SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115, 121, 125, 126, and 127

RIN 3245–AG38

Small Business HUBZone Program and Government Contracting Programs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending 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. This comprehensive revision to the HUBZone Program clarifies current HUBZone Program policies and procedures and makes changes that will benefit the small business community by making the HUBZone Program more efficient and effective. The rule is 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: This rule is effective on December 26, 2019.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Government Contracting, 202–205–7337 or *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

Background

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 final rule implements 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).

On October 31, 2018, SBA published in the **Federal Register** a comprehensive proposal to amend the HUBZone program. 83 FR 54812. SBA had not issued a comprehensive regulatory amendment to the HUBZone program since the program's initial implementation over twenty years ago. SBA's review of the HUBZone program in response to President Trump's directive highlighted several areas that needed revision. In order to address these deficiencies, SBA proposed to clarify and modify a number of the regulations implementing the program to reflect current policies, eliminate ambiguities in the regulations, and reduce burdens on small businesses and procuring agencies.

The proposed rule initially called for a 60-day comment period, with comments due by December 31, 2018. Due to the scope and significance of the proposed changes, SBA subsequently published a notice in the **Federal Register** on December 31, 2018 that extended the comment period to February 14, 2019. 83 FR 67701.

In addition, SBA proposed to implement section 1701(i) of the National Defense Authorization Act for Fiscal Year 2018 (NDAA 2018), Public Law 115–91, 131 Stat. 1283 (December 12, 2017), which by amending the definition of ''HUBZone small business concern,'' allows certain certified HUBZone small business concerns to maintain their HUBZone status until 2021. In addition, based on comments received, SBA is implementing sections 1701(b), 1701(c), and parts of section 1701(h) of the NDAA 2018 that are effective January 1, 2020, as discussed further below.

A challenge HUBZone participants have faced over the last two decades is understanding the definitions of key components of the program requirements. HUBZones change based on economic data. Once certified, it is unrealistic to expect a business concern or its employees to relocate in order to attempt to maintain the concern's HUBZone status if the area where the business is located or employees reside loses its HUBZone status. The proposed rule detailed changes to help the HUBZone program achieve its intended results: Investment and continued employment in distressed communities. First, the rule proposed 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 rule proposed to 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.

SBA recognizes the challenge many firms face in attempting to meet the requirement that at least 35% of the firm's employees live in a HUBZone. Firms with a significant number of employees may 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, thus jeopardizing 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 would make it ineligible for any future HUBZone contracts. The 35% HUBZone residency requirement can also make 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, § 126.500(a) of the final rule requires 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 will 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. SBA also requested comments on whether seasonal

employees can or should be counted and still maintain the integrity of the HUBZone eligibility requirements.

SBA received extensive responses to the proposed rule from 98 commenters, which comprised about 370 specific comments. SBA addresses each proposed amendment below, including the disposition of any comments.

II. Section-by-Section Analysis and Comments Received

1. Definitions

The proposed rule revised, added, or eliminated several definitions set forth in 13 CFR 126.103 in order to remove ambiguities and make the HUBZone program easier for firms to use.

SBA proposed to delete the definitions of ''Alaska Native Village'' and ''ANCSA'' (*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 received several comments that did not oppose the proposed change but asked SBA to be careful about conflating or confusing terms such as ANCSA, Alaska Native Village, and Alaskan Native Corporation. SBA does not believe it has incorrectly merged or eliminated any terms in the revised definition, but SBA will continue to be careful when defining these terms and other related terms.

SBA proposed to amend the definition of ''attempt to maintain'' to clarify what happens if a HUBZone small business concern's HUBZone residency percentage drops significantly below the 35% employee HUBZone residency requirement. The Small Business Act provides that a HUBZone small business concern must ''attempt to maintain'' compliance with the 35% residency requirement during the performance of a HUBZone contract. 15 U.S.C. 632(p)(5)(A)(i)(II). As noted in the proposed rule, 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 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 that it would be helpful to have clearer guidelines that would allow firms to adequately plan and ensure that they are in fact maintaining compliance and continued eligibility. SBA proposed to amend this definition by adding that falling below 20% HUBZone residency during the performance of a HUBZone contract would 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. SBA requested comments on how best to look at this 20% minimum requirement, specifically 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 received 20 comments on the proposed change. Several commenters opposed the changes and preferred the current language because of the flexibility of the current standard. One commenter said the current flexible standard was better for firms with a very low total number of employees. The remaining commenters supported SBA's change. One commenter supported the change to a fixed percentage but thought 15% would be better. Another commenter supported the change to a fixed percentage but thought 25% would be better. SBA received five comments that supported the change to a fixed percentage but expressed concerns about the inflexibility this would create and the consequence of decertification. These commenters recommended several alternatives, including establishing a rebuttable presumption and not decertifying firms that do not meet the requirements. One commenter effectively recommended changing the 35% residency requirement to a 20% requirement where participants would only need to show demonstrable efforts if they fell below 20%.

After considering the comments, SBA is adopting the change implementing a 20% floor within the definition of ''attempt to maintain''. SBA believes that it is important to remember the goals of the HUBZone program: To provide capital infusion into and hire individuals living in distressed areas. SBA believes that allowing any number below 20% would not properly capture the intent of the program. In addition, most commenters agreed that 20% was a reasonable standard. The final rule also maintains the proposed consequences for firms that do not meet the standard. SBA believes that it is important that firms adhere to the requirements. The attempt to maintain standard is already an exception to the general 35% residency requirement, and SBA believes that a situation in which a firm that does not meet this relaxed standard and faces little or no consequence would not further SBA's goal of ensuring firms meet the requirements of the program.

Two comments supported the change but requested clarity as to what it means to attempt to maintain in relation to recertification, continued eligibility, and the change made in § 126.501 providing that certification lasts for one year. These commenters raised concerns about firms merely hiring several employees immediately before an upcoming recertification date, employing those individuals for a short time to meet the 20% threshold, but only for a small window of time right before recertification. SBA agrees with this commenter and has provided clarity on this issue in other sections of this final rule. Specifically, SBA makes clear that the 20% threshold is the floor only for firms performing HUBZone contracts, and if a concern falls below that threshold during the year, it will be decertified according to the standards in § 126.602(d). SBA also made clear that firms have an affirmative duty to notify SBA if they fall below the 20% attempt to maintain standard in § 126.501(a)(2).

SBA proposed eliminating the definition of ''county unemployment rate'' as a separate definition and incorporating it into the definition of ''qualified non-metropolitan county (QNMC)'' and amending the definition of ''D/HUB'' to make clear that this term refers to the Director of SBA's Office of HUBZone. SBA received no comments on these changes to the proposed rule.

SBA proposed to amend the definition of ''decertify'' to clarify that the decertification procedures described in part 126 also apply to firms that voluntarily withdraw from the HUBZone program, and not solely to situations where SBA initiates a decertification action. SBA received three comments on the proposed changes to the definition of ''decertify.'' All three comments supported the change. As such, SBA is adopting the definition as proposed.

The proposed rule also sought to amend the definition of the term ''employee.'' This term is crucial to the HUBZone program since the 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. The proposed rule intended to clarify how SBA determines whether an individual worked ''a minimum of 40 hours per month.'' The proposed rule explained that an individual is considered an employee for HUBZone program purposes if he or she works at least 40 hours during the four-week period immediately prior to the relevant date of consideration, which is either the date the concern submits its HUBZone application to SBA or the date of recertification. Per the proposed rule, 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. Most commenters favored this proposed clarification, and SBA has finalized it in this rule.

SBA also sought comments on whether it should revise the requirement from 40 hours per month to 20 hours per week, due to concerns that the 40 hours per month standard may be insufficient to stimulate employment in HUBZones. SBA received 35 comments opposing this possible change to the definition of ''employee.'' Of these, 20 commenters cited concerns about the administrative and financial burdens on HUBZone firms and the restrictions it would place on firms' ability to hire certain groups of potential employees such as students, working parents, interns, individuals with more than one job, or individuals who are otherwise unable to work for a firm 20 hours or more per week. One of the purposes of the HUBZone program is to provide meaningful employment opportunities for residents of HUBZone areas. After reviewing the comments, SBA agrees that changing the requirement to 20 hours per week would hinder, rather than encourage, firms' efforts to hire and retain HUBZone-resident employees. Therefore, SBA will retain the existing requirement that an ''employee'' is an individual who works at least 40 hours per month.

SBA also sought comments on whether the definition of ''employee'' should continue to include temporary and leased employees, individuals obtained through a union agreement, and those co-employed through a professional employer organization (PEO) agreement, or if SBA should count only full-time employees or full-time equivalents. SBA received 30 comments on this issue, with 18 commenters in favor of continuing to use a broad definition of ''employee'' and 12 in favor of a narrower approach that would count only full-time employees or full-time equivalents. After reviewing the comments, SBA will retain the definition of ''employees'' that includes temporary and leased employees, individuals obtained through a union agreement, and those employed through a PEO agreement. As discussed above, the purpose of the program is to increase employment opportunities for individuals residing in HUBZones. A more inclusive definition of ''employee'' allows a wider group of people to apply for positions at HUBZone firms and thus gives the firms more opportunities to find employees who fit their needs.

The proposed definition of ''employee'' also clarified 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 is SBA's current policy, and it is intended to prevent a firm owner from being able to circumvent the HUBZone rules by not paying himself a salary to remove himself from the employee count. 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. The proposed rule also included a provision 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. All five comments received on this issue favored this change. The proposed change is adopted as final.

The proposed definition of ''employee'' also clarified SBA's existing rule that individuals who do not receive compensation and those who receive deferred compensation are not considered employees (other than owners who work at least 40 hours per month, as described above). As SBA's current rules provide, such individuals are considered volunteers, and volunteers are not considered employees. 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.'' SBA received three comments in support of continuing to exclude individuals who receive deferred compensation from the definition of ''employee.'' Thus, the final rule will continue to exclude individuals who receive deferred compensation from the definition of ''employee.''

