB) Federal Contract Assistance Program Certification. [No SBA Form Number]

Summary: The proposed regulations require concerns [that have not been otherwise certified] seeking certification for the WOSB program to submit to SBA an application, which demonstrates that the concern meets the eligibility requirements for the Program. Concerns will be required to submit information establishing that: (1) The concern is small as defined by SBA in 13 CFR part 121, Small Business Size Regulations; (2) one or more women unconditionally

and directly own at least 51% of the concern; (3) the woman or women who own at least 51% of the concern are United States citizens; and (4) if seeking certification as an EDWOSB, the 51% or more owners are economically disadvantaged, that is, their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same line of business. Concerns will be subject to criminal, civil and administrative penalties for making misrepresentations or false statements in the application for certification as an EDWOSB or WOSB.

Need and Purpose: Section 811 of the Small Business Reauthorization Act of 2000 authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. Section 811 specifies the eligibility criteria for EDWOSBs and WOSBs and requires SBA to establish procedures for verifying the eligibility of concerns that claim that status. The information submitted on the application for certification will enable SBA to verify that the concern qualifies as an EDWOSB or WOSB.

Description of Respondents: Concerns that are seeking certification as an EDWOSB or WOSB will submit this application. Concerns that have been certified under other Federal programs (including SBA's 8(a) and SDB programs), and that satisfy EDWOSB and WOSB eligibility requirements, will automatically qualify and will not need to submit this application. This program has not yet been implemented; therefore, there is no actual data to measure the number of respondents or the time to complete the certification. However, because the certification requirements and procedures for the WOSB program will be similar to the SDB, HUBZone and 8(a) certification programs, SBA relied on its experience with those programs as its basis for arriving at the following estimates.

As of January 2006, there were approximately 76,000 WOSBs registered in CCR. SBA estimates that of this total, approximately 16,500 WOSBs will ultimately seek certification from SBA, at the rate of approximately 2,000 concerns each year. SBA estimates that each of these 2,000 applicants will need approximately 2.5 hours to complete the certification application, at a cost of approximately \$150.00 per hour. Therefore, the estimated aggregate hour burden for this certification is 5,000

hours per annum, costing an aggregated \$750,000 for the year.

B. Recertification

Title: Recertification Form for the Women-Owned Small Business (WOSB) Federal Contract Assistance Program. [No SBA Form Number]

Summary: According to the proposed regulations, EDWOSBs and WOSBs that are designated as certified concerns on CCR must recertify their eligibility to SBA every three years. The recertification form will require an authorized representative of a concern that is listed on CCR as a certified EDWOSB or WOSB to certify under the penalty of perjury that it continues to satisfy the eligibility requirements to qualify as an EDWOSB or WOSB. Specifically, the concern will certify that: (1) There has been no material change in circumstances that could affect the concern's eligibility for the WOSB program since such eligibility was last determined; and (2) SBA has not decertified the concern, or otherwise determined that the concern does not qualify as a EDWOSB or WOSB.

Need and Purpose: As noted above, section 8(m) of the Small Business Act requires SBA to determine that all concerns in the WOSB program meet the eligibility requirements for participation in the Program. As part of this responsibility, SBA has an ongoing need to ensure that each concern certified as an EDWOSB or WOSB continues to meet the eligibility requirements. The information submitted on the recertification form will enable SBA to verify that the concern continues to qualify as an EDWOSB or WOSB.

Description of Respondents: All concerns that are designated on CCR as certified EDWOSBs and WOSBs are required to submit the recertification form to SBA within 60 days prior to the expiration of their three-year certification period. Since the proposed regulations do not require concerns to recertify their EDWOSB or WOSB status until two months before the expiration of their three-year certification term, no concerns will recertify their status during the first two years of the operation of the WOSB Program. Thereafter, SBA estimates that approximately 1,000 concerns will recertify their eligibility to SBA each year. The estimated decline in the number of concerns recertifying relative to the number of concerns that initially certified would more than likely be attributable to WOSBs not being eligible due to size or ownership, losing interest in the program or ceasing operation.

SBA estimates that each of the 1,000 WOSBs recertifying each year will need approximately 30 minutes to complete the recertification form. SBA estimates that the cost to complete this collection will be approximately \$75.00 per half-hour. Thus, the estimated aggregated burden is 500 hours per annum, costing an aggregated \$75,000 for the year.

Regulatory Flexibility Act

SBA has determined that this proposed rule establishing the WOSB Federal Contract Assistance Program may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* Accordingly, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of the WOSB Federal Contract Assistance Program in accordance with Section 603, Title 5, of the United States Code. The IRFA examines the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there are any Federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there are any significant alternatives to the proposed rule.

1. What are the Reasons for, and Objectives of, the Proposed Rule?

SBA is proposing to establish the Women-Owned Small Business Federal Assistance Program pursuant to the SBA Reauthorization Act, Pub. L. 106-554, enacted December 21, 2000. Section 8(m) of the Act created a "Procurement Program for Women-Owned Small Business Concerns" which authorizes the use of "restricted competition" in industries where WOSBs are underrepresented in Federal procurement and when certain other conditions are met. The purpose of the proposed rule is to create an initial framework and infrastructure for implementing this new program, thereby providing a tool Federal agencies may eventually use to increase Federal contracting to WOSBs.

