

**SMALL BUSINESS ADMINISTRATION****13 CFR Parts 115, 121, 125, and 126**

RIN 3245-AG38

**Small Business HUBZone Program;  
Government Contracting Programs****AGENCY:** U.S. Small Business Administration.**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) proposes to amend its regulations for the Historically Underutilized Business Zone (HUBZone) Program to reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies, implement new statutory provisions, and eliminate ambiguities in the regulations. SBA has reviewed all of its HUBZone regulations and is proposing a comprehensive revision to the HUBZone Program to clarify current HUBZone Program policies and procedures and to make changes that will benefit the small business community by making the HUBZone Program more efficient and effective. The proposed amendments are intended to make it easier for small business concerns to understand and comply with the program's requirements and to make the HUBZone program a more attractive avenue for procuring agencies.

**DATES:** Comments must be received on or before December 31, 2018.**ADDRESSES:** You may submit comments, identified by RIN 3245-AG38, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail (for paper, disk, or CD-ROM submissions):* Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted 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 comments to Mariana Pardo and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

**FOR FURTHER INFORMATION CONTACT:** Mariana Pardo, Director, Office ofHUBZone (D/HUB), 202-205-2985 or [hubzone@sba.gov](mailto:hubzone@sba.gov).

**SUPPLEMENTARY INFORMATION:** On January 30, 2017, President Trump issued Executive Order 13771 directing federal departments and agencies to reduce regulatory burdens and control regulatory costs. In response to this directive, SBA initiated a review of all of its regulations to determine which might be revised or eliminated. This proposed rule would implement revisions to the HUBZone program. The HUBZone program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Public Law 105-135, enacted December 2, 1997. The stated purpose of the HUBZone program is to provide for Federal contracting assistance to HUBZone small business concerns. 15 U.S.C. 657a(a).

In general, HUBZone small business concerns are those that have a principal place of business located in a HUBZone and 35 percent of their employees residing in one or more HUBZones. After SBA certifies eligible businesses into the program, they become eligible for HUBZone contracting preferences. HUBZone areas are generally defined as areas with low income levels, high poverty and unemployment rates, Indian reservations, closed military bases, or disaster areas.

SBA has not issued a comprehensive regulatory amendment to the HUBZone program since the program's initial implementation nearly twenty years ago, although SBA has issued numerous smaller amendments to the HUBZone Program to implement specific changes in 1998, 2001, 2004, 2005, 2007, 2009, 2013, and 2016. As such, SBA's review of the HUBZone program in response to President Trump's directive highlighted several areas that needed revision. This proposed rule would clarify and modify a number of the regulations implementing the program to update the rules to reflect SBA's current policies, to eliminate ambiguities in the regulations, and to reduce burdens on small businesses and procuring agencies.

As part of this proposed rulemaking process, SBA also held tribal consultations pursuant to Executive Order 13175, Tribal Consultations, in Anchorage, AK, Albuquerque, NM, and Oklahoma City, OK to provide interested tribal representatives with an opportunity to discuss their views on various HUBZone-related issues. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that these tribal consultation meetings allowed for

constructive dialogue with the Tribal community, Tribal Leaders, Tribal Elders, elected members of Alaska Native Villages or their appointed representatives, and principals of tribally-owned and Alaska Native Corporations (ANC) owned firms participating in the HUBZone program. SBA has taken these discussions into account in drafting this proposed rule.

In addition, SBA is proposing to implement section 1701(i) of the National Defense Authorization Act for Fiscal Year 2018 (NDAA 2018), Public Law 115-91, Dec. 12, 2017, which allows certain certified HUBZone small business concerns to maintain their HUBZone status until 2021, by amending the definition of "HUBZone small business concern."

The major challenge with the HUBZone program over the last two decades is the lack of stability and predictability for program participants. HUBZones change at different times based on economic data. Once certified, it is unrealistic to expect a business concern, or employee, to relocate in order to attempt to maintain the concern's HUBZone status when the area where the business is located or the employee resides loses its HUBZone status. This rule proposes changes that will help the HUBZone program achieve its intended results—investment in communities and continued employment. First, the rule proposes to treat an individual as a HUBZone resident if that individual worked for the firm and resided in a HUBZone at the time the concern was certified or recertified as a HUBZone small business concern and he or she continues to work for that same firm, even if the area where the individual lives no longer qualifies as a HUBZone or the individual has moved to a non-HUBZone area. Second, the proposed rule would eliminate the burden on HUBZone small businesses to continually demonstrate that they meet all eligibility requirements at the time of each offer and award for any HUBZone contract opportunity. It is hard for many firms to meet the requirement that at least 35% of the firm's employees must live in a HUBZone. Firms with a significant number of employees have a hard time meeting this requirement because it is often difficult to find a large number of individuals living in a HUBZone who possess the necessary qualifications. Smaller firms also have a hard time meeting this requirement because the loss of one employee could adversely affect their HUBZone eligibility. If a certified HUBZone small business receives a Federal contract (HUBZone or otherwise), it often must

hire additional employees to perform the contract and would lose its status as a certified HUBZone small business if it no longer meets the requirement that at least 35% of its employees reside in a HUBZone. This makes it ineligible for any future HUBZone contracts. The 35% HUBZone residency requirement also makes it hard for service contractors to perform contracts in other locations. For example, if a firm wins a contract in another state, it would most likely need to hire additional employees from that state. If there is no HUBZone near that location, the firm would have to hire non-HUBZone residents to perform the contract, which would most likely make it ineligible for future HUBZone contracts. To alleviate these problems, the proposed rule would require only annual recertification rather than immediate recertification at the time of every offer for a HUBZone contract award. This reduced burden on certified HUBZone small businesses would allow a firm to remain eligible for future HUBZone contracts for an entire year, without requiring it to demonstrate that it continues to meet all HUBZone eligibility requirements at the time it submits an offer for each additional HUBZone opportunity. A concern would represent that it is a certified HUBZone small business concern at the time of each offer, but its eligibility would relate back to the date of its certification or recertification, not to the date of the offer. The concern would be required to come into compliance with the 35% HUBZone residency requirement again at the time of its annual recertification in order to continue to be eligible for additional HUBZone contracts after the one-year certification period. During the tribal consultation process, SBA also received a few comments recommending that SBA count "seasonal" employees in a firm's count of total employees for purposes of determining whether it meets the 35% HUBZone residency requirement even if those individuals are currently employed by the firm. SBA is concerned that counting any individuals who are not currently on a firm's payroll (in the anticipation that they will again be employed by the firm at some point) would allow firms to circumvent the 35% residency requirement and subject the program to abuse. SBA requests comments on whether seasonal employees can or should be counted and still maintain the integrity of the eligibility requirements.

SBA addresses each proposed amendment below.

## II. Section-by-Section Analysis

### 1. Definitions

SBA has reviewed the current definitions set forth in 13 CFR 126.103 and has determined that several definitions need to be revised, added, or eliminated to remove ambiguities and make the HUBZone program easier for firms to use.

SBA proposes to delete the definitions of "Alaska Native Village" and "ANGSA" (*i.e.*, Alaska Native Claims Settlement Act) and incorporate those terms in an amended definition of "Alaska Native Corporation (ANC)" to make the regulations more readable.

SBA proposes to amend the definition of "attempt to maintain" to clarify what happens if a HUBZone small business concern's HUBZone residency percentage drops too low. The Small Business Act provides that a HUBZone small business concern must "attempt to maintain" compliance with the 35% employee HUBZone residency requirement during the performance of a HUBZone contract. 15 U.S.C. 632(p)(5)(A)(i)(II). This statutory requirement seeks to ensure that funds from HUBZone contracts flow to HUBZone areas and the residents of those areas, while at the same time recognizing that a HUBZone small business may need to hire additional employees in order to fully meet the terms of a contract. Under the "attempt to maintain" requirement, when hiring additional employees to perform on a HUBZone contract, the HUBZone small business must make efforts to hire HUBZone residents in order to try to maintain compliance with the 35% HUBZone residency requirement. The current regulation provides that "attempt to maintain" means "making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs." 13 CFR 126.103. SBA believes it is necessary to clarify that if the HUBZone residency percentage drops too low, then SBA will find that the HUBZone small business has not made its best efforts to "attempt to maintain" compliance with this requirement. Therefore, SBA is proposing to amend this definition to add that falling below 20% HUBZone residency during the performance of a HUBZone contract will be deemed a failure to attempt to maintain compliance with the statutory 35% HUBZone residency requirement. In such a case, SBA would propose that the concern be decertified from the HUBZone program. The concern would then have the opportunity to demonstrate that it in fact continues to

have at least 20% HUBZone employees and that it continues to attempt to hire additional HUBZone residents in order to reach 35%. SBA does not intend to require that employees be hired in any particular order (*i.e.*, in an order that ensures that at any moment in time, at least 20% of its total employees reside in a HUBZone), but merely that it always have at least 20% HUBZone employees once the hiring for contract performance is complete (and continues to attempt to hire more HUBZone employees). For example, if a certified HUBZone small business has 4 employees, 2 of which reside in a HUBZone, and wins a contract where it will be required to hire an additional 11 employees to perform the contract, SBA would not propose decertification if the first 8 new hires were non-HUBZone residents (meaning that for a time, only 2 employees out of 12 would be HUBZone residents, which is less than 20% of the firm's total employees), as long as the firm makes documented efforts to hire HUBZone residents and at least 1 of the remaining individuals hired to perform the contract lives in a HUBZone (*i.e.*, after hiring is complete, the firm employs 3 HUBZone residents out of a total of 15 employees, which equals 20%, thus allowing the firm to be deemed to have attempted to maintain the 35% HUBZone resident requirement). Of course, SBA would not believe that a firm truly attempted to maintain the 35% HUBZone resident requirement if it hired one HUBZone resident (in the example above, if it hired the third HUBZone resident in total, or first of the 11 supposedly hired to perform the newly awarded contract) one day before its annual HUBZone eligibility review and that individual really had no input in contract performance. Thus, considering SBA's desire not to insert itself into a firm's business decisions in hiring individuals to perform a HUBZone contract and its responsibility to ensure that additional HUBZone employees are in fact hired to perform the contract and that the overall purposes of the program are served, SBA requests comments on how best to look at this 20% minimum requirement. SBA also believes that a lower percentage (*i.e.*, allowing less than 20% HUBZone residents) would unreasonably diminish the impact of the program on the targeted areas and populations. However, SBA requests comments as to whether a different percentage is also reasonable and would accomplish the objectives of the HUBZone program while not unduly burdening firms performing HUBZone contracts.

SBA proposes to eliminate the definition of “county unemployment rate” and incorporate it into the definition of “qualified non-metropolitan county (QNMC),” as discussed further below.

The proposed rule would amend the definition of “D/HUB” to make clear that this term refers to the Director of SBA’s Office of HUBZone.

SBA proposes to amend the definition of “decertify” to clarify that the decertification procedures described in part 126 are applicable to firms which voluntarily withdraw from the HUBZone program. If a certified HUBZone small business concern is unable to recertify its HUBZone eligibility at the time of its annual recertification, or if it acquires, is acquired by, or merges with another concern and no longer meets the HUBZone eligibility requirements, it should submit a request to SBA to voluntarily withdraw. Upon receipt of such request, SBA will remove the firm as a certified HUBZone small business concern from the Dynamic Small Business Search (DSBS) system.

SBA proposes to amend the definition of the term “employee.” This term is key to the HUBZone program since the basic HUBZone eligibility requirements for a small business are to have at least 35% of its employees residing in a HUBZone and to have a principal office located in a HUBZone. SBA believes that a clarification is necessary because the existing definition’s language—“a minimum of 40 hours per month”—is ambiguous. The proposed rule would explain that an individual is an employee if he or she works at least 40 hours during the four-week period immediately prior to the relevant date—either the date the concern submits its HUBZone application to SBA or the date of recertification. SBA will review a firm’s payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. If the firm has weekly pay periods, then SBA will review the payroll records for the most recently completed last four pay periods. If the firm has two-week pay periods, then SBA will review the payroll records for the last two most recently completed pay periods. If the payroll records demonstrate that an individual worked forty or more hours during that four-week period, he or she would be considered an employee of the concern. Additionally, SBA is considering revising the requirement from 40 hours per month to 20 hours

per week, due to concerns that the 40 hours per month requirement is not sufficient to stimulate employment in HUBZones. Considering the purpose of the HUBZone program to stimulate meaningful employment in communities with high unemployment, SBA specifically requests comments on the number of hours SBA should require in order to count an individual as an employee of the firm for HUBZone eligibility purposes.

The proposed definition of “employee” continues to specify that employees include temporary and leased employees, individuals obtained through a union agreement, and those co-employed through a professional employer organization (PEO) agreement. To further respond to the number of hours an individual must work in order to be considered an employee of the firm, SBA also requests comments on whether SBA should count only full-time employees or full-time equivalents.

The proposed definition clarifies that all owners of a HUBZone applicant or HUBZone small business who work at least 40 hours per month will be considered employees, regardless of whether they receive compensation. This current interpretation responds to situations where the counting of one individual (*i.e.*, a non-HUBZone resident owner who works at the firm but does not collect a direct salary and claims not to be an employee) would render the firm ineligible for HUBZone participation. SBA believes that any time an owner works at least 40 hours per month for the concern, he or she should be counted as an employee. In addition, the proposed definition adds that if the sole owner of a firm works less than 40 hours during the four-week period immediately prior to the relevant date of review, but has not hired another individual to direct the actions of the concern’s employees, then that owner will be considered an employee as well.