In addition, the proposed definition clarified that individuals who receive in-kind compensation are not considered volunteers and will be considered employees, as long as such in-kind compensation is commensurate with the work performed by the individual. This means that an individual who works 40 hours per month but receives in-kind compensation equaling the value of only 10 hours would generally not be considered an employee. These clarifications were intended to address confusion about what SBA considers in-kind compensation and whether someone who receives in-kind compensation should be considered an employee. 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 provide that volunteers are not considered employees, SBA explained: ''SBA intends the term compensation to be read broadly and to be 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 this 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 (January 28, 2002).

SBA requested 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. Of the eight comments received on this issue, half supported a definition of ''employee'' that includes commensurate in-kind compensation and half opposed this definition. The former noted that they supported this element of the definition, as long as the in-kind compensation offered financial value to the employee because that would in turn benefit the HUBZone area. For example, one commenter supported in-kind compensation in the form of housing for the employee. Another supported in-kind compensation as long as it was equivalent to the minimum wage. The commenters who opposed the proposed regulation expressed concern about the difficulty of ensuring in-kind compensation complies with all relevant labor and tax laws and were concerned that it would be too subjective. In response to these concerns, SBA has revised the definition to provide that ''in-kind compensation commensurate with the work performed'' means compensation that is of demonstrable financial value to the individual and compliant with relevant laws. In general, a firm would be able to meet this standard by providing documentation such as: Employment agreements for any individuals receiving in-kind compensation, showing the employment relationship between the individuals and the firm, including the terms of employment, work requirements, and form of compensation for work performed; records showing that the individuals worked the required minimum of 40 hours per month at the time of evaluation (*e.g.,* signed timesheets, job logs, etc.); documentation showing the value of the in-kind compensation; and documentation showing that the firm is reporting and withholding appropriate taxes from the compensation provided. SBA notes that this is not a change in policy, but a clarification of what SBA currently requires. SBA believes this fulfills the public policy aim of facilitating the advantages that accrue to communities where individuals have increased employment opportunities, while also allowing firms flexibility to offer benefits such as housing that could make them more competitive to qualified individuals.

The proposed definition of ''employee'' clarified that independent contractors who receive compensation through Internal Revenue Service (IRS) Form 1099 generally are not considered employees, where such individuals would not be considered employees for size purposes under SBA's Size Policy Statement No. 1. 51 FR 6099 (February 20, 1986). SBA believes that it does not make sense to find an individual who receives a Form 1099 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, then that individual should also be considered an employee for HUBZone eligibility purposes. If an individual 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 and is also not under the same control as an employee.

SBA received four comments in favor of counting independent contractors as employees for HUBZone purposes if they are considered employees for size purposes, and three comments opposed to counting them as employees under any circumstances (including for size purposes). It is beyond the scope of this rulemaking to consider whether independent contractors should be treated as employees for size purposes. Thus, SBA did not consider those comments in finalizing this rule. SBA proposed including similar treatment for HUBZone eligibility because there is value in ensuring uniformity and consistency among its programs where possible. More importantly, SBA believes having one definition for size standards and another for HUBZone eligibility will lead to confusion and ultimately make it more difficult for firms to comply with SBA's regulations. As noted above, SBA intends for these revisions to clarify participants' and applicants' understanding of the program requirements. As such, the final rule adopts the language noting that an independent contractor considered an ''employee'' for size regulations is also an employee for HUBZone purposes.

SBA requested 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. Under such an arrangement, 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 requested public input on whether such an arrangement is consistent with the purposes of the HUBZone program and how such arrangements could be structured in order to be consistent with the goals of the program. SBA received two comments in favor of allowing firms to count individuals employed through third-party businesses as employees and one comment opposed. One commenter noted that these arrangements help HUBZone firms connect with potential employees who may not otherwise be familiar with the program or its benefits. By connecting HUBZone firms with eligible employees, third-party businesses serve the program goal of increasing employment opportunities for individuals in HUBZones. Another commenter noted that an applicant seeking HUBZone status (or one already in the program) may not need a full-time employee, and that concern should not be burdened with employing someone beyond its needs. Thus, arrangements allowing one individual to be counted as a HUBZone employee for more than one concern provides flexibility to firms to meet their needs and provides the opportunity for an individual to be fully employed where they otherwise might not be. SBA has considered all the comments received and is not changing the current policy allowing these arrangements where the arrangement appears legitimate and the HUBZone applicant (or participant) shows that the individuals being hired through the third-party business are doing legitimate work.

SBA proposed 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 proposed 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 proposed to replace the term ''qualified

HUBZone SBC'' through the regulations with the term ''certified HUBZone small business concern'' (or ''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 are can qualify to receive the benefits of the HUBZone program.

In addition, SBA proposed to implement section 1701(i) of the NDAA 2018 in the amended definition of ''HUBZone small business concern.'' In enacting section 1701(i), Congress intended for small businesses located in expiring redesignated areas 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 of the NDAA 2018 (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. SBA did not receive any comments on the proposed definition of ''HUBZone small business concern'' and is implementing the changes as proposed.

SBA proposed to amend the definition of ''principal office'' to eliminate ambiguities in the regulation. Specifically, SBA proposed to make more clear 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 job-sites. In addition, SBA proposed to clarify that a concern must demonstrate that it conducts business at a location in order for that location to be considered its principal office. SBA believes HUBZone firms should provide evidence that business is being conducted at the location to ensure the purposes of the HUBZone Program are being fulfilled. A firm that simply owns or leases a building but conducts no business there is not fulfilling the purposes of the program. Finally, SBA proposed to add clarifying language and examples to the definition of principal office, to illustrate how the agency treats situations in which employees work at multiple locations. SBA received three comments supporting these proposed changes. SBA also received two comments asking if SBA intended for ''job-site'' to refer only to firms whose primary industry classification is construction. The final rule clarifies that ''job-site'' refers to locations where work is performed for all service or construction contracts.

SBA proposed 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. SBA received a comment noting that section 1701 of the 2018 NDAA amends this definition effective January 1, 2020, and suggesting that SBA amend this definition to reflect this change. The statutory amendment does not make a substantive change but clarifies that ''qualified base closure areas'' are base closure areas that are treated as HUBZones for at least eight years. SBA agrees with this comment and has revised this definition accordingly.

SBA proposed to amend the definition of ''qualified census tract'' to make the regulation more readable. The proposed definition described the criteria used to define this term in the Internal Revenue Code, rather than simply cross-referencing it as the regulation currently does. SBA received a comment noting that section 1701 of the 2018 NDAA amends this definition effective January 1, 2020, and suggesting that SBA amend this definition to reflect this change. The statutory amendment does not make a substantive change but simply adds a reference to the HUBZone maps. SBA agrees with this comment and has amended this definition accordingly.

SBA proposed 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 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. The proposed rule noted 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 received a comment noting that section 1701 of the 2018 NDAA amends this definition effective January 1, 2020, and suggesting that SBA amend this definition to reflect this change. The statutory amendment does not make a substantive change but adds a reference to the HUBZone maps, corrects a reference to the Internal Revenue Code, and clarifies that qualified nonmetropolitan counties are designated based on a 5-year average of the available data. SBA agrees with this comment and has amended this definition accordingly.

The proposed rule also amended 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 proposed 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 proposed to remove the reference to primary residence because many individuals do not have primary residences as the term is traditionally defined. SBA proposed 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 proposed 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. 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 proposed examples to add clarity to these revisions. SBA specifically requested comments on these proposed changes.

SBA received 36 comments on the proposal that ''reside'' requires that an individual live in a place for at least 180 days before certification. Of these comments, 24 opposed the proposed changes, 9 supported them as proposed, and 3 supported SBA's intent behind the proposed changes but suggested alternate language to convey that intent. Of the comments opposed, most expressed concern that the 180-day requirement would further limit the pool of eligible employees for HUBZone firms. Several commenters suggested shorter timeframes, including 90 days or 30 days. SBA understands these concerns but believes that a shorter timeframe, or no timeframe at all, would allow firms seeking HUBZone status to circumvent the intent of the program by encouraging individuals to move into a HUBZone designated area shortly before the concern applies for certification and then move out of that area immediately after the concern is certified, yet still be counted as a HUBZone employee. That clearly would not serve the purpose of the HUBZone program, which is to promote capital infusion into HUBZone areas and to employ individuals living in HUBZones. This aim is best achieved by counting as employees individuals who have long-term connections in an area. However, SBA agrees with comments noting that a residency requirement that is defined too narrowly may constrain firms' ability to attract and hire qualified employees, such as students. SBA notes that this rule does not intend to prohibit students from counting as HUBZone employees if they reside in a HUBZone area for at least 180 days.

Several commenters raised concerns that the proposed rule did not require any specified period of HUBZone residency after certification and believed some period of residence after certification should be required in order to reduce the likelihood of firms trying to circumvent the residency requirements. SBA believes that the regulation requiring an individual to demonstrate an intent to continue to reside in a HUBZone indefinitely has been hard to enforce. As such, SBA does not believe it would be helpful to keep that requirement. SBA does agree, however, that some post-certification residency requirement should be imposed. As discussed further below, SBA has revised proposed § 126.200(d)(3) to require that an individual must live in a HUBZone for at least 180 days after certification in order for that individual to be counted as a resident of a HUBZone beyond the first year after certification. The same rule will apply to new HUBZone resident employees at the time of recertification—meaning that an individual who is being considered a HUBZone resident employee for the first time at the time of recertification must have lived in a HUBZone for at least 180 days prior to the date of recertification to be counted towards the 35% requirement, and then must continue to live in a HUBZone at least 180 days after recertification in order to count as a HUBZone resident employee thereafter. Consequently, as long as an individual lived in a HUBZone for at least 180 days prior to certification (or recertification, as applicable), he or she will count as a HUBZone employee for that entire HUBZone program year, even if the individual moves out of a HUBZone within 180 days of certification or recertification. However, if an individual moves out of a HUBZone within 180 days of certification (or recertification, as applicable), that person will not be considered a HUBZone employee in subsequent years.