The objective of this proposed rule is to increase the amount of Federal contract dollars awarded to WOSBs in industries where they are currently underutilized. The program will assist Federal agencies in achieving the Federal Government's goal of awarding 5 percent of Federal contract dollars to WOSBs, as provided in the Federal Acquisition Streamlining Act of 1994. Federal procurement was nearly \$300 billion in FY 2004, of which \$9.1 billion

in Federal contracts, or 3 percent, went to WOSBs.

2. What is the Legal Basis for the Proposed Rule?

This action, including publication of proposed rules, is authorized pursuant to section 8(m) of SBA's Reauthorization Act (Pub. L. 106-554), enacted December 21, 2000, that authorizes a new mechanism for Federal contracting with WOSBs.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

The RFA directs agencies to provide a description, and where feasible, an estimate of the number of small business concerns that may be affected by the proposed rules, if adopted. This proposed rule would ultimately establish in the Federal Acquisition Regulation (FAR) a new procurement mechanism to benefit WOSBs. Therefore, WOSBs that compete for Federal contracts are the specific group of small business concerns most directly affected by this proposed rule. This rule may also affect other small businesses to the extent that small businesses not owned and controlled by women may be excluded from competing for certain Federal contracting opportunities.

The 2002 Survey of Business Owners published by the U.S. Bureau of the Census reported 6,489,493 women-owned businesses in the United States. More than 900,000 of these businesses have one or more paid employees. Most women-owned businesses, however, do not participate in the Federal contracting market. The information contained in the Federal Government's CCR provides the best source of information on businesses interested in Federal contracting, including information on businesses identified as WOSBs.

In February 2005, approximately 75,000 businesses represented themselves as WOSBs in CCR as actual or potential Federal contractors. The potential number of WOSBs that could be direct beneficiaries of a program restricting certain Federal contracts to only WOSBs is likely to be much fewer than the number of WOSBs registered in CCR. Not all WOSBs will satisfy the certification requirements for SBA-certified EDWOSB and WOSB status. Also, the expected benefits of the Program may be less attractive to some WOSBs than other programs designed to assist small businesses.

SBA estimates that up to 16,500 WOSBs over time may seek status as an SBA-certified WOSB. SBA's experience with its SDB Certification and Eligibility

Program provides an example of a similar program for certain designated entities that may reveal the level of interest and participation by WOSBs. SBA has found that not all businesses identified in CCR as minority-owned seek or are eligible for SBA-certified SDB status. Approximately 22 percent of minority-owned small businesses (MSB) registered in CCR have obtained certified SDB status. In lieu of other indications, SBA assumes that a similar experience will occur with WOSBs seeking SBA certification. Applying the 22 percent certified SDB to MSB ratio to the 75,000 CCR-registered WOSBs results in approximately 16,500 potentially certified WOSBs. Currently, 7,673 WOSBs are SBA-certified as SDB or HUBZone firms, many of which are likely to seek SBA-certified WOSB status.

The potential number of SBA-certified WOSBs could be lower or higher than estimated. This proposed rule, if adopted, will affect SBA-certified WOSBs that participate in Federal procurement in industries where they are underrepresented. Not all areas of Federal procurement are likely to be designated as underrepresented, and opportunities in some of the qualified areas may be limited. Consequently, many otherwise-qualified WOSBs will not find WOSB-certified status as beneficial.

On the other hand, the estimated number of SBA-certified WOSBs could also be higher than 16,500. As other WOSBs realize that they can successfully compete in those qualified industries where contracts may be restricted to SBA-certified WOSBs, more WOSBs may pursue becoming qualified and active participants in this market, especially those now participating in state and local disadvantaged business enterprise contracting programs.

The proposed rule, if adopted, may also affect non-WOSBs (firms not 51 percent owned and controlled by women) seeking Federal contracts for which competition has been restricted to participants in this program. The CCR lists approximately 300,000 small businesses that are not WOSBs. Among these are 22,000 small businesses certified in the 8(a) and HUBZone Programs.

Additional contracting opportunities identified by Federal agencies as candidates to set aside for SBA-certified WOSBs will come from new contracting requirements and contracts currently performed by small and large businesses. At this time, SBA cannot estimate how the existing distribution of contracts by business type may change by this proposed rule. Until the WOSB-

underrepresented industries are identified, no supportable quantifiable estimate can be made on the potential benefits to WOSBs and impact on other small businesses. However, SBA does not expect that many, if any, contracts awarded through the 8(a), HUBZone, or SDVOSB Programs (\$14.3 billion in FY 2004) will be re-competed as WOSB set-aside contracts because those programs also support socioeconomic goals that agencies strive to achieve through their contracting activities.