The proposed definition clarifies that individuals who do not receive compensation and those who receive deferred compensation are generally not considered employees. The proposed definition further clarifies that individuals who receive in-kind compensation commensurate with the work performed will be considered employees. This means that an individual who works at least 40 hours per month and receives in-kind compensation equaling the value of 10 working hours would generally not be considered an employee. SBA believes these clarifications are needed because there has been confusion about whether someone who receives in-kind compensation should be considered an

employee, about what SBA considers in-kind compensation, and about what deferred compensation means. In general, in-kind compensation is non-monetary compensation, or anything other than cash, wages, salary or other monetary benefit received in exchange for work performed. An example of in-kind compensation is housing received in exchange for work performed. SBA generally treats individuals receiving in-kind compensation as employees because they are receiving an economic benefit from working for the firm, which is consistent with the purposes of the HUBZone program. In a previous proposed rule amending the definition of “employee” to address in-kind compensation, SBA explained: “SBA intended the term compensation to be read broadly and to encompass more than wages. Thus, a person who receives food, housing, or other non-monetary compensation in exchange for work performed would not be considered a volunteer under that proposed regulation. SBA believes that allowing volunteers to be counted as employees would not fulfill the purpose of the HUBZone Act—job creation and economic growth in underutilized communities.” 67 FR 3826 (Jan. 28, 2002). SBA requests comments on whether it is reasonable to continue treating in-kind compensation this way, and on how to measure whether in-kind compensation is commensurate with work performed. There has also been some confusion surrounding SBA’s treatment of deferred compensation. In general, deferred compensation means compensation that is not received at the time it is earned, but is received sometime in the future. SBA does not treat individuals receiving deferred compensation as employees for HUBZone purposes because such individuals are not receiving a present economic benefit from working for the firm, which is not consistent with the purpose of the HUBZone program. The Court of Federal Claims has found this policy to be reasonable. In *Aeolus Systems, LLC v. United States*, 79 Fed. Cl. 1, 9 (2007), the Court held that: “(1) the concept of deferred compensation is contrary to the program’s goal of increasing gainful employment in HUBZones, and (2) the identification of non-owner individuals who work for deferred compensation as ‘employees’ would open up the HUBZone program to potential abuse.”

The proposed definition also clarifies that independent contractors who receive compensation through Internal Revenue Service (IRS) Form 1099 generally are not considered employees,

as long as such individuals are not considered to be employees for size purposes under SBA's Size Policy Statement No. 1. SBA believes that it would not make sense to find an individual to be an employee of a firm when determining the concern's size, but to then not consider that same individual to be an employee when determining compliance with HUBZone eligibility rules. If an independent contractor meets the employee test under SBA Size Policy Statement No. 1, such individual should also be considered an employee for HUBZone eligibility purposes. If someone is truly acting as an independent contractor, that individual is acting as a subcontractor, not an employee. Such an individual does not receive the same benefits as an employee, but is also not under the same control as an employee. The proposed rule also clarifies that subcontractors are not considered employees when determining compliance with the HUBZone eligibility rules.

Additionally, the proposed definition states that employees of affiliates may be counted as employees of a HUBZone applicant or certified HUBZone small business concern, if the totality of circumstances demonstrates that there is no clear line of fracture between the concerns. This has always been SBA's policy and this amendment is intended to eliminate ambiguities in the regulation. When looking at the totality of circumstances to determine whether individuals are employees of a concern, SBA will review all information, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1. This means that SBA will consider the employees of an affiliate firm as employees of the HUBZone small business if there is no clear line of fracture between the business concerns in question, the employees are in fact shared, or there is evidence of intentional subterfuge. When determining whether there is a clear line of fracture, SBA will review, among other criteria, whether the firms: Operate in the same or similar line of business; operate in the same geographic location; share office space or equipment; share any employees; share payroll or other administrative or support services; share or have similar websites or email addresses; share telephone lines or facsimile machines; have entered into agreements together (e.g., subcontracting, teaming, joint venture, or leasing agreements) or otherwise use each other's services;

share customers; have similar names; have key employees participating in each other's business decisions; or have hired each other's former employees. For example, if John Smith owns 100% of Company A and 51% of Company B, the two companies are affiliated under SBA's size regulations based on common ownership. Thus, SBA would look at the totality of circumstances to determine whether it would be reasonable to treat the employees of Company B as employees of Company A for HUBZone program purposes. If both companies do construction work and share office space and equipment, then SBA would find that there is not a clear line of fracture between the firms, and would treat the employees of Company B as employees of Company A for HUBZone program purposes. This means that the employees of Company B would be counted in determining Company A's compliance with the 35% HUBZone residency requirement and the principal office requirement. Conversely, SBA would not treat the employees of one company as employees of another for HUBZone program purposes if the two firms would not be considered affiliates for size purposes. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of one concern as employees of another for HUBZone program purposes only where SBA first determines that the two firms should be considered affiliates for size purposes.

SBA specifically requests comments on these proposed changes to the definition of "employee." SBA also requests comments on how SBA should treat individuals who are employed through an agreement with a third-party business that specializes in providing HUBZone resident employees to prospective HUBZone small business concerns for the specific purpose of achieving and maintaining HUBZone eligibility. For example, one individual could work 10 hours per month for four separate businesses and be counted as a HUBZone resident employee for each of those businesses. SBA has seen this arrangement several times in recent years and requests public input on whether such an arrangement is consistent with the purposes of the HUBZone program and/or how such arrangements should be structured in order to be consistent with such purposes.

SBA proposes to revise the definition of "HUBZone small business concern" to remove ambiguities in the regulation. Currently, the definition of this term is copied directly from the Small Business Act and addresses only the ownership

and control requirements. SBA proposes to revise the definition to state that "HUBZone small business concern" or "certified HUBZone small business concern" means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for federal contracting assistance under the HUBZone program. In addition, SBA proposes to replace the term "qualified HUBZone SBC" with the term "certified HUBZone small business concern" to make the regulations more clear, since firms must apply to SBA and be certified as HUBZone small business concerns before they can qualify to receive the benefits of the HUBZone program. Accordingly, this rule proposes to remove the phrase "qualified HUBZone SBC" or "qualified HUBZone small business concern" everywhere it appears in SBA's regulations and replace it with "certified HUBZone small business concern."

In addition, SBA proposes to implement section 1701(i) of the NDAA 2018 in the amended definition of "HUBZone small business concern." The NDAA 2018 was enacted on December 12, 2017. Section 1701 of the act makes a number of amendments to sections 3(p) and 31 of the Small Business Act, 15 U.S.C. 632(p), 657a, which govern the HUBZone program. Most of these changes are not effective until January 1, 2020, with the exception of the provision contained in section 1701(i). In enacting section 1701(i), Congress intended for small businesses located in redesignated areas that are set to expire to retain their HUBZone eligibility until the date on which SBA updates the HUBZone maps in accordance with the broader changes described in section 1701. In other words, firms that were certified HUBZone small business concerns as of the date of enactment (December 12, 2017), and that had principal offices located in redesignated areas set to expire prior to January 1, 2020, shall remain certified HUBZone small business concerns until SBA updates the HUBZone maps after the 2020 decennial census, so long as all other HUBZone eligibility requirements described in § 126.200 are met. This means that in order to continue to be considered a certified HUBZone small business concern, the firm must: Continue to meet the HUBZone ownership and control requirements; continue to meet the 35% HUBZone residency requirement; and maintain its principal office in the redesignated area or another qualified HUBZone. SBA

notes that to implement this change, SBA will “freeze” the HUBZone maps with respect to qualified census tracts, qualified non-metropolitan counties, and redesignated areas. As a result, for all redesignated areas in existence on December 12, 2017, the expiration of their HUBZone treatment has been extended until December 31, 2021. SBA selected this date because SBA estimates that the HUBZone maps will have been updated to incorporate the results of the 2020 census and to reflect the broad changes mandated by section 1701 by that time, and selecting a specific date provides stability to program participants. With respect to the 35% residency requirement, SBA notes that an employee of a certified HUBZone small business concern who resided in a redesignated area as of December 12, 2017, will continue to be treated as a HUBZone resident through December 31, 2021.

SBA proposes to eliminate the definition of “median household income” and incorporate it into the definition of “qualified non-metropolitan county,” to make the regulations more readable and to clarify that SBA obtains the data on median household income from the Bureau of the Census’ publication titled, “American Community Survey 5-year estimates.”

SBA also proposes to remove the definition of “non-metropolitan” and incorporate it into the definition of “qualified non-metropolitan county” to make the regulations more clear and explain that the term “non-metropolitan” is defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics.

SBA proposes to remove the definition of “metropolitan statistical area” and incorporate it into the definitions of the terms “qualified census tract” and “qualified non-metropolitan county” to make the regulations more readable.

SBA proposes to add a definition for “primary industry classification” that refers to SBA’s definition of such term in 13 CFR 121.107. To be certified into the HUBZone program, an applicant must be small, which means it must meet the size standard corresponding to the North American Industry Classification System (NAICS) code associated with its primary industry classification.

SBA proposes to amend the definition of “principal office” to eliminate ambiguities in the regulation. SBA proposes to clarify that when determining whether a concern’s

principal office is located in a HUBZone. SBA counts all employees of the concern, other than those employees who work at jobsites. This includes both HUBZone residents and non-HUBZone residents. SBA is proposing this clarification because some applicants have been under the mistaken impression that only HUBZone resident employees are counted for purposes of determining a firm’s principal office, but this is not and has never been SBA’s intent. In addition, SBA proposes to add that in order for a location to be considered a concern’s principal office, the concern must demonstrate that it conducts business at this location. SBA has included this clarification to address situations such as when firms are only able to provide a lease document but not utility bills. SBA believes that evidence that business is being conducted at the location is necessary to ensure the purposes of the HUBZone Program are being fulfilled. Finally, SBA proposes to add examples to the definition of principal office, to illustrate how the agency treats situations in which employees work at multiple locations. The first example provides that if an employee spends more than 50% of his or her time at one location, the employee is deemed to work at that location. If the employee does not spend more than 50% of his or her time at any one location, then generally the employee will be deemed to work at a non-HUBZone location (assuming all locations are not in HUBZones). SBA specifically requests comments on these proposed changes.

SBA proposes to amend the definition of “qualified base closure area” to remove ambiguities in the regulation and to be consistent with SBA’s interpretation of the statutory text. In paragraph (1)(i) of the definition, SBA proposes to replace the language “The date the Administrator makes a final determination as to whether or not to implement the applicable designations in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area” with “the date on which the results of the decennial census conducted after the area was initially designated as a base closure area are released.” In paragraph (2), SBA proposes to replace the language “until such time as the Administrator makes a final determination as to whether or not to implement the applicable designations in accordance with the results of the 2020 decennial census are released” with “until the results of the 2020 decennial census are released.” SBA believes these changes are needed

to make clear that SBA interprets “the date the Administrator makes a final determination as to whether or not to implement the applicable designations” to mean the date that the public data is released.

SBA proposes to amend the definition of “qualified census tract” to make the regulation more readable. The proposed definition provides the criteria used to define the term in the Internal Revenue Code, rather than simply cross-referencing it as the regulation currently does.

SBA proposes to eliminate the definition of “qualified HUBZone SBC,” as discussed above.

SBA proposes to amend the definition of “qualified non-metropolitan county” to include Difficult Development Areas (DDAs) and to reflect SBA’s current policy of utilizing the most recent data from the Local Area Unemployment Statistics report, which is annually produced by the Department of Labor’s Bureau of Labor and Statistics. The proposed definition explains that a DDA is an area defined by the Department of Housing and Urban Development that is within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous states. DDAs may be HUBZones if they are also nonmetropolitan counties. SBA notes that it has been including qualified non-metropolitan counties that are DDAs in its program since the statutory authority was enacted, but had not yet amended the term qualified non-metropolitan county to include DDAs.

SBA proposes to amend the definition of “redesignated area” to delete an obsolete reference to the 2010 census. SBA proposes to define “redesignated area” as a census tract or non-metropolitan county that remains qualified as a HUBZone for 3 years after the date on which the area ceased to be either a qualified census tract or a qualified non-metropolitan county.

The proposed rule would also amend the definition of “reside.” This term is used when analyzing whether an employee should be considered a HUBZone resident for purposes of determining a firm’s compliance with the 35% HUBZone residency requirement. SBA proposes to remove the reference to primary residence, to eliminate the requirement that an individual demonstrate the intent to live somewhere indefinitely, and to provide clarifying examples. SBA proposes to remove the reference to primary residence because many individuals do not have primary residences as the term is traditionally defined. SBA proposes to remove the requirement to prove intent to live somewhere indefinitely

because SBA does not have a reasonably reliable method of enforcing this requirement. In the alternative, SBA proposes that “reside” means to live at a location full-time and for at least 180 days immediately prior to the date of application or date of recertification, as applicable. SBA believes that this is consistent with the purposes of the HUBZone program, while taking into account the realities of the unique living arrangements that may be utilized by certain small business’ workforces. The definition also makes clear that to determine an individual’s residence, SBA will first look to an individual’s address as identified on his or her driver’s license or voter’s registration card, which is SBA’s current and long-standing policy. Where such documentation is not available, SBA will require other specific proof of residency, such as deeds or leases, or utility bills. Additionally, this rule also proposes examples to add clarity to these revisions. SBA specifically requests comments on these proposed changes.

In addition, SBA notes that more small businesses are performing contracts overseas and are faced with the problem of how to treat those employees who reside in a HUBZone when in the United States or its territories, but are temporarily residing overseas to perform a contract. SBA proposes that it will consider the residence located in the United States as that employee’s residence, if the employee is working overseas for the period of a contract. SBA believes that as long as that employee can provide documents showing he or she is paying rent or owns a home in a HUBZone, then the employee should be counted as a HUBZone resident in determining whether the small business meets the 35% HUBZone residency requirement. Because of the proposed change, discussed below (which treats an individual as a HUBZone resident if that individual resided in a HUBZone at the time his or her employer was certified into the HUBZone program or at the time he or she first worked for the certified HUBZone small business concern (*i.e.*, the individual was hired after the firm was certified into the HUBZone program), so long as he or she continues to work for that same firm, even if the area where the individual lives no longer qualifies as a HUBZone or the individual has moved to a non-HUBZone area) this provision would have meaning only with respect to firms that have employees performing overseas contracts and are applying to the HUBZone program for the first time.

An individual who already qualified as a HUBZone resident for a certified HUBZone small business would continue to be treated as a resident of a HUBZone for HUBZone program eligibility purposes as long as he or she continued to work for the same certified HUBZone small business. SBA believes that this proposal strikes the right balance between acknowledging the increased prevalence of overseas contracting by small businesses and the need to ensure that the program benefits HUBZone areas. However, SBA requests comments on this issue.

SBA proposes to eliminate the definition of “small disadvantaged business (SDB)” because SBA no longer certifies firms as SDBs, and SDB set-asides and price evaluation preferences no longer exist. However, the term SDB continues to be defined in part 124 for use in other contexts such as subcontracting.

Finally, SBA proposes to remove the definition of “statewide average unemployment rate” and incorporate it into the definition of “qualified non-metropolitan county” to make the regulations more readable and to clarify that the statewide average unemployment rate is determined using the Local Area Unemployment Statistics report, which is produced by the Department of Labor’s Bureau of Labor Statistics.