In addition, the proposed rule acknowledged 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 proposed that it will consider the residence located in the United States as an 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 change in § 126.200(d)(3), 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 received six comments in favor of considering the U.S. address of individuals working on overseas contracts as their addresses for HUBZone residency purposes and one comment opposed to this change. SBA also received three comments suggesting that SBA not consider the address of employees working on overseas contracts at all as long as they resided in HUBZones at the time of certification. As discussed below, that is exactly what the change at § 126.200(d)(3) will accomplish. As such, SBA is adopting the rule as proposed.

SBA also proposed changes to or the elimination of the following definitions: Non-metropolitan county, redesignated area, median household income, metropolitan statistical area, primary industry classification, small disadvantaged business (SDB), and statewide average unemployment rate. SBA did not receive any comments regarding these definitions and is adopting the changes as proposed.

2. Eligibility Requirements

Section 126.200

SBA proposed to reorganize § 126.200 to make the section more readable and to make the HUBZone eligibility requirements clearer. SBA received one comment on proposed § 126.200(a), which addressed the ownership requirements for HUBZone small business concerns. The commenter requested that SBA make clear that firms owned by tribes and Native Hawaiian Organizations (NHOs) need not be structured as corporations to be eligible for the HUBZone program but can take any legal form. SBA believes this is clear in the regulations. Proposed §§ 126.200(a)(3) and 126.200(a)(6) provided that in order to be eligible for HUBZone certification, a ''concern must be . . . [a]t 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'' or ''[a]t least 51% owned

by one or more NHO[s], or by a corporation that is wholly owned by one or more NHO[s].'' The current HUBZone regulations define ''concern'' to mean ''a firm which satisfies the requirements in §§ 121.105(a) and (b) of this title.'' Section 121.105(b) provides: ''A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative.'' SBA has implemented this paragraph as proposed.

In proposed § 126.200(b), which addresses the size requirements for HUBZone small business concerns, SBA clarified that 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. This clarification was meant to prevent firms that have grown to be other than small in all industries from remaining in the HUBZone program. SBA did not receive any comments on this paragraph and it has been adopted as proposed.

In proposed § 126.200(c), which addresses the principal office requirement, SBA proposed to 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. SBA did not receive any comments on this change and will adopt the provision as proposed. SBA did, however, receive several comments recommending changes to the principal office requirement that would take into account long-term investment in a qualified HUBZone area. Two commenters recommended that SBA adopt a provision similar to that proposed for HUBZone residency, meaning that if a concern makes a substantial investment to establish a principal office in a qualified HUBZone area and that area loses its HUBZone status, the concern should be deemed to continue to have its principal office located in a HUBZone for some extended period of time. One of the commenters suggested that such period of time should be for at least ten years or for the length of a long-term lease. They argue that with such a change, firms would make more permanent investments and more substantial leasehold improvements in a HUBZone, which would benefit the community at large. Another commenter suggested that any firm that has moved its principal office into a qualified HUBZone area should be able to have that principal office location be considered to be in a HUBZone for at least a known, specified amount of time. The commenter believes that firms would otherwise be hesitant to expend the substantial resources necessary to move into a HUBZone if there is uncertainty as to how long such status would last. The commenter points to the possibility that a firm could move into a qualified HUBZone area one year, have the area lose its HUBZone status the next year, and then get an additional three years of HUBZone eligibility through the area's redesignated status. The commenter argues that that is not enough time for a firm to recoup its moving costs, and, thus, firms would choose not to relocate into a HUBZone area. Another commenter noted that even if a small business concern located in an area that lost its HUBZone status were willing to relocate its principal office to another qualified HUBZone, its existing employees might be unable or unwilling to relocate with the business. SBA agrees with the commenters that establishing a principal office in a HUBZone can be a significant investment for any business, especially small businesses, and that by providing more certainty regarding a firm's eligibility for the program will further the programmatic purpose of encouraging firms to invest in these areas for the long term. In response to the comments, the final rule provides that a concern that owns or makes a long-term investment (*i.e.,* a lease of at least 10 years) in a principal office in an area that qualifies as a HUBZone at the time of its initial certification will be deemed to have its principal office located in a HUBZone for at least 10 years from the date of that certification as long as the firm maintains the long-term lease or continues to own the property upon which the principal office designation was made. This means that in the example cited by the commenter above, the firm's principal office would be deemed to be located in a HUBZone for 10 years from the date of its certification even though the area's redesignated status would have ended after five years. In order to be eligible for a HUBZone contract, the firm would still have to meet the 35% HUBZone residency requirement and continue to qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract. The final rule also provides that this change would not apply to leases of office space that are shared with one or more other concerns or individuals, or to other co-working arrangements. SBA does not believe that ''virtual offices'' or co-working arrangements rise to the level of a significant investment in a HUBZone area that would warrant this exception. Similarly, SBA does not believe that the exception should apply to subleases, which also do not create a significant investment in a HUBZone area.

Proposed § 126.200(d) addressed the 35% HUBZone residency requirement, and SBA received numerous comments in response to this paragraph. In proposed § 126.200(d)(1), SBA proposed to change 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. Under the proposed rule, SBA would round 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 require the firm to employ only 2 HUBZone residents. SBA received 11 comments in support of the proposed change and one opposed. The commenter who opposed the change argued that firms should be allowed to round up to meet the requirement. SBA believes that this commenter misinterpreted SBA's intent because the new rule will provide more flexibility and allow an even greater number of firms to meet the 35% residency requirement. Moreover, a rule that mirrors the common usage of rounding will reduce confusion for participants and applicants. This final rule adopts this change as proposed.

In order to provide stability and certainty for program participants, in proposed § 126.200(d)(3), SBA proposed 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 ceases to be qualified as a HUBZone. Under this 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.

SBA received 21 comments in support of the proposed change, two partially supporting the proposed change, four opposed, and two requesting clarification. The comments in support of the proposed change agreed with SBA's intent, which is to avoid penalizing successful HUBZone firms with employees who, as a result of the firm's success, have increased flexibility in deciding where to live. The unsupportive comments noted that the change would enable firms to maintain their HUBZone status even if they are no longer benefiting the communities in which they are located by providing employment opportunities to residents. SBA recognizes this legitimate concern, but believes it would be more harmful to the public policy goals of the program for firms to be punished by their own success by requiring them to either fire employees who have moved out of a HUBZone, or to have to seek out and hire additional employees who currently live in HUBZones, regardless of their staffing needs. In addition, a HUBZone concern would always be required to maintain its principal office in a HUBZone, which would support increased economic activity in the HUBZone. In response to the change made to the term ''reside,'' the final rule also makes a change to § 126.200(d) to require an employee to continue to live in a HUBZone for at least 180 days after certification (or recertification if that was the first time that the individual's HUBZone residency was used to qualify the concern). Then, as long as he or she continuously remains an employee of the concern, even if the employee subsequently 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, he or she will continue to count as a HUBZone employee for that concern. However, if an individual moves out of a HUBZone, or the area where he or she lives loses its status as a HUBZone within 180 days, the individual will not count as a HUBZone employee at the time the firm seeks recertification. Similarly, if an individual has a break in employment by the HUBZone firm, he or she will not count as a HUBZone employee upon reemployment unless the individual has resided in a HUBZone for at least 180 days prior to the date the firm seeks recertification.

Finally, one commenter asked for clarification regarding an employee who lived in a HUBZone at the time he or she was employed by a certified HUBZone small business concern, but who moved out of the HUBZone prior to the change specified in this final rule. The commenter asked for clarification as to whether such an employee, who lost his or her status as a HUBZone employee when he or she moved out of a HUBZone but is still employed by the certified HUBZone small business concern, would once again count as a HUBZone employee under this final rule. The new regulatory language of § 126.200(d)(3) specifies that 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 continues to live in the HUBZone for at least 180 days after certification. There are three requirements in this provision. First, the individual must live in a HUBZone at the time he or she is counted as a HUBZone resident in order to qualify a firm as a certified HUBZone small business concern. Second, the individual must continue to live in a HUBZone for at least 180 days after the certification. Third, the individual must continuously work for the certified HUBZone small business concern. In the case questioned in the comment, the individual lived in a HUBZone at the time he or she was counted as a HUBZone resident to qualify a firm as a certified HUBZone small business concern. That individual has continued to work for the certified HUBZone small business concern since its certification. Thus, as long as the individual continued to live in a HUBZone for at least 180 days after the certification date, that individual would count today as a HUBZone employee. It would not matter that for some certain amount of time the individual did not count as a HUBZone employee.

SBA proposed to clarify in § 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 amended the regulations for clarity nevertheless. Debarred and suspended entities are ineligible for Federal contracting assistance and would thus not receive any benefits from being certified as a HUBZone small business concern. SBA received one comment in support of this change and is adopting the rule as proposed.

Section 126.204

SBA proposed changes to § 126.204 in order 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. The proposed changes to § 126.204 clarified 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. Further, the proposed rule stated the HUBZone applicant or concern must demonstrate to SBA 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. This has always been SBA's policy and SBA merely sought 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 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. 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 received seven comments on this proposed change. All seven comments supported SBA's proposed amendment clarifying that employees of affiliates are considered employees of a HUBZone participant or applicant if there is no clear line of fracture between the two. Several of the comments requested clarifying examples. One commenter was concerned that any contact between a parent company or one or more sister companies could cause SBA to aggregate the employees of those concerns in determining whether 35% of the concern's employees reside in a HUBZone. That was not SBA's intent. In response, SBA has clarified that minimal business activity between the concern and its affiliate and the use of common back office or administrative services between parent and/or sister concerns will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern. Several commenters requested additional clarification on how SBA would treat the employees of sister companies for entity-owned companies. These comments recommended that SBA state that there would be a presumption that the employees of sister-owned companies of entities should not be counted. SBA does not believe that such a presumption is needed. This section clarifies when employees ''of an affiliate'' should be counted as employees of the applicant or HUBZone small business concern. Under § 121.103(b)(2)(ii) of SBA's size regulations, business concerns owned and controlled by Indian Tribes, ANCs, NHOs, or CDCs are not considered to be affiliated with other concerns owned by these entities because of their common ownership, common management, or common administrative services. Affiliation may be found for other reasons. Thus, if the interconnections between sister companies of a tribe, ANC, NHO or CDC are merely based on common ownership, management or performance of administrative services, the firms would not be considered affiliates and would not be aggregated for HUBZone eligibility purposes. It is only where affiliation exists between entity-owned sister companies that SBA might count employees of a sister company as employees of the HUBZone applicant/participant when determining the concern's compliance with the principal office and 35% percent HUBZone residency requirements, and then only if there is not a clear line of fracture between the business concerns.

