

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125 and 126

RIN 3245-AE 66

Small Business Size Regulations; Government Contracting Programs; HUBZone Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration proposes to amend its regulations for the Historically Underutilized Business Zone Program (HUBZone Program). On December 21, 2000, the Small Business Reauthorization Act of 2000 made several changes to the HUBZone Program, including changes to the eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations, and the addition of new HUBZone areas called redesignated areas. This proposed rule addresses these statutory amendments, clarifies several regulations, and makes some technical changes, including changes to website addresses.

In addition, SBA proposes to amend its regulations, which address subcontracting limitations. Specifically, SBA proposes consolidating all of the subcontracting limitations requirements into one regulation, rather than have them scattered throughout SBA's chapter of the Code of Federal Regulations. In addition, SBA proposes language explaining how to petition for changes in the subcontracting limitations requirements.

Finally, SBA proposes to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. This change corresponds to a similar change made in this rule with respect to HUBZone contracts. For contracts below the simplified acquisition threshold, SBA proposes to permit a small business nonmanufacturer to submit the product

of any manufacturer, including a large business, and still be considered small.

DATES: Comments must be received on or before February 27, 2002.

ADDRESSES: Send your comments to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program (AA/HUB), 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael McHale, AA/HUB, (202) 205-8885 or hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: 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 purpose of the HUBZone Program is "to provide for Federal contracting assistance to qualified HUBZone small business concerns." 15 U.S.C. 657a(a). The HUBZone Act authorizes the Administrator of the U.S. Small Business Administration (SBA or Agency) to publish regulations implementing the program. Public Law 105-135, section 605. On April 2, 1998, SBA published its proposed rules for the HUBZone Program. 63 FR 16148. After the close of the public comment period and review of the comments, SBA published its final regulations. 63 FR 31896 (June 11, 1998). These regulations amended parts 121 and 125 of title 13 of the Code of Federal Regulations (CFR), and added part 126. On October 3, 2000, SBA published a proposed rule amending the definition of principal office, the affiliation requirement, the non-manufacturer eligibility requirement, and the non-manufacturer contract performance requirement. 65 FR 58963. SBA published this rule as final on January 18, 2001. 66 FR 4643.

Since that time, SBA has received more applications for certification, has certified over four thousand concerns into the program, and has become aware of additional amendments that should be made to the program's regulations. Many of these amendments are technical, while others are proposed to clarify existing regulations. Some amendments, such as the amendment to the definition of "employee," propose to ease program eligibility requirements perceived to be burdensome on concerns and streamline the operation of the HUBZone Program. SBA has also

proposed to remove any regulatory provisions that it deems duplicative.

In addition, the proposed regulations address the recent amendments made to the HUBZone Act by the Small Business Reauthorization Act of 2000, Public Law 106-554. Specifically, Congress amended the eligibility requirements for small business concerns (SBCs) owned by Tribal Governments or Community Development Corporations (CDCs). Further, Congress amended the definition of HUBZone to include "redesignated areas," and added definitions for the terms Indian Reservation and Alaska Native Corporation. This regulation addresses those amendments.

SBA also proposes to amend part 125 of its regulations to add language that addresses requests for changes in subcontracting percentages for small business set-asides and for SBA's various programs. In order to be awarded a small business set-aside or partial small business set-aside contract, an 8(a) contract, a HUBZone contract, a woman-owned small business (WOB) contract, or a contract awarded pursuant to an unrestricted procurement where a concern claims a 10 percent price evaluation preference/adjustment, the concern must agree that it will perform a certain percentage of the contract itself. In other words, there is a limit on the percentage of work that the concern can subcontract. Currently, § 125.6 sets forth these limitations on subcontracting percentages for SBCs, 8(a) concerns, and small and disadvantaged business concerns. Current § 126.700 addresses the subcontracting limitations for qualified HUBZone SBCs.

SBA does not propose changing these percentages; rather, SBA proposes adding language in § 125.6 explaining how such percentages may be changed through requests from interested parties. In addition, SBA proposes adding the subcontracting limitations for qualified HUBZone SBCs, currently set forth in § 126.700, to § 125.6 so that all such subcontracting limitations will be located in one place and, thus, be easy for SBCs and contracting officials to locate.

Finally, SBA proposes to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. This change corresponds to a similar change made in this rule with respect to HUBZone

contracts. For contracts below the simplified acquisition threshold, SBA proposes to permit a small business nonmanufacturer to submit the product of any manufacturer, including a large business, and still be considered small.

SBA invites comments on the proposed rule and on any additional ways to improve the HUBZone Program.

Section-by-Section Analysis

SBA proposes to amend § 121.406(b) of SBA's size regulations pertaining to the application of the nonmanufacturer rule. Proposed § 121.406(b)(6) would permit a nonmanufacturer to supply the product of any domestic business, small or large, and be considered small with respect to any contract below the simplified acquisition threshold. This change corresponds to a similar change made in this rule for the HUBZone program in proposed § 126.601(e)(2). SBA believes that procurements below the simplified acquisition threshold were intended to be quick and easy, and that small business nonmanufacturers should not be restricted in this limited contracting arena. In addition, SBA proposes to remove current paragraph (d) because it would be superceded by the above amendment.

The proposed rule also revises § 121.1001 to permit the AA/HUB to protest the size status of a concern in connection with a HUBZone contract, and authorizes the AA/HUB to request a formal size determination in connection with a HUBZone application or continued HUBZone eligibility.

SBA proposes to amend 13 CFR 125.6 by adding the subcontracting limitations for qualified HUBZone SBCs, currently set forth in § 126.700, so that all such subcontracting limitations will be located in one place and thus easy for SBCs and contracting officials to locate. In addition, SBA proposes language explaining when it may use different percentages. According to the proposed rule, SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by the six digit industry codes in the North American Industry Classification System (NAICS). The proposed rule sets forth the procedures by which an interested party may request a change (in writing, with information supporting its request). If SBA determines that there is an adequate preliminary showing, it will publish a notice in the **Federal**

Register of its receipt of a request to consider a change in the subcontracting percentage requirements for a particular industry. The notice will identify the party making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

SBA proposes several amendments to 13 CFR part 126.

SBA proposes to amend § 126.101, which addresses the government departments and agencies subject to the HUBZone Program. Prior to September 30, 2000, the HUBZone Program applied to the procurements of only ten agencies and departments. These agencies and departments are currently set forth in the regulations. The HUBZone Program now applies to more than those ten agencies and departments. Thus, SBA proposes to remove the names of those agencies and departments and simply state that the HUBZone Program applies to all agencies and departments that employ one or more contracting officers.

SBA proposes several amendments to the definitions contained in § 126.103. This rule would amend the definitions of the Associate Administrator for 8(a) Business Development (AA/8(a)BD) and Associate Deputy Administrator for Government Contracting and 8(a) Business Development (ADA/GC&8(a)BD). The rule would also change the name of the AA/8(a)BD to the Associate Administrator for Business Development and change the name of the ADA/GC&8(a)BD to the Associate Deputy Administrator for Government Contracting and Business Development. In addition, SBA is amending the definition of the term AA/HUB to mean the Associate Administrator for the HUBZone Empowerment Contracting Program. SBA proposes these changes in response to a re-organization within SBA's Office of Government Contracting and Business Development.

SBA proposes to define the term "Agricultural Commodity," because Congress recently amended the HUBZone Act's application of the price evaluation preference in procurements involving agricultural commodities. This definition appearing in this rule is the same as the one mandated by Congress in Public Law 106-554.

SBA proposes to define the terms "Alaska Native Corporation (ANC)" and "Alaska Native Village" as those terms are defined in Public Law 106-554. Currently, the HUBZone regulations define the term "Alaska Native Corporation" under its definition of "person." SBA proposes to define the terms "ANC" and "person" separately, to avoid confusion.

