

2. Potential Benefits and Costs of This Regulation

Small R&D concerns that become eligible for SBIR Program awards will be the primary beneficiaries of this rule. Specifically, benefits will flow to some concerns that are currently ineligible for SBIR awards solely because they are wholly owned subsidiaries. If the SBA adopts this proposal as a final rule, small concerns that are 100% owned and controlled by another for-profit business concern that is itself 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, will be eligible for SBIR awards; that is, provided it meets the 500 employees size standard and any other SBIR eligibility requirements.

The SBA cannot accurately determine how many concerns will be competing for SBIR awards because there are no data on business size by organizational structure to support a reasonable estimate. However, the SBA believes that there are about 50 to 100 concerns that might benefit. The SBA bases this estimate on the fact that a small number of such concerns have made inquiries about the program or expressed an interest in participating. Also, SBIR Program managers have relayed to the SBA their experiences with having to deny awards to those concerns that do apply. The SBA believes that these companies should not be precluded from participating. The SBA welcomes comments discussing the potential number of concerns that could become eligible under this rule and on the effect their eligibility would have on other small concerns.

In fiscal year 2002, SBIR awards totaled about 5,000 and \$1.5 billion in funding. The SBA estimates that as much as \$85 million could be awarded annually to newly eligible concerns. Phase I awards are as large as \$100,000, and Phase II awards can be as high as \$750,000. The maximum number of annual awards could be as high as 100, a 2% increase each year. If the maximum number of SBIR awards were made for their maximum possible award amounts, this could represent an additional \$85 million awarded to small R&D concerns. However, the average SBIR award is about \$300,000, based on the SBIR Program's current annual average of approximately 5,000 awards and \$1.5 billion. An additional 100 (estimated maximum number) SBIR awards to R&D concerns would more likely total about \$30 million. This, rather than \$85 million, reflects the more realistic benefits to the newly eligible concerns.

Federal Government agencies with SBIR Programs will also benefit, because they will be able to tap the resources of small innovative firms, to facilitate the conversion of federally funded research results into commercially viable products and services, and to increase the share of the Federal R&D budget awarded to small businesses, as discussed in SBIDA's legislative history, more than they do now. Because that is Congress' intent, the rule, if the SBA adopts it as final, will further help Federal agencies to meet their mandate to assist small business concerns. There could be up to 2% more small business concerns that receive SBIR awards. Not only will there be more concerns competing for SBIR awards, but there will be more awards made to more small businesses.

The Federal Government's increased cost will equal the additional SBIR awards made because more concerns will be eligible under this proposed rule. However, it will require no additional appropriations for the participating agencies. Presently, some SBIR funds are unspent. Applicants with meritorious and feasible proposals are ineligible because they are wholly owned subsidiaries of other concerns, not because they with their affiliates exceed the 500 employee size standard. This rule, therefore, may possibly increase the cost to the government by up to \$85 million per year in funds spent. However, the awards would come from already appropriated and budgeted SBIR funds, ordinarily left unspent.

The SBA estimates that there will be relatively few distributional effects if this proposed rule is adopted. The 50 to 100 annual awards that are unawarded not only do not go to small businesses, but they do not go to any concerns. Again, as stated above, The SBA cannot accurately determine how many concerns might become eligible for these awards, because there are no data to support an estimate of the distributional effects, but the SBA believes it could be no more than 100 awards made to newly eligible concerns. These newly eligible concerns may obtain SBIR funding that would otherwise be awarded to existing small concerns. With the relatively small proportion of additional firms and the fact that few small concerns obtain multiple SBIR awards, the SBA believes only a few small concerns could lose SBIR opportunities. If so, it is important to note that the newly eligible firms are not more competitive due to size, but differ only on the basis of organizational structure. The SBA specifically requests comments on the proposal's impact on current SBIR participants.

This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or recordkeeping requirements, other than those now required of the SBA and Federal agencies that request R&D proposals under the SBIR Program. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, the SBA has determined that this rule may have a significant economic effect on a substantial number of small entities. The SBA estimates that an additional 50 to 100 small concerns may become eligible for the SBIR Program and obtain up to \$85 million in funding agreements. Immediately below, the SBA sets forth an Initial Regulatory Flexibility Analysis (IRFA) of this rule providing the following: (1) The need for and objective of the rule; (2) a description and estimate of the number of small concerns to which the rule will apply; (3) projected reporting, recordkeeping, and other compliance requirements of the rule; (4) relevant Federal rules that may duplicate, overlap or conflict with the rule; and (5) alternatives to allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities.

(1) Need and Objective of the Rule

There are, the SBA believes, a number of concerns that are currently precluded from participating in the SBIR Program, solely because of their ownership structure. Approximately 50 to 100 SBIR awards go unawarded annually because there are no meritorious and feasible proposals from qualified concerns that could be eligible, except for the fact that they do not meet the ownership criteria to participate in the SBIR Program. Congress, with SBIDA, did not define what concerns were eligible based on ownership; it stated that the purpose of the SBIR Program is to increase the share of the Federal R&D budget awarded to small businesses. The SBA proposes to make eligible concerns that are wholly owned by other for-profit business concerns eligible for SBIR awards. If the parent concern is not