

of certain biological agents and toxins by the Department of Health and Human Services (HHS) (subtitle A, sections 201–204) and the Department of Agriculture (USDA) (subtitle B, sections 211–213), and provides for interagency coordination between the two Departments regarding overlap agents and toxins (subtitle C, section 221). For the HHS, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the USDA. CDC and APHIS list select agents and toxins in 42 CFR 73.3 and in 7 CFR 331.3 and 9 CFR 121.3, respectively. The Federal Bureau of Investigation's Criminal Justice Information Service (CJIS) conducts security risk assessments of all individuals and nongovernmental entities that request to possess, use, or transfer select agents and toxins.

The meeting announced here is an opportunity for the regulated community (*i.e.*, registered entity responsible officials, alternate responsible officials, and entity owners) and other interested individuals to obtain specific regulatory guidance and information on standards concerning biosafety and biosecurity issues related to the Federal Select Agent Program. CDC, APHIS, and CJIS representatives will be present at the meeting to address questions and concerns.

Updates on the current status of the APHIS and CDC proposed rule, general components of a personnel reliability program, pre-employment background screening, occupational health programs, BSL4 surety programs, and future responsible official training will be discussed, including panel discussions, by representatives from the Department of Homeland Security, CJIS, APHIS, CDC, and National Institutes of Health.

All attendees must register in advance. To register all persons must complete an online registration form at <http://www.selectagents.gov> and submit it by October 14, 2011. For those unable to attend in person, the workshop will be available over the Internet as a webcast.

Parking is available at the University Center for a \$5 fee. Hotel information is available on the Internet at <http://www.selectagents.gov>.

If you require special accommodations, such as a sign language interpreter, please call or write one of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 3rd day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26071 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 90

[Docket No. APHIS–2009–0091]

RIN 0579–AD24

Traceability for Livestock Moving Interstate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before December 9, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0091-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0091> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 46,

Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION: On August 11, 2011, we published in the **Federal Register** (76 FR 50082–50110, Docket No. APHIS–2009–0091) a proposal to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate.

Comments on the proposed rule were required to be received on or before November 9, 2011. We are extending the comment period on Docket No. APHIS–2009–0091 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC this 3rd day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26056 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, 127

RIN 3245–AG23

Small Business Size and Status Integrity

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend its regulations to implement provisions of the Small Business Jobs Act of 2010 (Jobs Act) pertaining to small business size and status integrity. SBA is proposing to amend its program regulations to implement statutory provisions establishing that there is a presumption of loss equal to the value of the contract or other instrument when a concern willfully seeks and receives an award by misrepresentation. SBA is proposing to amend its program regulations to implement statutory provisions that provide that the submission of an offer or application for an award intended for small business concerns will be deemed a size or status certification or representation in certain circumstances. SBA is proposing to amend its program regulations to implement statutory provisions that provide that an authorized official must sign in connection with a size or status certification or representation for a

contract or other instrument. SBA is proposing to amend its regulations to implement statutory provisions that provide that concerns that fail to update their size or status in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) at least annually shall no longer be identified in the database as small or some other socioeconomic status, until the representation is updated. Finally, SBA is proposing to amend its regulations to clarify when size is determined for purposes of entry into the 8(a) Business Development and HUBZone programs.

DATES: Comments must be received on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by RIN: 3245-AG23, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail, for paper, disk, or CD-ROM submissions: Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

- *Hand Delivery/Courier:* Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.Regulations.gov>, please submit the information to Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416, or send an e-mail to Dean.Koppel@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Office of Government Contracting, 409 Third Street SW., Washington, DC 20416; (202) 205-9751; Dean.Koppel@sba.gov.

