

## § 126.201

## 13 CFR Ch. I (1–1–10 Edition)

partnership is owned and controlled by Natives (determined pursuant to section 29(e)(2)) of the ANCSA); or

(iii) The concern must be wholly owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;

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

(3) *Principal office.* The concern's principal office must be located in a HUBZone.

(4) *Employees.* At least 35% of the concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number;

*Example 1:* A concern has 25 employees, 35% or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

*Example 2:* A concern has 95 employees, 35% or 33.25 employees must reside in a HUBZone. Thus, 34 employees must reside in a HUBZone.

(5) *Contract Performance.* The concern must represent, as provided in the application, that it will "attempt to maintain" (see §126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(6) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in §126.700.

(c) *Concerns owned by small agricultural cooperatives—(1) Ownership.* (i) A small agricultural cooperative organized or incorporated in the United States;

(ii) A small business concern wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) A small business concern owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided

that all other owners are small business concerns or United States citizens.

(2) *Size.* The small agricultural cooperative must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter. However, in determining such size, an 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.

(3) *Principal office.* The cooperative's principal office must be located in a HUBZone.

(4) *Employees.* At least 35% of the cooperative'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, round up to the nearest whole number.

(5) *Contract Performance.* The concern must represent, as provided in the application, that it will "attempt to maintain" (see §126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(d) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in §126.700.

[69 FR 29422, May 24, 2004, as amended at 70 FR 51249, Aug. 30, 2005]

### § 126.201 Who does SBA consider to own a HUBZone SBC?

An owner of a SBC seeking HUBZone certification or a qualified HUBZone SBC is a person who owns any legal or equitable interest in such SBC. If an Employee Stock Ownership Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner. If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner. In addition:

(a) *Corporations.* SBA considers any person who owns stock, whether voting or non-voting, to be an owner. SBA considers options to purchase stock and the right to convert debentures

into voting stock to have been exercised.

*Example:* U.S. citizens own all of the stock of a corporation. A corporate officer, a non-U.S. citizen, owns no stock in the corporation but owns options to purchase stock in the corporation. SBA will consider the options exercised and the individual to be an owner. Therefore, if that corporate officer has options to purchase 50% or more of the corporate stock, pursuant to §126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not at least 51% owned and controlled by persons who are U.S. citizens.

(b) *Partnerships.* SBA considers all partners, whether general or limited, to be owners in a partnership.

(c) *Sole proprietorships.* The proprietor is the owner.

(d) *Limited liability companies.* SBA considers each member to be an owner of a limited liability company.

[69 FR 29422, May 24, 2004, as amended at 70 FR 51249, Aug. 30, 2005; 71 FR 69183, Nov. 30, 2006]

#### **§ 126.202 Who does SBA consider to control a HUBZone SBC?**

Control means both the day-to-day management and long-term decision-making authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions: officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

[69 FR 29422, May 24, 2004]

#### **§ 126.203 What size standards apply to HUBZone SBCs?**

(a) *At time of application for certification.* A HUBZone SBC must meet SBA's size standards for its primary industry classification as defined in §121.201 of this title. If SBA is unable to verify that a concern is small, SBA may deny the concern status as a qualified HUBZone SBC, or SBA may request a formal size determination from the responsible Government Contracting Area Director or designee.

(b) *At time of initial contract offer.* A HUBZone SBC must be small for the size standard corresponding to the NAICS code assigned to the contract.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29422, May 24, 2004]

#### **§ 126.204 May a qualified HUBZone SBC have affiliates?**

A concern may have affiliates provided that the aggregate size of the concern and 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.

[70 FR 51249, Aug. 30, 2005]

#### **§ 126.205 May participants in other SBA programs be certified as qualified HUBZone SBCs?**

Participants in other SBA programs may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in this part. Participation in other SBA Programs is not a requirement for participation in the HUBZone Program.

[69 FR 29422, May 24, 2004]

#### **§ 126.206 May non-manufacturers be certified as qualified HUBZone SBCs?**

Non-manufacturers (referred to in the HUBZone Act of 1997 as "regular dealers") may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in §126.200. For purposes of this part, a "non-manufacturer" is defined in §121.406(b)(1)(i) and (ii) of this title.

[66 FR 4645, Jan. 18, 2001]

#### **§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?**

A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to be certified as a qualified HUBZone SBC and if required by §126.200, the concern's principal office must be located in a HUBZone.

[69 FR 29423, May 24, 2004]