SBA proposes moving the definition of "attempt to maintain," which is currently found in two places in the HUBZone regulations, to the definition section so that it is easier to find. The proposed rule would not change the substance of this definition, but would merely move it to the definition section for ease of use.

The proposed rule adds a definition for the term "Community Development Corporation (CDC)." Public Law 106-554 defines CDC and adds an eligibility criterion for SBCs owned by CDCs so that such concerns can participate in the HUBZone Program. The proposed definition is the same as the one enacted by Congress—a CDC is a corporation that receives financial assistance under 42 U.S.C. 9805.

SBA proposes to add a definition for the term "Contracting Officer (CO)." According to the HUBZone Act, a CO has the meaning given that term in 41 U.S.C. 423(f)(5). That statute defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

SBA proposes to amend the definition of the term "employee." Currently, the regulations provide that an "employee" of a concern includes "full-time equivalents." SBA proposes to remove the provision concerning "full-time equivalents" because SBA believes it is confusing. SBA proposes a definition that allows persons employed on a full-time or part-time basis to be considered employees of the concern. This proposed definition is similar to the one used for size, set forth in part 121 of SBA's regulations.

In addition, SBA proposes to allow leased or temporary employees to be counted as employees of the concern. It is believed that such employees comprise approximately 2-5% of the work force in the U.S. economy. In addition, small businesses account for the employment of about 40% of such employees. SBA believes that counting leased, temporary and part-time employees will fulfill the statutory purpose and intent of the HUBZone Act by providing more job opportunities for HUBZone residents, albeit temporary or part-time.

Finally, the proposed definition of the term "employee" specifically states that volunteers are not to be counted. The rule would define a volunteer as a person who receives no compensation for work performed. 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.

The proposed rule would amend the definition of the term “HUBZone” to include redesignated areas. As part of the Small Business Administration Reauthorization Act of 2000, Congress made “redesignated areas” qualified HUBZones because governmental data, which determines whether census tracts and non-metropolitan counties are qualified HUBZones, changes periodically. Non-metropolitan counties that qualify based upon unemployment level, may, as a result of updated U.S. Department of Labor, Bureau of Labor Statistics data, shift in and out of eligibility year after year. Also, individual census tracts and non-metropolitan counties that qualify based upon certain income levels may lose their status as a result of data developed during the decennial census—the results of which are due shortly. As a result, SBCs that locate to a HUBZone may lose their eligibility in only one year due to changes in such data. Consequently, Congress sought to stabilize this situation and determined that “redesignated areas” should be HUBZones. A “redesignated area” is a qualified census tract or qualified non-metropolitan county that ceases to be qualified as a result of a change in official government data. This “redesignated” status lasts for a period of 3 years following the date of the census tract’s or non-metropolitan county’s disqualification. It is important to note that the redesignated status applies to concerns currently in the program and concerns seeking certification to the program. Thus, because a redesignated area is a HUBZone, concerns may seek certification to the program if their principal office is located in and the required percentage of their employees reside in such an area. SBA has also proposed defining the term “redesignated area,” as set forth below.

SBA proposes to amend the term “HUBZone SBC.” The current definition is redundant of the eligibility criteria set forth in § 126.200 and does not set forth the new eligibility criteria for SBCs owned by Tribal governments or CDCs. The proposed definition would state that a “HUBZone SBC” is: (1) One that is owned and controlled by 1 or more persons, each of whom is a United

States citizen; (2) an ANC owned and controlled by Natives (determined pursuant to the Alaskan Native Claims Settlement Act (ANCSA), 43 U.S.C. 1626(e)(1)); (3) a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant ANCSA); (4) one that is wholly-owned by 1 or more Indian Tribal Governments, or by a corporation that is wholly owned by 1 or more Indian Tribal Governments; (5) one that is owned in part by 1 or more Indian Tribal Governments, or by a corporation that is wholly owned by 1 or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or (6) one that is wholly owned by a CDC; or, (7) one that is owned in part by 1 or more CDCs, if all other owners are either United States citizens or SBCs. This proposed definition is the same as the one set forth in the HUBZone Act.

SBA proposes to amend its definition of “Indian reservation” to conform to Public Law 106–554. According to that law, the term “Indian reservation” has the same meaning as the term “Indian country” in 18 U.S.C. 1151, with certain exceptions. According to 18 U.S.C. 1151, the term “Indian country” means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. The amendments to the HUBZone Act, however, excepted the following land from being treated as an “Indian reservation” for purposes of the HUBZone Program: (a) lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of the date of enactment (December 21, 2000), unless that tribe is recognized after that date of enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and (b) lands taken into trust or acquired by an Indian tribe after the date of enactment of this paragraph if such

lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of enactment.

In addition, Congress provided that for the state of Oklahoma, the term “Indian reservation” will include lands within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of Interior) and lands that are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151 (as in effect as of December 21, 2000).

Essentially, the statutory definition of “Indian Reservation,” for HUBZone Program purposes, includes federally-recognized Indian reservations, Indian communities dependent on the Federal Government, and certain federal Indian allotments (parcels of land created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians). The new statutory definition of “Indian Reservation” does not include lands transferred to Alaskan Natives pursuant to the Alaskan Native Claims Settlement Act. *See Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). In the state of Oklahoma, an “Indian Reservation” includes a federally recognized Indian reservation and trust land. SBA has been and intends to keep working with the U.S. Department of the Interior to appropriately identify these areas.

The proposed rule defines for the first time the term “Indian Tribal Government.” The recent amendments to the HUBZone Program set forth specific eligibility criteria for concerns owned by “Indian Tribal Governments.” The statutory amendments, however, do not define that term. Thus, SBA proposes to define the term “Indian Tribal Government” to mean “the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” The Bureau of Indian Affairs of the U. S. Department of the Interior (BIA) publishes in the **Federal Register** a list of tribes that it recognizes as eligible for special Federal programs. *See* 65 FR 13298 (March 13, 2000). An Indian Tribal Government is essentially the governing body of one of the tribes or entities set forth on that list. This definition does not include ANCs because the recent amendments to the HUBZone Program establish specific eligibility criteria solely for ANCs and concerns owned by ANCs.

SBA proposes to amend the definition of "person" by removing the provision relating to ANCs. ANCs and their subsidiaries were made eligible by Public Law 106-554 and therefore the discussion on ANCs in this definition is unnecessary.

SBA proposes to amend the terms "qualified census tract" and "qualified non-metropolitan county" to address non-technical changes made by Public Law 106-554. The changes to the definitions are based entirely on the changes made by Public Law 106-554.

SBA proposes defining the term "redesignated area," discussed above, to mean any census tract and any non-metropolitan county that ceases to be a qualified HUBZone, except that a census tract or a non-metropolitan county may be a "redesignated area" only for the 3-year period following the date on which the census tract or non-metropolitan county ceased to be so qualified. This is the same definition that is set forth in the HUBZone Act, as recently amended. In addition, SBA proposes to use the public release date of the official government data, which affects the eligibility of the HUBZone, as the date on which the census tract or non-metropolitan county ceases to be qualified. It is important to note that it is the formerly qualified census tract or qualified non-metropolitan county that is designated as a HUBZone area (as a "redesignated area") for three years from the date that it ceases to be qualified. As such, a concern that applies for and receives HUBZone certification based on its location in a redesignated area would not receive three years of HUBZone participation unless the tract or county again becomes qualified as a HUBZone based on new data. Such a firm would remain eligible as a qualified HUBZone concern until three years from the date that the tract or county became a redesignated area, regardless of the amount of time it had participated in the HUBZone Program.