SUPPLEMENTARY INFORMATION: On September 27, 2010, Congress amended the Small Business Act to provide that if a concern willfully seeks and receives an award by misrepresenting its small business size or other socioeconomic status, there is a presumption of loss to the United States equal to the value of the contract, subcontract, cooperative agreement, cooperative research and

development agreement or grant. The Senate Report indicates that this presumption is “irrefutable.” Senate Rep. No. 111-343, p. 8. The amendments also provide that certain actions, such as submitting an offer in response to a solicitation set aside for small business concerns, will be deemed a representation of small business size or status. The amendments require the signature of an authorized official of a concern making a small business size or status representation in connection with certain actions, such as submitting an offer. The amendments further provide that concerns must update their size and status certifications in ORCA at least annually, or the status will be lost until such time as the update is made. Finally, the amendments further provide that SBA must promulgate regulations to protect individuals and concerns from liability in cases of unintentional errors, technical malfunctions and other similar situations.

In accordance with 15 U.S.C. 632(w), SBA is proposing to amend its Size (121.108, 121.411), 8(a) (124.521), Small Disadvantaged Business (SDB) (124.1015), Service-Disabled Veteran-Owned (SDVO) (125.29), HUBZone (126.900) and Women-Owned Small Business (WOSB) (127.700) regulations to notify firms participating in those programs about the statutory presumption of loss provisions; the statutory deemed certification provisions; the statutory signature requirement in connection with offers; and the statutory limitation of liability provisions. In addition, SBA is proposing to amend its Size, SDB, SDVO, HUBZone and WOSB regulations to notify firms participating in these programs of the additional penalties for misrepresentations set forth in 15 U.S.C. § 645(d). SBA is not proposing to amend its 8(a) regulations to add this notice because 8(a) Participants are not mentioned in 15 U.S.C. 645(d).

In accordance with 15 U.S.C. 632(x), SBA is also proposing to amend its regulations to add provisions (121.109, 124.1016, 125.30, 127.701) requiring a firm to update its size, small disadvantaged business, service-disabled veteran-owned or women-owned small business status certification in federal databases at least annually, and to require that a firm that fails to certify its size or status within one year of a prior certification will no longer be listed as a firm of that size or status, until the firm recertifies its status in connection with the specific relevant size standard or eligibility requirements. SBA is not proposing to add such a requirement for purposes of the 8(a) BD

or HUBZone programs, because the Small Business Administration is responsible for providing these certification designations in federal procurement databases.

SBA’s regulations currently provide that a concern applying for certification into the 8(a) Business Development or HUBZone programs must be small for its primary industry at the time of application and “the date of certification by SBA.” 13 CFR 121.404(b). If the SBA 8(a) or HUBZone program office believes that an applicant is other than small, the SBA program office requests a formal size determination from the relevant SBA Office Government Contracting Area Office. However, SBA will not certify a firm into these programs if it believes the firm is other than small. Consequently, an issue in administrative litigation has arisen concerning what date to use to determine the firm’s size as of the “date of certification” into the program. Obviously, SBA does not want to certify a firm into one of the 8(a) or HUBZone programs in the firm is other than small for the work for which it is primarily engaged. Consequently, we are proposing to amend the size regulations to provide that for purposes of entry into these programs, a firm must be small at the date of application and the date the program office requests a formal size determination in connection with a firm that is otherwise eligible for program certification.

SBA is also proposing to update its size protest regulations to add additional methods for serving formal size determinations. The current regulation limits the notification method to certified mail, return receipt requested, or overnight delivery. In addition, SBA is proposing to remove the current requirement that SBA provide the formal size determination to all of the protested concern’s affiliates, or alleged affiliates. A concern can have hundreds of affiliates or alleged affiliates, and it is impractical and costly to provide a decision to all of these entities.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. chapter 35), and the Regulatory Flexibility Act (5. U.S.C. 601-612)

Executive Orders 12866

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA’s Regulatory Impact Analysis. This is not a major rule, however, under the

Congressional Review Act, 5 U.S.C. 80, *et seq.*

Regulatory Impact Analysis

1. *Is there a need for the regulatory action?* The proposed regulations would implement Sections 1341 and 1342 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act) which are codified at 15 U.S.C. 632(w), (x). Sections 1341 and 1342 of the Jobs Act require the Administrator to promulgate regulations implementing some of the provisions within one year of enactment.