## 2. Eligibility Requirements

SBA proposes to reorganize § 126.200 to make the section more readable and to make the HUBZone eligibility requirements more clear.

With respect to the 35% HUBZone residency requirement, SBA proposes to clarify that all employees are counted when determining a concern’s compliance with this requirement, regardless of where the employee performs his or her work. This has always been SBA’s policy, but it appears that some applicants have misinterpreted SBA’s rules. SBA has received several comments indicating that some in the community mistakenly believe that SBA would look only at those employees performing work in the principal office, and not any employees performing work at job site locations, in determining whether the firm meets the 35% HUBZone residency requirement. This has never been the case. SBA counts all individuals considered “employees” under the HUBZone definition of the term toward the 35% HUBZone residency requirement. SBA believes that the misunderstanding stems from the definition of the term “principal office.” In determining a concern’s “principal office,” SBA

excludes the concern’s employees who perform the majority of their work at job-site locations. That exclusion, however, applies only to the principal office determination, and not to whether a concern meets the 35% HUBZone residency requirement. The proposed rule seeks to clarify SBA’s intent. In addition, SBA proposes to change its application of how SBA requires a firm to meet the 35% residency requirement when the calculation results in a fraction. Previously, when the calculation of 35% of a concern’s total employees resulted in a fraction, SBA would round up to the nearest whole number. For example, under the current rule, if a firm has 6 total employees, since 35% of 6 is 2.1, then SBA would round 2.1 up to 3 and require the firm to employ 3 HUBZone residents to meet the 35% HUBZone residency requirement. This rule proposes rounding to the nearest whole number, rather than rounding up in every instance. This means that if 35% of a firm’s employees equates to X plus .49 or less, SBA would round down to X and not up to the next whole number. Thus, in the example above, SBA would round 2.1 down to 2 and would only require the firm to employ 2 HUBZone residents. SBA believes that this proposed change would have a minimal impact, but would clear up confusion that several small businesses seeking HUBZone status have encountered.

In addition, SBA has proposed new examples relating to the HUBZone residency requirement. With respect to the principal office and HUBZone residency requirements for tribally owned entities, SBA has clarified the regulatory language without making any substantive changes to the rule. Specifically, the proposed rule would replace the word “adjoining” with the word “adjacent” as it was used to describe HUBZones neighboring Indian reservations, because SBA believes this term is more accurate.

In order to provide stability and certainty for program participants, SBA is also proposing that an employee that resides in a HUBZone at the time of a HUBZone small business concern’s certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee’s residence is located is redesignated and no longer qualifies as a HUBZone. SBA understands that a few HUBZone concerns have become ineligible for further HUBZone contracts merely because one or two of their employees

have moved their residences from a HUBZone to non-HUBZone area. This has placed such businesses in the unenviable position of firing those individuals and replacing them with other individuals currently living in a HUBZone, or allowing the individuals to remain on the payroll and either becoming ineligible for the HUBZone program or having to hire additional HUBZone individuals that might cause a substantial hardship on very small businesses by increasing costs and reducing profits of those businesses. One of the purposes of the program is to promote job creation for individuals living in HUBZones, enabling them to better their lives and their communities. Someone who is hired by a HUBZone small business concern and who is then able to better the lives of his or her family by moving to a different location outside a HUBZone area (due to that newly created job) should not face losing his or her job because the HUBZone small business concern cannot maintain its HUBZone eligibility with that individual on the payroll. Under this proposed change, a certified HUBZone small business concern would have to maintain records of the employee's original HUBZone address, as well as records of the individual's continued and uninterrupted employment by the HUBZone small business concern, for the duration of the firm's participation in the HUBZone program.

Further, SBA proposes to clarify in proposed § 126.200(g) that the concern and its owners cannot have an active exclusion in the System for Award Management and be certified into the program. SBA believes that this logically follows from a debarred or suspended status, but would amend the regulations for clarity nevertheless. Debarred/suspended entities are ineligible for federal contracting assistance and would thus not receive any benefits from being certified as a HUBZone small business concern.

In § 126.204, SBA proposes to clarify that a HUBZone small business concern may have affiliates, but the affiliate's employees may be counted as employees of the HUBZone applicant/participant when determining the concern's compliance with the principal office and 35 percent HUBZone residency requirements. Proposed § 126.204 clarifies that where there is evidence that a HUBZone applicant/participant and its affiliate are intertwined and acting as one, SBA will count the employees of one as employees of the other. The HUBZone applicant or concern must demonstrate a clear line of fracture between it and

any affiliate in order for SBA to not count the affiliate's employees when determining the concern's principal office or compliance with the 35% residency requirement. The above supplementary information on the proposed definition of the term "employee" discusses this issue in more detail.

In § 126.205, SBA proposes to delete the following: "Participation in other SBA Programs is not a requirement for participation in the HUBZone Program." SBA believes that this language is unnecessary and may merely confuse prospective HUBZone small businesses.

In § 126.206, SBA proposes to replace the term "non-manufacturers" with "nonmanufacturers" to be consistent with SBA's regulations at § 121.406(b).

SBA proposes to amend the title and text of § 126.207 to clarify that a HUBZone small business concern may have multiple offices, as long as the firm's principal office is located in a HUBZone, and to clarify that a different rule applies to concerns owned by Indian Tribal Governments.

### 3. Certification

The HUBZone program is a certification program. In other words, a small business concern must submit an application and supporting documents to SBA in order for SBA to determine eligibility and certify the company into the program. SBA has proposed several clarifications to its certification process.

SBA proposes to amend § 126.300 by breaking up the section to make it clearer and more readable, to move the discussion of the adverse inference rule to § 126.306, and to clarify that SBA may conduct site visits, conduct independent research, and review additional information (such as tax and property records, public utility records, postal records, and other relevant information).

SBA proposes to revise § 126.303 to update the instructions for submitting electronic applications.

This proposed rule would also clarify that an applicant must submit a completed application and all documents and a representation that it meets the program's requirements as of the date of the application and that the information provided and any subsequent information provided is complete, true and accurate. Further, SBA proposes to require that the representation be electronically signed by a person who is authorized to represent the concern. SBA believes that this should either an owner or officer of the applicant, and not an administrative employee acting on behalf of an officer.

Further, SBA proposes to clarify that after an application has been submitted, the applicant must notify SBA of any changes that could affect its eligibility. The applicant would have to provide information and documents to support the changes.

SBA also proposes to clarify that if an applicant believes that an area is a HUBZone but SBA's website is not showing the area to be a qualified HUBZone, the applicant must note this on the application. Further, the applicant must provide documents demonstrating why it believes that the area meets the statutory criteria of a HUBZone. It cannot merely assert that it believes the area is underutilized and should be a HUBZone; it must show that the area meets the statutory criteria.

SBA proposes to delete and reserve § 126.305, addressing what format the certification to SBA must take, because this is addressed in § 126.303.

SBA proposes several changes to § 126.306. First, SBA proposes to clarify that the agency must receive all required information, supporting documents, and a completed HUBZone representation before it will begin processing a concern's application and that SBA will make a final decision within 90 calendar days after receipt of a complete package, whenever practicable. SBA proposes to clarify that the burden of proof to demonstrate eligibility is on the applicant concern and if the concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the business concern and demonstrate a lack of eligibility in the area or areas to which the information relates and decline the applicant.

Similarly, SBA proposes to clarify that an applicant must be eligible as of the date it submitted its application and up until the time the D/HUB issues a decision. SBA cannot certify a business into the program that does not meet the eligibility requirements at that time.

SBA proposes to amend § 126.307 to make a general reference to the website where SBA identifies where firms are listed as certified HUBZone small business concerns so that the regulation itself does not have to be updated every time a change in the website location occurs. The proposed rule would also delete the reference to the ability of requesters to obtain a copy of the list of certified HUBZone small business concerns by writing to the D/HUB at SBA. An interested party may find all firms that are certified HUBZone small business concerns by searching the

Dynamic Small Business Search (DSBS) system, and can verify a specific concern's HUBZone certification. SBA believes that the availability of this search function makes written requests an outdated and inefficient way of obtaining current information about certified HUBZone small business concerns.

SBA proposes to amend § 126.308 to clarify that certified HUBZone small business concerns cannot "opt out" of being publicly displayed in the DSBS system. All certified HUBZone small business concerns appear in DSBS as certified HUBZone small business concerns, and those not so appearing will not be eligible for HUBZone contracts. Contracting officers refer to DSBS to ensure that potential awardees are in fact HUBZone certified small business concerns.

SBA proposes to revise § 126.309 to add a new provision permitting a firm to submit a formal request for reconsideration when it receives a determination denying admission to the HUBZone program. Under the proposed regulation, the business would be able to submit a request for reconsideration within 15 calendar days after receiving SBA's decision. SBA will presume that written notice was provided if SBA sends a communication to the concern at an address, email address, or fax number provided in the concern's System for Award Management (SAM) (or any successor system) profile. The applicant would be required to set forth the reasons why it believes the D/HUB's initial decision was erroneous and include information and documentation pertinent to overcoming the reasons for the initial decline, whether or not available at the time of initial application.

Proposed § 126.309(a)(4) would explain that SBA would not add a concern to DSBS as a certified HUBZone small business concern during the reconsideration process. SBA would recognize a concern as a certified HUBZone small business concern in DSBS only if the D/HUB certifies the concern into the program. The D/HUB would have 30 calendar days to issue a decision and could either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If the D/HUB declines the application solely on issues not raised in the initial decline, the applicant could ask for reconsideration as if it were an initial decline.

SBA proposes that if a concern that has been declined does not request reconsideration of the D/HUB's decision, the concern could reapply for certification 90 calendar days after the

date of decline. If a concern that has been declined requests reconsideration and the decline is affirmed, the concern could apply for certification 90 calendar days after the date of the D/HUB's decision on the request for reconsideration.

#### 4. Program Examinations

As part of SBA's oversight responsibilities for the HUBZone program, SBA monitors the HUBZone program and certified HUBZone small business concerns, and verifies information submitted by HUBZone applicants, by conducting program examinations.

SBA proposes to revise § 126.401 to clarify what a program examination is. The proposed rule would provide that a program examination is a review by SBA that verifies the accuracy of any certification made or information provided as part of the HUBZone application or recertification process.

SBA proposes to revise § 126.403 to clarify what SBA will review during a program examination. SBA would be able to review any information related to the concern's HUBZone eligibility, including documentation related to the concern's ownership and principal office, compliance with the 35% HUBZone residency requirement, and the concern's "attempt to maintain" 35% of its employees from a HUBZone during the performance of a HUBZone contract.

SBA proposes to add a new § 126.404 to provide the procedures and possible outcomes of a program examination. Whether the concern is applying to the HUBZone program for the first time, is undergoing a recertification analysis, or is subject to a program examination for another reason, SBA's program examination can result in a decision finding the concern either to be eligible to participate in the program (either for the first time or to be able to continue in the program), or not eligible to participate in the program (which would result in a disapproval of an application or the decertification of a HUBZone concern). The proposed regulation provides that SBA will make its determination within 90 calendar days after receiving all requested information, when practicable, and that possible outcomes of a program examination include certification, denial of certification, continued certification, or proposed decertification.

#### 5. Maintaining HUBZone Status

SBA proposes to amend § 126.500 to require HUBZone small business concerns to recertify annually to SBA

that they continue to meet all of the HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years. The proposed rule also provides that when a concern fails to submit its annual recertification to SBA, SBA will start proceedings to decertify the concern.

SBA proposes to amend § 126.501 to clarify that once certified, a HUBZone small business concern will remain eligible for HUBZone contract awards for one year from the date of certification, provided that the concern qualifies as small for the size standard corresponding to the NAICS code assigned to the contract. On the one-year anniversary of the certification, the firm would be required to recertify that it continues to meet the HUBZone eligibility requirements or voluntarily withdraw from the HUBZone program. Although requiring annual recertification instead of every three years may appear to impose additional burdens on a HUBZone small business concern, the annual recertification burden would be easily offset by the elimination of the requirement that a firm must demonstrate that it continues to be an eligible HUBZone small business concern both at the time of offer and time of award for any HUBZone contract. As set forth in proposed § 126.501(a), once SBA certifies a concern as eligible to participate in the HUBZone program, the concern would be treated as an eligible HUBZone small business for all HUBZone contracts for which the concern qualifies as small for a period of one year from the date of its initial certification or its annual recertification. Thus, any certification that the firm makes representing that it qualifies as a HUBZone small business concern relates back to the initial certification or annual recertification. The HUBZone concern would not have to review and demonstrate its continued compliance with all HUBZone eligibility requirements throughout the year for each new HUBZone contract that it seeks.

HUBZone status protests would also relate back to the date of initial certification or most recent annual recertification (except for protests against HUBZone joint ventures). Thus, the protest would have to demonstrate that the information relied on by SBA in certifying or recertifying the concern as an eligible HUBZone small business concern was incorrect, not that there may have been changed circumstances since that certification that would render the concern ineligible. For HUBZone status protests filed against a



HUBZone joint venture in connection with a HUBZone contract, a protester could challenge both the HUBZone status of the HUBZone member(s) of the joint venture and the joint venture's compliance with the requirements governing HUBZone joint ventures, including the contents of the joint venture agreement. If a protester challenged the HUBZone status of the HUBZone member(s) of the joint venture, the protest would relate back to the date of that firm's initial certification or annual recertification (whichever was more recent) and the firm's HUBZone status would be determined as of that date. If the protester challenged the joint venture's compliance with the HUBZone joint venture requirements set forth in § 126.616, the protest would relate to the date on which the joint venture submitted its initial offer including price and the joint venture's compliance with § 126.616 would be determined as of that date. SBA will also utilize the program examination mechanism to review the status of selected firms on the date of initial certification or recertification.

The proposed rule would also clarify that a HUBZone small business concern could voluntarily withdraw from the program at any time. This may be because the concern believes that it no longer meets the program's eligibility requirements and could not be recertified or it may simply no longer want to participate in the program for a variety of other reasons. The proposed rule would also clarify that any firm that voluntarily withdraws from the program could reapply to the program at any point after 90 calendar days from the date it was decertified. For a firm that voluntarily withdrew because it no longer met all the HUBZone eligibility requirements, it could make the necessary changes that would enable it to come back into compliance and reapply to the program after 90 days.