SBA has also added an example to § 126.204, which refers to the definition of ''employee'' laid out in § 126.103.

Section 126.205, Section 126.206, Section 126.207

In § 126.205, SBA proposed to delete the statement that ''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 proposed to replace the term ''non-manufacturers'' with ''nonmanufacturers'' to be consistent with SBA's regulations at § 121.406(b).

SBA proposed 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.

SBA did not receive any comments in response to the proposed changes to §§ 126.205, 126.206, and 126.207. Therefore, SBA is adopting the proposed changes as final.

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 proposed several clarifications to its certification process.

Section 126.300

SBA proposed to divide § 126.300 into several paragraphs 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 received no comments on § 126.300 and is adopting the proposed changes as final.

Section 126.303

SBA proposed to revise § 126.303 to update the instructions for submitting electronic applications. The proposed rule clarified 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 proposed to require that the application and any supporting documentation must be submitted by a person authorized to represent the concern. SBA did not receive any comments regarding this section and is adopting the proposed changes as final.

Section 126.304

SBA proposed several changes to § 126.304. The proposed rule clarified 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. The rule also proposed 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 proposed to clarify that after an application has been submitted, the applicant must immediately notify SBA of any changes that could affect its eligibility. The applicant would have to provide information and documents to support the changes.

Finally, SBA proposed 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 received four comments to the changes proposed to § 126.304. One commenter disagreed with requiring electronic signatures, believing that not all small businesses have the capability to e-sign. SBA agrees. The final rule merely requires that an authorized representative of the concern submit the application and supporting documentation. SBA will accept electronic signatures but will not require them. In addition, a commenter noted that while proposed § 126.304(a) required representations to be made only by an owner of the applicant, the supplementary information to the proposed rule noted that the person making representations on behalf of a concern should either be an owner or officer of the applicant, and not an administrative employee acting on behalf of an officer. The commenter supported the flexibility provided for in

the supplementary information. In response to the comment, the final rule authorizes either an owner or officer to represent the concern.

SBA received one comment on § 126.304(c). The commenter did not think a concern should have to wait 90 days to resubmit its application. This requirement however is not new. The proposed regulation moved the requirement to a new section for clarity and consistency. The current requirement can be found in § 126.309. This provision is consistent with other proposed sections of the regulations that require concerns that are found ineligible to wait 90 days before submitting a new application for the program. As such, the final rule does not shorten the 90-day time period to reapply for HUBZone certification after initially being declined.

SBA did not receive any comments to proposed § 126.304(d), which authorized an applicant to represent that it believes that an area is a qualified HUBZone where SBA's website is not showing the area as such. This rule adopts the proposed language as final.

SBA received one comment on § 126.304(e), which required concerns to retain records demonstrating their eligibility for six years. The commenter believed this requirement was overly burdensome. However, this is not a new requirement. SBA moved the requirement and simplified the wording to provide more clarity. The requirement to maintain these records for six years is currently in § 126.401(b). Given that this is not a new requirement, SBA is adopting the rule as proposed.

Section 126.306

SBA proposed several changes to § 126.306. SBA proposed 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 proposed 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. Finally, SBA proposed 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 received three comments. The first comment suggested that applications should be processed within thirty days of SBA receiving a complete application submission. The second comment noted that the 2018 NDAA requires applications to be processed in 60 days, starting January 1, 2020, and suggested that the rule be changed to be consistent with this upcoming statutory requirement. SBA agrees with this second comment and has made this change to the rule. The third comment discussed issues with the current application process that are beyond the scope of this rulemaking.

Section 126.307

SBA proposed 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 deleted 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 did not receive any comments on this change and will adopt the rule as proposed.

Section 126.308

SBA proposed 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. SBA did not receive any comments on this change and will be adopting the rule as proposed.

Section 126.309

SBA proposed 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. SBA proposed this change in order to make the HUBZone program more consistent with the 8(a) BD program, where a firm that is declined admission may request reconsideration of that decision and have an opportunity to demonstrate its eligibility within 45 days of the decline decision rather than having to wait a year to reapply. SBA received three comments regarding this section. One commenter supported the changes to § 126.309 as proposed. One commenter believed that the 15-day timeframe set forth in the proposed rule for submitting a request for reconsideration was insufficient and recommended extending the amount of time to submit a request for reconsideration. One commenter thought that a reconsideration process that in effect amounted to allowing a concern to submit a totally revised application contradicted the provision requiring applicants to wait 90 days before submitting a new application. If SBA were to proceed with authorizing reconsideration, SBA agrees with the commenter that the 15-day timeframe should be lengthened. Since SBA allows a concern to submit a new application after 90 days from the date of the decline decision, it would not make sense to extend the reconsideration process to that extent. With 15 days being too short and 90 days not making sense with the ability to reapply at that point, SBA would have to determine some point in between to be the appropriate amount of time. In response to the comments and upon further consideration, SBA believes that a reconsideration process is not needed. Unlike the 8(a) BD program, where a concern must wait one year from the date of a final decline decision to reapply to the program, a concern can reapply to the HUBZone program 90 calendar days after the date of decline. Thus, a reconsideration process that allows changes to overcome deficiencies in an application in a shortened timeframe becomes redundant. The current HUBZone application process does not authorize reconsideration, and SBA has not been inundated with recommendations calling for a reconsideration process. SBA merely sought to make applying to the HUBZone program consistent with that for the 8(a) BD program. Upon further review, SBA believes that is not necessary in this instance. Allowing a concern to reapply for the HUBZone program 90 days after a decline decision appears to be a reasonable and

appropriate amount of time. As such, the final rule does not adopt the proposed reconsideration process.

4. Program Examinations

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

Section 126.401

SBA proposed to revise § 126.401 to clarify what a program examination is. The proposed rule provided 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 did not receive any comments on this provision and is adopting § 126.401 as proposed.

Section 126.402

SBA did not receive any comments on the minor proposed wording change to § 126.402. However, SBA did receive numerous comments on §§ 126.500 and 126.501 concerning the lack of clarity regarding the burden on participants during the recertification process. In order to provide more clarity, SBA has made changes to § 126.402 related to program examinations and when program examinations may be part of the recertification process. SBA is adding new language to § 126.402 to provide clarity as to when a program examination will be initiated. The new language specifically references § 126.500 and the recertification process. The final rule also provides that SBA will conduct program examinations when determined to be necessary during recertification. In order to provide additional clarity, the final rule also incorporates language similar to that contained in § 124.112(c) for the 8(a) BD program into § 126.402. Specifically, the final rule provides that SBA will examine a certified HUBZone small business concern's eligibility for continued participation in the program upon the receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility.

Section 126.403

SBA proposed to revise § 126.403 to clarify what SBA will review during a program examination. The rule stated that 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 did not receive any comments on this section and is adopting the proposed language as final.

Section 126.404

SBA proposed to add a new § 126.404 to provide the procedures and possible outcomes of a program examination. Whether a concern is applying to the HUBZone program for the first time, is undergoing recertification, 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). SBA received a comment noting that section 1701(h) of the 2018 NDAA requires that starting January 1, 2020, firms found ineligible as a result of a program examination be given 30 days to provide documentation showing that they are in fact eligible. During this time, firms cannot compete for or be awarded HUBZone contracts. If after the 30-day period, the firm has not demonstrated its HUBZone eligibility, it shall be decertified. SBA agrees with this comment and makes these changes to the final rule.

5. Maintaining HUBZone Status

Section 126.500

SBA proposed to amend § 126.500 to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years as required prior to the proposed change. The proposed rule also provided that when a concern fails to submit its annual recertification to SBA, SBA will start proceedings to decertify the concern.

SBA received 24 comments in response to this proposed change. Although many commenters supported the change, a majority thought that recertification on an annual basis would be burdensome for certified HUBZone small business concerns if recertification entailed a full programmatic review of concerns each year. If, however, recertification required some sort of less exhaustive process, a majority of commenters favored the change. Several commenters believed that the current process of requiring recertification by SBA every three years should be retained and one commenter recommended recertification every five years.

SBA does not seek to impose unnecessary burdens on certified HUBZone small business concerns. However, SBA takes seriously its responsibility to ensure that only eligible concerns remain as certified HUBZone small business concerns. In response to comments received from both small business concerns and procuring agencies, SBA agrees that a full document review recertification process is not needed annually. Such a process could be burdensome on small businesses, difficult for SBA to timely accomplish, and, therefore, could be inefficient for procuring agencies seeking to make awards through the HUBZone program. The final rule keeps the requirement that certified HUBZone small business concerns must annually represent that they continue to meet all HUBZone eligibility criteria. However, SBA will accept the representation without requiring the certified HUBZone small business concern to submit any supporting information or documentation unless SBA has reason to question the concern's recertification. If at the time of its recertification the certified HUBZone small business concern is not currently performing a HUBZone contract, its recertification means that at least 35% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone. If at the time of its recertification the certified HUBZone small business concern is currently performing a HUBZone contract, its recertification means that at least 20% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone. This requirement is no different or any more burdensome than the current requirement that concerns must annually certify their size status in the System for Award Management (SAM). SBA will then require a full document review recertification, or program examination, every three years, which is the same as currently required. SBA believes this approach balances the need to not impose unnecessary burdens while promoting program integrity and ensuring only eligible firms remain as certified HUBZone small business concerns.

Section 126.501

SBA proposed to amend § 126.501 to provide that once certified, a HUBZone small business concern will remain eligible for HUBZone contract awards for one year from the date of certification (as long as the concern qualifies as small for the size standard corresponding to the NAICS code assigned to any such contract). On the one-year anniversary of the firm's HUBZone certification, the firm would be required to recertify to SBA that it continues to meet the HUBZone eligibility requirements or voluntarily withdraw from the HUBZone program.

