

Proposed Rules

Federal Register

Vol. 62, No. 13

Tuesday, January 21, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Small Business Administration (SBA) proposes to amend its size and government contracting assistance regulations to incorporate the Very Small Business Program together with a definition of a very small business concern for purposes of the SBA's small business set-aside program. Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) authorized the SBA Administrator to establish and carry out a pilot program for very small business concerns. The Act defines a very small business concern as one that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. The Act establishes September 30, 1998, as the expiration date for this pilot.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: Send comments to: Nancyellen Gentile, Office of Prime Contracts, U.S. Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Nancyellen Gentile, Office of Government Contracting, (202) 205-6471, or Carl J. Jordan, Office of Size Standards, (202) 205-6618.

SUPPLEMENTARY INFORMATION: The Small Business Administration Reauthorization and Amendments Act of 1994 (Act) authorized the SBA to establish a pilot program for very small business concerns. (See Pub. L. 103-403, Section 304) The purpose of this pilot program is to improve access to Federal contract opportunities for

concerns that are substantially below SBA's size standards by reserving certain procurements for competition among very small business concerns. Very small business concerns that receive a very small business set-aside contract are eligible for loan application support and assistance under the very small business prequalification component of this pilot program. This pilot program will expire on September 30, 1998, unless extended through legislation.

The Very Small Business Program is being established in § 125.7 of these regulations and the definition of a very small business concern is being established in § 121.413. Under section 304(j)(4) of the Act, a very small business concern is one that has no more than 15 employees and average annual receipts that total no more than \$1 million. The size standard requirements applicable to small business concerns contained in Part 121 of this chapter, such as the definitions and calculation of average annual receipts and number of employees, self-certification, and size status protests, also will apply to very small business concerns. Section 125.7 also describes the types of procurements which will be eligible for the pilot program.

Under this pilot, the SBA proposes that procurements of \$50,000 or less that could be set-aside for small business will be reserved for concerns meeting the statutory definition of a very small business. Currently, the simplified acquisition procedures apply to all requirements less than \$100,000. The SBA has elected \$50,000 as the very small business set-aside threshold for the following reasons. The nature of requirements ranging in value between \$2,500 and \$50,000 is that of standard off-the-shelf products and services which typically lend themselves to performance by very small businesses. The SBA analyzed the fiscal year 1995 Federal procurement activity within the Small Business Competitiveness Demonstration Program and determined that the average dollar value of a contract action awarded to an emerging small business (a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity) was \$51,842. Further analysis of this data shows that

the average dollar value of a contract action awarded to an emerging small business in the architectural and engineering services industry was \$31,317. Smaller requirements will develop the ability of very small business concerns to do business in the federal marketplace at a gradual pace. The dollar size of this requirement will enable a very small business concern to take on the requirement without greatly disrupting operations. It will also allow the very small business concern to take advantage of multiple opportunities. A review of fiscal year 1995 federal procurement data shows that awards of \$50,000 or less totaled \$544,212,000. This represents 1.3 percent of the total awards received by small business concerns. Therefore, this threshold for very small business set-aside requirements will minimize any adverse impact on existing procurement assistance programs for larger small business concerns. Requirements above the \$50,000 threshold will continue to be reserved for small businesses where appropriate. (Note: Procurements of \$2,500 and below are processed under new micro-purchase procedures contained in FASA and are not reserved for small business competition. Thus, the proposed rule would not apply.)

The SBA is proposing that to qualify for an award under this program a firm must be an eligible small business concern under 13 CFR part 121 as well as one that has 15 or fewer employees and average annual receipts that do not exceed \$1 million. Also, due to the limited number of, and geographical distance between the designated SBA districts, the SBA believes that eligible firms should be those whose headquarters are located within a geographical area serviced by a designated SBA district office where the procurement is offered, as opposed to all very small businesses in the country. This will also serve to ensure that SBA and participating federal agencies are familiar with potential very small business sources. Since very small businesses receiving contract awards are entitled to prequalification financial assistance under this program, the SBA believes that eligibility should be limited to firms located within those SBA districts that offer a prequalification loan program to ensure consistent and efficient administration of both programs.

The Act authorizes administration of this pilot program in not less than five (5) nor more than ten (10) SBA districts. The Act permits SBA to determine the operating details of the program. For informational purposes, the following are the SBA districts where this pilot program will be implemented:

Albuquerque, NM
Boston, MA
Columbus, OH
Detroit, MI
El Paso, TX
Los Angeles, CA
Louisville, KY
New Orleans, LA
Philadelphia, PA
Santa Ana, CA

These SBA districts have the required available resources to implement and administer the pilot. A prequalification loan pilot program is available in each of these designated districts to provide loan application support and assistance. Also, SBA will achieve nationwide geographical coverage by designating at least one pilot site within broad regional areas of the country. Each site will have a procurement center representative to work with the various procuring activities to implement the program. SBA may, from time to time, through notice in the Federal Register, find it necessary to make modifications to this list, provided, however, the total number of participating districts will remain within the legislated number.