2. *What are the potential benefits and costs of this regulatory action?* It is the declared statutory policy of the United States that small business concerns receive their fair proportion of government contracts, to spur creativity and innovation, increase employment and strengthen the industrial base. Several recent Government Accountability Office reports indicate that ineligible concerns may be receiving benefits to which they are not entitled. This in turn harms legitimate small business concerns that not only do not receive the contracts, but may be deprived of future contracting opportunities because of the attention garnered by these bad actors. The presumption of loss, deemed certification and signature requirement will make it easier to prosecute, seek damages or suspend or debar concerns and individuals that willfully misrepresent their size and socioeconomic status in order to gain a contract, subcontract, grant or cooperative agreement. The rule proposes to force concerns to update their size or status in federal procurement databases at least annually, or else the firms will lose their status in those databases. Standard contracting and grant forms will have to be amended to allow an authorized official to sign on the same page as the size or status that the firm is claiming. The Online Certification and Representation (ORCA) database will have to be programmed to automatically change the size or socioeconomic status of firms that fail to update their size or socioeconomic status at least annually. SBA believes that the potential costs associated with these changes, which are required by statute, are relatively minor and are significantly outweighed by the benefits to the integrity of small business procurement, grant and research programs and the intended beneficiaries.

3. *What are the alternatives to this final rule?* The proposed regulations are required to implement statutory

provisions. The requirements are clear, and the Jobs Act requires promulgation of regulations implementing certain portions of the Jobs Act within one year.

Executive Order 13563

The proposed regulations implement important statutory provisions intended to prevent and deter fraud and misrepresentation in small business government contracting and other programs. SBA proposes to amend all applicable parts of its regulations to put participants in those programs on notice of the penalties associated with misrepresentation, and to the extent practicable, utilize identical language in each Part. SBA is also proposing to include in each part other relevant applicable statutory provisions concerning the penalties for misrepresentation. The costs associated with these proposed rules, requiring a signature in connection with a size or status representation and requiring concerns to update online certifications annually, are minimal and required by statute. As part of its implementation of this executive order and consistent with its commitment to public participation in the rulemaking process, SBA held public meetings in 13 locations around the country to discuss implementation of the Jobs Act, and received public input from thousands of small business owners, contracting officials and large business representatives.

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(a) and 3(b)(2) of that Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government, as specified in the order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act, 44 U.S.C., Chapter 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that this rule, if adopted in final form, would not impose new reporting requirements and would not require new recordkeeping

requirements. In accordance with Federal Acquisition Regulation (FAR) §§ 4.1202, 52.204–8, 52.219–1 and 13 CFR 121.404(a), 121.411, concerns must submit paper or electronic representations or certifications in connection with prime contracts and subcontracts. The Jobs Act requires that each offeror or applicant for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. The Jobs Act mandates that an authorized official must sign the certification on the same page containing the size and status claimed by the concern. Offerors are already required to sign their offers, bids or quotes (Standard Forms 18, 30, 33, 1449), so this provision does not create new reporting or recordkeeping requirements.

Regulatory Flexibility Act

SBA has determined that this proposed rule, if adopted in final form, 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. 601–612. Therefore, SBA has prepared an Initial Regulatory Flexibility Act (IRFA) analysis addressing the proposed regulation.

IRFA

When preparing a Regulatory Flexibility Analysis, an agency shall address all of the following: a description of why the action by the agency is being considered; the objectives and legal basis of the rule; the estimated number of small entities to which the rule may apply; a description of the projected reporting, recordkeeping and other compliance requirements; identification of all Federal rules which may duplicate, overlap or conflict with the proposed rule; and a description of significant alternatives which minimize any significant economic impact on small entities. This IRFA considers these points and the impact the proposed regulation concerning small business size and status integrity may have on small entities.