SBA proposes to amend § 126.503 to clarify that if SBA is unable to verify a HUBZone small business concern's eligibility or determines that it may not be eligible for the program, the SBA could conduct a program examination or propose the concern for decertification and the HUBZone small business concern would be required to rebut each of the reasons SBA sets forth in its written notification letter within 15 calendar days from the date that it receives SBA's notification. If SBA finds that the concern is not eligible, the SBA would provide notice to the concern stating the basis for the determination, decertify the concern and remove it as a certified HUBZone small business

concern from DSBS. In addition, the proposed rule would authorize SBA to propose decertification of a HUBZone small business concern that is performing one or more HUBZone contracts if SBA determines that the concern no longer has at least 20% of its employees living in a HUBZone. As identified above, the proposed rule has defined the statutory requirement that a HUBZone small business concern "attempt to maintain" compliance with the 35% HUBZone while performing a HUBZone contract to mean having not less than 20% HUBZone employees. During the proposed decertification process, the concern could demonstrate that it does in fact continue to have at least 20% HUBZone employees and has otherwise attempted to meet the 35% requirement.

SBA proposes to amend § 126.504 to reflect the various ways that a HUBZone small business concern could lose its designation in DSBS as a certified HUBZone small business concern, including if it has: (1) Been decertified as a result of a protest; (2) been decertified as a result of the procedures set forth in the regulations; or (3) submitted a voluntary withdrawal agreement to SBA. SBA proposes to add a new § 126.506 to provide that a decertified firm could reapply for admission to the HUBZone program after ninety (90) calendar days. This is the current rule for reapplying, but SBA has moved it to a new section to make the process clearer.

#### 6. Contractual Assistance

SBA proposes to revise § 126.601 to remove the discussion of the acquisition-related dollar thresholds in paragraph (a) because this does not relate to additional requirements a certified HUBZone small business concern must meet to submit an offer on a HUBZone contract. In addition, SBA proposes to move the discussion of compliance with the limitations on subcontracting for multiple award contracts currently in paragraph § 126.601(g) to proposed § 126.700, which specifically addresses the limitations on subcontracting requirements for HUBZone contracts. Finally, SBA proposes to move the discussion of recertification currently in paragraph § 126.601(h) to proposed new § 126.619.

SBA proposes to amend § 126.602 to be consistent with the proposed change requiring certified HUBZone small businesses to demonstrate their eligibility at the time of initial certification and annual certification only. Under this proposed regulation, certified HUBZone small business

concerns would no longer be required to meet the 35% HUBZone residency requirement at all times while certified in the program. This means that they no longer would have to meet this requirement at the time of offer and time of award for a HUBZone contract. HUBZone small businesses would continue to have to "attempt to maintain" compliance with this requirement during the performance of a HUBZone contract. With respect to HUBZone status for the underlying contract, the agency will get credit if the firm was in the HUBZone program at the time of offer, and that status will continue unless and until recertification for the contract is required.

#### 7. Protests

SBA proposes to amend § 126.801 to clarify how a HUBZone status protest should be filed and referred to SBA. Among other clarifications, SBA proposes to clarify that HUBZone status protests may be filed against HUBZone joint ventures. The grounds for such protests would include (1) arguments that the HUBZone small business concern partner(s) to the joint venture did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time of the concern's initial certification or most recent annual recertification, and (2) arguments that the HUBZone joint venture did not meet the requirements set forth in § 126.616 at the time the joint venture submitted its offer for the HUBZone contract. For consistency purposes, SBA proposes to also make these clarifications for Service-Disabled Veteran-Owned (SDVO) small business joint ventures and Women-Owned Small Business (WOSB) joint ventures by amending sections 125.28(b) and 127.602. For the SDVO and WOSB programs, unlike the HUBZone program, the eligibility of the SDVO/WOSB joint venture partner would continue to be determined as of the date of offer.

SBA proposes to amend § 126.803, addressing how SBA will process a HUBZone status protest, to reduce the timeframe by which a protested concern must respond to SBA's notification that an interested party has filed a protest to 3 business days after the date of receipt of the SBA's letter. SBA believes that businesses generally respond in a short period of time since an award on a contract is pending and the business has this information readily available. In addition to the above, SBA proposes to update all instructions contained in the HUBZone regulations related to submission of information and documentation to SBA to specify that such submissions must be completed

electronically. The appropriate email addresses have been added and updated where necessary, and mailing addresses and fax numbers have been removed. This change is intended to reduce the paperwork burden on program applicants and participants.

**Compliance With Executive Orders 12866, 13563, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

*Regulatory Impact Analysis*

1. Is there a need for the regulatory action?

SBA is proposing to make several changes to clarify its regulations. Through the years, SBA has spoken with small business and representatives and has determined that several regulations need further refinement so that they are easier to understand and implement. Further, SBA has added in new provisions providing for reconsiderations of application denials and decertifications. Currently, there is no request for reconsideration process in the regulations, unlike SBA's other certification programs. SBA believes that making the programs as consistent and similar as possible, where practicable, will make it easier for small businesses to understand the process.

2. What are the potential benefits and costs of this regulatory action?

The proposed regulations seek to address or clarify issues, which will provide clarity to small businesses and contracting personnel. Further, SBA is proposing a formal request for reconsideration process, which could increase costs to the government (*e.g.*, additional workload for requests for reconsideration), but will provide consistency in the processes for SBA's programs. SBA declined approximately 87 applicants in fiscal year 2017. The cost for requesting reconsideration is estimated at one and a half hours, and we estimate that approximately ten applicants would request reconsideration. That equates to 15 hours at an estimated rate of \$33.34 an hour, for a de minimis annual total of \$500. However, a reconsideration process is beneficial to HUBZone

applicants because it allows them to correct deficiencies and come into compliance without waiting 90 days to reapply for the program. This should enable additional firms to be more quickly certified for the HUBZone program, which should allow them to seek and be awarded HUBZone contracts sooner. Thus, any costs associated with the voluntary request for reconsideration would be outweighed by the potential benefit of allowing firms to request reconsideration, although it is difficult to quantify the opportunity cost avoidance associated with this benefit. For example, if only one of the ten HUBZone firms applying for reconsideration was able to be recertified earlier and received a set aside contract of \$150,000, it would clearly offset the entire cost incurred by the ten applicants.

SBA proposes to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all of the HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years. There are approximately 5,000 firms in the HUBZone program. Under SBA's current rules, firms must recertify every three years. Approximately 1,200 firms recertify each year based on HUBZone data, and we estimate it takes approximately 1 hour to recertify. OMB Control #3245–0320. Consequently, these proposed changes would increase the annual hourly burden for HUBZone firms by 3,800 hours or an estimated annual cost of \$126,692.00. Instead, of 1,200 firms recertifying annually, all 5,000 would have to recertify annually.

SBA is also proposing that HUBZone small business concerns will not have to represent or certify that they are eligible at the time of offer and award for every HUBZone contract, which are the current program requirements. Under current rules, a HUBZone small business concern must be eligible both at the time of offer and award of a HUBZone contract. Based on FPDS data, approximately 2,100 new HUBZone contracts are awarded each fiscal year. We estimate it takes approximately 1 hour for a firm to determine it is eligible at the time of offer and approximately 1 hour for a firm to determine it is eligible at the time of award. Thus, this proposed rule will reduce burden on HUBZone small business concerns by approximately 4,200 hours for an estimated annual savings of \$140,028.00.

SBA is proposing that an employee who resides in a HUBZone at the time

of a HUBZone concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located is redesignated and no longer qualifies as a HUBZone. This will greatly reduce burden on firms, as they will not have to continuously track whether their employees still reside in a HUBZone or seek to employ new individuals if the location that one or more current employees reside loses its HUBZone status. We estimate that it takes 1 hour to determine eligibility and that this proposed change will save approximately 0.5 hours because once a HUBZone employee is hired, the firm will never again have to examine where that employee resides. Thus, this proposed rule should reduce the hourly burden on approximately 5,000 HUBZone small business concerns by 2,500 hours annually for an estimated annual savings of \$83,350.00.

3. What are the alternatives to this final rule?

The alternative to the proposed regulations would be the status quo, where a firm must be eligible at the time of offer and time of award. SBA has also identified other alternatives that SBA considered in the supplementary information to this proposed rule. With respect to the requirement to annually recertify, SBA could instead require firms to certify at time of offer, as is done for the other small business or socioeconomic set aside contract programs. In addition, SBA could propose only a formal request for reconsideration process or could have proposed no request for reconsideration process. However, as noted above, SBA has modeled these processes from its other contracting programs (*e.g.*, 8(a) request for reconsideration) and believes that these processes have worked well for these programs and should therefore be utilized for the HUBZone program. SBA also considered whether eligibility or protest decisions should be appealed to the Office of Hearings and Appeals.

Summary of Costs and Cost Savings

Table 1: Summary of Incremental Costs and Cost Savings, below, sets out the estimated net incremental cost/(cost saving) associated with this proposed rule. Table 2: Detailed Breakdown of Incremental Costs and Cost Savings, below, provides a detailed explanation of the annual cost/(cost saving) estimates associated with this proposed rule.

TABLE 1—SUMMARY OF INCREMENTAL COSTS AND COST SAVINGS

Item No.	Regulatory action item	Annual cost/ (cost saving) estimate
1	Annual recertification instead of every 3 years	\$126,692
2	Requiring a formal request of reconsideration	500
3	Removing requirement to present eligibility at award	(140,028)
4	Change to employee count eligibility	(83,350)
Estimated Net Incremental Cost/(Cost Saving)		(96,186)

TABLE 2—DETAILED BREAKDOWN OF INCREMENTAL COSTS AND COST SAVINGS

Item No.	Regulatory action item details	Annual cost/ (cost saving) estimate breakdown
1	<p><i>Proposed regulatory change:</i> SBA proposes to require HUBZone SBCs to recertify annually to SBA that they continue to meet all of the HUBZone eligibility requirements instead of requiring them to undergo a recertification by SBA every three years.</p> <p><i>Estimated number of impacted entities:</i> There are approximately 5,000 firms in the HUBZone program, and under the proposed rule all these firms will need to recertify each year. However, since 1,200 firms recertify each year currently, the incremental increase in recertifications is 3,800 firms annually.</p> <p><i>Estimated average impact* (labor hour):</i> SBA estimates that it takes the average participating firm about 1 hour to complete the recertification process.</p> <p><i>2017 Median Pay** (per hour):</i> Most HUBZone firms use an accountant or someone with similar skills for this task.</p>	<p>3,800 entities.</p> <p>1 hour.</p> <p>\$33.34.</p>
Estimated Cost/(Cost Saving)		\$126,692.
2	<p><i>Proposed regulatory change:</i> SBA proposes to add a new provision permitting a firm to submit a formal request for reconsideration when it receives a determination denying admission to the HUBZone program.</p> <p><i>Estimated number of impacted entities:</i> SBA declined 87 applications in FY 2017. Of these, we estimate that only 10 firms would seek reconsideration.</p> <p><i>Estimated average impact* (labor hour):</i> SBA estimates that it would take 1.5 hours to respond to the denial and to request reconsideration.</p> <p><i>2017 Median Pay** (per hour):</i> Most HUBZone firms use an accountant or someone with similar skills for this task.</p>	<p>10 entities.</p> <p>1.50 hours.</p> <p>\$33.34.</p>
Estimated Cost/(Cost Saving)		\$500.
3	<p><i>Proposed regulatory change:</i> Under current rules, a HUBZone firm must be eligible at the time of offer and award of a HUBZone contract. SBA is proposing that firms will not have to represent or certify that they are eligible at the time of offer and award for every contract, which are the current program requirements.</p> <p><i>Estimated number of impacted entities:</i> Approximately 2,100 new HUBZone contracts awarded each fiscal year and each firm will need to certify twice per each contract.</p> <p><i>Estimated average impact* (labor hour):</i> SBA estimates that it takes the average participating firm about 1 hour to complete the recertification process.</p> <p><i>2017 Median Pay** (per hour):</i> Most HUBZone firms use an accountant or someone with similar skills for this task.</p>	<p>4,200 entities.</p> <p>1 hour.</p> <p>\$33.34.</p>
Estimated Cost/(Cost Saving)		(\$140,028).
4	<p><i>Proposed regulatory change:</i> SBA is proposing that an employee that resides in a HUBZone at the time of a HUBZone SBC's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located is redesignated and no longer qualifies as a HUBZone. This will greatly reduce burden on firms, as they will not have to continually track whether their employees still reside in a HUBZone.</p> <p><i>Estimated number of impacted entities:</i> SBA estimates that approximately 5,000 firms participate in the HUBZone program. All participating firms will be impacted by this change.</p> <p><i>Estimated average impact* (labor hour):</i> SBA estimates that it would take 1 hour to determine eligibility but this proposed change will save 0.5, because once a HUBZone employee is hired the firm will never have to check residency for that employee.</p>	<p>5,000 entities.</p> <p>0.50 hours.</p>

TABLE 2—DETAILED BREAKDOWN OF INCREMENTAL COSTS AND COST SAVINGS—Continued

Item No.	Regulatory action item details	Annual cost/ (cost saving) estimate breakdown
Estimated Cost/(Cost Saving) .....	2017 Median Pay** (per hour): Most HUBZone firms use an accountant or someone with similar skills for this task.	\$33.34. (\$83,350).
Estimated Net Annual Impact .....		(\$96,186).

\* This estimate is based on HUBZone and FPDS data, as well as best professional judgment.

\*\* Source: Bureau of Labor Statistics, Accountants and Auditors.

#### Executive Order 13563

This executive order directs agencies to, among other things: (a) Afford the public a meaningful opportunity to comment through the internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an “open exchange” of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to Executive Order 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, DSBS and SAM.

2. Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an “open exchange” of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on *Regulations.gov*; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking? SBA has also discussed some of the proposals in this rule with stakeholders at various small business procurement conferences, and received written comments on suggested changes to the HUBZone Program regulations generally in response to SBA’s

regulatory reform initiative implementing Executive Order 13771.

The proposed rule will have a 60-day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions.

3. Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?

The proposed rule is intended to make it easier for firms to apply for, or participate in, the HUBZone program, as well as for procuring agencies to utilize the program.

#### Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have any retroactive or preemptive effect.