Federal agencies will implement this program, working with SBA procurement center representatives to identify opportunities appropriate to be set aside for very small businesses. The SBA district offices and procurement center representatives will assist the buying activities in identifying very small business concerns likely to compete. The contracting officer will advertise very small business set-aside opportunities. The contracting officer will rely on the offeror's self-certification in a specific bid or proposal. If the self-certification of a very small business concern is protested on a very small business set-aside, the size determination will be made using the statutorily imposed size standard of 15 or fewer employees and average annual receipts of \$1 million or less. If there are not two or more very small business concerns eligible to compete on a specific procurement, then the very small business program will not apply to that contract.

The Act establishes April 30, 1997, as the date by which the Administrator of SBA will report the results of this pilot program to the Congress. Before that date, SBA will obtain from participating

agencies a record of all contract awards under this program, after advising them of the manner and frequency of such reporting. At a minimum, reports will include the date of solicitation, the date of an award, the contractor's name and address, the standard industrial classification code or a brief description of the product or service, and the dollar value of the agency's purchase.

Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

The SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The value of procurements awarded under the Very Small Business Program is expected to be less than \$100 million since the program is being implemented as a pilot program in only eight locations and is targeted to businesses that have historically experienced limited participation in the federal market. This rule does not impose costs upon the businesses which might be affected by it. The rule would have no effect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within the small business set-aside program. Therefore, it would not have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

As required by the Regulatory Flexibility Act, 5 U.S.C. 601-612, the SBA has prepared a regulatory flexibility analysis of this proposed rule. This analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration, and is available upon request.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of SBA.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

For the reasons set forth above, Title 13, Code of Federal Regulations (CFR) is amended as set forth below.

List of Subjects in 13 CFR Part 121

Government procurement;
Government property; Grant programs—business; Loan programs—business; Small businesses.

13 CFR Part 125

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

PART 121—[AMENDED]

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

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); Pub. L. 102-486, 106 Stat. 2776, 3133; and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. Section 121.401 is revised to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The requirements set forth in §§ 121.401 through 121.413 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency program, SBA's Minority Enterprise Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, the Federal Small Disadvantaged Business programs, and the Very Small Business program.

3. The following new § 121.413 is added after § 121.412 to read as follows:

§ 121.413 What size firm is eligible for the Very Small Business Program?

A concern eligible for the very small business program, as established in § 125.7, is one that, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

PART 125—[AMENDED]

1. The authority citation for 13 CFR part 125 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702; and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. The following new § 125.7 is added after § 125.6 to read as follows:

§ 125.7 What is the Very Small Business Program?

(a) The Very Small Business Program is an extension of the small business set-aside program, administered by the SBA as a pilot to increase opportunities for very small business concerns. The program is limited to contracts of \$50,000 or less that could be set aside for small business, and to concerns that

meet the very small business size standard defined in § 121.413.

(b) If there are not two or more very small business concerns eligible to compete on a specific procurement, then the very small business program will not apply to that contract.

(c) This pilot program will be implemented in the following SBA districts: Albuquerque, NM; Los Angeles, CA; Boston, MA; Louisville, KY; Columbus, OH; New Orleans, LA; Detroit, MI; Philadelphia, PA; El Paso, TX; Santa Ana, CA. Only very small businesses whose headquarters are located within the geographical area serviced by a designated SBA district office where the procurement is offered are eligible for award of a contract under this pilot program.

(d) This pilot program terminates on September 30, 1998.

Dated: January 14, 1997.

Philip Lader,
Administrator.

[FR Doc. 97-1308 Filed 1-17-97; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-239-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100, -200, and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747-100, -200, and -300 series airplanes, that would have required the replacement of certain switches located behind the cabin attendant's panel at door 4 right, with new improved switches. That proposal was prompted by reports indicating that fires have occurred on some airplanes due to the internal failure of some of these switches. This action revises the proposed rule by adding a requirement to replace switches located at door 2 right. The actions specified by this proposed AD are intended to prevent the installation and use of switches that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane.

DATES: Comments must be received by February 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-239-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-2790; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-239-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-239-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747-100, -200, and -300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on November 29, 1996 (61 FR 60653). That NPRM would have required the replacement of switches S4 and/or S5, or switches S7 and S8 that are installed on the cabin attendant's panel at door 4 right, with new improved switches. That NPRM was prompted by reports indicating that fire and smoke have occurred on some airplanes due to the internal failure of some of these switches.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received a report of the failure of these same switches located at the cabin attendant panel located at door 2 right on at least two airplanes. Failure of the switches at this location presents the same unsafe condition addressed in the previous proposal.

Accordingly, the FAA has determined that, in addition to replacing these switches at the panel at door 4, operators must replace the switches at the panel at door 2, as well.

Requirements of the Revised Proposed Rule

This supplemental NPRM proposes to require removing switches S4 and/or S5, or switches S7 and S8, that are currently installed on the cabin attendant's panel at door 4 right, and the equivalent switches at door 2 right, and replacing them with new improved switches.

The compliance time for accomplishing the replacement would be extended from the previously proposed 6 months to 10 months. The FAA finds that such an extension is appropriate in consideration of the increased number of work hours and required parts that would be necessary to accomplish the proposed actions.

These actions would be required to be accomplished in accordance with the procedures described in Boeing Alert Service Bulletin 747-33A2252, dated August 1, 1996. Although those procedures address replacing only the switches located at door 4, they can be