SBA received 19 comments on proposed § 126.501. Of the comments, 16 supported the change. One comment, while supportive, was also concerned about the burden that could be caused by requiring a full re-application process each year for recertification. This comment also recommended keeping the certification good for a year, and only doing a full application-type certification every three years. SBA believes it has addressed the concerns raised by this comment in changes made to § 126.500, discussed above. The final rule has made some clarifications to § 126.501 to take into account the changes made by this rule to § 126.500.

SBA received two comments that opposed the changes generally. The commenters believed that the change could lead to issues with employees being fired near the time of recertification or concerns generally not meeting the eligibility requirements throughout the year. The comments either requested the change not be adopted, or that additional regulations be added to allow additional opportunities for SBA to review a concern's eligibility, possibly a protest mechanism. SBA does not believe these changes are needed to this section. As noted above, the final rule has amended § 126.402 to provide that SBA will examine a certified HUBZone small business concern's eligibility for continued participation in the program upon the receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility. In addition, SBA can perform a program examination with respect to a concern's continued eligibility at any time SBA deems it to be warranted.

In order to clarify SBA's intent in response to some of the concerns raised by the commenters, the final rule adds language requiring a certified HUBZone small business concern to timely notify SBA if the concern acquires, is acquired by, or merges with another business entity or fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103) where the concern is performing a HUBZone contract. Either case will then trigger a program examination to determine whether the concern continues to be eligible to participate in the HUBZone program.

Section 126.502

Proposed § 126.502 provided that 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 all eligibility requirements. SBA did not receive any comments on this section and is adopting § 126.502 as proposed.

Section 126.503

SBA proposed to amend § 126.503 to provide the procedures for program decertification and certain program examinations. The proposed rule also authorized 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.

SBA received several comments on this section. One comment supported the proposed change. One commenter recommended that firms found ineligible pursuant to a HUBZone status protest should not be decertified. SBA does not agree with this comment. It is important for concerns' certifications and recertifications to be accurate. If a concern is found to not meet the eligibility requirements at the time of its certification or recertification, SBA believes it should be decertified from the program. The concern will be allowed to reenter the program by re applying at a later date.

One comment recommended that the regulation should provide a specific amount of time for a concern proposed for decertification to respond to SBA instead of merely stating that the concern must respond to the notice of proposed decertification within the timeframe specified in the notice. SBA agrees and has amended this section to require a response to SBA within 30 days from the date it receives the letter. This 30-day response time is the same as that set forth in the 8(a) BD program for a concern to respond to a notice of proposed termination.

Section 126.504

SBA proposed 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 did not receive any comments on this section. On further consideration, SBA believes that some clarification is needed. As proposed, § 126.504(c) provided that 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. When SBA's regulations required a concern to be an eligible HUBZone small business both at the time of offer and time of award, it made sense to say that as soon as a concern was decertified it would be ineligible for any future HUBZone contract. However, under the proposed rule and now this final rule, where a concern is certified as of a particular date, it remains eligible to submit offers for HUBZone contracts for a year, and if an award occurs after that one-year period, the concern would still be eligible for the award even if it could not recertify its status as an eligible HUBZone for the following year. Thus, as long as the concern was eligible at the time of its offer (and eligibility relates back to the date of its certification or recertification), it could be awarded a HUBZone contract even if it no longer appears as a certified HUBZone small business concern on DSBS on the date of award. However, if SBA determines that the concern's recertification was invalid (*i.e.,* based on a protest or program examination SBA determines that the concern did not qualify as a HUBZone small business concern on the date of its recertification), the concern will be ineligible for the award of any HUBZone contract for which it previously certified its HUBZone status.

6. Contractual Assistance

Section 126.601

SBA proposed 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 in order to submit an offer on a HUBZone contract. In addition, SBA proposed 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 proposed to move the discussion of recertification currently in paragraph § 126.601(h) to proposed new § 126.619, which includes the requirement for firms to recertify their HUBZone status for HUBZone set-aside orders and Blanket Purchase Agreements. SBA received one comment in support of these changes and adopts § 126.601 as proposed.

Section 126.602

SBA proposed 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 recertification only. Under the 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. However, HUBZone small businesses would continue to have to ''attempt to maintain'' compliance with this requirement during the performance of a HUBZone contract.

In order to be consistent with the changes made to § 126.500 in response to comments, the final rule makes similar corresponding changes to § 126.602. The final rule clarifies that a certified HUBZone small business concern that has received a HUBZone contract must have at least 20% of its employees residing in a HUBZone during the performance of any HUBZone contract and at the time of its annual recertification.

SBA received two comments on § 126.602. One commenter recommended that SBA clarify § 126.602(b) regarding how the attempt to maintain requirement should be applied to indefinite delivery, indefinite quantity contracts, including multiple award contracts. SBA believes the regulatory language is clear. If the base contract is set aside or reserved exclusively for eligible HUBZone small business concerns, then the certified HUBZone small business concern must maintain at least 20% of its employees residing in a HUBZone throughout the full contract. However, if the concern is performing an order that was set aside or reserved for HUBZone small business concerns on a contract that was not itself set aside or reserved for HUBZone small business concerns, then the certified HUBZone small business concern must maintain at least 20% of its employees residing in a HUBZone only while preforming that task order.

Section 126.619

SBA proposed to move the discussion of recertification currently in paragraph § 126.601(h) to proposed new § 126.619. The proposed rule required an offeror to be a certified HUBZone small business concern at the time it submits an offer for an order issued against a MAC where the order is set-aside for HUBZone small business concerns and the underlying MAC was not a HUBZone contract. SBA received one comment on § 126.619. The commenter believed that orders or Blanket Purchase Agreements issued under any General Services Administration Federal Supply Schedule (FSS) contract should be excluded from this requirement. The commenter argued that the FSS program has a successful track record of increasing small business opportunities under current ordering procedures and was concerned that changing those procedures could have an adverse effect on small business. The final rule adopts this recommendation to exclude orders and Blanket Purchase Agreements issued under any FSS contract at this time. Under this requirement, an offeror must be identified as a certified HUBZone small business concern in SAM at the time it submits an offer for an order issued against a MAC where the order is set-aside for HUBZone small business concerns and the underlying MAC was not a HUBZone contract, except for FSS contracts. Being a certified HUBZone small business at the time of offer for an order merely means that the concern has been certified or recertified within a year of that offer and is identified in SAM as a certified HUBZone small business concern. Specifically, time of eligibility for the order relates back to the certification or recertification date, not to the date of the offer for the order. The final rule also adds language at the end of paragraph (a)(5) to clarify that a procuring agency may not count options as an award to a HUBZone small business concern where the concern has been found ineligible for the award of the contract pursuant to a HUBZone status protest pursuant to § 126.803.

Section 126.700

As noted above, SBA proposed 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 SBA did not receive any comments on this section and is adopting § 126.700 as proposed.

7. Protests

Section 126.800

The proposed rule amended § 126.800 by changing the phrase ''qualified HUBZone SBC'' to ''certified HUBZone small business concern'' throughout the section. SBA received no comments in response to the proposed changes. The final rule makes minor, non-substantive edits to the wording of the section for clarity.

Section 126.801

SBA proposed to amend § 126.801 to clarify how a HUBZone status protest should be filed and referred to SBA. Among other clarifications, SBA proposed to clarify that HUBZone status protests may be filed against HUBZone joint ventures. For consistency purposes, SBA proposed 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 §§ 125.28(b) and 127.602. SBA did not receive any comments on these amendments. In addition, SBA received a comment suggesting that SBA clarify that it dismisses protests that are moot or not filed by an interested party. SBA agrees with this commenter and has amended § 126.804, which addresses this issue more specifically.

Section 126.803

SBA proposed to amend § 126.803 to specify the date at which a protested concern's eligibility will be determined, in light of the changes contained in § 126.501 providing that once certified, a HUBZone small business concern will remain eligible for HUBZone contract awards for one year from the date of certification. Proposed § 126.803(a) provided that SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of its initial certification or its most recent recertification, whichever is later in time. This means that if a concern is certified on January 1, and the concern submits an offer on June 1 of the same year and its status is protested, SBA will determine the concern's eligibility as of January 1. After the firm completes its annual recertification, any subsequent protests during that year will relate back to its eligibility as of the date its of recertification. SBA did not receive any comments on this change and adopts it as final in this rule.

SBA also proposed to amend § 126.803 to state that a concern that is

the subject of a HUBZone protest must submit responsive information within three days of receiving notification of a timely and specific protest. The current rule is that a concern must submit such information within five days. SBA received twelve comments on the proposed change, all of which opposed it. In response to the comments, SBA has revised this provision in the final rule to reflect that concerns will continue to have five business days to respond to protests.

In addition, SBA proposed 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. There were no comments on these proposed changes and SBA adopts them as final in this rule.

Section 126.804

As discussed above, in response to a comment received, SBA has revised § 126.804 to clarify that SBA will dismiss any HUBZone status protest that is premature, untimely, unspecific, moot, or not filed by an interested party. This is simply a clarification of SBA's current policy.

Compliance With Executive Orders 12866, 13563, 12988, 13132, 13175, 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 final 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 making several changes to clarify its regulations. Through the years, SBA has spoken with small business representatives and has determined that several regulations needed further refinement so that they are easier to understand and implement. In addition, the major challenge with the HUBZone program over the last two decades is the lack of stability and predictability for program participants and procuring agencies. This rule attempts 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. In addition, this rule implements section 1701(i) of the NDAA 2018, which allows certain certified HUBZone small business concerns to maintain their HUBZone status until 2021, and section 1701(h) of the NDAA 2018, which provides that HUBZone application decisions will be made within 60 days and that firms found ineligible under a program examination will have 30 days to provide documentation demonstrating their eligibility.

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

The rule addresses or clarifies issues, which will provide clarity to small businesses and contracting personnel. SBA believes that improved clarity will necessarily alleviate burdens on small business and make it easier to participate in the program.

The proposed rule sought to implement a formal request for reconsideration process with an associated annual cost of about $500. Because this final rule is not adopting a reconsideration process, that cost will no longer be borne by small businesses and has been removed from this impact analysis.