4. What are the Projected Reporting, Recordkeeping, Paperwork Reduction Act and Other Compliance Requirements?

WOSBs are not required to be certified as such in order to contract with the Federal Government. This will still be true if the proposed rule is adopted. However, for a WOSB to participate in the Program, it will have to be certified by SBA as a WOSB. This provision ensures that the program is narrowly tailored and participation is restricted to qualified WOSBs. Similar provisions apply to WOSBs desiring to participate in SBA's 8(a) or SDB program or the Department of Transportation's Disadvantaged Business Enterprise program. SBA may accept WOSBs currently certified for those programs when presented with evidence of the existing certification.

This certification requirement will have associated costs, *i.e.*, labor costs, for participating WOSBs. At a minimum, potential participants must complete specific forms and provide adequate documentation. Documents include what a business would normally have on hand, *e.g.*, ownership records, tax records, etc. Firms applying for certification will have to locate, copy and submit supporting documents. SBA estimates that the cost to complete these activities will be approximately \$150.00 per hour. After the tax and other business papers for documentation are assembled, completing the form is estimated to take about 2.5 hours. An estimated 2,000 firms per year are expected to apply using the full form process and thus, the total cost is estimated to be \$750,000 per year. The paperwork burden on the WOSB applying for certification is estimated from SBA's experience with SDB and 8(a) applications that require similar documentation to support the claim of economic disadvantage and 51 percent ownership and control of the firm.

This rule also proposes a recertification process. However, to minimize the reporting burden on WOSBs, SBA is proposing that WOSBs recertify every three years instead of

annually. The total cost associated with the recertification process is expected to be less than the certification process because the information required to be submitted is far less. However, the labor cost is expected to be the same \$150 per hour because the same level of knowledge about the firm's status will be necessary. It will take approximately 30 minutes to complete the recertification form and with 1,000 concerns expected to recertify their eligibility each year, the total cost of recertification will be approximately \$75,000.

5. What Relevant Federal Rules may Duplicate, Overlap, or Conflict with the Rule?

SBA has not identified any relevant Federal rules currently in effect that duplicate, overlap, or conflict with this proposed rule. This "restricted competition" program for WOSBs would be an addition to the small business, SDB, HUBZone, SDVOSB and 8(a) preference programs that agencies currently administer. Because any contract to a WOSB may also count toward the agency's small business goal, this program enhances an agency's chances of meeting its goals in the other preference programs as well as the 5 percent WOSB goal. Where applicable, a WOSB contract can also count toward other goals, such as SDVOSB or SDB. Therefore, rather than duplicate, overlap or conflict with, the addition of the WOSB program should complement existing rules. Because agencies are not required to use the Program, the issue of which preference program takes precedence should be mitigated.

6. What Significant Alternatives did SBA Consider that Accomplish the Stated Objectives and Minimize Any Significant Economic Impact on Small Entities?

The Regulatory Flexibility Act (RFA) requires agencies to identify alternatives to the proposed rule in an effort to "minimize any significant economic impact of the proposed rule on small entities." SBA has determined that the proposed rule may have a significant economic impact on a substantial number of small entities.

This proposed rule would implement a WOSB Federal Contracting Program as established by Section 811 of Pub. L. 106-554 (15 U.S.C. 637(m)). Most of the provisions of this proposed rule reflect requirements under that Program. The legislation does provide SBA with alternative approaches for the certification of WOSBs. Specifically, a WOSB may be certified by a Federal agency, a State government, or a

national certifying entity approved by the Administrator, or a WOSB may submit a certification to the contracting officer that it is a small business concern owned and controlled by women along with adequate documentation, in accordance with standards established by the Administration. As discussed earlier, SBA is proposing that it will be responsible for certifying businesses as EDWOSBs and WOSBs.

SBA decided to perform the certification function based on administrative and legal considerations. SBA currently performs certifications for status as 8(a) firms, HUBZone firms, and SDBs. Because the Act uses similar ownership, control and economic disadvantage criteria as used in the 8(a) BD and SDB Programs, SBA is able to efficiently utilize existing processes to determine the eligibility of businesses as EDWOSBs and WOSBs. SBA also believes that such an approach would reduce the likelihood of fraud and misrepresentation of WOSB status.

An alternative approach would have businesses self-certify their status directly to the contracting officer, provided that their self-certifications include adequate documentation in accordance with standards established by SBA. However, based on prevailing Supreme Court precedent, the likely disruption that such an approach would have on the acquisition process as well as the Agency's goal of preventing fraud, SBA has decided not to propose a self-certification process for procurements set aside under the Program.

As described in this RFA's discussion of reporting requirements and other compliance issues, WOSBs will incur new costs associated with the application process. However, SBA believes that its proposed certification approach is more preferable than for potential bidders to submit the same information with each offer and, most likely, to different contracting officers. Not only could that entail higher costs in the long run, it creates a potential for inconsistent and erroneous decisions.

SBA welcomes comments on this proposed rule's RFA. Comments from small entities concerning the affected 13 CFR parts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* in correspondence.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities,

Loan programs—business, Small businesses.

13 CFR Part 125

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

13 CFR Part 127

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

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR chapter I as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637, 644, and 662(5); and Pub. L. 105-135, sec. 401 *et seq.*, 111 Stat. 2592; Pub. L. 106-24, 113 Stat. 39.

