

insights

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Your guide to the SBA's certification requirement for women-owned small business concerns

If your company is run by one or more women, take note: on May 11, 2020, the U.S. Small Business Administration ("SBA") [published a final rule](#) to implement the certification requirement for Women-Owned Small Business Concerns ("WOSBs") and Economically Disadvantaged Women-Owned Small Business Concerns ("EDWOSBs") participating in the Procurement Program for Women-Owned Small Business Concerns ("WOSB Program"). The below provides an overview of the rule as well as answers to likely questions about the rule and the existing regulations.

The quick facts

Who needs to be certified

- Businesses wishing to compete for set-aside or sole-source contracts under the WOSB Program or seeking multiple-award contracts for pools reserved for WOSBs and EDWOSBs must be certified.
- *Note:* WOSBs that do not participate in the WOSB Program may continue to self-certify their status and receive contract awards outside of the WOSB Program. If they do, they will still count toward an agency's goal for awards to WOSBs.

Who provides the certifications

- SBA will provide certifications using an online application process.
- SBA-approved third-party certifiers may also provide certifications.
- If further information is provided regarding whether the owner or owners are women, SBA will also accept evidence of certifications from either the SBA's 8(a) Program or the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE). *Note:* SBA will **not** accept evidence of a Disadvantaged Business Enterprise Program (DBE) certification or evidence of HUBZone participation as had been considered in the proposed rule.

Date by when certifications will be required for the WOSB program

- The certification requirement for set-aside and sole-source contracts becomes effective on October 15, 2020.
- Many other parts of the rule become effective on July 15, 2020, including the parts addressing when and where a business concern may apply for certification.

Changes made to other small business rules

- The rule also makes the personal-net-worth standard for determining economic disadvantage consistent across programs. In particular, it increases the 8(a) threshold from \$250,000 for initial eligibility to \$750,000, which is consistent with the EDWOSB threshold.
- The rule also revised the 8(a) and EDWOSB regulations to exclude "official" retirement accounts from calculations of net worth.

Answers to common questions

What do I have to provide to obtain a certification?

- SBA will maintain a list of minimum documents that it requires for its certification on <https://certify.sba.gov>. Required documents may include (but are not limited to) corporate records/documents, business and personal financial records, and business and personal bank statements.
- If using a third-party certifier, the business/applicant must provide the information in accordance with the certifier's application procedures.

Is there a difference between the certification options?

- Eligibility requirements are the same, regardless of certifier, and third-party certifiers cannot impose their own application standards for issuing the certification. Further, SBA has stated it "will not distinguish between concerns based on how they were certified."
- The clearest difference will be cost: SBA's certification process is free. Third-party certifiers may charge a "reasonable" fee (the rule noted that third-party certifiers charge an average of \$380 annually for the certifications). If third-party certifiers want to keep doing the certifications and charging fees, they will likely develop value-added benefits to using them for the certification (such as a faster timeline for a decision or quick-responding representatives for questions).

How long will it take to obtain a certification?

- SBA will make its determination within 90 calendar days after receipt of a *completed* application.
- The timeframe may be accelerated for either SBA or a third-party certifier if a contract award is pending while the application is under review, but there is no guarantee certification will be received prior to award.

How long will the certification be valid?

- Every year a certified concern must represent that it continues to meet the eligibility criteria.
- Every three years, the certified concern will undergo a "program examination"; the examinations are not automatic and must be requested.

What if I already have a WOSB or EDWOSB contract?

- Generally, a business with a WOSB Program contract may continue to perform the contract, and the procuring agency may continue to count the contract towards its WOSB goal.
- But a business with a WOSB Program contract in excess of five years or that will receive an option under a WOSB Program contract must represent that it is certified 120 days prior to the end of the fifth year or the option in order for the award to continue to count toward an agency's WOSB goal.

What if I already have been certified?

- Businesses that have a third-party certification or that are certified through the 8(a) BD Program and are owned and controlled by one or more women will be "considered certified the day the rule is effective."
- Concerns that were subject to a program examination or status protest and received a "concomitant positive decision in the three years prior to the rule's effective date" will also be considered certified.

Once I obtain a certification, will I be immune to a size or status protest?

- No. The rule did not eliminate the availability of protests. A concern's status can be protested pursuant to 13 CFR 127.604(d), and its size can be protested pursuant to 13 CFR 121.1001.
- Further, any joint ventures in which a concern is a member and that rely on the concern's size and status pursuant to 13 CFR 127.506 may also be subject to size or status protests.

This certification rule was five and a half years in the making (its genesis is the National Defense Authorization Act for Fiscal Year 2015, which was signed into law on December 19, 2014). Although the above answers the common questions about the rule, some businesses may have other questions. If you are a contractor with questions about how Thompson Coburn can help you address concerns regarding a WOSB or EDWOSB certification or respond to a status or size protest, please reach out to your Thompson Coburn contact or the author below.

Jayna Marie Rust is an associate in Thompson Coburn's Washington, D.C. office. She counsels clients on Federal contract- and grant-administration matters, including analyzing and negotiating subcontractor and joint-venture agreements and following small-business requirements. She also represents Government contractors in claims, protests, and disputes.



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jayna

Jayna Marie Rust