SBA initially proposed to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all 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, the proposed changes would have increased the annual hourly burden for HUBZone firms by 3,800 hours or an estimated annual cost of $167,428. Instead of 1,200 firms recertifying annually, all 5,000 would have to recertify annually. However, in response to comments, the final rule merely requires a recertification without a full document production and review every year and only requires a full document production and review recertification process every three years. Thus, the only additional burden in this final rule from the current process is to require certified HUBZone small business concerns to annually represent to SBA that they continue to meet all HUBZone eligibility criteria. As such, we estimate that the burden imposed by this change will be cut in half from that proposed. Instead of 3,800 hours, SBA estimates a burden of 1,900 hours with an estimated annual cost of $83,714.

The final rule also provides 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 Federal Procurement Data System (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 $185,052.

SBA has amended the definition of the term ''employee'' such 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 certified HUBZone small business concerns, 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 $110,150.

The largest benefit of this final rule for HUBZone entities is that the flexibility provided for the residency requirement will allow many HUBZone

entities to maintain their certification even if they do not meet the 35% residency rule. As long as an employee is a resident of a HUBZone when they begin their employment, they will count toward the requirement even if they move out of a HUBZone. The average annual value of federal prime contracting dollars awarded to HUBZone certified entities from 2012 to 2017 was $6.9 billion. There are approximately 5,000 HUBZone certified firms each year, resulting in approximately $1.4 million in federal prime contracting dollars per HUBZone certified firm annually. For the same years, 62 HUBZone firms, on average, decertified per year as they no longer met the 35% residency requirement. Assuming these entities would stay certified given the new rules, this would transfer $85,973,333 from HUBZone entities who would be decertified due to the residency requirement to a certified HUBZone entity or a non-HUBZone entity. The flexibilities in this rule create distributional effects in favor of HUBZone entities but do not affect total resources available to society. Given that the primary objectives of the HUBZone program are job creation and increased capital investment in distressed communities, these distributional effects are desired and should be noted although they are not included in the estimate of benefits for the purposes of this analysis.

This rule also clarifies SBA's position with respect to HUBZone status certifications on task orders under MACs. Currently, HUBZone status certifications at the order level are not required unless the contracting officer, in his or her discretion, requests a recertification in connection with a specific order. This rule requires that an offeror be identified as a certified HUBZone small business concern in SAM at the time it submits an offer for an order issued against a MAC where the order is set-aside for HUBZone small business concerns and the underlying MAC was not a HUBZone contract, except for orders or Blanket Purchase Agreements issued under any FSS contracts. Being identified as a HUBZone small business concern in SAM at the time of offer for the order will be considered a recertification of HUBZone status. Since a firm's HUBZone status in SAM is updated by SBA and not the firm, the firm will not need to submit an additional certification or any other additional documentation with its offer or take any other action. Thus, SBA believes that this requirement imposes no additional burden on a small business contract holder.

The added burden to ordering agencies includes the act of checking a firm's HUBZone status in SAM at the time of order award. Since ordering agencies are already familiar with checking SAM information, such as to ensure that an order awardee is not debarred, suspended, or proposed for debarment, this verification is de minimis. SBA recognizes, however, that an agency's market research for the order level may be impacted where the agency intends to issue a HUBZone set-aside order off an unrestricted vehicle. The ordering agency may need to identify MAC-eligible vendors and then find their status in SAM. This is particularly the case where the agency is applying the Rule of Two and verifying that there are at least two HUBZone small business concerns to set aside the order.

FPDS–NG indicates that, in Fiscal Years 2014 to 2018, agencies set aside for HUBZone small business concerns an average of about 11 orders per year off unrestricted MACs, excluding orders under FSS contracts. The annual cost of additional market research efforts for applicable set-aside orders under MACs, therefore, is calculated as 11 orders × 10 minutes (0.16 hours) per order × $44.06 cost per hour. This amounts to an annual government burden of about $78.

3. What are the alternatives to this final rule?

SBA considered alternatives to each of the significant changes made by this rule. Instead of requiring a one-time certification that would allow a concern to seek and be eligible for HUBZone contracts for a year, SBA considered the status quo, where a firm must be eligible at the time of offer and time of award, and requiring certifications at time of offer only, but eligibility would be fluid and could change from contract opportunity to contract opportunity (as is done for the other small business or socioeconomic set aside contract programs). SBA proposed a formal annual recertification process but has changed that in this final rule to merely require a recertification without a full document production and review. A formal annual recertification process could be unnecessarily burdensome on certified HUBZone small business concerns. This does not change the current requirement that a full document production and review recertification process is required every three years. SBA also considered whether eligibility or protest decisions should be appealed to the Office of Hearings and Appeals. SBA decided against pursuing this change because of the added cost to certified HUBZone small business concerns and the added delay to the procurement process that could dissuade procuring agencies from using the HUBZone program.

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 final 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 final rule.

TABLE 1—SUMMARY OF INCREMENTAL COSTS AND COST SAVINGS

Item No.	Regulatory action item	Annual cost/(cost saving) estimate
1	Annual representation of continued eligibility	$83,714
2	Removing requirement to present eligibility at award	(185,052)
3	Change to employee count eligibility	(110,150)
4	Change to residency requirements	*85,973,333
5	Additional Government market research to identify qualified sources for set-aside orders	78
	Estimated Net Incremental Cost/(Cost Saving)	(211,410)

*(Transfer).

TABLE 2—DETAILED BREAKDOWN OF INCREMENTAL COSTS AND COST SAVINGS

Item No.	Regulatory action item details	Annual cost/(cost saving) estimate breakdown
1	*Regulatory change:* SBA will require certified HUBZone small business concerns to annually represent their continued eligibility. The rule would continue to require certified HUBZone small business concerns to undergo a full document recertification review by SBA every three years.	
	Estimated number of impacted entities: There are approximately 5,000 firms in the HUBZone program, and under the rule all these firms will need to represent their continued eligibility each year. However, since 1,200 firms recertify each year currently, the incremental increase in recertifications is 3,800 firms annually.	3,800 entities.
	Estimated average impact (labor hour):* SBA estimates that it takes the average participating firm about 0.5 hour to complete its annual representation of continued eligibility.	0.5 hour.
	*2018 Median Pay** (per hour + 30% for benefits):* Most HUBZone firms use an accountant or someone with similar skills for this task.	$44.06.
	Estimated Cost/(Cost Saving)	$83,714.
2	*Regulatory change:* Under current rules, a HUBZone firm must be eligible at the time of offer and award of a HUBZone contract. This rule provides 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.	
	Estimated number of occurrences: Approximately 2,100 new HUBZone contracts are awarded each fiscal year and each firm will need to certify twice per each contract.	4,200 certifications.
	Estimated average impact (labor hour):* SBA estimates that it takes the average participating firm about 1 hour to complete the recertification process.	1 hour.
	*2018 Median Pay** (per hour + 30% for benefits):* Most HUBZone firms use an accountant or someone with similar skills for this task.	$44.06.
	Estimated Cost/(Cost Saving)	($185,052).
3	*Regulatory change:* SBA is changing the eligibility requirements to provide that an individual employee who 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. This will greatly reduce burden on firms, as they will not have to continually track whether their employees still reside in a HUBZone.	
	Estimated number of impacted entities: SBA estimates that approximately 5,000 firms participate in the HUBZone program. All participating firms will be impacted by this change.	5,000 entities.
	Estimated average impact (labor hour):* SBA estimates that it would take 1 hour to determine eligibility but this proposed change will save 0.5 hours, because once a HUBZone employee is hired the firm will never have to check residency for that employee.	0.50 hours.
	*2018 Median Pay** (per hour + 30% for benefits):* Most HUBZone firms use an accountant or someone with similar skills for this task.	$44.06.
	Estimated Cost/(Cost Saving)	($110,150).
4	*Regulatory change:* SBA is changing the eligibility requirements to provide that an individual employee who 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. Further, the requirement to maintain certification is being lowered from 35% to 20%, which will provide HUBZone entities with greater flexibility to maintain their certification and stay in the program.	
	Estimated number of impacted entities: SBA estimates that approximately 62 firms are decertified from the HUBZone program annually due to no longer meeting the 35% residency requirement.	62 entities.
	Estimated average impact: HUBZone entities are awarded an average of $6.9 million per year. Assuming 5,000 entities, this is $1,386,667 per entity.*	$1,386,667.
	Estimated Transfer	$85,973,333.
5	*Regulatory change:* SBA is changing the HUBZone recertification requirements to provide a firm must be a certified HUBZone small business concern at the time of offer for set-aside orders and Blanket Purchase Agreements issued against unrestricted Multiple Award Contracts, except for Federal Supply Schedule contracts. This change impacts the market research required by ordering activities to determine if a set-aside order for HUBZone small business concerns may be pursued.	
	Estimated number of impact entities: Approximately 11 HUBZone set-aside orders are issued annually on Multiple Award Contracts that are not set aside in the same category, other than on the Federal Supply Schedule.	11 orders.
	Estimated average impact: SBA estimates that ordering activities applying the Rule of Two will spend an average of 10 additional minutes to locate contractors awarded MACs and looking up the current HUBZone status for each of the contractors in SAM to determine if a set-aside order can be pursued.	0.16 hours.
	2017 Median Pay (per hour): Contracting officers typically perform the market research for the acquisition plan	$44.06.
	Estimated Cost/(Cost Saving)	$78.
	Estimated Net Annual Impact	($211,410)

* This estimate is based on HUBZone and FPDS data, as well as best professional judgment.
** Source: Bureau of Labor Statistics, Accountants and Auditors.

Table 3 displays the savings and costs of the rules in effect during the first 3 years. Savings would be the same for all years and is the sum of Items 2 and 3 in Table 2 above. Additional costs will be incurred in year 2 and year 3 as HUBZone entities will now have to represent their continued eligibility in those years (Item 1 in Table 2) and there are no additional costs in year 1, since the requirement to certify eligibility into the program and undergo a full document recertification review by SBA every three years has not changed. This pattern would continue into perpetuity.