SBA proposes a definition for the term "small business concern (SBC)." The recent amendments to the HUBZone Act allow a HUBZone SBC to be owned in part by a SBC, with certain restrictions. SBA proposes defining the term SBC to mean a concern that, with its affiliates, meets the size standard for its primary industry.

SBA proposes to amend the definition of "small disadvantaged business" to clarify that such a concern is one that is certified by SBA pursuant to subpart B, part 124, of this chapter.

SBA proposes to remove the definition of woman-owned business because that term is no longer

referenced in this part of the regulations.

SBA proposes to amend § 126.200, which sets forth the eligibility requirements for the program, because Congress recently changed these requirements in Public Law 106-554. To be eligible, all applicants must (together with all their affiliates) be small. In addition, according to Public Law 106-554, concerns owned by Indian Tribal Governments or tribal corporations must certify: (1) That they are owned by an Indian Tribal Government, by a wholly-owned tribal corporation, or owned in part by a Indian Tribal Government or tribal corporation and in part by another SBC or U.S. citizens, and (2) when the concern obtains a HUBZone contract, at least 35 percent 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 adjoining any such Indian reservation. When enacting this legislation, Congress believed that no firm should be made eligible solely by virtue of who owns the concern. Thus, for example, concerns owned by Indian Tribal Governments will not be eligible solely because they are tribally-owned. Instead, such concerns will be eligible only if they agree to advance the goals of the HUBZone Program—job creation and economic development in the areas that need it most. See S. Rpt. 422, 106th Cong., 2d Sess. 21 (2000).

As discussed above, the statutory amendments provide that an Indian Tribal Government or tribal corporation may own a HUBZone SBC "in part" with a SBC or U.S. citizens. For example, an SBC in which a Tribal Government or tribal corporation owned 1% or less could claim that it qualified for the program if the other owners were SBCs or U.S. citizens. Further, there is no principal office eligibility requirement for such applicants. Thus, SBA is considering whether or not to require a Tribal Government or tribal corporation to own at least 51 percent of the HUBZone SBC. SBA is specifically requesting comments on this issue, and whether or not the Agency should require the Tribal Government or tribal corporation own a certain percentage (e.g., 51% or more) of the HUBZone SBC. SBA believes Congress intended the HUBZone benefits to assist Native American Indian Tribes, their Indian Reservations, and the HUBZone communities adjoining those reservations. If a Tribal Government or tribal corporation were able to own an inconsequential amount of a HUBZone SBC, the intended

benefits may not reach that community or those people.

It must be noted that SBA is not considering such a limitation on ownership for HUBZone SBC owned by CDCs. As discussed below, a HUBZone SBC may be owned in part by a CDC and in part by U.S. citizens or SBCs. SBA is not considering a limit on how much or little of the applicant the CDC must own because the qualified HUBZone SBC that is owned "in part" by a CDC must also have its principal office located in a HUBZone and must meet the 35% HUBZone residence requirement. Therefore, the benefits of the program must necessarily flow to a HUBZone community, regardless of the percentage of ownership by a CDC.

Finally, proposed § 126.200(a)(3) defines the term "adjoining." When tribally-owned concerns obtain a HUBZone contract, at least 35 percent of the qualified HUBZone SBC's employees engaged in performing that contract must reside within any Indian reservation governed by one or more of the qualified HUBZone SBC's Tribal Government owners, or reside within any HUBZone adjoining any such Indian reservation. The common meaning of the term "adjoining" is "to be next to" or "to be in contact." SBA believes that tribal members often may not reside on the reservation, but may still live next to the reservation. Thus, SBA believes the common meaning of the term is in harmony with the purpose of this amendment, the HUBZone Act and the employee residency requirement. Thus, this rule proposes that a HUBZone and Indian reservation are "adjoining" when the two areas are right next to and in contact with each other.

SBA also proposes to address the eligibility requirements for all other SBCs in § 126.200. According to the HUBZone statute, an applicant that is not tribally-owned must: be small; have a principal office located in a HUBZone; have at least 35% of its employees residing in a HUBZone; represent that it will attempt to maintain this percentage during the performance of any HUBZone contract; and represent that it will ensure compliance with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700. The recent amendments to the HUBZone Act provide that an applicant may be owned by a CDC or owned in part by a CDC and the rest by U.S. citizens or SBCs.

SBA also proposes to amend § 126.201 concerning who owns a HUBZone SBC. The proposed rule would clarify Example 1 to § 126.201,

addressing ownership of stock options. In addition, the proposed rule would move Example 2 from § 126.201 to § 126.200 because it provides a better example of the U.S. citizen ownership requirement set forth in that section. In addition, SBA has proposed addressing who it considers to own a concern owned by an Employee Stock Option Plan (ESOP). According to the proposed rule, SBA will deem the employees that participate in the ESOP and the ESOP's trustees to be owners because these persons have legal and equitable ownership in the ESOP. Likewise, SBA proposes addressing who it considers to own a concern owned by a trust. SBA believes that where the ownership interest in a HUBZone SBC is held under a trust, all of the trustees and trust beneficiaries must be deemed owners.

SBA proposes to amend § 126.202 to add "managing member" to the list of persons who share control of a concern because such persons share control of limited liability companies.

In § 126.203, SBA proposes a technical correction in paragraph (b). SBA recently amended its size regulations and established a new table of small business size standards based upon the NAICS rather than the Standard Industrial Classification (SIC) code. Thus, SBA proposes changing the reference in paragraph (b) from SIC codes to NAICS codes.

SBA proposes to amend § 126.205 to clarify that all SBCs, and not just 8(a) Participants, WOBs, and small disadvantaged businesses (SDBs), may be qualified HUBZone SBCs, if they meet the HUBZone Program's eligibility requirements.

SBA proposes amending § 126.207 to state that HUBZone SBCs may have offices located outside of a HUBZone, so long as the concern's principal office is located in a HUBZone (when required by § 126.200 to have a principal office located in a HUBZone). As noted above, Congress recently amended the HUBZone Act to no longer require certain tribally-owned concerns to have a principal office in a HUBZone.

SBA proposes to remove parts of § 126.300 that are duplicative of § 126.304. In addition, SBA has proposed language that allows SBA to draw an adverse inference from the failure of a HUBZone SBC to cooperate or submit additional information.

SBA proposes amendments to § 126.303 to address how the electronic HUBZone application may be submitted to SBA online.

SBA proposes to amend §§ 126.304(a)-(b) and move the certification requirement currently set

forth in § 126.501 to this section. Currently, paragraph (a) reiterates all of the eligibility requirements set forth in § 126.200. SBA proposes to amend paragraph (a) to state that to be certified, concerns must submit a completed application (paper or electronic) and represent that they meet the eligibility requirements of § 126.200. In addition, paragraph (b) currently requires all concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation to submit official documentation from the appropriate BIA Land Titles and Records Office confirming that it is located within such an area. When SBA first promulgated the HUBZone regulations, it did not have available electronic data for lands within the external boundaries of an Indian reservation, as it did for qualified census tracts and qualified nonmetropolitan counties. SBA now has this data available electronically. However, SBA understands that there may be rare instances when a concern believes a certain location is within the external boundaries of an Indian reservation, but the HUBZone maps indicate otherwise. Thus, the proposed regulation provides that upon such an occurrence, the concern may obtain certification from the appropriate BIA Land Titles and Record Offices confirming that the location is within the external boundaries of an Indian Reservation, as defined by the HUBZone Act and regulations.

Finally, SBA proposes adding a new paragraph (c) to § 126.304 stating that if the concern was decertified for failure to notify SBA of a material change affecting its eligibility, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern. This requirement is currently set forth in § 126.501, which addresses a qualified HUBZone SBC's ongoing obligations. SBA believes it would be appropriate to place this requirement in this section, which addresses application requirements.

