

could not recertify their small business status today.

SBA welcomes comments on the potential number of small businesses that would have to change their business designation and its implications as a result of this proposed provision.

This proposed rule could have a significant economic impact on SBCs. Using both the census and FPDS data

discussed above, concerns that grow and no longer qualify as SBCs (about 6–12 a year) attain over \$18 million a year in FSS awards (average of task order awards to SBCs is \$1.5 million). Therefore, this rule could result in a corresponding increase in over \$18 million in awards to those concerns that are actually small, although such a result is unlikely.

As an example, SBA has researched four actual business concerns that it believes are no longer small, and yet are still receiving orders issued pursuant to a MAS contract where each business certified itself as small on the original contract. The concerns, and the number of schedule orders received, as well as the total value of the awards, were obtained from FPDS data and are as follows:

	FY2000 # actions	Dollars (\$000)	FY2001 # actions	Dollars (\$000)
Business #1 .....	1,019	154,321	902	124,063
Business #2 .....	88	8,043	55	6,073
Business #3 .....	28	18,217	0	0
Business #4 .....	178	16,235	314	77,360

SBA notes that it is difficult to access FPDS data with only a business concern's name because concerns typically have many different variations of their name (*i.e.*, divisions, sections, etc). Therefore, the total number of actions and dollar value may be higher for the four concerns listed above.

SBA also notes that some could argue that this rule provides a disincentive for contracting officers to select a small business. Contracting officers may fear that there will be a size protest that would ultimately slow down the contracting process.

SBA does not believe this rule would alter the decisions of contracting officers in any way. First, the procuring activity will select a concern for an order because it is the best value to the Federal Government. Second, SBA does not believe that the activity will refuse to issue the order, which results in the best value to the Government, because the concern has to certify its size and may no longer be small. SBA believes that the only consequence is that the procuring activity will not be able to count the award as one to a SBC.

SBA believes that this is similar to how orders issued pursuant to MAS contracts currently interact with the 8(a) BD program. Today, a contracting officer can consider an offer from an 8(a) BD program participant, a SBC, and a large business simultaneously. Under a Memorandum of Understanding between SBA and the GSA, if the contracting officer determines that the best value to the Government is the offer submitted by the 8(a) BD participant, the order to that firm may be counted as an 8(a) award and counted towards the agency's SDB goal. If the best value to the Government is the offer from the large business, the large business would receive the award and the order would not count toward any small business

goal. It is SBA's view that the same would happen under the proposed rule where a schedule holder grows to be other than small. In that case, if a firm that is no longer small would provide the best value to the Government, SBA believes that the firm would still get the MAS or FSS order, but, as with an award to any other large business, the order could not count toward any small business goal.

Therefore, if implemented, SBA believes this rule will ultimately impact the data collected on orders issued to SBCs, rather than affect the number of orders received by business concerns who have grown to be other than small since they received a federal multiple award or schedule contract.

#### (c) Additional Reporting or Record Keeping Requirements on Small Businesses

This proposed rule would impose a new information collection requirement on small businesses. However, the information collection is the same as that small business concerns currently submit for Government contracts to receive a preference or for an agency to count the award as one to a small business.

SBA does not believe that this provision imposes any new recordkeeping requirements. SBCs have always been required to keep records pertaining to their size and to certify as to their size status to receive Federal benefits. In addition, these records are those kept in the ordinary course of businesses, such as federal income tax returns.

#### (d) Relevant Federal Rules That May Duplicate, Overlap or Conflict With This Rule

This rule does not duplicate, overlap, or conflict with any other Federal rules.

Under this proposed rule, SBCs would have to certify that they are small at the time they receive the MAS or other multiple award contract and then annually each year thereafter, so long as the MAS or other multiple award contract is still in effect, in order for the procuring activity to count the order as an award to a SBC. SBA does not believe this rule conflicts with any FAR rule. For example, according to FAR 19.804–6, separate offers and acceptances need not be made for individual orders under MAS or FSS contracts for the 8(a) BD Program. SBA's acceptance of the original multiple award or MAS contract is valid for the term of the contract. The same is set forth in 13 CFR 124.503(h) of SBA's regulations. The rule proposed does not conflict with this FAR regulation, which addresses offer and acceptance of a contract for the 8(a) BD Program.

In addition, typically, SBCs only certify their size on initial contracts and not annually, and therefore the FAR will need to be amended to address this rule, if promulgated as final. SBA does not believe this rule conflicts with FAR rules addressing multiple award or schedule orders and notes that SBA has exclusive statutory jurisdiction in establishing size definitions and standards. It is important to remember, however, that size eligibility generally, and in this case size for purposes of a multiple award or schedule order, falls within SBA's jurisdiction. The Small Business Act gives to SBA the exclusive authority to determine when and under what circumstances a business entity may be considered small.

#### (e) Alternatives That SBA Considered

SBA has proposed a new provision addressing orders issued pursuant to MAS and other multiple award contracts. Currently, size is determined