#### Executive Order 13132

SBA has determined that this proposed rule 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 levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

#### Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in this rule’s regulatory impact analysis. SBA proposes to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all of the HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years. While the proposal to require firms to

recertify annually will increase the burden on firms, this burden will be offset by the proposal to no longer require firms to be eligible at the time of offer and award for a contract, and will provide that if a firm hires a HUBZone resident, the firm will be able to count that employee towards the residency requirement, this reducing the burden on the firm to determine whether it meets the 35 percent residency requirement. Thus, the proposed rule will result in an estimated annual savings of \$96,185.00

#### Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purposes of the Paperwork Reduction Act, SBA has determined that this rule, if adopted in final form, would impose new government-wide reporting requirements on HUBZone small business concerns. In the rule, SBA proposes that small businesses recertify annually to SBA concerning their status. At this time, HUBZone small businesses recertify every three years. Although requiring annual recertification instead of every three years may appear to impose additional burdens on a HUBZone small business concern, the annual recertification burden is offset by the elimination of the requirement to be eligible at the time of offer and award of a contract and the requirement to continually monitor the residency status of an employee that resides in a HUBZone at the time of hiring, resulting in an estimated annual savings of \$96,186.00. In addition, SBA believes the annual recertification would assist in deterring fraud and abuse in the program. SBA also proposes that certified HUBZone small business concerns maintain records demonstrating the home address of employees who resided in a HUBZone at the time of the concern’s certification or recertification, as well as records of the employee’s continued employment with the firm. SBA believes allowing a HUBZone small business concern to continue employing individuals who once lived in HUBZones is consistent with the purpose of the HUBZone

program of increasing employment and would provide greater opportunities for certified HUBZone small business concerns to be eligible for and receive HUBZone contracts. Further, this will reduce burden as the firm will not have to continually determine whether the employee that resided in a HUBZone at the time of certification continues to reside in a HUBZone in connection with the offer and offer of each contract or future recertifications. A firm's ability to request reconsideration will be added to the existing information collection for the HUBZone program (OMB Control #3245-0320).

*Regulatory Flexibility Act, 5 U.S.C. 601-612*

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The RFA defines "small entity" to include "small businesses," "small organizations," and "small governmental jurisdictions." This proposed rule concerns various aspects of SBA's HUBZone program, as such the rule relates to small business concerns but would not affect "small organizations" or "small governmental jurisdictions" because those programs generally apply only to "business concerns" as defined by SBA regulations, in other words, to small businesses organized for profit. "Small organizations" or "small governmental jurisdictions" are non-profits or governmental entities and do not generally qualify as "business concerns" within the meaning of SBA's regulations.

There are approximately 5,000 certified HUBZone small business concerns that are listed as certified HUBZone small businesses in DSBS, and SBA receives approximately 1,500 applications annually. Most of the changes are clarification of current policy and therefore should not impact many of these concerns. Further, there is a new compliance or other costs imposed by the proposed rule on current or prospective HUBZone small business concerns. Under current law, HUBZone small business concerns must recertify every three years and under the proposed rule, the same firms will need to recertify every year.

Nonetheless, most of these costs relating to reconsideration and appeals

will be borne by the agency and not the small business. In addition, recertifying every year should not impose a significant cost on small business since the rules already require the business to actively monitor its compliance from the moment it applies to the program. As a result, SBA does not believe that the proposed amendments would have a disparate impact on small businesses or would impose any additional significant costs. For the reasons discussed, SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small business concerns.

#### List of Subjects

##### 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

##### 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

##### 13 CFR Part 125

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

##### 13 CFR Part 126

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

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR parts 115, 121, 125, and 126 as set forth below:

#### PART 115—SURETY BOND GUARANTEE

- 1. The authority citation for part 115 continues to read as follows:

**Authority:** 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110-246, Sec. 12079, 122 Stat. 1651.

##### § 115.31 [Amended]

- 2. Amend § 115.31(a)(2) by removing the phrase "qualified HUBZone small business concern" and adding in its place the phrase "certified HUBZone small business concern".

#### PART 121—SMALL BUSINESS SIZE REGULATIONS

- 3. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

##### § 121.404 [Amended]

- 4. Amend § 121.404(g)(4) by removing the phrase "HUBZone SBCs" and adding in its place the phrase "certified HUBZone small business concerns".

##### § 121.1001 [Amended]

- 5. Amend § 121.1001 as follows:
  - a. In paragraph (a)(6)(ii), remove the phrase "qualified HUBZone SBC" and add in its place the phrase "certified HUBZone small business concern"; and
  - b. In paragraph (b)(8)(i), remove the phrase "qualified HUBZone business concern" and add in its place the phrase "certified HUBZone small business concern".

#### PART 125—GOVERNMENT CONTRACTING PROGRAMS

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

**Authority:** 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644; 657f; 657q; 657r; and 657s.

##### § 125.1 [Amended]

- 7. In § 125.1, amend the definition of "similarly situated entity" by removing the phrase "qualified HUBZone small business concern" and adding in its place the phrase "certified HUBZone small business concern".

##### § 125.2 [Amended]

- 8. Amend § 125.2(c)(1)(i) by removing the phrase "qualified HUBZone small business concerns" and adding in its place the phrase "certified HUBZone small business concerns".

##### § 125.3 [Amended]

- 9. Amend § 125.3(c)(1)(xi) by removing the phrase "qualified HUBZone small business concerns" and adding in its place the phrase "certified HUBZone small business concerns".

##### § 125.6 [Amended]

- 10. Amend § 125.6 by removing paragraph (d) and redesignating paragraphs (e) through (h) as paragraphs (d) through (g), respectively.
- 11. Revise § 125.28(b) to read as follows:

##### § 125.28 How does one file a service disabled veteran-owned status protest?

\* \* \* \* \*

(b) *Format and specificity.* (1) Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations is insufficient.

*Example to paragraph (b)(1):* A protester submits a protest stating that the apparent successful offeror is not owned by a service-disabled veteran. The protest does not state any basis for this assertion. The protest allegation is insufficient.

(2) For a protest filed against a SDVO SBC joint venture, the protest must state all specific grounds for why—

(i) The SDVO SBC partner to the joint venture did not meet the SDVO SBC eligibility requirements set forth in subpart B of part 125; and/or

(ii) The protested SDVO SBC joint venture did not meet the requirements set forth in § 125.18.

\* \* \* \* \*

## PART 126—HUBZONE PROGRAM

■ 12. The authority citation for part 126 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

### § 126.101 [Amended]

■ 13. Amend § 126.101(b) by removing the phrase “qualified HUBZone SBCs” and adding in its place the phrase “certified HUBZone small business concerns”.

■ 14. Amend § 126.103 as follows:

■ a. Remove the definitions of “Alaska Native Village”, “ANCSA”, “County unemployment rate”, “De-certify”, “List”, “Median household income”, “Metropolitan statistical area”, “Qualified HUBZone SBC”, “Small Disadvantaged Business (SDB)”, and “Statewide average unemployment rate”;

■ b. Revise the definitions of “Alaska Native Corporation”, “Attempt to maintain”, “Certify”, “D/HUB”, “Employee”, “HUBZone small business concern”, “Interested party”, “Principal office”, “Qualified base closure area”, “Qualified census tract”, “Qualified non-metropolitan county”, “Redesignated area”, “Reside”; and

■ c. Add definitions for “Decertify”, “Dynamic Small Business Search (DSBS)” and “Primary industry classification or primary industry” in alphabetical order.

The revisions and additions read as follows:

### § 126.103 What definitions are important in the HUBZone Program?

\* \* \* \* \*

*Alaska Native Corporation (ANC)* has the same meaning as the term “Native Corporation” in section 3 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602.

*Attempt to maintain* means making substantive and documented efforts, such as written offers of employment, published advertisements seeking

employees, and attendance at job fairs and applies only to concerns during the performance of any HUBZone contract. A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement.

\* \* \* \* \*

*Certify* means the process by which SBA determines that a firm is qualified for the HUBZone program and eligible to be designated by SBA as a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS) system (or successor system).

\* \* \* \* \*

*D/HUB* means the Director of SBA’s Office of HUBZone.

*Decertify* means the process by which SBA determines that a concern no longer qualifies as a HUBZone small business concern and removes that concern as a certified HUBZone small business concern from DSBS (or successor system), or the process by which SBA removes a concern as a certified HUBZone small business concern from DSBS (or successor system) after receiving a request to voluntarily withdraw from the HUBZone program.

*Dynamic Small Business Search (DSBS)* means the database that government agencies use to find small business contractors for upcoming contracts. The information a business provides when registering in the System for Award Management (SAM) is used to populate DSBS. For HUBZone Program purposes, a firm’s DSBS profile will indicate whether it is a certified HUBZone small business concern, and if so, the date it was certified or recertified.

*Employee* means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours during the four-week period immediately prior to the relevant date of review, which is either the date the concern submits its HUBZone application to SBA or the date of recertification. SBA will review a firm’s payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. To determine if an individual is an employee, SBA reviews the totality of circumstances, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and the factors set forth in

SBA’s Size Policy Statement No. 1 (51 FR 6099, Feb. 20, 1986).

(1) In general, the following are considered employees:

(i) Individuals obtained from a temporary employee agency, leasing concern, or through a union agreement, or co-employed pursuant to a professional employer organization agreement;

(ii) An individual who has an ownership interest in the firm and who works for the firm a minimum of 40 hours during the four-week period immediately prior to the relevant date of review, whether or not the individual receives compensation;

(iii) The sole owner of a firm who works less than 40 hours during the four-week period immediately prior to the relevant date of review, but who has not hired another individual to direct the actions of the concern’s employees;

(iv) Individuals who receive in-kind compensation commensurate with work performed.

(2) In general, the following are not considered employees:

(i) Individuals who receive no compensation (including no in-kind compensation) for work performed;

(ii) Individuals who receive deferred compensation for work performed;

(iii) Independent contractors that receive payment via IRS Form 1099 and are not considered employees under SBA’s Size Policy Statement No. 1 (51 FR 6099, Feb. 20, 1986); and

(iv) Subcontractors.

(3) Employees of an affiliate may be considered employees, if the totality of the circumstances shows that there is no clear line of fracture between the HUBZone applicant (or certified HUBZone small business concern) and its affiliate(s) (*see* § 126.204).

\* \* \* \* \*

*HUBZone small business concern or certified HUBZone small business concern* (1) Means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for federal contracting assistance under the HUBZone program.

(2) A firm that was a certified HUBZone small business concern as of December 12, 2017, and that had its principal office located in a redesignated area set to expire prior to January 1, 2020, shall remain a certified HUBZone small business concern until December 31, 2021, so long as all other HUBZone eligibility requirements are met.

\* \* \* \* \*

*Interested party* means any concern that submits an offer for a specific

HUBZone set-aside contract (including Multiple Award Contracts) or order, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone small business concern, any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given to a qualified HUBZone small business concern, the contracting activity's contracting officer, or SBA.

\* \* \* \* \*

*Primary industry classification or primary industry* means the six digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the HUBZone applicant or HUBZone small business concern. SBA utilizes § 121.107 of this chapter in determining a firm's primary industry classification.

*Principal office* means the location where the greatest number of the concern's employees at any one location perform their work.

(1) If an employee works at multiple locations, then the employee will be deemed to work at the location where the employee spends more than 50% of his or her time. If an employee does not spend more than 50% of his or her time at any one location and at least one of those locations is a non-HUBZone location, then the employee will be deemed to work at a non-HUBZone location;

(2) In order for a location to be considered the principal office, the concern must conduct business at this location.

(3) For those concerns whose "primary industry classification" is services or construction (see § 121.201 of this chapter), the determination of principal office excludes the concern's employees who perform more than 50% of their work at job-site locations to fulfill specific contract obligations. If all of a concern's employees perform more than 50% of their work at job sites, the concern does not comply with the principal office requirement.

*Example 1:* A business concern whose primary industry is construction has a total of 78 employees, including the owners. The business concern has one office (Office A), which is located in a HUBZone, with 3 employees working at that location. The business concern also has a job-site for a current contract, where 75 employees perform more than 50% of their work. The 75 job-site employees are excluded for purposes of determining principal office. Since the remaining 3 employees all work at Office A, Office A is the firm's principal office. Since Office A is in a HUBZone, the

business concern complies with the principal office requirement.

*Example 2:* A business concern has a total of 4 employees, including the owner. The business concern has one office located in a HUBZone (Office A), where 2 employees perform more than 50% of their work, and a second office not located in HUBZone (Office B), where 2 employees perform more than 50% of their work. Since there is not one location where the greatest number of the concern's employees at any one location perform their work, the business concern would not have a principal office in a HUBZone.

*Example 3:* A business concern whose primary industry is services has a total of 6 employees, including the owner. Five of the employees perform all of their work at jobsites fulfilling specific contract obligations. The business concern's owner performs 45% of her work at jobsites, and 55% of her work at an office located in a HUBZone (Office A) conducting tasks such as writing proposals, generating payroll, and responding to emails. Office A would be considered the principal office of the firm since it is the only location where any employees of the firm work that is not a job site and the 1 individual working there spends more than 50% of her time at Office A. Since Office A is located in a HUBZone, the small business concern would meet the principal office requirement.

*Qualified base closure area* means:

(1) A base closure area that is treated by SBA as a HUBZone for a period of at least 8 years, beginning on the date the military installation undergoes final closure and ending on the latter of the following:

(i) The date on which the results of the decennial census conducted after the area was initially designated as a base closure area are released; or

(ii) The date 8 years after the base closure area was initially designated as a HUBZone.

(2) However, if a base closure area was treated as a HUBZone at any time after 2010, it shall be treated as a HUBZone until the results of the 2020 decennial census are released.

*Qualified census tract* (1) Means any census tract which is designated by the Secretary of Housing and Urban Development, and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. See 26 U.S.C. 42(d)(5)(B)(ii)(I).

(2) The portion of a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) which may be

designated as "qualified census tracts" shall not exceed an area having 20 percent of the population of such metropolitan statistical area. See 26 U.S.C. 42(d)(5)(B)(ii)(II). This paragraph does not apply to any metropolitan statistical area in the Commonwealth of Puerto Rico until December 22, 2027, or the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) (Pub. L. 114-187, June 30, 2016) ceases to exist, whichever event occurs first.

\* \* \* \* \*

*Qualified non-metropolitan county* means any county that was not located in a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 26 U.S.C. 42(d)(5)(B)(ii), and in which:

(1) The median household income is less than 80% of the non-metropolitan State median household income, based on the most recent data available from the American Community Survey 5-year estimates, published by the Bureau of the Census of the Department of Commerce;

(2) The unemployment rate is not less than 140% of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Local Area Unemployment Statistics report, produced by the Department of Labor's Bureau of Labor Statistics; or

(3) There is located a Difficult Development Area within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States. A Difficult Development Area (DDA) is an area designated by the Secretary of the Department of Housing and Urban Development, in accordance with section 26 U.S.C. 42(d)(5)(B)(iii), with high construction, land, and utility costs relative to its Area Median Gross Income.