SBA proposes amending § 126.306 by deleting part of paragraph (b). Currently, the first sentence of paragraph (b) states that SBA will base its certification on facts existing on the date of submission. However, SBA can only certify a concern into the program that meets all of the eligibility requirements. If circumstances change from the date of submission of the application that affect the concern's eligibility, then SBA can not certify the concern into the program.

Section 126.307 would be amended to reflect the change in the Internet website where SBA maintains its List of qualified HUBZone SBCs and the change in SBA's HUBZone e-mail address. SBA believes that in addition to having a separate List of qualified HUBZone SBCs, Pro-Net may also be used as the List. Pro-Net is a database containing profiles of over 200,000 SBCs. The information in the Pro-Net system includes data from SBA's files and other available databases. Pro-Net is designed to be used as a search engine for COs and a marketing tool for SBCs.

Section 126.308 would be amended to reflect the change in SBA's HUBZone e-mail address.

Section 126.401, addressing program examinations, would be amended to clarify that examiners will verify that the concern currently meets the HUBZone eligibility requirements, and that it met such requirements at the time of its initial certification or most recent recertification. This provision would also permit an examination of a HUBZone certification in connection with a HUBZone contract. In addition, paragraph (b) would be amended to clarify how the examiners will conduct the review. SBA proposes to add a sentence explaining that the review, or parts of the review, may be conducted at one or all of the concern's offices. SBA also proposes an amendment that specifically allows the examiners to determine the location of the examination.

SBA proposes to amend § 126.403 to provide that SBA may draw an adverse inference from the failure of a concern to cooperate with a program examination or provide requested information. This provision should discourage firms from being unresponsive to SBA's request for more information. SBA also does not want firms to be able to purposely delay the examination process. SBA should be allowed to draw an adverse inference to make the process more efficient.

SBA proposes to remove § 126.405. This regulation currently provides that if SBA verifies that a concern is eligible after conducting a program examination or a protest, then SBA will amend the date of certification on the List to reflect the date of verification. Protests and program examinations do not always cover all of the program's eligibility requirements. Therefore, the List should not be amended to reflect a new "eligibility" date. In addition, even if a protest or program examination does cover all of the eligibility requirements, SBA believes that amending the List will be confusing to the SBC as to when

its next recertification submission is due.

SBA proposes to amend § 126.500 concerning continued eligibility in the program. Currently, a qualified HUBZone SBC must recertify annually that it continues to be eligible for the program. SBA believes that such an annual recertification is burdensome to SBCs, and proposes that qualified HUBZone SBCs recertify every three years that they continue to meet all of the program eligibility requirements. SBA believes that the program examination process and protest mechanism will effectively eliminate concerns that are not eligible, and, therefore, annual recertification is unnecessary. SBA also believes that three years is a reasonable period of time to give effect to a HUBZone certification. SBA notes that a small disadvantaged business (SDB) certification generally lasts for three years. See 13 CFR 124.1014. In addition, under the new statutory language identified above, three years will correspond with the amount of time an area losing its HUBZone status is classified as a redesignated area.

SBA proposes amending § 126.501 to state that failure to notify SBA of a material change in the circumstances of a qualified HUBZone SBC's eligibility may result in decertification. In addition, SBA proposes moving the last sentence of this section, which requires the concern to submit with any new application for HUBZone certification a statement explaining why it failed to notify SBA of a material change, to § 126.304, which addresses what a concern must submit to SBA to be certified into the program.

SBA proposes combining the substance of current § 126.404, concerning what happens if SBA is unable to verify a concern's eligibility, with § 126.503, regarding decertification. In addition, SBA proposes to revise § 126.503 to clarify the procedures by which SBA decertifies a concern. These procedures ensure that due process is followed before any firm is decertified from the program. Under these procedures, SBA must generally first propose to decertify the concern and allow the concern to respond to all allegations that it is ineligible. The current regulations require a concern to respond within 10 business days from the date that it receives notification of SBA's intent to decertify. This rule changes the amount of time a concern has to respond to SBA's notification of intent to decertify from 10 business days to 30 calendar days. SBA believes that it is important to give a HUBZone SBC ample

opportunity to respond to SBA's notification of its intent to decertify the concern. This is particularly true in the context of the 35% HUBZone residency requirement. Where a HUBZone SBC is experiencing economic hardships, it may be required to temporarily reduce its number of employees, and may fall below the 35% requirement. SBA would give the concern the opportunity to explain its situation and meet the 35% requirement. Although the firm would not be able to certify itself to be a qualified HUBZone SBC in connection with a HUBZone contract during the time that it did not meet the 35% requirement, if SBA believes that the firm will come into compliance, it may determine not to decertify the firm. The AA/HUB will review any responses submitted by a concern receiving a notification of SBA's intent to decertify and will make a written determination, which is the final agency decision. Where decertification emanates from an adverse finding in the resolution of a HUBZone protest, SBA need not propose the firm for decertification. The same due process rights afforded a concern through proposing a concern for decertification are available in the protest context. In both cases, the firm is apprised of allegations against it, and has the opportunity to rebut those allegations and prove its eligibility.

SBA proposes to amend § 126.601 to change the reference in paragraph (a) from SIC to NAICS, in light of SBA's change to the NAICS system. In addition, SBA proposes to add a new paragraph (b) that would specify that a firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract. Further, SBA proposes to amend § 126.601 to clarify that a qualified HUBZone SBC must make certain representations to a CO at the time it submits its *initial and final* offers for a HUBZone contract. A concern that is not a qualified HUBZone SBC at the time it submits its initial offer can not submit an offer on a HUBZone sole source or set-aside contract, or receive the benefits of the HUBZone price evaluation preference. Similarly, a concern that is not qualified at the time of award can not receive a HUBZone contract. The proposed rule would also require SBCs owned by Indian Tribal Governments (as set forth in § 126.200(a)) to certify on a HUBZone contract that at least 35 percent of its employees engaged in performing the HUBZone contract will reside within any Indian reservation governed by one or more of the HUBZone SBC's tribal

government owners or within any HUBZone adjoining any such Indian reservation. This is a statutory requirement for such concerns, added by Public Law 106-554.

Finally, SBA proposes to amend paragraph (e) to address confusion regarding the nonmanufacturer rule. The statutory nonmanufacturer rule generally requires a small business nonmanufacturer to supply the product of a small business in connection with an 8(a) or small business set aside contract. The SBA Administrator may waive that requirement in certain cases. The nonmanufacturer rule that applies to HUBZone contracts requires a HUBZone nonmanufacturer to supply the product of a manufacturer, which is a qualified HUBZone SBC. This rule would clarify that for purposes of a HUBZone contract, there are no waivers of the nonmanufacturer rule. The program is designed to assist HUBZones by assuring that individuals residing in those areas are employed generally by a qualified HUBZone SBC and specifically in connection with the performance of a HUBZone contract. SBA believes that allowing a non-HUBZone manufacturer to be the firm ultimately supplying the product for a HUBZone contract would be contrary to the intent of the program. The proposed rule would provide, however, that for HUBZone contracts at or below the simplified acquisition threshold (currently \$100,000), a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

SBA proposes to amend § 126.602 to address the employee residency requirements for qualified HUBZone SBCs performing HUBZone contracts. The requirements are different, depending on the ownership of the qualified HUBZone SBC, as mandated by Public Law 106-554. In addition, SBA proposes deleting the definition for "attempt to maintain" currently set forth in this regulation and moving it to the definition section of the regulations.

SBA proposes to replace the term "procuring agencies" in § 126.603 with "contracting activities" for consistency in the regulations and conformance with the Federal Acquisition Regulations (FAR).