TABLE 3—SCHEDULE OF COSTS/(SAVINGS) OVER 3 YEAR HORIZON

	Savings	Costs
Year 1	($295,202)	$78
Year 2	(295,202)	83,792
Year 3	(295,202)	83,792

TABLE 4—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE, 2016 DOLLARS

	Estimate
Annualized Savings	($283,306)
Annualized Costs	51,804
Annualized Net Savings	(231,502)

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 published a proposed rule with a 60-day comment period, and the proposed rulemaking was posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. In addition, the proposed rule was discussed with the Small Business Procurement Advisory Council, which consists of the Directors of the Office of Small and Disadvantaged Business Utilization. SBA also submitted the rule to multiple agencies with representatives on the FAR Small Business Subcommittee prior to submitting the rule to the Office of Management and Budget for interagency review. 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. SBA received extensive responses to the proposed rule from 98 commenters, which comprised about 370 specific comments.

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

The 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 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 rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13175

As part of the proposed rulemaking process, SBA held tribal consultations with tribal governments in Anchorage, Alaska, Albuquerque, New Mexico, and Oklahoma City, Oklahoma 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 Corporation (ANC)-owned firms participating in the HUBZone program. SBA took these discussions into account in drafting the proposed rule.

Executive Order 13771

This rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in this rule's Regulatory Impact Analysis. By making eligibility requirements more flexible and by reducing the amount of recording keeping required for participation in the program, the rule will result in annualized savings of $231,502 discounted to perpetuity using a 7% discount rate in 2016 dollars and a net present value of $3,307,169.

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

For the purposes of the Paperwork Reduction Act, SBA has determined that this rule will impose new government-wide reporting requirements on HUBZone small business concerns. The rule requires 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. The requirement to maintain records is included in 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.

While this final rule is expected to impact a substantial number of small entities as all HUBZone entities are small, the impact is not expected to be significant. As detailed in the Regulatory Impact Analysis, there will be an annualized savings of $231,502 to all HUBZone entities, or approximately $33 per HUBZone entity, which qualifies as de minimis savings for each entity.

Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 115, 121, 125, 126, and 127 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.

(i) 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.

(ii) [Reserved]

(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'' wherever it appears and adding in its place the phrase ''certified HUBZone small business concerns''.
■ 14. Amend § 126.103 as follows:
■ a. Revise the definition of ''Alaska Native Corporation (ANC)'';
■ b. Remove the definitions of ''Alaska Native Village'' and ''ANCSA'';
■ c. Revise the definitions of ''Attempt to maintain'' and ''Certify'';
■ d. Remove the definitions of ''County unemployment rate'' and ''De-certify'';
■ e. Revise the definition of ''D/HUB'';
■ f. Add a definition in alphabetical order for ''Decertify'';
■ g. Add a definition in alphabetical order for ''Dynamic Small Business Search (DSBS)'';
■ h. Revise the definition of ''Employee'';
■ i. Remove the definition of ''HUBZone small business concern (HUBZone SBC)'';
■ j. Add a definition in alphabetical order for ''HUBZone small business concern or certified HUBZone small business concern'';
■ k. Revise the definition of ''Interested party'';
■ l. Remove the definitions of ''List'', ''Medium household income'', and ''Metropolitan statistical area'';

■ m. Add in alphabetical order a definition for ''Primary industry classification or primary industry'';
■ n. Revise the definitions of ''Principal office'', ''Qualified base closure area'', ''Qualified census tract'', and ''Qualified disaster area'';
■ o. Remove the definition of ''Qualified HUBZone SBC'';
■ p. Revise the definitions of ''Qualified non-metropolitan county'', ''Redesignated area'', and ''Reside''; and
■ q. Remove the definitions of ''Small disadvantaged business (SDB)'' and ''Statewide average unemployment rate''.

The revisions and additions to 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 concern 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 concern'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 concern'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, February 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 concern and who works for the concern 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 concern 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. Such compensation must provide a demonstrable financial value to the individual and must be compliant with all relevant federal and state laws.

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

(i) Individuals who are not owners and 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; 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 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. A concern 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 certified HUBZone small business concern. SBA utilizes § 121.107 of this chapter in determining a concern'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.

(i) *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 concern's principal office. Since Office A is in a HUBZone, the business concern complies with the principal office requirement.

(ii) *Example 2:* A business concern whose primary industry is services 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 a 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.

(iii) *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 job-sites fulfilling specific contract obligations. The business concern's owner performs 45% of her work at job-sites, 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 concern since it is the only location where any employees of the concern 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 a base closure area that is treated by SBA as a HUBZone for a period of at least 8 years, beginning on the date on which the Administrator designates the base closure area as a HUBZone and ending on the date on which the base closure area ceases to be a qualified census tract or a qualified nonmetropolitan county in accordance with the online tool prepared by the Administrator.

Qualified census tract. (1) Qualified census tract means a 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.

(3) Qualified census tracts are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

Qualified disaster area. (1) Qualified disaster area means any census tract or nonmetropolitan county located in an area where a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) has occurred or an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be a qualified census tract or qualified nonmetropolitan county during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(2) A census tract or nonmetropolitan county shall be considered to be a qualified disaster area only for the period of time ending on the date the area ceases to be a qualified census tract or a qualified nonmetropolitan county, in accordance with the publicly accessible online tool that depicts HUBZones, and beginning—

(i) In the case of a major disaster, on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; or

(ii) In the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

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 State median household income, based on a 5-year average of the available data from 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 a 5-year average of the 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.

(4) Qualified non-metropolitan counties are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

Redesignated area 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.'' 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 where the individual is being treated as a HUBZone resident for the first time).

(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, or utility bills. Where the documentation provided does not demonstrate 180 days of residency, SBA will require a signed statement attesting to an individual's dates of residency.

(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.

(i) *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.

(ii) *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.

(iii) *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 remain 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 NHOs, or by a corporation that is wholly owned by one or more NHOs.

(b) *Size.* (1) An applicant concern, together with its affiliates, must qualify as a small business concern 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 concern 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.* In order to be eligible for HUBZone certification, a 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.

(1) A concern that owns or makes a long-term investment (*i.e.,* a lease of at least 10 years) in a principal office in an area that qualifies as a HUBZone at the time of its initial certification will be deemed to have its principal office located in a HUBZone for at least 10 years from the date of that certification as long as the firm maintains the long-term lease or continues to own the property upon which the principal office designation was made. This does not apply to leases of office space that are shared with one or more other concerns or individuals.

(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) In order to be eligible for HUBZone certification, at least 35% of a 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.

(i) *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.

(ii) *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 time of recertification where the individual is being treated as a HUBZone resident for the first time) shall continue to count as a HUBZone resident employee if the individual continues to live in the HUBZone for at least 180 days immediately after certification (or recertification) and remains an employee of the concern, even if the employee subsequently 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

concern's participation in the HUBZone program.

(i) *Example to paragraph (d)(3):* As part of its application for HUBZone certification, a concern provides documentation showing that 35% of its employees have lived in a HUBZone for more than 180 days. SBA certifies the concern as a certified HUBZone small business concern. Within 180 after being certified, an individual critical to the concern's meeting the 35% residency requirement moves out of the HUBZone area. That individual will continue to be treated as a HUBZone resident during the first year after the concern's certification; however, at the time of the firm's recertification, that individual will not be counted as a resident of a HUBZone.

(ii) [Reserved]

(e) *Attempt to maintain.* (1) At the time of application, a 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.* In order to be eligible for HUBZone certification and to remain certified, the concern and any of its owners must not have an active exclusion in the System for Award Management, available at *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(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) Employees of affiliates are not automatically considered employees of a HUBZone applicant or HUBZone small business concern solely on the basis of affiliation.

(c) 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 certain circumstances. In determining whether individuals should be counted as employees of a HUBZone applicant or HUBZone small business concern, SBA will consider all information, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1. Employees of the concern's affiliate will not be counted as the concern's employees if there is a clear line of fracture between the concern and its affiliate.

(1) SBA generally will find that there is a clear line of fracture where the concern demonstrates that it does not share employees, facilities, or equipment with the affiliate; has different customers or lines of business (or is distinctly segregated geographically); and does not receive significant contracts or financial assistance from the affiliate.

(2) The use of common administrative services between parent and/or sister concerns by itself will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(3) Minimal business activity between the concern and its affiliate will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(i) *Example to paragraph (c):* X owns 100% of Company A and 51% of Company B. Based on X's common ownership of A and B, the two companies are affiliated under SBA's size regulations. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of B as employees of 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 two concerns and would treat the employees of B as employees of A for HUBZone program purposes. In order to be eligible for the HUBZone program, at least 35% of the combined employees of A and B must reside in a HUBZone.

(ii) [Reserved]

■ 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 concern and designate the concern 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.* 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 signed by an owner or officer 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 immediately 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 concern is not eligible, the applicant will be given the option to withdraw its application, or SBA will decline certification and the concern must wait 90 days to reapply.

(d) *HUBZone areas.* Concerns applying for HUBZone status must use SBA's website (*e.g.,* 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.,* by contacting 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 60 calendar days after receipt of a complete package.

(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 concern.

(e) If SBA approves the application, it will send a written notice to the concern and designate the concern 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.

(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 concerns 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.*

(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 § 126.401 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.

■ 31. Revise § 126.402 to read as follows:

§ 126.402 When will SBA conduct program examinations?

(a) SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is a certified HUBZone small business concern.

(b) SBA will conduct program examinations periodically as part of the recertification process set forth in § 126.500.

(c) Upon receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility, SBA will examine the concern's eligibility for continued participation in the program.

■ 32. 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.

■ 33. Add § 126.404 to subpart D 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 concern 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 concern is not eligible, the concern will have 30 days to submit documentation showing that it is eligible. During the 30-day period, such concern may not compete for or be awarded a HUBZone contract. If such concern fails to demonstrate its eligibility by the last day of the 30-day period, the concern will be decertified.

(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 concern is eligible, SBA will send a written certification notice to the concern 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 concern is ineligible, SBA will send a written decline notice to the concern.

■ 34. Revise § 126.500 to read as follows:

§ 126.500 How does a concern maintain HUBZone certification?

(a) Any concern seeking to remain a certified HUBZone small business concern in DSBS (or successor system) must annually represent to SBA that it continues to meet all HUBZone eligibility criteria (*see* § 126.200).