*Redesignated area* (1) Means any census tract that ceases to be a "qualified census tract" or any non-metropolitan county that ceases to be a "qualified non-metropolitan county."

(2) A redesignated area generally shall be treated as a HUBZone for a period of three years, starting from the date on

which the area ceased to be a qualified census tract or a qualified non-metropolitan county. The date on which the census tract or non-metropolitan county ceases to be qualified is the date on which the official government data affecting the eligibility of the HUBZone is released to the public. However, an area that was a redesignated area on or after December 12, 2017 shall remain a redesignated area until December 31, 2021.

*Reside* means to live at a location full-time and for at least 180 days immediately prior to the date of application or date of recertification, as applicable.

(1) To determine residence, SBA will first look to an individual's address identified on his or her driver's license or voter's registration card. Where such documentation is not available, SBA will require other specific proof of residency, such as deeds, leases, and utility bills.

(2) For HUBZone purposes, SBA will consider individuals temporarily residing overseas in connection with the performance of a contract to reside at their U.S. residence.

*Example 1:* A person possesses the deed to a residential property and pays utilities and property taxes for that property. However, the person does not live at this property, but instead rents out this property to another individual. For HUBZone purposes, the person does not reside at the address listed on the deed.

*Example 2:* A person moves into an apartment under a month-to-month lease and lives in that apartment full-time. SBA would consider the person to reside at the address listed on the lease if the person can show that he or she has lived at that address for at least 180 days immediately prior to the date of application or date of recertification.

*Example 3:* A person is working overseas on a contract for the small business and is therefore temporarily living abroad. The employee can provide documents showing he is paying rent for an apartment located in a HUBZone. That person is deemed to reside in a HUBZone.

\* \* \* \* \*

### Subpart B—Requirements To Be a Certified HUBZone Small Business Concern

■ 15. Revise the heading for subpart B to read as set forth above.

■ 16. Revise § 126.200 to read as follows:

#### § 126.200 What requirements must a concern meet to be eligible as a certified HUBZone small business concern?

(a) *Ownership.* In order to be eligible for HUBZone certification and to continue to be certified, a small business concern must be owned in

accordance with this paragraph. The concern must be:

(1) At least 51% owned and controlled by one or more individuals who are United States citizens;

(2) An ANC or at least 51% owned by an ANC or a wholly-owned business entity of an ANC;

(3) At least 51% owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(4) At least 51% owned by one or more CDCs;

(5) A small agricultural cooperative organized or incorporated in the United States, or at least 51% owned by one or more small agricultural cooperatives organized or incorporated in the United States; or

(6) At least 51% owned by one or more NHO, or by a corporation that is wholly owned by one or more NHO.

(b) *Size.* (1) An applicant concern, together with its affiliates, must qualify as a small business under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(2) In order to remain eligible as a certified HUBZone small business concern, a firm must qualify as small under the size standard corresponding to one or more NAICS codes in which it does business.

(3) If the concern is a small agricultural cooperative, in determining size, the small agricultural cooperative is treated as a "business concern" and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(c) *Principal office.* (1) The concern's principal office must be located in a HUBZone, except for concerns owned in whole or in part by one or more Indian Tribal Governments.

(2) A concern that is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by Indian Tribal Governments) must either:

(i) Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone as provided in paragraph (d)(1) of this section; or

(ii) Certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjacent to such Indian reservation.

(d) *Employees.* (1) At least 35% of the concern's employees must reside in a HUBZone. When determining the

percentage of employees that reside in a HUBZone, if the percentage results in a fraction, SBA rounds to the nearest whole number.

*Example 1 to paragraph (d)(1):* A concern has 25 employees; 35% of 25, or 8.75, employees must reside in a HUBZone. The number 8.75 rounded to the nearest whole number is 9. Thus, 9 employees must reside in a HUBZone.

*Example 2 to paragraph (d)(1):* A concern has 95 employees; 35% of 95, or 33.25, employees must reside in a HUBZone. The number 33.25 rounded to the nearest whole number is 33. Thus, 33 employees must reside in a HUBZone.

(2) If the concern is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by one or more Indian Tribal Governments), *see* paragraph (c)(2) of this section.

(3) An employee who resides in a HUBZone at the time of certification or recertification shall continue to count as a HUBZone resident employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a HUBZone or the area in which the employee's residence is located no longer qualifies as a HUBZone. The certified HUBZone small business concern must maintain records of the employee's original HUBZone address, as well as records of the individual's continued and uninterrupted employment by the HUBZone small business concern, for the duration of the firm's participation in the HUBZone program.

(e) *Attempt to maintain.* (1) At the time of application, an applicant concern must certify that it will "attempt to maintain" (*see* § 126.103) having at least 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(2) If the concern is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by one or more Indian Tribal Governments), the concern must certify that it will "attempt to maintain" (*see* § 126.103) the applicable employment percentage described in paragraph (c)(2) of this section during the performance of any HUBZone contract it receives.

(f) *Subcontracting.* At the time of application, an applicant concern must certify that it will comply with the applicable limitations on subcontracting requirements in connection with any procurement that it receives as a certified HUBZone small business concern (*see* § 126.5 and § 126.700).

(g) *Suspension and Debarment.* The concern and any of its owners must not



have an active exclusion in the System for Award Management, available at [www.SAM.gov](http://www.SAM.gov), at the time of application.

**§ 126.202 [Amended]**

■ 17. Amend § 126.202 by removing the phrase “Many persons share control” and adding in its place the phrase “Many persons may share control”.

**§ 126.203 [Amended]**

■ 18. Amend § 126.203 paragraph (a) by removing the phrase “qualified HUBZone SBC” and adding in its place the phrase “certified HUBZone small business concern”.

■ 19. Revise § 126.204 to read as follows:

**§ 126.204 May a HUBZone small business concern have affiliates?**

(a) A HUBZone small business concern may have affiliates, provided that the aggregate size of the concern together with all of its affiliates is small as defined in part 121 of this title, except as otherwise provided for small agricultural cooperatives in § 126.103.

(b) The employees of an affiliate may be counted as employees of a HUBZone applicant or HUBZone small business concern for purposes of determining compliance with the HUBZone program’s principal office and 35% residency requirements. In determining whether individuals should be counted as employees of a HUBZone applicant or HUBZone small business concern, SBA will review all information, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and those set forth in SBA’s Size Policy Statement No. 1 (Pub. L. 114–187, June 30, 2016). If the firms would be affiliated for size purposes and the totality of the circumstances shows that there is no clear line of fracture between the HUBZone applicant (or HUBZone small business concern) and the affiliate, SBA will consider the employees of the affiliate as employees of the HUBZone applicant (or HUBZone small business concern).

■ 20. Revise § 126.205 to read as follows:

**§ 126.205 May participants in other SBA programs be certified as HUBZone small business concerns?**

Participants in other SBA programs may be certified as HUBZone small business concerns if they meet all of the requirements set forth in this part.

■ 21. Revise § 126.206 to read as follows:

**§ 126.206 May nonmanufacturers be certified as HUBZone small business concerns?**

Nonmanufacturers (referred to in the HUBZone Act of 1997 as “regular dealers”) may be certified as HUBZone small business concerns if they meet all of the requirements set forth in § 126.200. For purposes of this part, a “nonmanufacturer” is defined in § 121.406(b) of this chapter.

■ 22. Revise § 126.207 to read as follows:

**§ 126.207 Do all of the offices or facilities of a certified HUBZone small business concern have to be located in a HUBZone?**

A HUBZone small business concern may have offices or facilities in multiple HUBZones or even outside a HUBZone. However, in order to be certified as a HUBZone small business concern, the concern’s principal office must be located in a HUBZone (except *see* § 126.200(c)(2) for concerns owned by Indian Tribal Governments).

■ 23. Revise § 126.300 to read as follows:

**§ 126.300 How may a concern be certified as a HUBZone small business concern?**

(a) A concern must apply to SBA for HUBZone certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies.

(b) SBA, at its discretion, may rely solely upon the information submitted, may request additional information, may conduct independent research, or may verify the information before making an eligibility determination.

(c) If SBA determines that a concern meets the eligibility requirements of a HUBZone small business concern, it will notify the firm and designate the firm as a certified HUBZone small business concern in DSBS (or successor system).

■ 24. Revise § 126.303 to read as follows:

**§ 126.303 Where must a concern submit its application for certification?**

A concern seeking certification as a HUBZone small business concern must submit an electronic application to SBA’s HUBZone Program Office via SBA’s web page at [www.SBA.gov](http://www.SBA.gov). The application and any supporting documentation must be submitted by a person authorized to represent the concern.

■ 25. Revise § 126.304 to read as follows:

**§ 126.304 What must a concern submit to SBA in order to be certified as a HUBZone small business concern?**

(a) *General.* To be certified by SBA as a HUBZone small business concern, a

concern must submit a completed application and all documents requested by SBA. The concern must also represent to SBA that it meets the requirements set forth in § 126.200 and that all of the information provided as of the date of the application (and any subsequent information provided) is complete, true and accurate. The representation must be electronically signed by an owner of the applicant.

(b) *Supporting documents.* (1) SBA may request documents to verify that the applicant meets the HUBZone program’s eligibility requirements. The documents must show that the concern meets the program’s requirements at the time it submits its application to SBA.

(2) The concern must document compliance with the requirements listed in § 126.200, including but not limited to employment records and documentation showing the address of each HUBZone resident employee. Records sufficient to demonstrate HUBZone residency include copies of driver’s licenses and voter registration cards; only where such documentation is unavailable will SBA accept alternative documentation (such as copies of leases, deeds, and/or utility bills) accompanied by signed statements explaining why the alternative documentation is being provided.

(c) *Changes after submission of application.* After submitting an application, a concern applying for HUBZone certification must notify SBA of any changes that could affect its eligibility, and provide information and documents to verify the changes. If the changed information indicates that the firm is not eligible, the applicant will be given the option to withdraw its application, or SBA will decline certification and the firm must wait 90 days to reapply.

(d) *HUBZone areas.* Concerns applying for HUBZone status must use SBA’s website (*i.e.*, maps or other tools showing qualified HUBZones) to verify that the location of the concern’s principal office and the residences of at least 35% of the concern’s employees are within HUBZones. If SBA’s website indicates that a particular location is not within a HUBZone and the applicant disagrees, then the applicant must note this on the application and submit relevant documents showing why the applicant believes the area meets the statutory criteria of a HUBZone. SBA will determine whether the location is within a HUBZone using available methods (*e.g.*, contact Bureau of Indian Affairs for Indian reservations or Department of Defense for BRACs).

(e) *Record Maintenance.* HUBZone small business concerns must retain

documentation demonstrating satisfaction of all qualifying requirements for 6 years from date of submission of all initial and continuing eligibility actions as required by this part. In addition, HUBZone small business concerns must retain documentation as required in § 126.200(d)(3).

**§ 126.305 [Removed and reserved]**

■ 26. Remove and reserve § 126.305.

■ 27. Revise § 126.306 to read as follows:

**§ 126.306 How will SBA process an application for HUBZone certification?**

(a) The D/HUB or designee is authorized to approve or decline applications for HUBZone certification. SBA will receive and review all applications and request supporting documents. SBA must receive all required information, supporting documents, and a completed HUBZone representation before it will begin processing a concern's application. SBA will not process incomplete packages. SBA will make its determination within 90 calendar days after receipt of a complete package whenever practicable.

(b) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may draw an adverse inference and presume that the information that the applicant failed to provide would demonstrate ineligibility and deny certification on this basis.

(c) SBA's decision will be based on the facts set forth in the application, any information received in response to SBA's request for clarification, any independent research conducted by SBA, and any changed circumstances.

(d) In order to be certified into the program, the applicant must be eligible as of the date it submitted its application and at the time the D/HUB issues a decision. An applicant must inform SBA of any changes to its circumstances that occur after its application and before its certification that may affect its eligibility. SBA will consider such changed circumstances in determining whether to certify the firm.

(e) If SBA approves the application, it will send a written notice to the concern and designate the firm as a certified HUBZone small business concern in DSBS (or successor system) as described in § 126.307.

(f) If SBA denies the application, it will send a written notice to the concern and state the specific reasons for denial.

The decision will also state the reconsideration rights.

(g) SBA will presume that notice of its decision was provided to an applicant if SBA sends a communication to the concern at a mailing address, email address, or fax number provided in the concern's profile in the System for Award Management (or successor system).

■ 28. Revise § 126.307 to read as follows:

**§ 126.307 Where is there a list of certified HUBZone small business concerns?**

SBA designates firms as certified HUBZone small business concerns in DSBS (or successor system).

■ 29. Revise § 126.308 to read as follows:

**§ 126.308 What happens if a HUBZone small business concern receives notice of its certification but it does not appear in DSBS as a certified HUBZone small business concern?**

(a) A certified HUBZone small business concern that has received SBA's notice of certification, but does not appear in DSBS (or successor system) as a certified HUBZone small business concern within 10 business days, should immediately notify the D/HUB via email at [hubzone@sba.gov](mailto:hubzone@sba.gov).

(b) A certified HUBZone small business concern that has received SBA's notice of certification must appear as a certified HUBZone small business concern in DSBS (or successor system) in order to be eligible for HUBZone contracts (*i.e.*, it cannot "opt out" of a public display in the System for Award Management (SAM.gov) or DSBS (or successor systems)).

■ 30. Revise § 126.309 to read as follows:

**§ 126.309 May a declined concern request reconsideration or seek certification at a later date?**

(a) *Reconsideration.* An applicant may request that the D/HUB reconsider the initial decline decision by filing a request for reconsideration with SBA.

(1) *Method of submission.* The applicant must submit its request for reconsideration to the SBA's HUBZone Program Office by email to [hubzone@sba.gov](mailto:hubzone@sba.gov).

(2) *Filing deadline.* The request for reconsideration must be submitted within 15 calendar days of receipt of written notice that the concern's application was declined.

(3) *Contents of request.* The request for reconsideration must set forth the reasons why the D/HUB's initial decision was erroneous and include information and documentation pertinent to overcoming the reason(s)

for the initial decline, whether or not available at the time of initial application.