SBA proposes to amend § 126.605 by deleting paragraph (c) to allow HUBZone contracts for micropurchases. SBA believes this will open up the market to the program's participants. In addition, SBA proposes to amend § 126.608 to explain that HUBZone contracts at or below the micropurchase threshold are not mandatory. Further, SBA proposes to clarify § 126.608 and

allow HUBZone contract opportunities "at or below" the simplified acquisition threshold, as opposed to just below the simplified acquisition threshold. This change will conform the regulation to FAR part 13.

SBA proposes to amend § 126.606 to change the reference of "AA/8(a)BD" to "AA/BD," as a result of a reorganization in SBA's Office of Government Contracting and Business Development that occurred more than a year ago, and to clarify that the AA/BD will consult with the AA/HUB before determining whether to release an 8(a) requirement to the HUBZone Program.

In response to several inquiries, SBA proposes to amend § 126.607 to clarify the interaction between the HUBZone and 8(a) Programs. The proposed rule would provide for parity between the two programs. A CO must look first to the HUBZone and 8(a) Programs in determining how to fulfill a particular procurement requirement. In deciding which contracting vehicle to use, a CO must consider where the contracting activity is in fulfilling its HUBZone and 8(a) goals, as well as other pertinent factors. The CO is directed to exercise his/her discretion on whether to offer the requirement to the 8(a) or HUBZone Program. For example, if the contracting activity has met 0% of its HUBZone goals and has met its 8(a) goals, then the CO should restrict the requirement for competition among HUBZone SBCs, if all other criteria are met. If the activity has met half of its HUBZone and half of its 8(a) goals, then the CO has the discretion to offer the requirement to the 8(a) Program or restrict the requirement for competition among HUBZone SBCs. At this point, other factors, including knowledge of a particular HUBZone or 8(a) SBC that is capable of performing the requirement, become more important. SBA believes that this determination should be made by the contracting activity, based upon the activity's needs at that time. Further, the regulation restates the position in the FAR that HUBZone set-asides procurements take priority over small business set-asides. A CO must consider using a HUBZone set-aside to fulfill a requirement before considering whether award can be made as a small business set-aside.

SBA proposes amending § 126.611 to clarify that SBA may appeal a CO's decision to not use a HUBZone contract for a certain requirement to the Secretary of the department or the head of the agency, rather than the head of the contracting activity. This proposed change conforms with the statute.

SBA proposes amending § 126.612 to address the conversion from the SIC to

NAICS code. In addition, SBA has proposed adding language in paragraph (e), addressing when a CO may issue a sole source award to a qualified HUBZone SBC, to state that it is the CO's determination (not SBA's) that the contract can be made at a fair and reasonable price. This language is the same as set forth in the HUBZone Act.

SBA proposes amending § 126.613 to conform to the recent statutory amendments made by Public Law 106-554. According to that statute, for purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences is 10 percent for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation; 5 percent for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and zero for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation. HUBZone contracts awarded pursuant to this preference may not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

In addition, SBA proposes to add other examples to § 126.613, regarding the price evaluation preference for a qualified HUBZone SBC in full and open competition, to clarify that only qualified HUBZone SBCs should benefit from the preference. SBA also proposes to amend the current example by correcting a mathematical error. According to the current example, if the qualified HUBZone SBC's offer was \$101 and the large business' offer was \$93, the award would go to the large business. This is inaccurate because at \$101, the HUBZone SBC's offer is not more than 10% higher than the large business' offer. SBA has amended the example to state that if the qualified HUBZone SBC's offer was \$103 and the large business' offer was \$93, the award would go to the large business because the qualified HUBZone SBC's offer would be more than 10% higher than the lowest, responsive, responsible offeror.

SBA proposes to correct a typographical error in § 126.614. That regulation currently refers to the price evaluation preference described in "126.614." The regulation should refer to the price evaluation preference described in "126.613." In addition, SBA proposes to amend the regulation by providing examples of how to apply

the HUBZone and SDB price evaluation preferences when a CO receives offers from two such concerns and must apply both preferences, and when a CO receives an offer from a concern that qualifies for both preferences. SBA had proposed similar examples when it issued its first proposed regulations for the HUBZone Program. See 63 FR 16148, 16152 (April 2, 1998). SBA did not provide these examples in the final rule because the Agency decided to leave the mechanics for implementation in the FAR. 63 FR 31896, 31904 (June 11, 1998). Although the FAR has addressed these issues, SBA has received numerous requests for further clarification. Therefore, SBA proposes to provide examples explaining clearly how this process works.

SBA proposes to amend § 126.616 to allow for joint ventures comprised of only qualified HUBZone SBCs and not 8(a) concerns or women-owned businesses. SBA believes the proposed eligibility requirements allowing qualified HUBZone SBCs to be owned in part by SBCs, makes joint ventures with other SBCs and large businesses unnecessary. Allowing HUBZone contracts to go to qualified HUBZone SBCs that are owned in part by a non-qualified HUBZone SBC, and which joint venture with another non-qualified HUBZone SBC, will dilute the benefits intended to go to the HUBZone area and residents. In addition, SBA proposes clarifying that the joint venture, which is comprised of two or more qualified HUBZone SBCs, does not itself have to be certified as a qualified HUBZone SBC, because joint ventures are limited entities that are formed for the purpose of performing on a specific contract. In addition, SBA proposes to amend the reference of SIC to NAICS.

SBA proposes to add § 126.617 to address disputes arising under a HUBZone contract. Oftentimes, qualified HUBZone SBCs request SBA's assistance with contract disputes between the procuring activity and the concern. However, it is not within SBA's authority to decide disputes arising under a HUBZone contract. Therefore, SBA proposes a regulation specifically stating that for purposes of the Disputes Clause of a HUBZone contract, the procuring activity will decide disputes arising between a qualified HUBZone SBC and the procuring activity.

SBA proposes to add a new § 126.618, which would explain how the participation of an applicant to the HUBZone Program or a HUBZone SBC in a Mentor-Protégé relationship affects its participation in the HUBZone Program. This section would provide

that qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements. For example, SBA may approve mentor-protégé agreements for purposes of its 8(a) BD program in which the mentor owns up to 40% of the 8(a) protégé firm. See 13 CFR 124.520(d)(2). Because such a relationship would violate the statutory requirement that a HUBZone SBC be 100% owned and controlled by persons who are United States citizens, a protégé firm in such a relationship would not be eligible for the HUBZone Program. For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small, proposed § 126.618(b) would exempt a protégé firm from being considered affiliated with its mentor based on its mentor-protégé agreement. SBA could still find affiliation on other grounds. Proposed § 126.618(c) would permit a qualified HUBZone SBC to team with and subcontract work under a HUBZone contract to its mentor, but would not permit a joint venture between a protégé and its mentor on a HUBZone contract unless the mentor was also a qualified HUBZone SBC.

SBA proposes to amend § 126.700 to state that the performance of work requirements for qualified HUBZone SBCs are set forth in 13 CFR 125.6. SBA proposes adding the performance of work requirements for qualified HUBZone SBCs to § 125.6 so that all of the performance of work requirements will be located in one place and thus easy to locate.

In addition, SBA is considering adding a new paragraph to § 126.700, which would add an additional contract performance requirement for construction HUBZone contracts. Specifically, in the case of a HUBZone construction contract (either general construction or specialty trade construction), SBA is considering requiring qualified HUBZone SBCs to perform at least 50 percent of the contract, either at the prime or subcontracting level. Such a provision would not affect the prime performance of work requirements set forth in § 125.6 (i.e., 15% for general construction and 25% for specialty trade construction); rather, the Agency is considering a new overall performance of work requirement for HUBZone construction contracts. Thus, for general construction, if a prime contractor will perform 15% of the contract, it would be required to subcontract at least 35% of the contract to one or more other qualified HUBZone SBCs. For a

specialty trade construction contract, if a prime contractor will perform 25% of the contract, it would be required to subcontract at least 25% of the contract to one or more other qualified HUBZone SBCs.