(1) If at the time of its recertification the certified HUBZone small business concern is not currently performing a HUBZone contract, its representation means that at least 35% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone.

(2) If at the time of its recertification the certified HUBZone small business concern is currently performing a HUBZone contract, its representation means that at least 20% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone.

(3) Except as provided in paragraph (b) of this section, unless SBA has reason to question the concern's representation of its continued eligibility, SBA will accept the representation without requiring the certified HUBZone small business concern to submit any supporting information or documentation.

(4) The concern's recertification must be submitted within 30 days of the anniversary date of its original HUBZone certification. The date of HUBZone certification is the date specified in the concern's certification letter. If the business fails to recertify, SBA may propose the concern for decertification pursuant to § 126.503.

(b) SBA will conduct a program examination of each certified HUBZone small business concern pursuant to § 126.403 at least once every three years to ensure continued program eligibility. Specifically, SBA will conduct a program examination as part of the recertification process three years after the concern's initial HUBZone certification (whether by SBA or a third-party certifier) or three years after the date of the concern's last program examination, whichever date is later.

(1) *Example:* Concern A is certified by SBA to be eligible for the HUBZone program on September 27, 2020. During that year, Concern A does not receive a HUBZone contract. Concern A must recertify its eligibility to SBA between August 27, 2021 and September 26, 2021. Concern A must represent that at least 35% of its employees continue to reside in a HUBZone and that its principal office continues to be located in a HUBZone. Concern A will continue to be a certified HUBZone small business concern that is eligible to receive HUBZone contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2022. On June 28, 2022, Concern A is awarded a HUBZone contract. Concern A must recertify its eligibility to SBA between August 27, 2022 and September 26, 2022. Because Concern A is performing a HUBZone contract, Concern A must represent that at least 20% of its employees continue to reside in a HUBZone and that its principal office continues to be located in a HUBZone. Concern A will continue to be a certified HUBZone small business concern that is eligible to receive HUBZone contracts (as

long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2023. Concern A must recertify its eligibility to SBA between August 27, 2023 and September 26, 2023. Because three years have elapsed since its application and original certification, SBA will conduct a program examination of Concern A at that time. In addition to its representation that it continues to be eligible as a certified HUBZone small business concern, Concern A must provide additional information as requested by SBA to demonstrate that it continues to meet all the eligibility requirements of the HUBZone Program.

(2) [Reserved]

■ 35. Revise § 126.501 to read as follows:

§ 126.501 How long does HUBZone certification last?

(a) *One-year certification.* 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, or the concern is performing a HUBZone contract and fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103).

(1) A certified HUBZone small business concern that acquires, is acquired by, or merges with another business entity must notify SBA within 30 days of the transaction becoming final. The concern must then 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.

(2) A certified HUBZone small business concern that is performing a HUBZone contract and fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103) must notify SBA within 30 days of such occurrence. A concern that cannot meet the requirement may voluntarily withdraw from the program, or it will be removed by SBA pursuant to program decertification procedures.

(b) *Annual recertification.* On the annual anniversary of a concern's certification or recertification, the concern 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) *Review of recertification.* SBA may review the concern's recertification through the program examination process when deemed appropriate and will do so every three years pursuant to § 126.500.

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

(2) If SBA determines that the concern continues to be eligible, SBA will notify the concern 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 ninety (90) calendar days after the date of decertification. At that point, the concern would have to demonstrate that it meets all HUBZone eligibility requirements.

■ 36. 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 designated 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.

■ 37. 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) *General.* If SBA is unable to verify a certified HUBZone small business concern's eligibility or has information indicating that a concern 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 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. The notice of proposed decertification will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify 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 submit a written response 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 concern'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.

■ 38. 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 will 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 for a HUBZone contract.

(1) As long as the concern was eligible at the time of its offer (and eligibility relates back to the date of its certification or recertification), it could be awarded a HUBZone contract even if it no longer appears as a certified HUBZone small business concern on DSBS on the date of award.

(2) If SBA determines that the concern's recertification was invalid (*i.e.,* based on a protest or program examination SBA determines that the concern did not qualify as a HUBZone small business concern on the date of its recertification), the concern will be ineligible for the award of any HUBZone contract for which it previously certified its HUBZone status.

Subpart F—Contracting With Certified HUBZone Small Business Concerns

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

§ 126.600 [Amended]

■ 40. 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 paragraph (a), (b), and (c), remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';
■ c. In paragraphs (d) and (e), remove the phrase ''HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns''; and
■ 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''.

■ 41. 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.

■ 42. 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 that has not received a HUBZone contract must have at least 35% of its employees residing within a HUBZone at the time of certification and annual recertification. Such a concern need not meet the 35% HUBZone residency requirement at all times while certified in the program. A certified HUBZone small business concern that has received a HUBZone contract must ''attempt to maintain'' (*see* § 126.103) having 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. Such a concern must have at least 20% of its employees residing within a HUBZone at the time of its annual recertification.

(b) For orders under indefinite delivery, indefinite quantity contracts, including orders under 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]

■ 43. Amend § 126.603 as follows:
■ a. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern''; and
■ b. Remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns''.

■ 44. Amend § 126.607 as follows:
■ a. In the section heading, remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';
■ b. In paragraph (c) introductory text, remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns''; and

■ 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)''.

§ 126.608 [Amended]

■ 45. Amend § 126.608 as follows:
■ a. Remove the phrase ''HUBZone set-aside'' and add in its place the phrase ''HUBZone set-aside or sole source award'';
■ b. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern''.

§ 126.611 [Amended]

■ 46. Amend the § 126.611 heading 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]

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

§ 126.613 [Amended]

■ 48. Amend § 126.613 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. In paragraph (a)(1):
■ i. Remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ ii. Remove the phrase ''another SBC'' and add in its place the phrase ''another small business concern'';
■ iii. In the final sentence, remove the phrase ''HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ iv. In the final sentence, remove the phrase ''HUBZone SBCs'' and add in its place the phrase ''HUBZone small business concerns'';
■ c. In paragraph (a)(2):
■ i. Designate the paragraphs that are Examples 1 through 4 as paragraphs (a)(2)(i) through (iv), respectively;
■ ii. Remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ iii. Remove the phrase ''non-HUBZone SBC'' wherever it appears and add in its place the phrase ''non-HUBZone small business concern'';
■ iv. In newly designated paragraph (a)(2)(ii) (Example 2), remove the phrase ''non-HUBZone SBC's'' and add in its place the phrase ''non-HUBZone small business concern's'';
■ v. In the second and third sentences in newly designated paragraph (a)(2)(iv) (Example 4), remove the phrase ''HUBZone SBC'' wherever it appears and add in its place the phrase ''HUBZone small business concern'';
■ vi. In the third sentence in newly designated paragraph (a)(2)(iv) (Example 4), remove the phrase ''HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';
■ d. In paragraph (b)(2):
■ i. Remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';
■ ii. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ iii. Designate the ''Example'' paragraph as paragraph (b)(2)(i) and add a reserved paragraph (b)(2)(ii); and
■ e. In paragraph (d):
■ i. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ ii. Remove the phrase ''SBCs'' and add in its place the phrase ''small business concerns''.

■ 49. Amend § 126.616 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a);
■ c. In paragraphs (b)(1), (d)(1), and (d)(2) introductory text, remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ e. In paragraph (c) introductory text, remove ''SBC'' and add in its place ''small business concern'';
■ f. In paragraphs (c)(2) through (4), (c)(9) and (10), (d)(2), (e), (g), and (i) remove the phrase ''HUBZone SBC'' wherever it appears'' and add in its place the phrase ''certified HUBZone small business concern'';
■ g. 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
■ h. 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]

■ 50. 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]

■ 51. Amend § 126.618 as follows:
■ a. In the section heading, remove the phrase ''HUBZone SBC's'' and add in its place the phrase ''certified HUBZone small business concern's'';
■ b. In paragraph (a), remove the phrase ''the underlying HUBZone requirements'' and add in its place the phrase ''the HUBZone requirements described in § 126.200'';
■ c. 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'';
■ d. In paragraphs (b) and (c)(1), remove the phrase ''HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ e. In paragraph (c)(1), remove the phrase ''performance of work'' and add in its place the phrase ''limitations on subcontracting''.
■ 52. Add § 126.619 to subpart F 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 (see paragraph (b)(4) of this section).

(2) Except for orders under Federal Supply Schedule contracts, 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 concern 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 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, or where the concern has been found to be ineligible for award pursuant to a HUBZone status protest pursuant to § 126.803.

(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 concern 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 concern's initial certification or, if applicable, its most recent recertification.

(c) Except for Blanket Purchase Agreements under Federal Supply Schedule contracts, a concern's status will be determined at the time of submission of its initial response to a solicitation for 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.
■ 53. 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.

■ 54. Revise § 126.800 to read as follows:

§ 126.800 Who may protest the status of a certified HUBZone small business concern?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's status as a certified HUBZone small business concern.

(b) *For all other procurements, including Multiple Award Contracts (see § 125.1 of this chapter).* SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's status as a certified HUBZone small business concern.

■ 55. Amend § 126.801 by revising the section heading, paragraphs (a), (b), and (c)(3), and the second and third sentences in paragraph (e), and by adding paragraphs (e)(1) through (12) to 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 concern 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.*

* * * * *

(e) * * * The contracting officer must send the protest, along with a referral letter, to the D/HUB by email to *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 (*i.e.,* HUBZone set-aside; HUBZone sole source; full and open competition with a HUBZone price evaluation preference applied; reserve for HUBZone small business concerns under a Multiple Award Contract; or order set-aside for HUBZone small business concerns against a Multiple Award Contract);

(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 concern 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]

■ 56. 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''.

■ 57. 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 revisions and addition 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 5 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 (e) 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 concern 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).

■ 58. Revise § 126.804 to read as follows:

§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed on the basis that they are premature, untimely, non-specific, moot, or not filed by an interested party.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 59. The authority citation for part 127 continues to read as follows:

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

■ 60. 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 EDOWSB 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: November 12, 2019.

Christopher M. Pilkerton,

Acting Administrator.

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