(4) *Decision on reconsideration.* The D/HUB will issue a written decision within 30 calendar days of SBA's receipt of the applicant's request for reconsideration. The D/HUB may approve the application, deny it on the same grounds as the original decision, or deny it on other grounds.

(i) If denied, the D/HUB will provide written notice and explain why the applicant is not eligible for admission to the program and give specific reasons for the decline.

(ii) If the D/HUB declines the application solely on issues not raised in the initial decline, the applicant can ask for reconsideration as if it were an initial decline.

(b) *Reapplying for certification.* A declined concern may reapply for certification ninety (90) calendar days after the date of the final agency decision (*i.e.*, the initial decision of the D/HUB where the concern does not seek reconsideration, or the decision on reconsideration), if it believes that it has overcome all reasons for decline through changed circumstances and is currently eligible.

■ 31. Revise § 126.401 to read as follows:

**§ 126.401 What is a program examination?**

A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application or recertification process. Examiners may verify that the concern met the program's eligibility requirements at the time of its certification or, if applicable, at the time of its most recent recertification.

**§ 126.402 [Amended]**

■ 32. Amend § 126.402 by removing the phrase "qualified HUBZone SBC" and adding in its place the phrase "certified HUBZone small business concern".

■ 33. Revise § 126.403 to read as follows:

**§ 126.403 What will SBA review during a program examination?**

(a) SBA may conduct a program examination, or parts of an examination, at one or more of the concern's offices. SBA will determine the location and scope of the examination and may review any information related to the concern's HUBZone eligibility including, but not limited to, documentation related to the location and ownership of the concern, compliance with the 35% HUBZone

residency requirement, and the concern's "attempt to maintain" (see § 126.103) this percentage.

(b) SBA may require that a HUBZone small business concern (or applicant) submit additional information as part of the program examination. If SBA requests additional information, SBA will presume that written notice of the request was provided when SBA sends such request to the concern at a mailing address, email address or fax number provided in the concern's profile in the Dynamic Small Business Search (DSBS) or the System for Award Management (SAM) (or successor systems). SBA may draw an adverse inference from a concern's failure to cooperate with a program examination or provide requested information and assume that the information that the HUBZone small business concern (or applicant) failed to provide would demonstrate ineligibility, and decertify (or deny certification) on this basis.

(c) The concern must retain documentation provided in the course of a program examination for 6 years from the date of submission.

■ 34. Add § 126.404 to read as follows:

**§ 126.404 What are the possible outcomes of a program examination and when will SBA make its determination?**

(a) *Timing.* SBA will make its determination within 90 calendar days after SBA receives all requested information, when practicable.

(b) *Program examinations on certified HUBZone small business concerns.* If the program examination was conducted on a certified HUBZone small business concern—

(1) And the D/HUB (or designee) determines that the firm is eligible, SBA will send a written notice to the HUBZone small business concern and continue to designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(2) And the D/HUB (or designee) determines that the firm is not eligible, SBA will propose the concern for decertification pursuant to the procedures set forth in § 126.503.

(c) *Program examinations on applicants.* If the program examination was conducted on an applicant to the HUBZone program—

(1) And the D/HUB (or designee) determines that the firm is eligible, SBA will send a written certification notice to the firm and designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(2) And the D/HUB (or designee) determines that the firm is ineligible, SBA will send a written decline notice to the firm.

■ 35. Revise § 126.500 to read as follows:

**§ 126.500 How does a concern maintain HUBZone certification?**

Any concern seeking to remain a certified HUBZone small business concern in DSBS (or successor system) must annually provide a written recertification to SBA that it continues to meet all HUBZone eligibility criteria (see § 126.200) and provide supporting documentation when requested to do so by SBA. In order to remain in the program without any interruption, a HUBZone small business concern must recertify its eligibility to SBA on the anniversary of the date of its original HUBZone certification. The date of HUBZone certification is the date specified in the firm's certification letter. If the business fails to recertify, SBA may propose the firm for decertification pursuant to § 126.503.

■ 36. Revise § 126.501 to read as follows:

**§ 126.501 How long does HUBZone certification last?**

(a) Once SBA certifies a concern as eligible to participate in the HUBZone program, the concern will be treated as a certified HUBZone small business concern eligible for all HUBZone contracts for which the concern qualifies as small, for a period of one year from the date of its initial certification or recertification, unless the concern acquires, is acquired by, or merges with another firm during that one-year period. Where a HUBZone small business concern acquires, is acquired by, or merges with another firm, the concern must demonstrate to SBA that it continues to meet the HUBZone eligibility requirements in order for it to remain eligible as a certified HUBZone small business concern.

(b) On the annual anniversary of a firm's certification or recertification, the firm must recertify that it is fully compliant with all HUBZone eligibility requirements (see § 126.200), or it can request to voluntarily withdraw from the HUBZone program.

(c) SBA may review the firm's recertification through the program examination process.

(1) If SBA determines that the firm is no longer eligible at the time of its annual recertification, SBA will propose the HUBZone small business concern for decertification pursuant to § 126.503.

(2) If SBA determines that the firm continues to be eligible, SBA will notify the firm of this determination. In such case, the concern will:

(i) Continue to be designated as a certified HUBZone small business

concern in DSBS (or successor system); and

(ii) Be treated as an eligible HUBZone small business concern for all HUBZone contracts for which the concern qualifies as small for a period of one year from the date of the recertification.

(d) *Voluntary withdrawal.* A

HUBZone small business concern may request to voluntarily withdraw from the HUBZone program at any time. Once SBA concurs, SBA will decertify the concern and no longer designate it as a certified HUBZone small business concern in DSBS (or successor system). The concern may apply again for certification at any point after ninety (90) calendar days from the date of decertification. At that point, the concern would have to demonstrate that it meets all HUBZone eligibility requirements.

■ 37. Revise § 126.502 to read as follows:

**§ 126.502 Is there a limit to the length of time a concern may be a certified HUBZone small business concern?**

There is no limit to the length of time a concern may remain qualified as a certified HUBZone small business concern in DSBS (or successor system) so long as it continues to comply with the provisions of §§ 126.200, 126.500, and 126.501.

■ 38. Revise § 126.503 to read as follows:

**§ 126.503 What happens if SBA is unable to verify a HUBZone small business concern's eligibility or determines that a concern is no longer eligible for the program?**

(a) *Proposed decertification.* (1) If SBA is unable to verify a certified HUBZone small business concern's eligibility or has information indicating that a firm was not eligible for the program at the time of certification or recertification, SBA may propose decertification of the concern. In addition, if during the one-year period of time after certification or recertification SBA believes that a HUBZone small business concern that is performing one or more HUBZone contracts no longer has at least 20% of its employees living in a HUBZone, SBA will propose the concern for decertification based on the concern's failure to attempt to maintain compliance with the 35% HUBZone residency requirement.

(i) *Notice of proposed decertification.* SBA will notify the HUBZone small business concern in writing that SBA is proposing to decertify it and state the reasons for the proposed decertification. SBA will consider that written notice was provided if SBA sends the notice of

proposed decertification to the concern at a mailing address, email address, or fax number provided in the concern's profile in the System for Award Management (SAM.gov) or the Dynamic Small Business Search (DSBS) (or successor systems).

(ii) *Response to notice of proposed decertification.* The HUBZone small business concern must respond to the notice of proposed decertification within the timeframe specified in the notice. In this response, the HUBZone small business concern must rebut each of the reasons set forth by SBA in the notice of proposed decertification, and where appropriate, the rebuttal must include documents showing that the concern is eligible for the HUBZone program as of the date specified in the notice.

(iii) *Adverse inference.* If a HUBZone small business concern fails to cooperate with SBA or fails to provide the information requested, the D/HUB may draw an adverse inference and assume that the information that the concern failed to provide would demonstrate ineligibility.

(2) *SBA's decision.* SBA will determine whether the HUBZone small business concern remains eligible for the program within 90 calendar days after receiving all requested information, when practicable. The D/HUB will provide written notice to the concern stating the basis for the determination. If SBA finds that the concern is not eligible, the D/HUB will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system). If SBA finds that the concern is eligible, the concern will continue to be designated as a certified HUBZone small business concern in DSBS (or successor system).

(b) *Decertification pursuant to a protest.* The procedures described in paragraph (a) of this section do not apply to HUBZone status protests. If the D/HUB sustains a protest pursuant to § 126.803, SBA will decertify the HUBZone small business concern immediately and change the firm's status in DSBS (or successor system) to reflect that it no longer qualifies as a certified HUBZone small business concern without first proposing it for decertification.

■ 39. Revise § 126.504 to read as follows:

**§ 126.504 When will SBA remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern?**

(a) SBA will remove the designation of a concern in DSBS (or successor

system) as a certified HUBZone small business concern if the concern has:

(1) Been decertified as a result of a HUBZone status protest pursuant to § 126.803;

(2) Been decertified as a result of the procedures set forth in § 126.503; or

(3) Voluntarily withdrawn from the HUBZone program pursuant to § 126.501(b).

(b) SBA may remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern as soon as the D/HUB issues a decision decertifying the concern from the program.

(c) After a concern has been removed as a certified HUBZone small business concern in DSBS (or successor system), it is ineligible for the HUBZone program and may not submit an offer on or be an awarded a HUBZone contract, or receive any other benefit as a HUBZone small business concern.

**Subpart F—Contracting with Certified HUBZone Small Business Concerns**

■ 40. Revise the heading of subpart F to read as set forth above.

**§ 126.600 [Amended]**

■ 41. Amend § 126.600 as follows:

■ a. In the introductory text, remove the phrase “qualified HUBZone SBC” and add in its place the phrase “certified HUBZone small business concern”;

■ b. In paragraphs (a), (b), and (c), remove the phrase “qualified HUBZone SBCs” wherever it appears and add in its place the phrase “certified HUBZone small business concerns”;

■ c. In paragraphs (d) and (e), remove the phrase “HUBZone SBCs” wherever it appears and add in its place the phrase “certified HUBZone small business concerns”;

■ d. In paragraph (e), remove the word “against” and add in its place the word “under” and remove the phrase “, which had been” and add in its place the phrase “that was”.

■ 42. Revise § 126.601 to read as follows:

**§ 126.601 What additional requirements must a certified HUBZone small business concern meet to submit an offer on a HUBZone contract?**

(a) Only certified HUBZone small business concerns are eligible to submit offers for a HUBZone contract or to receive a price evaluation preference under § 126.613.

(b) At the time a certified HUBZone small business concern submits its initial offer (including price) on a specific HUBZone contract, it must certify to the contracting officer that it:

(1) Is a certified HUBZone small business concern in DSBS (or successor system);

(2) Is small, together with its affiliates, at the time of its offer under the size standard corresponding to the NAICS code assigned to the procurement;

(3) Will “attempt to maintain” having at least 35% of its employees residing in a HUBZone during the performance of the contract, as set forth in § 126.200(e); and

(4) Will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter and §§ 126.200(f), and 126.700.

(c) A certified HUBZone small business concern may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406 of this chapter.

■ 43. Revise § 126.602 to read as follows:

**§ 126.602 Must a certified HUBZone small business concern maintain the employee residency percentage during contract performance?**

(a) A certified HUBZone small business concern eligible for the program pursuant to § 126.200(b) must have at least 35% of its employees residing within a HUBZone at the time of certification and annual recertification. Such a certified HUBZone small business concern must “attempt to maintain” (see § 126.103) having at least 35% of its employees residing in a HUBZone during the performance of any HUBZone contract awarded to the concern on the basis of its HUBZone status.

(b) For indefinite delivery, indefinite quantity contracts, including multiple award contracts, a certified HUBZone small business concern must “attempt to maintain” the HUBZone residency requirement during the performance of each order that is set aside for HUBZone small business concerns.

(c) A certified HUBZone small business concern eligible for the program pursuant to § 126.200(a) must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation.

(d) A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt

to maintain the HUBZone residency requirement. Such failure will result in proposed decertification pursuant to § 126.503.

**§ 126.603 [Amended]**

- 44. Amend § 126.603 by removing the phrase “qualified HUBZone SBCs” and adding in its place the phrase “certified HUBZone small business concerns”.
- 45. Amend § 126.607 as follows:
  - a. Revise the section heading;
  - b. In paragraph (c), amend the introductory text by removing the phrase “qualified HUBZone SBCs” and adding in its place the phrase “certified HUBZone small business concerns”;
  - c. In paragraph (c)(1), remove the phrase “SBA’s list of qualified HUBZone SBCs” and add in its place the phrase “the list of certified HUBZone small business concerns contained in DSBS (or successor system)”.

The revision reads as follows:

**§ 126.607 When must a contracting officer set aside a requirement for certified HUBZone small business concerns?**

\* \* \* \* \*

**§ 126.608 [Amended]**

- 46. Amend § 126.608 by removing the phrase “HUBZone set-aside” and adding in its place the phrase “HUBZone set-aside or sole source award”.

**§ 126.611 [Amended]**

- 47. Amend the heading of § 126.611 by removing the phrase “such an appeal” and adding in its place the phrase “an appeal of a contracting officer’s decision not to issue a procurement as a HUBZone contract”.

**§ 126.612 [Amended]**

- 48. Amend § 126.612 as follows:
  - a. In the introductory text and paragraph (d), remove the phrase “qualified HUBZone SBC” wherever it appears and add in its place the phrase “certified HUBZone small business concern”;
  - b. In paragraph (c), remove the phrase “qualified HUBZone SBCs” and add in its place the phrase “certified HUBZone small business concerns”.