The HUBZone Program is intended to stimulate historically underutilized business zones through job creation and capital investment. Where a qualified HUBZone SBC is able to subcontract up to 85% of a general construction contract or up to 75% of a specialty trade construction contract to non-HUBZone SBCs (which may in fact be large businesses), SBA is concerned that it would not be adequately meeting the underlying Congressional purpose of the program. At the same time, however, SBA is not seeking to impose a barrier that could dissuade COs from using the HUBZone Program. If such a requirement in any way would cause a CO to use a contracting vehicle other than a HUBZone set-aside because he or she believes that there are not at least two qualified HUBZone SBCs that could meet it, then the requirement would have the opposite effect of what is intended. In such a case, instead of causing more work to be done by one or more qualified HUBZone SBCs, and hopefully increasing jobs in a HUBZone, the requirement would have caused 15% (or 25% for specialty trade construction) of the work that would have been performed by a qualified HUBZone SBC to be taken away from the Program and go elsewhere.

Thus, SBA is also considering several alternatives that would attempt to encourage increased performance by qualified HUBZone SBCs, but that would not adversely affect the HUBZone Program. One alternative that SBA is considering is requiring that HUBZone SBCs perform at least 50% of a construction contract through prime or subcontracting arrangements, but allow the CO to waive this requirement where he or she believes it cannot be met for a particular procurement. Where a CO believes that the 50% requirement can be met, it would continue to apply. Where a CO waives the 50% requirement, the solicitation would have to specify that the 50% requirement does not apply to the HUBZone procurement. The 15% or 25% prime contractor performance of work requirement would continue to apply. As another alternative, SBA is also considering imposing an evaluation factor in the award of negotiated HUBZone set-asides relating to overall performance by qualified HUBZone SBCs. SBA specifically requests comments on these proposals, including whether the 50% requirement is one

that can be met by the affected concerns, and whether and to what extent the CO waiver and evaluation factor can be used to make the requirement acceptable to COs and the procurement community.

In addition, SBA proposes to amend § 126.702 to state that the procedures for requesting changes in the subcontracting percentages are set forth in 13 CFR 125.6. As noted above, SBA has proposed a regulation amending § 125.6, which outlines the procedures for requesting changes in subcontracting percentages for all of SBA's program, including the HUBZone Program. Because it is redundant and unnecessary to have these procedures listed twice in the regulations, SBA proposes to remove § 126.703.

SBA proposes to amend paragraph (b) of § 126.800 to clarify that SBA and the CO may protest the apparent successful offeror's qualified HUBZone SBC status.

SBA proposes amending § 126.801 to clarify that SBA does not review protest issues concerning the conduct or administration of a HUBZone contract. In addition, SBA proposes amending paragraphs (d) to state that any protest received after the time limits is untimely, unless it is from SBA or the CO. This is similar to SBA's size protest procedures and will allow SBA or the CO to file HUBZone status protests any time either obtains information that a qualified HUBZone SBC may not be eligible. Further, SBA proposes amending paragraph (e) to state the information a CO should include in his or her protest referral letter to SBA. The CO's protest referral letter, in which he or she refers a HUBZone protest, should include certain information about the procurement so that SBA can determine issues of standing and timeliness.

SBA proposes amending paragraph (d) of § 126.803. Currently, that paragraph states that if SBA denies a protest, it will amend the date of certification on the List of qualified HUBZone SBCs to reflect the date of the protest decision. SBA believes that because protests often do not decide all eligibility issues, the Agency should not change the date of certification for the concern.

SBA proposes to change the references in § 126.805 of the ADA/GC&8(a)BD to ADA/GC&BD, to conform to SBA's recent re-organization and change in title of this position.

SBA proposes a technical change to § 126.900(b). SBA proposes to replace the term "civil remedies" with "civil penalties," in accordance with the statute.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this rule constitutes a “significant regulatory action” under Executive Order 12866. A copy of the Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis—HUBZone Empowerment Contracting Program

A. General Considerations

1. Is There a Need for the Regulatory Actions?

Yes. The U.S. Small Business Administration (SBA) is statutorily authorized to administer the HUBZone Empowerment Contracting Program (HUBZone Program). In addition, the SBA is required to implement and administer all statutory changes to the program. The HUBZone Act has been amended by the 2000 Reauthorization Act. These amendments must be implemented pursuant to regulations. There are no practical alternatives to the implementation of the proposed regulatory changes. In addition, the SBA believes these changes are necessary and appropriate to better service the needs of small business concerns (SBCs) and the statutory goals of the HUBZone Program.

2. What Is the Baseline?

There are several baselines being considered in the formulation of this proposed rule change. These include the present set of HUBZone Program regulations and definitions that would be modified by this proposal, the estimated universe of potential HUBZone SBCs, the existing statutory requirements, the achievement of HUBZone contracting goals by Federal agencies, and current procurement practices of Federal agencies. The SBA estimates that over 30,000 small businesses may be eligible and may be certified for the HUBZone Program. As of the end of fiscal year 2001, there were 4000 firms participating in the HUBZone Program. There are, at present, approximately 8000 designated HUBZone areas and approximately one HUBZone certified firm for every two designated HUBZone areas. As of the end of fiscal year 2000, Federal agencies (according to the Federal Procurement Data Center—FPDC) are, on average, achieving only 22% of their statutorily mandated goals for HUBZone contracting. This means that agencies are well below the required HUBZone

goal of 2–3 percent of the total contracting dollars.

It is difficult to obtain precise quantitative estimates of the impact these changes might have on these baseline criteria. However, we estimate that adoption of this proposed regulation will significantly increase the number of HUBZone SBCs, increase the number of HUBZone procurement actions by Federal agencies, and result in better and more efficient administration of the program. Ultimately, the program would move closer to meeting its statutory objectives of creating jobs and infusing capital into distressed communities.

3. Alternatives

There are no alternatives to implementing or changing the statutorily mandated items detailed in the proposed rule. Issuance of policy notices, for example, which are not published material like regulations, would hinder a SBC’s access to this needed information. However, SBA did consider proposing that no regulatory changes, other than those required by the amendments to the HUBZone Act, be made to the HUBZone Program. We also considered the proposal of less stringent and more stringent regulatory changes that were either well-short of or well-beyond what is included in this proposal. Those alternatives were disregarded on the basis of market, economic and administrative considerations. The utilization of HUBZone SBCs, while growing, lags far behind congressional goals. The SBA has observed and investigated this phenomenon and has concluded that our current rules are insufficient to propel the program to the legislatively established levels. The alternatives to propose less or more stringent regulatory changes were abandoned by the SBA as they precluded the Agency from striking a balance between the competing considerations of program integrity, program viability and program resources.

In addition, the “program achievement costs” of implementing less stringent regulations or not changing the regulations are unacceptably high. At the other end of the spectrum, the potential increases in program achievement to be gained by writing more stringent rules are far outweighed by the exponential increase in administrative and operating costs necessary to enforce regulations of that nature.

Our proposal maintains the legislative intent of the HUBZone Program. It facilitates the growth of the program to congressionally established levels, and

provides balanced give and take among the needs to manage the program, maintain program integrity, service the program’s small business participants and meet the procurement needs of other Federal agencies.

B. Benefit Estimates

The three most significant benefits to implementing the changes included in this proposal are:

1. *Improved efficiency of the HUBZone Program and its added benefits to both small businesses and Federal agencies.* SBA believes that the changes in this proposal will increase the base number of small businesses in the HUBZone Program and increase the viability and practicability of using the HUBZone Program by Federal agencies. We consider these to be mutually dependent in that the more firms that are in the program, the more Federal agencies will use the program, and when more Federal agencies use the program, more concerns will want to be able to take advantage of the benefits (contracts) available in the program. According to FPDC data, in fiscal year 2000 Federal agencies executed 3500 HUBZone actions worth over \$650,000,000. We estimate that these changes in the rule have the potential to triple the number of participating concerns and the number of contract actions directed to the HUBZone Program.