§ 121.401 [Amended]

2. Amend § 121.401 by adding the phrase "the Women-Owned Small Business (WOSB) Federal Contract Assistance Program," after the phrase "SBA's HUBZone Program".

3. Amend § 121.1001 by adding a new paragraph (a)(9) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(9) For SBA's WOSB Federal Contracting Assistance Program, the following entities may protest:

(i) Any concern that submits an offer for a specific requirement set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB).

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Associate Administrator for Government Contracting, or designee.

* * * * *

4. Amend § 121.1008(a) by adding a new sentence after the second sentence to read as follows:

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) * * * If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Assistant Administrator for Size Standards of the protest. * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

5. The authority citation for 13 CFR part 125 continues to read as follows:

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

6. Section 125.6 is amended by redesignating paragraphs (d) through (j) as paragraphs (e) through (k), respectively, and by adding a new paragraph (d) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(d) An economically disadvantaged women-owned small business or women-owned small business (WOSB) awarded a contract pursuant to § 127.503 of this chapter may subcontract part of the contract provided:

(1) In the case of a contract for services (except construction), the concern spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or the employees of other concerns designated as a certified WOSB in the Central Contractor Registration (CCR);

(2) In the case of a contract for general construction, the concern spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other concerns designated as a certified WOSB in CCR;

(3) In the case of a contract for construction by special trade contractors, the concern spends at least 25 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other concerns designated as a certified WOSB in CCR; and

(4) In the case of a contract for procurement of supplies or products (other than procurement from a non-manufacturer in such supplies or products), at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials), will be performed by the concern or other concerns designated as a certified WOSB in CCR.

(5) In the case of a contract awarded under § 126.503 to a joint venture formed in accordance with § 127.506, the joint venture must perform the applicable percentage of work.

* * * * *

7. Add a new part 127 to read as follows:

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROGRAM**Subpart A—General Provisions**

- 127.100 What is the purpose of part 127?
 127.101 What type of assistance is available under part 127?
 127.102 What are the definitions of the terms used in part 127?

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

- 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?
 127.201 What are the requirements for ownership of an EDWOSB and WOSB?
 127.202 What are the requirements for control of an EDWOSB or WOSB?
 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

Subpart C—Certification of EDWOSB or WOSB Status

- 127.300 What is the purpose of obtaining EDWOSB or WOSB certification?
 127.301 How may a concern become certified as an EDWOSB or WOSB?
 127.302 What is the process for obtaining EDWOSB or WOSB certification from SBA?
 127.303 What are the other program certifications SBA will accept as EDWOSB or WOSB certifications for purposes of the WOSB Program?
 127.304 How long does EDWOSB or WOSB certification last?
 127.305 How does a concern maintain certification?

Subpart D—Program Examinations

- 127.400 What is a program examination?
 127.401 What is the difference between a program examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?
 127.402 How will SBA conduct a program examination?
 127.403 What happens if SBA verifies the concern's eligibility?
 127.404 What happens if SBA is unable to verify a concern's eligibility?

Subpart E—Federal Contract Assistance

- 127.500 In what industries is a contracting officer authorized to restrict competition under this part?
 127.501 How will SBA determine the industries in which WOSBs are underrepresented or substantially underrepresented?
 127.502 How will SBA identify and provide notice of the industries that are eligible for EDWOSB or WOSB requirements?
 127.503 When is a contracting officer authorized to restrict competition under this part?
 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?
 127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?

- 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

Subpart F—Protests

- 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?
 127.601 May a protest challenging the size and status of a concern as a EDWOSB or WOSB be filed together?
 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?
 127.603 What are the requirements for filing an EDWOSB or WOSB protest?
 127.604 How will SBA process an EDWOSB or WOSB status protest?
 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

Subpart G—Penalties

- 121.700 What penalties may be imposed under this part?
Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

Subpart A—General Provisions**§ 127.100 What is the purpose of part 127?**

Section 8(m) of the Small Business Act authorizes certain procurement mechanisms to increase Federal contracting opportunities for women-owned small businesses (WOSBs) and to assist agencies in achieving their WOSB participation goals mandated under Section 15(g) of the Small Business Act.

§ 127.101 What type of assistance is available under part 127?

This part authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which the Small Business Administration (SBA) has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement.

§ 127.102 What are the definitions of the terms used in part 127?

For purposes of this part:
8(a) Business Development (8(a) BD) concern means a concern that SBA has certified as an 8(a) BD program participant.

AA/GC means SBA's Associate Administrator for Government Contracting.

ADA/GC&BD means SBA's Associate Deputy Administrator for Government Contracting and Business Development.

Central Contractor Registration (CCR) means the system that functions as the central registration and repository of contractor data for the Federal government. CCR also serves as the single portal for conducting searches of small business contractors and as the authoritative source for identifying contractors that are certified as 8(a) BD program participants, small

disadvantaged businesses, WOSBs and EDWOSBs. Prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

Certified concern means a concern that is determined to qualify as an economically disadvantaged WOSB or WOSB by SBA or under another program that SBA has determined includes the same eligibility criteria as set forth in § 127.200.

Citizen means a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens.