**§ 126.613 [Amended]**

- 49. Amend § 126.613 as follows:
  - a. In the section heading and paragraphs (a)(1), (a)(2), (b)(2), and (d), remove the phrase “qualified HUBZone SBC” wherever it appears and add in its place the phrase “certified HUBZone small business concern”;
  - b. In paragraph (a)(1):
    - i. Remove the phrase “another SBC” and add in its place the phrase “another small business concern”;

- ii. In the final sentence, remove the phrase “HUBZone SBC” and add in its place the phrase “certified HUBZone small business concern”;
- iii. In the final sentence, remove the phrase “HUBZone SBCs” and add in its place the phrase “certified HUBZone small business concerns”;
- c. In Examples 1, 2, and 3 in paragraph (a)(2), remove the phrase “non-HUBZone SBC” wherever it appears and add in its place the phrase “non-HUBZone small business concern”
- d. In the second and third sentences in Example 4 in paragraph (a)(2), remove the phrase “HUBZone SBC” wherever it appears and add in its place the phrase “HUBZone small business concern”;
- e. In the third sentence in Example 4 in paragraph (a)(2), remove the phrase “HUBZone SBCs” and add in its place the phrase “certified HUBZone small business concerns”;
- f. In paragraph (b)(2), remove the phrase “qualified HUBZone SBCs” and add in its place the phrase “certified HUBZone small business concerns”; and
- g. In paragraph (d), remove the phrase “SBCs” and add in its place the phrase “small business concerns”.
- 50. Amend § 126.616 as follows:
  - a. Revise the section heading;
  - b. Revise paragraph (a);
  - c. In paragraph (b) and (d)(1), remove the phrase “qualified HUBZone SBC” wherever it appears and add in its place the phrase “certified HUBZone small business concern”;
  - d. In the introductory text of paragraph (c), remove the phrase “HUBZone SBC” and add in its place “certified HUBZone small business concern”;
  - e. In paragraphs (c)(2) through (4), (c)(9), (c)(10), (d)(2), (g), and (i) remove the phrase “HUBZone SBC” wherever it appears” and add in its place the phrase “certified HUBZone small business concern”;
  - f. In paragraphs (c)(7), (i), (j)(2), and (k), remove the phrase “performance of work” wherever it appears and add in its place the phrase “limitations on subcontracting”; and
  - g. Revise paragraph (e).

The revisions read as follows:

**§ 126.616 What requirements must a joint venture satisfy to submit an offer and be eligible to perform on a HUBZone contract?**

- (a) *General.* A certified HUBZone small business concern may enter into a joint venture agreement with one or more other small business concerns, or with an approved mentor authorized by § 125.9 of this chapter (or, if also an 8(a)

BD Participant, with an approved mentor authorized by § 124.520 of this chapter), for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be a certified HUBZone small business concern.

\* \* \* \* \*

(e) *Certification of compliance.—(1) At time of offer.* If submitting an offer as a joint venture for a HUBZone contract, at the time of initial offer (and if applicable, final offer), each certified HUBZone small business concern joint venture partner must make the following certifications to the contracting officer separately under its own name:

(i) It is a certified HUBZone small business concern that appears in DSBS (or successor system) as a certified HUBZone small business concern and it met the eligibility requirements in § 126.200 at the time of its initial certification or, if applicable, at the time of its most recent recertification;

(ii) It, together with its affiliates, is small under the size standard corresponding to the NAICS code assigned to the procurement;

(iii) It will “attempt to maintain” having at least 35% of its employees residing in a HUBZone during performance of the contract; and

(iv) It will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter and §§ 126.200(f) and 126.700.

(2) *Prior to performance.* Prior to the performance of any HUBZone contract as a joint venture, the HUBZone small business concern partner to the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating the following:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section; and

(ii) The parties will perform the contract in compliance with the joint venture agreement.

\* \* \* \* \*

**§ 126.617 [Amended]**

- 51. Amend § 126.617 as follows:
  - a. In the section heading, remove the phrase “qualified HUBZone SBC” and add in its place the phrase “certified HUBZone small business concern”;
  - b. Remove the phrase “qualified HUBZone SBC” and add in its place the phrase “certified HUBZone small business concern”.

**§ 126.618 [Amended]**

■ 52. Amend § 126.618 as follows:

■ a. In paragraph (a), remove the phrase “the underlying HUBZone requirements” and add in its place the phrase “the HUBZone requirements described in § 126.200”;

■ b. In paragraphs (a) through (c), remove the phrase “qualified HUBZone SBC” wherever it appears and add in its place the phrase “certified HUBZone small business concern”;

■ c. In paragraph (c)(1), remove the phrase “HUBZone SBC” and add in its place the phrase “certified HUBZone small business concern”;

■ d. In paragraphs (c)(1) and (c)(2), remove the phrase “performance of work” wherever it appears and add in its place the phrase “limitations on subcontracting”.

■ 53. Add § 126.619 to read as follows:

**§ 126.619 When must a certified HUBZone small business concern recertify its status for a HUBZone contract?**

(a) A concern that is a certified HUBZone small business concern at the time of initial offer (including a Multiple Award Contract) is generally considered a HUBZone small business concern throughout the life of that contract.

(1) If a concern is a certified HUBZone small business concern at the time of initial offer for a HUBZone Multiple Award Contract, then it will be considered a certified HUBZone small business concern for each order issued against the contract, unless a contracting officer requests a new HUBZone certification in connection with a specific order.

(2) Where the underlying Multiple Award Contract is not a HUBZone contract and a procuring agency is setting aside an order for the HUBZone program, a firm must be a certified HUBZone small business concern and appear in DSBS (or successor system) as a certified HUBZone small business concern at the time it submits its offer for the order.

(3) Where a HUBZone contract is novated to another business concern, the concern that will continue performance on the contract must certify its status as a certified HUBZone small business concern to the procuring agency, or inform the procuring agency that it is not a certified HUBZone small business concern, within 30 days of the novation approval. If the concern is not a certified HUBZone small business concern, the agency can no longer count any work performed under the contract, including any options or orders issued pursuant to the contract, from that point forward towards its HUBZone goals.

(4) Where a concern that is performing a HUBZone contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its status as a certified HUBZone small business concern status to the procuring agency, or inform the procuring agency that it no longer qualifies as a HUBZone small business concern. If the contractor is unable to recertify its status as a HUBZone small business concern, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. The agency must immediately revise all applicable Federal contract databases to reflect the new status.

(5) Where a concern is decertified after the award of a HUBZone contract, the procuring agency may exercise options and still count the award as an award to a HUBZone small business concern, except where recertification is required or requested under this section.

(b) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its status as a HUBZone small business concern no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option.

(1) If the concern cannot recertify that it qualifies as a HUBZone small business concern, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. This means that if the firm either no longer meets the HUBZone eligibility requirements or no longer qualifies as small for the size standard corresponding to NAICS code assigned to the contract, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals.

(2) A concern that did not certify itself as a HUBZone small business concern, either initially or prior to an option being exercised, may recertify itself as a HUBZone small business concern for a subsequent option period if it meets the eligibility requirements at that time.

(3) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(4) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date of the firm’s initial certification or, if applicable, its most recent recertification.

(c) A concern’s status will be determined at the time of submission of its initial response to a solicitation for and award of an Agreement (including Blanket Purchase Agreements (BPAs), Basic Agreements, Basic Ordering Agreements, or any other Agreement that a contracting officer sets aside or reserves awards for certified HUBZone small business concerns) and each order issued pursuant to the Agreement.

■ 54. Revise § 126.700 to read as follows:

**§ 126.700 What are the limitations on subcontracting requirements for HUBZone contracts?**

(a) *Other than Multiple Award Contracts.* For other than a Multiple Award Contract, a prime contractor receiving an award as a certified HUBZone small business concern must meet the limitations on subcontracting requirements set forth in § 125.6 of this chapter.

(b) *Multiple Award Contracts.—(1) Total Set-Aside Contracts.* For a Multiple Award Contract that is totally set aside for certified HUBZone small business concerns, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (see § 126.5), or if applicable, the nonmanufacturer rule (see § 121.406 of this chapter), during the base term and during each subsequent option period. However, the contracting officer, at his or her discretion, may also require the concern to comply with the limitations on subcontracting or the nonmanufacturer rule for each individual order awarded under the Multiple Award Contract.

(2) *Partial Set-Aside Contracts.* For Multiple Award Contracts that are partially set aside for certified HUBZone small business concerns, paragraph (b)(1) of this section applies to the set-aside portion of the contract. For orders awarded under the non-set-aside portion of a Multiple Award Contract, a certified HUBZone small business concern need not comply with any limitations on subcontracting or nonmanufacturer rule requirements.

(3) *Orders Set Aside for certified HUBZone small business concerns.* For each individual order that is set aside for certified HUBZone small business concerns under a Multiple Award Contract that is not itself set aside for certified HUBZone small business

concerns, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (see § 125.6 of this chapter), or if applicable, the nonmanufacturer rule (see § 121.406 of this chapter), in the performance of such order.

(4) *Reserves.* For an order that is set aside for certified HUBZone small business concerns against a Multiple Award Contract with a HUBZone reserve, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (see § 125.6 of this chapter), or if applicable, the nonmanufacturer rule (see § 121.406 of this chapter), in the performance of such order. However, the certified HUBZone small business concern does not have to comply with the limitations on subcontracting or the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst certified HUBZone small business concerns and one or more other-than-small business concerns.

#### § 126.800 [Amended]

■ 55. Amend § 126.800 as follows:

■ a. Amend the section heading by removing the phrase “qualified HUBZone SBC” and adding in its place the phrase “certified HUBZone small business concern”; and

■ b. In paragraphs (a) and (b), remove the phrase “qualified HUBZone SBC” wherever it appears and add in its place the phrase “certified HUBZone small business concern”;

■ 56. Amend § 126.801 as follows:

■ a. Revise the section heading;

■ b. Revise paragraphs (a), (b), and (c)(3); and

■ c. Revise the second and third sentences in paragraph (e).

The revisions read as follows:

#### § 126.801 How does an interested party file a HUBZone status protest?

(a) *General.* (1) A HUBZone status protest is the process by which an interested party may challenge the HUBZone status of an apparent successful offeror on a HUBZone contract, including a HUBZone joint venture submitting an offer under § 126.616.

(2) The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a certified HUBZone small business concern is other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the HUBZone small business concern and whether the

concern meets the HUBZone eligibility requirements set forth in § 126.200, SBA will process the protests concurrently, under the procedures set forth in part 121 of this chapter and this part.

(3) SBA does not review issues concerning the administration of a HUBZone contract.

(b) *Format and specificity.* (1) Protests must be in writing and must state all specific grounds for why the protested concern did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for certification or at the time SBA last recertified the concern as a HUBZone small business concern. A protest merely asserting that the protested concern did not qualify as a HUBZone small business concern at the time of certification or recertification, without setting forth specific facts or allegations, is insufficient. A protest asserting that a firm was not in compliance with the HUBZone eligibility requirements at the time of offer or award will be dismissed.

(2) For a protest filed against a HUBZone joint venture, the protest must state all specific grounds for why—

(i) The HUBZone small business concern partner to the joint venture did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for certification or at the time SBA last recertified the concern as a HUBZone small business concern; and/or

(ii) The protested HUBZone joint venture did not meet the requirements set forth in § 126.616 at the time the joint venture submitted an offer for a HUBZone contract.

(c) \* \* \*

(3) Protestors may submit their protests by email to [hzprotests@sba.gov](mailto:hzprotests@sba.gov).

(e) \* \* \* The contracting officer must send the protest, along with a referral letter, to the D/HUB by email to [hzprotests@sba.gov](mailto:hzprotests@sba.gov). The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the following:

(1) The solicitation number;

(2) The name, address, telephone number, email address, and facsimile number of the contracting officer;

(3) The type of HUBZone contract at issue;

(4) If the procurement was conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference;

(5) If the procurement was a HUBZone set-aside, whether the protester submitted an offer;

(6) Whether the protested concern was the apparent successful offeror;

(7) Whether the procurement was conducted using sealed bid or negotiated procedures;

(8) The bid opening date, if applicable;

(9) The date the protester was notified of the apparent successful offeror;

(10) The date the protest was submitted to the contracting officer;

(11) The date the protested firm submitted its initial offer or bid to the contracting activity; and

(12) Whether a contract has been awarded, and if applicable, the date of contract award and contract number.

#### § 126.802 [Amended]

■ 57. Amend § 126.802 by removing the phrase “has qualified HUBZone status” and adding in its place the phrase “qualifies as a certified HUBZone small business concern”.

■ 58. Amend § 126.803 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively;

■ c. Adding new paragraph (a); and

■ d. Revising newly redesignated paragraphs (b)(2), (c), and (e).

The addition and revisions read as follows:

#### § 126.803 How will SBA process a HUBZone status protest and what are the possible outcomes?

(a) *Date at which eligibility determined.* SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of its initial certification or, if applicable, its most recent recertification.

(b) \* \* \*

(2) If SBA determines the protest is timely and sufficiently specific, SBA will notify the protested concern of the protest and the identity of the protestor. The protested concern must submit information responsive to the protest within 3 business days of the date of receipt of the protest.

(c) *Time period for determination.* (1) SBA will determine the HUBZone status of the protested concern within 15 business days after receipt of a complete protest referral.

(2) If SBA does not issue its determination within 15 business days (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will

be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (d) of this section apply to the procurement in question.

\* \* \* \* \*

(e) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the AA/GC&BD, or designee, pursuant to § 126.805.

(1) *Protest sustained.* If the D/HUB finds the protested concern ineligible and sustains the protest, SBA will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system). A contracting officer shall not award a contract to a protested concern that the D/HUB has determined is not an eligible HUBZone small business concern for the procurement in question.

(i) *No appeal filed.* If a contracting officer receives a determination sustaining a protest after contract award, and no appeal has been filed, the contracting officer shall terminate the award.

(ii) *Appeal filed.* (A) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(B) If the AA/GCBD affirms the initial determination finding the protested

concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(iii) *Update FPDS-NG.* Where the contract was awarded to a firm that is found not to qualify as a HUBZone small business concern, the contracting officer must update the Federal Procurement Data System-Next Generation (FPDS-NG) and other procurement reporting databases to reflect the final agency HUBZone decision (*i.e.*, the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed).

(2) *Protest dismissed or denied.* If the D/HUB denies or dismisses the protest, the contracting officer may award the contract to the protested concern.

(i) *No appeal filed.* If a contracting officer receives a determination dismissing or denying a protest and no appeal has been filed, the contracting officer may:

(A) Award the contract to the protested concern if it has not yet been awarded; or

(B) Authorize contract performance to proceed if the contract has been awarded.

(ii) *Appeal filed.* If the AA/GCBD overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(3) A concern found to be ineligible is precluded from applying for HUBZone

certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed).

#### **PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM**

■ 59. Amend § 127.602 by redesignating the text of § 127.602 as paragraph (a) and adding paragraph (b).

The addition reads as follows:

#### **§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?**

\* \* \* \* \*

(b) For a protest filed against an EDWOSB or WOSB joint venture, the protest must state all specific grounds for why—

(1) The EDWOSB or WOSB partner to the joint venture did not meet the EDWOSB or WOSB eligibility requirements set forth in § 127.200; and/or

(2) The protested EDWOSB or WOSB joint venture did not meet the requirements set forth in § 127.506.

Dated: October 19, 2018.

**Linda E. McMahon,**  
*Administrator.*

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