2. *Greater administrative efficiency and program integrity.* SBA believes that this proposal will allow the program to be run more effectively with existing resources relative to program activity while simultaneously permitting SBA to more precisely focus the benefits of the program on the businesses and those areas of low income or high unemployment.

3. *Greater contracting efficiency for Federal agencies.* SBA believes that by increasing the level of activity and participation in the HUBZone Program, it will increase economic savings to the Federal government on HUBZone awards. By having more HUBZone eligible concerns, procuring agencies will have a larger base of HUBZone vendors, which will ultimately reduce the cost of HUBZone contracts through increased competition among HUBZone SBCs.

C. Cost Estimates

Pursuant to this proposed rule, SBA expects significant increases in the number of concerns participating in the HUBZone Program and in the number of contract dollars spent in the program by Federal agencies. To the extent that this materializes, there may be attendant

cost increases to the government in terms of the costs of goods and services and slightly increased administrative costs. However, existing provisions of the Federal Acquisition Regulations concerning the determination of "fair and reasonable" pricing will mitigate any significant monetary costs to the government of this proposal.

The SBA does not believe these changes will result in significantly higher increased costs to HUBZone SBCs because SBA is attempting to streamline the program and ease burdensome restrictions on SBCs.

D. Other Considerations Including Distributional Effects, Equity Considerations and Uncertainty

SBA anticipates that the distribution of contracts among different procurement vehicles will change. Non-HUBZone concerns currently participating in the Federal marketplace will be affected economically as a result of their not being eligible to compete for the contracts that are restricted to the HUBZone Program. These costs will vary based on the goods and services provided by newly eligible HUBZone SBCs. In some industries there may be very little impact, while in other industries there may be substantial impact.

Large Federal prime contractors will see some decrease in contract opportunities as Federal agencies begin to utilize the HUBZone Program. However, these changes are insignificant in light of the magnitude of Federal procurement versus HUBZone procurement. The Federal government annually spends about \$200 billion on goods and services. However, in fiscal year 2000, the HUBZone Program accounted for only \$650 million of that amount (less than half of one percent). This is significantly less than the estimated \$1–6 billion goal set by Congress for the program.

Current and future HUBZone participants will see a tightening of definitions concerning contract performance. However, additional contracting opportunities and clearer regulations should offset these additional restrictions.

Most of the benefits of this proposal will accrue to HUBZone communities. Expanded eligibility for designated areas, increased HUBZone contracting and a refocusing of HUBZone subcontracting should result in more Federal contract dollars going to distressed communities.

Overall, projecting winners and losers from regulatory changes in the HUBZone Program cannot be done with certainty. SBA believes that increasing

the efficiency and access to the HUBZone Program to both Federal agencies and small businesses will, over time, result in increased use of the program and a higher probability that the HUBZone Program will meet its original objectives to create jobs and increase capital investment in HUBZone communities. The HUBZone Act of 1997 increased the small business goal from 20% to 23%, to include the HUBZone contracting goal (maximum level 3%), and ensure that small business contracting would not be impacted. In every case, the mix of winners and losers will be affected by the decisions of contracting agencies to use or not to use the HUBZone Program.

SBA has determined that this rule, if adopted in final form, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The amendments proposed in this rule involve revising several definitions, including the definition of "HUBZone" and "employee." These amendments may affect a large percentage of the over 30,000 SBCs that SBA believes are eligible or will become eligible for certification as qualified HUBZone SBCs over the life of the program. Thus, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) and has submitted a complete copy of the IRFA to the Chief Counsel for Advocacy of the SBA. The IRFA explains that this proposed rule will affect those SBCs that participate in Federal procurements, that hire leased or temporary employees, or are owned by Indian Tribal Governments or tribal corporations. The proposed rule will make it easier for such entities to apply to and become eligible for the program. For a complete copy of the IRFA, please contact Michael McHale at (202) 205–8885.

SBA has determined that this proposed rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. The rule authorizes SBA to request that a HUBZone SBC submit updated financial information and information relating to the number of its employees. This information is needed to comply with the statutory requirement that SBA report to Congress "the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones." Pub. L. 105–135, Title VI, § 606, 111 Stat. 2635. As noted in the Supplementary Information above, SBA has certified over four thousand concerns into the HUBZone Program.

Each of these concerns could be subject to this request for information. SBA estimates the burden of this collection of information as follows: SBA may request updated financial information and information relating to the number of employees from a qualified HUBZone SBC annually. SBA estimates that the time needed to complete this collection will average less than one-half hour. SBA estimates that the cost to complete this collection will be approximately \$30 per hour. Thus, the estimated aggregated burden for each qualified HUBZone SBC is 0.5 hours per annum costing an estimated \$15 for the year. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 and to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 125

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

13 CFR Part 126

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

Accordingly, for the reasons set forth above, SBA proposes to amend 13 CFR parts 121, 125 and 126, as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. Revise the authority citation for 13 CFR part 121 to read as follows:

Authority: Pub. L. 105-135 sec. 601 et seq., 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5); and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. Amend § 121.406 by revising the section heading, by adding a new paragraph (b)(6) to read as follows, and by removing paragraph (d):

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

* * * * *

(b) Nonmanufacturers. (1) * * *

(6) With respect to any contract under the simplified acquisition threshold, a small business nonmanufacturer may supply the end item of any manufacturer made in the United States, including a large business.

* * * * *

3. Amend § 121.1001 by revising paragraph (a)(6)(iv), and by adding new paragraph (b)(7) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) Size status protests. * * *

(6) * * *

(iv) The SBA Associate Administrator for the HUBZone Program, or designee.

* * * * *

(b) * * *

(7) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or qualified HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

4. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

5. In § 125.6, redesignate paragraphs (b), (c), (d), (e), (f), and (g) as paragraphs (d), (e), (f), (g), (h), and (i) respectively, and add new paragraphs (b) and (c) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(b) A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract (as defined in § 126.600) provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(4) In the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the qualified HUBZone SBC spends at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement; and

(5) In the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, the qualified HUBZone SBC may not purchase from a subcontractor any of the commodity if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(c) SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry

codes in the North American Industry Classification System (NAICS) pursuant to the following procedures.

(1) Format of request. Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Associate Administrator of the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDB, woman-owned business, or HUBZone programs.

(2) Notice to public. Upon an adequate preliminary showing to SBA, SBA will publish in the Federal Register a notice of its receipt of a request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) Comments. SBA will provide a period of not less than 30 days for public comment in response to the Federal Register notice.

(4) Decision. SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the Federal Register. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

* * * * *

PART 126—HUBZONE PROGRAM

6. Revise the authority citation for 13 CFR part 126 to read as follows:

Authority: 15 U.S.C. 632, and 15 U.S.C. 657a.

7-8. Amend § 126.101 by revising paragraph (a), removing paragraph (b), and redesignating current paragraph (c) as paragraph (b) to read as follows:

§ 126.101 Which government departments or agencies are affected directly by the HUBZone Program?

(a) The HUBZone Program applies to all federal departments or agencies that employ one or more contracting officers.