(a) Need for, Objectives, and Legal Basis of the Rule

The proposed regulatory amendments implement Sections 1341 and 1342 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 632(w), (x). The purpose of the statute and implementing regulations is to prevent or deter firms from

misrepresenting their size or socioeconomic status.

(b) Estimate of the Number of Small Entities to Which the Rule May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that may be affected by the proposed rules, if adopted. The RFA defines “small entity” to include “small businesses,” “small organizations,” and “small governmental jurisdictions.” SBA’s programs do not apply to “small organizations” or “small governmental jurisdictions” because they are non-profit or governmental entities and do not generally qualify as “business concerns” within the meaning of SBA’s regulations. SBA’s programs generally apply only to for-profit business concerns. Therefore, the proposed regulation will not impact small organizations or small governmental jurisdictions.

In fiscal year 2010, there were approximately 3.35 million small business contract actions. The proposed regulations concerning presumption of loss will only impact small business concerns that misrepresent their size or status in connection with a contract, subcontract, cooperative agreement, cooperative research and development agreement or grant in such a way that criminal prosecution or other action is taken by the Government. In fiscal year 2010, SBA found approximately 200 firms to be ineligible for a contract (14 HUBZone, 33 Service-Disabled Veteran-Owned, 151 size). Not all of these firms would be criminally prosecuted or have others actions taken against them. Thus, the proposed regulation concerning presumption of loss will impact very few concerns, and some of these concerns are not actually small.

There are approximately 348,000 concerns listed as small business concerns in the Dynamic Small Business Search (DSBS) database. The proposed regulations concerning deemed certifications and the requirement for a signature would apply to all of these concerns, to the extent the concerns submit an offer for a prime contract that is set aside for small business concerns. In addition, there are small business concerns that are not registered in the DSBS database that submit offers or responses for grants, subcontracts, and other agreements. The annual certification requirement would apply to all of the 348,000 firms registered in the DSBS database.

(c) Projected Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule would not impose a new information collection, recordkeeping or compliance requirement on small businesses. A firm’s size or socioeconomic status is generally based on records that it already possesses, such as payroll records and annual tax returns. Firms currently must represent their size or status in connection with contracts and subcontracts, either electronically or in paper form. FAR §§ 4.1202, 52.204–8, 52.219–1 and 13 CFR 121.404(a), 121.411. The proposed rule requires an authorized official to sign on the page containing a concern’s size or status representation. Offerors are generally required to sign their offers (*e.g.*, Standard Forms 26, 33, 1447, 1449), so the burden on small business concerns to also sign their size or status representation or certification will be minimal.

(d) Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

Although firms registered in ORCA are supposed to update their certifications and representations on an annual basis (FAR § 4.1201(b)(1)), Section 1342 of the Jobs Act requires that firms that fail to meet the annual certification or representation requirement shall lose their status as small or some other socioeconomic category in the database until such time as the firm updates its size or socioeconomic status. The requirement to have an authorized official sign in connection with the firm’s size or status will be implemented in the Federal Acquisition Regulation and will have to be harmonized with current ORCA requirements as well as electronic commerce and electronic signature rules. However, firms currently must sign offers in many cases (*e.g.*, Standard Forms 26, 33 1447, and 1449).

(e) Significant Alternatives to the Rule Which Could Minimize Impact on Small Entities

The proposed regulations implement Sections 1341 and 1342 of the Jobs Act. The proposed regulations are directed at small business concerns seeking government contracts, subcontracts, grants, and cooperative agreements. The proposed rules are intended to prevent or deter firms from misrepresenting their size or socioeconomic status. The impact on firms that accurately represent their size or status will be minimal. An authorized official will have to sign an offer where the firm

represents its size and status, but authorized officials already have to sign offers. Firms will have to update their size and socioeconomic status in ORCA at least annually, but that is already required. FAR § 4.1201(b)(1). The proposed rule gives firms incentive to update their size or status in ORCA, and ensures that firms that do not update their size or status will no longer be listed as having small or socioeconomic status, unless or until the firms update their status.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Reporting and recordkeeping requirements, and Small Businesses.