Concern means a firm that satisfies the requirements in § 121.105 this chapter.

Contracting officer has the meaning given to that term in section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

Decertification or decertify means the determination by SBA that a certified concern does not qualify as an economically disadvantaged WOSB or as a WOSB.

Economically disadvantaged WOSB (EDWOSB) means a concern that is small pursuant to part 121 of this title and that is at least 51% owned and controlled by one or more women who are economically disadvantaged in accordance with §§ 127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to EDWOSBs.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

Interested party means any concern that submits an offer for a specific EDWOSB or WOSB requirement.

Primary industry classification means the six digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern. The NAICS code designations are described in the NAICS manual available via the Internet at <http://www.census.gov/NAICS>.

Small disadvantaged business (SDB) means a concern that SBA has certified in accordance with subpart B of part 124 of this chapter, and has listed on CCR as an SDB.

WOSB means a concern that is small pursuant to part 121 of this chapter, and that is at least 51% owned and controlled by one or more women in accordance with §§ 127.200, 127.201 and 127.202.

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs.

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

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

(a) *Qualification as an EDWOSB.* To qualify as an EDWOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB.* To qualify as a WOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General.* To qualify as an EDWOSB or WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern.

Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership.* To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership.* To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership trusts) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However,

ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, a trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women.

(f) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General.* To qualify as an EDWOSB or WOSB, the management and daily business operations of the concern must be controlled by one or more women. Control by one or more women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women.

(b) *Managerial position and experience.* A woman must hold the highest officer position in the concern (usually President or Chief Executive Officer) and must have managerial experience of the extent and complexity needed to run the concern. The woman manager need not have the technical expertise or possess the required license to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and

has an equity interest in the concern, he may be found to control the concern.

(c) *Limitation on outside employment.* The woman who holds the highest officer position of the concern may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and business operations.

(d) *Control over a partnership.* In the case of a partnership, one or more women must serve as general partners, with control over all partnership decisions.

(e) *Control over a limited liability company.* In the case of a limited liability company, one or more women must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women must control the Board of Directors of the concern. Women are considered to control the Board of Directors when either:

(1) One or more women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entity may exercise actual control or have the power to control the concern.

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

(a) *General.* To qualify as an EDWOSB, the concern must be at least 51% owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

(b) *Limitation on personal net worth.* In order to be considered economically disadvantaged, the woman's personal net worth must be less than \$750,000, excluding her ownership interest in the concern and equity in her primary personal residence.

(c) *Factors that may be considered.* The personal financial condition of the

woman claiming economic disadvantage, including her personal income for the past two years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, may be considered in determining whether she is economically disadvantaged.

(d) *Transfers within two years.* Assets that a woman claiming economic disadvantage transferred within two years of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:

(1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

Subpart C—Certification of EDWOSB or WOSB Status

§ 127.300 What is the purpose of obtaining EDWOSB or WOSB certification?

Certification as an EDWOSB or WOSB enables a concern to submit an offer for an EDWOSB or WOSB requirement for which it qualifies, provided that the concern:

(a) Is designated as a certified EDWOSB or WOSB on CCR;

(b) Qualifies as a small business concern for the particular procurement; and

(c) Has not been subject to any material change in its circumstances since its certification as an EDWOSB or WOSB.

§ 127.301 How may a concern become certified as an EDWOSB or WOSB?

To obtain EDWOSB or WOSB certification, a concern must apply for SBA certification or must have a valid certification recognized by SBA in accordance with § 127.303 of this part.

§ 127.302 What is the process for obtaining EDWOSB or WOSB certification from SBA?

(a) *Application.* A concern seeking EDWOSB or WOSB certification by SBA must submit an electronic application to SBA. The completed application must demonstrate that the concern meets the requirements for eligibility set forth in subpart B of this part. After submitting

the application, the applicant must notify SBA of any material changes that could affect its eligibility.

(b) *Processing of application.* SBA will only process completed electronic applications submitted in accordance with the application instructions. Any incomplete applications will be returned to the applicant unprocessed. At its discretion, SBA may request additional information or request clarification of information contained in the application. Whenever practicable, SBA will make its determination within 30 calendar days after receipt of the completed application.

(c) *SBA decision.* The AA/GC is authorized to approve or decline EDWOSB or WOSB applications submitted to SBA. If the application is approved, the AA/GC will send a written notice of approval to the applicant and will automatically designate the concern on CCR as a certified EDWOSB or WOSB, as appropriate. If the application is denied, the AA/CAWBO will send a written notice of denial to the applicant. The notice of denial will specify the basis of the AA/GC's decision. The decision of the AA/GC is the final agency decision.

§ 127.303 What are the other program certifications SBA will accept as EDWOSB or WOSB certifications for purposes of the WOSB Program?

(a) *8(a) BD and SDB certifications.* SBA will accept all current SBA-certified 8(a) BD or SDB women-owned concerns in good standing as certified EDWOSBs for purposes of this part and will automatically designate such concerns on CCR as certified EDWOSBs. SBA also will accept as certified EDWOSBs any WOSB that has graduated from the 8(a) BD program, provided SBA determined that the concern continued to be eligible for the 8(a) BD program as part of an annual review within the last 3 years and has no information indicating that the firm may not be eligible for certification as an EDWOSB.