13 CFR Part 124

Administrative practice and procedure, Minority businesses, Reporting and recordkeeping requirements, and Technical assistance.

13 CFR Part 125

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

13 CFR Part 126

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements and Small businesses.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, and Small businesses.

For the reasons stated in the preamble, SBA proposes to amend parts 121, 124, 125, 126 and 127 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. Amend § 121.108 by revising section heading and adding paragraphs (a) through (e) to read as follows:

§ 121.108 What are the requirements for representing small business size status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise

classified as intended for award to small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of size was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation*

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concern are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

3. Add new § 121.109 to read as follows:

§ 121.109 What Must a Concern do in order to be Identified as a Small Business Concern in any Federal procurement databases?

(a) In order to be identified as a small business concern in the Online Representations and Certifications Application (ORCA) database (or any successor thereto), a concern must certify its size in connection with specific size standards at least annually.

(b) If a firm identified as a small business concern in ORCA fails to certify its size within one year of a size certification, the firm will not be listed as a small business concern in ORCA, unless and until the firm recertifies its size.

4. Amend § 121.404(b) by removing “date of certification by SBA” and adding in its place “date the SBA program office requests a formal size determination in connection with a concern that is otherwise eligible for program certification.”

5. Amend § 121.411 by adding new paragraphs (d), through (i) to read as follows:

§ 121.411 What are the size procedures for SBA's section 8(d) Subcontracting Program?

* * * * *

(d) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(e) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(f) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(g) *Limitation of Liability.* Paragraphs (d)–(f) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of size was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid

representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(h) Additional Penalties for Misrepresentation.

(1) *Suspension or debarment.* The SBA debarbing official or the agency debarbing official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concern are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

6. Amend § 121.1009 by revising paragraph (f) to read as follows:

§ 121.1009 What are the procedures for making size determinations?

* * * * *

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protester, and the protested concern. SBA will send the notification by verifiable means, which may include facsimile, electronic mail, or overnight delivery service.

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PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

7. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 632, 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d); and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

8. Add new § 124.521 to read as follows:

§ 124.521 What are the requirements for representing 8(a) status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to 8(a) Participants, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than an 8(a) Participant willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of 8(a) status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to 8(a) Participants.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to an 8(a) Participant.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as an 8(a) Participant.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the 8(a) status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the 8(a) status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of 8(a) status was not affirmative, intentional or willful. Consideration shall be given to the firm’s internal management procedures governing 8(a) representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to

correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

9. Add new § 124.1015 to read as follows:

§ 124.1015 What are the requirements for representing small disadvantaged business status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small disadvantaged business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small disadvantaged business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small disadvantaged business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small disadvantaged business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small disadvantaged business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small disadvantaged business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small disadvantaged business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page

containing the small disadvantaged status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of size was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing SDB representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA debaring official or the agency debaring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small disadvantaged business status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

10. Add new § 124.1016 to read as follows:

§ 124.1016 What must a concern do in order to be identified as a Small Disadvantaged Business Concern in any Federal procurement databases?

(a) In order to be identified as a small disadvantaged business concern in the Online Representations and Certifications Application (ORCA) database, (or any successor thereto) a concern must certify its small disadvantaged business status in

connection with specific eligibility requirements at least annually.

(b) If a firm identified as a small disadvantaged business concern in ORCA fails to certify its status within one year of a status certification, the firm will not be listed as a small disadvantaged business concern in ORCA, unless and until the firm recertifies its small disadvantaged business status.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

11. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637, 644 and 657f.