(b) *Certifications from other programs.* If a concern has a current, valid certification as a disadvantaged business enterprise (DBE) from a certifying entity of a Department of Transportation grant recipient and is at least 51 percent owned by one or more women, SBA may adopt the DBE certification as an EDWOSB certification when determined by the AA/GC or designee to be appropriate. SBA will maintain on its web site a list of all certifications from other programs that it will accept for purposes of this part and information on the procedures concerns must follow for

SBA to adopt their certifications from such programs.

§ 127.304 How long does an EDWOSB or WOSB certification last?

(a) *General certification period.* Certification as an EDWOSB or WOSB will be effective for a period of 3 years from the date SBA notifies the concern in writing that SBA has approved its EDWOSB or WOSB application, pursuant to § 127.302.

(b) *Extension of period.* Where SBA determines in connection with a program examination that a certified concern continues to qualify as an EDWOSB or WOSB, SBA will extend the concern's certification period for 3 years from the date of SBA's final program examination and will amend the concern's CCR designation as a certified EDWOSB or WOSB to reflect its extended 3 year certification period.

(c) *Early termination of period.* Where SBA determines in connection with a program examination or protest that a concern does not qualify as an EDWOSB or WOSB, SBA will immediately decertify the concern and remove its CCR designation as a certified EDWOSB or WOSB.

§ 127.305 How does a concern maintain certification?

(a) *Re-certification.* To remain certified without any interruption in its certification term, a certified concern must submit to the AA/GC or designee within 60 days of the expiration of its certification term, a written certification as to its continued eligibility.

(1) The certification must be in writing, must represent that there has been no material change in circumstances that could affect the concern's eligibility as an EDWOSB or WOSB, and must be signed by a duly authorized representative of the concern.

(2) SBA will notify the firm in writing once it has completed processing the written certification and will extend the concern's certification period listed on CCR for an additional 3 years from the date of SBA's written notification. If SBA obtains information that indicates that the concern may no longer qualify as an EDWOSB or WOSB, SBA will conduct a program examination pursuant to subpart D of this part.

(3) A concern's failure to submit a written certification of its continued eligibility before the expiration of its certification term will result in the removal of its designation on CCR as a certified EDWOSB or WOSB.

(b) *Notification of change.* A certified EDWOSB or WOSB must immediately notify the AA/GC or designee in writing

of any change that could affect its eligibility. Failure to provide written notification of the change may result in the concern's decertification pursuant to § 127.404, and removal of the concern's designation on CCR as a certified EDWOSB or WOSB. SBA also may seek the imposition of penalties under § 127.700.

Subpart D—Program Examinations

§ 127.400 What is a program examination?

A program examination is an investigation by SBA to verify that a certified concern meets the EDWOSB or WOSB eligibility requirements at the time of the program examination. SBA may, in its sole discretion, perform a program examination at any time after it designates a concern in CCR as a certified EDWOSB or WOSB.

§ 127.401 What is the difference between a program examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?

(a) *Program examination.* A program examination is the formal process through which SBA verifies and monitors the continuing eligibility of a concern that is designated on CCR as a certified EDWOSB or WOSB. For purposes of a program examination, SBA will determine the eligibility of a concern as of the date SBA notifies the concern that it will conduct the program examination. SBA's program examination determination will apply only to solicitations issued on or after the date of the determination. If SBA is conducting a program examination on a concern that has submitted an offer on a pending EDWOSB or WOSB procurement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, then SBA may initiate a protest pursuant to § 127.600, to suspend award of the contract for 15 days pending SBA's determination of the concern's eligibility.

(b) *EDWOSB or WOSB protests.* An EDWOSB or WOSB status protest provides a mechanism for challenging or verifying the EDWOSB or WOSB eligibility of a concern in connection with a specific EDWOSB or WOSB requirement. SBA will process EDWOSB or WOSB protests in accordance with the procedures and time frame set forth in subpart F, and will determine the EDWOSB or WOSB eligibility of the protested concern as of the date the concern represented its EDWOSB or WOSB status as part of its initial offer including price. SBA's protest determination will apply to the specific procurement to which the

protest relates and to future procurements.

§ 127.402 How will SBA conduct a program examination?

(a) *Notification.* No less than 5 business days before commencing a program examination, SBA will notify the concern in writing that it will conduct a program examination to determine the status of the concern as an EDWOSB or WOSB. The notification also will advise the concern that its EDWOSB or WOSB eligibility will be determined based on the status of the concern on the date of the notification.

(b) *Request for information.* SBA may request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information.

§ 127.403 What happens if SBA verifies the concern's eligibility?

If SBA verifies that the concern satisfies the applicable EDWOSB or WOSB eligibility requirements at the time of the program examination, then the AA/GC will send the concern a written decision to that effect and will extend the concern's EDWOSB or WOSB certification period indicated in CCR for a period of 3 years from the date of SBA's decision.

§ 127.404 What happens if SBA is unable to verify a concern's eligibility?

(a) *Notice of proposed decertification.* If SBA is unable to verify that the concern qualifies as an EDWOSB or WOSB at the time of the program examination, then the AA/GC will send the concern a written notice proposing to decertify the concern. The notice will set forth the specific reasons for the proposed decertification and will notify the concern that it has 15 calendar days from the date it receives the notice to respond to the proposed decertification.

(b) *SBA determination.* Following the 15-day response period, the AA/GC or designee will consider the reasons for the proposed decertification and any information the concern submitted in response, and will issue a decision as follows:

(1) If SBA verifies that the concern qualifies as an EDWOSB or WOSB at the time of the program examination, then the AA/GC will send the concern a decision to that effect and will extend the concern's EDWOSB or WOSB CCR designation for a period of 3 years from the date of the decision.

(2) If SBA determines that the concern does not qualify as an EDWOSB or

WOSB, then the AA/GC will notify the concern in writing that it is decertified and will remove the concern's designation as an EDWOSB or WOSB on CCR. The decertification notice will explain the basis of the determination.

(3) The decertification notice constitutes the final agency decision. The decertification notice is effective immediately and applies to solicitations issued on or after the date of the notice.

Subpart E—Federal Contract Assistance

§ 127.500 In what industries is a contracting officer authorized to restrict competition under this part?

A contracting officer may restrict competition under this part only in those industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement.

§ 127.501 How will SBA determine the industries in which WOSBs are underrepresented or substantially underrepresented?

(a) *Determination of eligible industries.* At least once every three years, SBA, or other authorized entities, will conduct a study to identify the industries in which WOSBs are underrepresented or substantially underrepresented in Federal contracting. The study will include an analysis of the extent of the participation and utilization of WOSBs in Federal contracting. Based upon that analysis, SBA will designate by the 3-digit NAICS Industry Subsector the eligible industries as follows:

(1) Industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal contracting will be designated as industries eligible for EDWOSB requirements; and

(2) Industries in which SBA has determined that WOSBs are substantially underrepresented in Federal contracting and has waived the requirement for WOSB ownership and control by economically disadvantaged women, will be designated as industries eligible for EDWOSB and WOSB requirements.

(b) *Data collection.* In determining the extent of WOSB participation and utilization in Federal contracting, SBA may request that the head of any Federal department or agency provide SBA, or other designated entity, data or information necessary to analyze the extent of WOSB participation in Federal contracting.

(c) *Effective date of determination.* SBA's determination of eligible

industries for EDWOSB or WOSB contracts will apply to solicitations that are issued on or after the effective date of the determination. The effective date of the determination of eligible industries will be no less than 30 days after its publication date.

§ 127.502 How will SBA identify and provide notice of the industries that are eligible for EDWOSB or WOSB requirements?

SBA will post a list of the industries eligible for EDWOSB and WOSB requirements on its Internet web site. The list of eligible industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

(a) *EDWOSB requirements.* For requirements in industries in which SBA has determined that WOSBs are underrepresented, a contracting officer may restrict competition to certified EDWOSBs, if the contracting officer has a reasonable expectation that:

(1) Two or more EDWOSBs will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed \$5,000,000, in the case of a contract assigned an NAICS code for manufacturing; or \$3,000,000, in the case of all other contracts; and

(3) Contract award may be made at a fair market price.

(b) *WOSB requirements.* For requirements in industries in which SBA has determined that WOSBs are substantially underrepresented and has waived the requirement for WOSB 51 percent ownership and control by economically disadvantaged women, a contracting officer may restrict competition to certified WOSBs, if the contracting officer has a reasonable expectation that:

(1) Two or more WOSBs will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed \$5,000,000, in the case of a contract assigned an NAICS code for manufacturing; or \$3,000,000, in the case of all other contracts; and

(3) Contract award may be made at a fair market price.

(c) *8(a) BD requirements.* A contracting officer may not restrict competition to eligible WOSBs if an 8(a) BD concern is currently performing the requirement or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless

SBA consented to release the requirement from the 8(a) BD program.

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

In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must certify at the time it submits its offer to the contracting officer that:

(a) It is small under the size standard corresponding to the NAICS code assigned to the contract;

(b) It is listed on CCR as a certified EDWOSB or WOSB;

(c) There has been no material change in its ownership or any other circumstances affecting its EDWOSB or WOSB eligibility; and

(d) It will meet the applicable percentages of work requirement as set forth in § 125.6 of this chapter (limitations on subcontracting rule).

§ 127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?

An EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b) of this chapter, may submit an offer on an EDWOSB or WOSB contract for supplies, if it meets the requirements under the non-manufacturer rule set forth in § 121.406(b).

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture may submit an offer on an EDWOSB or WOSB contract if the joint venture meets all of the following requirements:

(a) Except as provided in § 121.103(h)(3) of this chapter, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract;

(b) The EDWOSB or WOSB participant of the joint venture must be designated on CCR as a certified EDWOSB or WOSB;

(c) The EDWOSB or WOSB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for the performance of the contract;

(d) The joint venture must perform any applicable percentage of work required of the EDWOSB or WOSB offerors in accordance with § 125.6 of this chapter (limitations on subcontracting rule); and

(e) The EDWOSB or WOSB venturer must perform a significant portion of the contract.