12. Amend § 125.29 by

- a. Revising the section heading;
- b. Revising paragraphs (a) through (c); and
- c. Adding new paragraphs (d) through (e) to read as follows:

§ 125.29 What are the requirements for representing service-disabled veteran-owned small business status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to service-disabled veteran-owned small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a service-disabled veteran-owned small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of service-disabled veteran-owned small business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to service-disabled veteran-owned small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a service-

disabled veteran-owned small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small disadvantaged business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the service-disabled veteran-owned small business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the service-disabled veteran-owned small business status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of service-disabled veteran-owned small business status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing SDVO SBC representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA debaring official or the agency debaring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the service-disabled veteran-owned status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns are subject to criminal penalties for knowingly making false statements or

misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

13. Add new § 125.30 to read as follows:

§ 125.30 What must a concern do in order to be identified as a Service-Disabled Veteran-Owned Small Business concern in any Federal procurement databases?

(a) In order to be identified as a Service-Disabled Veteran-Owned business concern in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) a concern must certify its Service-Disabled Veteran-Owned small business status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a Service-Disabled Veteran-Owned small business concern in ORCA fails to certify its status within one year of a status certification, the firm will not be listed as a Service-Disabled Veteran-Owned small business concern in ORCA, unless and until the firm recertifies its Service-Disabled Veteran-Owned status.

PART 126—HUBZONE PROGRAM

14. The authority citation for part 126 is revised to read as follows:

Authority: 15 U.S.C. 632 and 657(a).

15. Amend § 126.900 by:

- a. Revising the section heading;
- b. Revising paragraphs (a)–(c); and
- c. Adding new paragraphs (d)–(e) to read as follows:

§ 126.900 What are the requirements for representing HUBZone status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to HUBZone small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a HUBZone small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed

affirmative, willful and intentional certifications of HUBZone small business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to HUBZone small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a HUBZone small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a HUBZone small business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the HUBZone small business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the HUBZone status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of HUBZone status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing HUBZone SBC representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation*

(1) *Suspension or debarment.* The SBA debarbing official or the agency debarbing official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program

Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

16. The authority citation for part 127 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

17. Amend § 127.700 by:

- a. Revising the section heading;
- b. Revising paragraphs (a)–(c); and
- c. Adding new paragraphs (d)–(e):

§ 127.700 What are the requirements for representing women-owned small business or economically disadvantaged women-owned small business status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to women-owned small business concerns or economically disadvantaged women-owned small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a women-owned small business concern or economically disadvantaged women-owned small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of women-owned small business or economically disadvantaged women-owned small business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract,

cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to women-owned small business concerns or economically disadvantaged women-owned small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a women-owned small business concern or economically disadvantaged women-owned small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a women-owned small business concern or economically disadvantaged women-owned small business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the women-owned small business or economically disadvantaged women-owned small business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the women-owned small business or economically disadvantaged women-owned small business status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of women-owned small business or economically disadvantaged women-owned small business status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing WOSB representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA debaring official or the agency debaring official may suspend or debar a person or concern for

misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the women-owned status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concern are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

18. Add new § 127.701 to read as follows:

§ 127.701 What must a concern do in order to be identified as a Women-Owned Small Business concern in any Federal procurement databases?

(a) In order to be identified as a Women-Owned business concern in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) a concern must certify its Women-Owned small business status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a Women-Owned small business concern in ORCA fails to certify its status within one year of a status certification, the firm will not be listed as a Women-Owned small business concern in ORCA, unless and until the firm recertifies its Women-Owned status.

Dated: September 26, 2011.

Karen G. Mills,
Administrator.

[FR Doc. 2011–25656 Filed 10–6–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Aviation Communication & Surveillance Systems (ACSS) Traffic Alert and Collision Avoidance System (TCAS) Units

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Aviation Communication & Surveillance Systems (ACSS) traffic alert and collision avoidance system (TCAS) units installed on but not limited to various transport and small airplanes. That NPRM proposed to require upgrading software. That NPRM was prompted by reports of anomalies with TCAS units during a flight test over a high density airport. The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. This action revises that NPRM by proposing to require new updated software for certain TCAS units. We are proposing this supplemental NPRM to correct the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by November 7, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590,