Subpart F—Protests**§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?**

An interested party, the procuring agency contracting officer or SBA may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB contract. Any other party or individual may submit information to the contracting officer or SBA in an effort to persuade them to initiate a protest or to persuade SBA to conduct a program examination pursuant to subpart D of this part.

§ 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?

An interested party seeking to protest both the size and the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement must file two separate protests, one size protest pursuant to part 121 of this chapter and one EDWOSB or WOSB status protest pursuant to this subpart. An interested party seeking to protest only the size of an apparent successful EDWOSB or WOSB offeror must file a size protest to the contracting officer pursuant to part 121 of this chapter.

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents credible evidence that the concern is not owned and controlled by one or more women who are United States citizens and, if the protest is in connection with an EDWOSB contract, that the concern is not at least 51% owned and controlled by one or more women who are economically disadvantaged.

§ 127.603 What are the requirements for filing an EDWOSB or WOSB protest?

(a) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the following:

- (1) To the contracting officer, if the protestor is an interested party; or
- (2) To the AA/GC, if the protest is initiated by the contracting officer or SBA.

(c) *Timeliness.* (1) For negotiated acquisitions, an interested party must

submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the contracting officer. A contracting officer and SBA may file an EDWOSB or WOSB protest at any time after offers are opened.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(d) *Referral to SBA.* The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send all such protests, along with a referral letter, directly to the Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to (202) 205-6390, marked Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded. The AA/GC or designee will decide the merits of EDWOSB or WOSB status protests.

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

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will

dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct a program examination of the protested concern pursuant to subpart D of this part.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and of its right to submit information responding to the protest within five business days from the date of the notice; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination.* SBA will determine the EDWOSB or WOSB status of the protested concern within 15 business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the 15-day period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will decertify the concern and remove its designation on CCR as a certified EDWOSB or WOSB, as appropriate.

(f) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by ADA/GC&BD on appeal.

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

(a) *Parties authorized to appeal.* The protested concern, the protestor, or the contracting officer may file appeals of protest determinations with the ADA/GC&BD.

(b) *Timeliness of appeal.* The ADA/GC&BD must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

(c) *Method of submission.* The party appealing the decision may deliver its appeal in person, by facsimile to (202) 205-6390, by express delivery service or by U.S. mail (postmarked within the applicable time period) to Associate Deputy Administrator of Government Contracting and Business Development, U.S. Small Business Administration,

409 Third Street, SW., Washington, DC 20416, marked Attn: Women-Owned Small Business Status Appeal.

(d) *Notice of appeal.* The party bringing an appeal must provide notice of the appeal to the contracting activity contracting officer and either the protested concern or original protestor, as appropriate.

(e) *Grounds for appeal.* (1) SBA will re-examine a protest determination only if the appeal demonstrates that there was a clear and significant error in the processing of the protest or if the AA/GC failed completely to consider a significant fact contained within the information supplied by the protestor or the protested concern.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of SBA's protest decision or that are based on disagreement with the findings and conclusions contained in the determination.

(f) *Contents of appeal.* The appeal must be in writing. The appeal must identify the protest determination being appealed and set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/GC failed to consider.

(g) *Completion of appeal after award.* An appeal may proceed to completion even after award of the contract that prompted the protest, if so desired by the protested concern, or where the AA/GC&BD determines that a decision on appeal is meaningful.

(h) *Decision.* The ADA/GC&BD will make a decision within five business days of receipt of the appeal, if practicable, and will base his or her decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested concern, consistent with law. The ADA/GC&BD's appeal decision is the final agency decision.

Subpart G—Penalties

§ 127.700 What penalties may be imposed under this part?

Persons or concerns that falsely certify or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension or debarment pursuant to the procedures set forth in part 145 of this title, and in the Federal Acquisition Regulations, subpart 9.4 of title 48 of the Code of Federal Regulations;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31

U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

Dated: February 24, 2006.

Hector V. Barreto,
Administrator.

[FR Doc. 06–5354 Filed 6–14–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25047; Directorate Identifier 2006–NM–028–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A300–600 series airplanes. The existing AD currently requires repetitive eddy current inspections to detect cracks of the outer skin of the fuselage at certain frames, and repair or reinforcement of the structure at the frames, if necessary. The existing AD also requires eventual reinforcement of the structure at certain frames, which, when accomplished, terminates the repetitive inspections. This proposed AD would add, for airplanes that were previously reinforced but not repaired in accordance with the existing AD, a one-time inspection for cracking of the fuselage outer skin at frames 28A and 30A above stringer 30, and repair if necessary. This proposed AD results from a report that the previously required actions were not sufficient to correct cracking before the structural reinforcement was installed. We are proposing this AD to prevent such fatigue cracking, which could result in reduced structural integrity, and

consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by July 17, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Governmentwide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

- Fax: (202) 493–2251.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA–2006–25047; Directorate Identifier 2006–NM–028–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may