9. Amend § 126.103 to remove the terms and definitions for "HUBZone 8(a) concern," and "Woman-owned business (WOB);" revise the terms and definitions of "AA/8(a)BD", "AA/HUB," "ADA/GC&8(a)BD", "employee," "HUBZone," "HUDZone small business concern (HUBZone SBC)," "Indian reservation," "Lands within the external boundaries of an Indian reservation", "Person," "Qualified census tract," "Qualified non-metropolitan county," and "Small disadvantaged business (SDB);" add the terms "Agricultural Commodity," "Alaska Native Corporation (ANC)," "Alaska Native Village," "Attempt to Maintain," "Community Development Corporation," "Contracting Officer," "Indian Tribal Government," "Redesignated area," and "Small business concern (SBC)" to read as follows:

§ 126.103 What definitions are important in the HUBZone Program?

AA/BD means SBA's Associate Administrator for the Office of Business Development.

AA/HUB means SBA's Associate Administrator for the HUBZone Empowerment Contracting Program.

ADA/GC&BD means SBA's Associate Deputy Administrator for Government Contracting and Business Development.

Agricultural Commodity has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

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.

Alaska Native Village has the same meaning as the term "Native village" in section 3 of the 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.

Community Development Corporation (CDC) means a corporation that has

received financial assistance under 42 U.S.C. 9805 *et seq.*

Contracting Officer (CO) has the meaning given that term in 41 U.S.C. 423(f)(5), which defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

Employee means a person (or persons) employed by a concern on a full-time, part-time, temporary, leased or other basis. SBA will consider the totality of circumstances, including factors relevant for tax purposes, when determining whether individuals are employees of a concern. Volunteers (*i.e.*, persons who receive no compensation for work performed) are not considered employees. To determine the size of a HUBZone concern, SBA uses the calculation of "employee" set forth in § 121.106 of this chapter.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, or redesignated areas.

HUBZone SBC means:

(1) An SBC that is owned and controlled by 1 or more persons, each of whom is a United States citizen;

(2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));

(3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));

(4) An SBC that is wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(5) An SBC that is 51% owned by one or more Indian Tribal Governments or 51% owned by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or,

(6) An SBC that is 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.

Indian reservation has the same meaning as the term "Indian country" in 18 U.S.C. 1151, except that such term does not include—

(1) Any lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and

(2) Lands taken into trust or acquired by an Indian tribe after December 21, 2000 if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status as of December 21, 2000. However, in the State of Oklahoma, "Indian reservation" means lands that—are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151, as in effect on December 21, 2000.

Indian Tribal Government means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Lands within the external boundaries of an Indian reservation includes all lands within the perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the perimeter of an Indian reservation is "lands within the external boundaries of an Indian reservation." By contrast, an Indian-owned parcel of land that located outside the perimeter of an Indian reservation is not "lands within the external boundaries of an Indian reservation."

Person means a natural person.

Qualified census tract has the meaning given that term in § 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area at the time of the most recent census taken for purposes of selecting qualified census tracts under § 42(d)(5)(C)(ii) of the

Internal Revenue Code of 1986, and in which:

(1) The median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(2) The unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

Redesignated area means any census tract or any nonmetropolitan county that ceases to be a qualified HUBZone, except that such census tracts or nonmetropolitan counties may be "redesignated areas" only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified. The date on which the census tract or nonmetropolitan county ceases to be qualified is the date that the official government data, which affects the eligibility of the HUBZone, is released to the public.

* * * * *

Small business concern (SBC) means a concern that, with its affiliates, meets the size standard for its primary industry, pursuant to part 121 of this chapter.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this chapter, is owned and controlled by one or more socially and economically disadvantaged individuals, tribes, ANCs, Native Hawaiian Organizations, or CDCs and has been certified pursuant to subpart B, part 124 of this chapter.

* * * * *

10. Revise § 126.200 to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) *Concerns owned by Indian Tribal Governments.*

(1) *Ownership.* (i) The concern must be wholly owned by one or more Indian Tribal Governments;

(ii) The concern must be wholly-owned by a corporation that is wholly owned by one or more Indian Tribal Governments;

(iii) The concern must be owned in part by one or more Indian Tribal Governments and all other owners are either United States citizens or SBCs; or

(iv) The concern must be owned in part by a corporation, which is wholly-owned by one or more Indian Tribal

Governments, and all other owners are either United States citizens or SBCs.

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

(3) *Employees.* The concern must certify that when performing a HUBZone contract, at least 35 percent 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 adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other.

(b) *Concerns owned by U.S. citizens or CDCs.*

(1) *Ownership.* (i) The concern must be 100 percent owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership is owned 99.9 percent by persons who are U.S. citizens, and 0.1 percent by someone who is not. The concern is not eligible because it is not 100 percent owned by U.S. citizens;

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to § 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to § 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to § 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 percent 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 percent 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 percent 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 having 35 percent 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.

11. Revise § 126.201 to read as follows:

§ 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 Option 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. Thus, pursuant to § 126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not 100 percent owned and controlled by persons who are United States 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.

12. Revise § 126.202 to read as follows:

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

Control means both the day-to-day management and long-term decisionmaking 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.

13. Revise § 126.203(b) to read as follows:

§ 126.203 What size standards apply to HUBZone SBCs?

* * * * *

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

14. Revise § 126.205 to read as follows:

§ 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.

15. Revise § 126.207 to read as follows:

§ 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.

16. Revise § 126.300 to read as follows:

§ 126.300 How may a concern be certified as a qualified HUBZone SBC and what information will SBA consider?

A concern must apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where a concern fails to cooperate with SBA or submit information requested by SBA. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

17. Revise § 126.303 to read as follows:

§ 126.303 Where must a concern submit its application and certification?

A concern seeking certification as a HUBZone SBC must submit its electronic application to SBA via <https://eweb1.sba.gov/hubzone/internet/> and its written application to the AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Certification pages must be signed by a person authorized to represent the concern.

18. Revise § 126.304 to read as follows:

§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must submit a completed application and represent to SBA that it meets the requirements set forth in § 126.200. The concern must also submit any additional information required by SBA.

(b) Concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation must use SBA's maps to verify that the location is within the external boundaries of an Indian reservation. If, however, SBA's maps indicate that the location is not within the external boundaries of an Indian reservation and the concern disagrees, then the concern must submit official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5.

(c) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 126.501, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

19. Revise § 126.306(b) to read as follows:

§ 126.306 How will SBA process the certification?

* * * * *

(b) SBA may request additional information or clarification of information contained in an application submission at any time.

* * * * *

20. Revise § 126.307 to read as follows:

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

Qualified HUBZone SBCs are identified on Pro-Net at <http://pro-net.sba.gov> and on the HUBZone Web page at <https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm>. In addition, requesters may obtain a copy of the List by writing to the AA/HUB at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at hubzone@sba.gov.

21. Revise § 126.308 to read as follows:

§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter, should immediately notify the AA/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or via e-mail at hubzone@sba.gov. The concern must appear on the List to be eligible for HUBZone contracts.

22. Revise § 126.309 to read as follows:

§ 126.309 May a declined or decertified concern seek certification at a later date?

A concern that SBA has declined or decertified may seek certification no sooner than one year from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. See § 126.304(c).

23. Revise § 126.401 to read as follows:

§ 126.401 What is a program examination and what will SBA examine?

(a) *General.* 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 process or in connection with a HUBZone contract. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a HUBZone contract.

(b) *Scope of review.* Examiners may conduct the review, or parts of the review, at one or all of the concern's offices. SBA will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the location and ownership of the concern, the

employee percentage requirements, and the concern's attempt to maintain this percentage. The concern must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission of the application and any recertifications issued to SBA.

24. Revise § 126.402 to read as follows:

§ 126.402 When may SBA conduct program examinations?

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 certified as a qualified HUBZone SBC.

25. Revise § 126.403 to read as follows:

§ 126.403 May SBA require additional information from a HUBZone SBC?

(a) At the discretion of the AA/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. SBA may draw an adverse inference from the failure of a HUBZone SBC to cooperate with a program examination or provide requested information.

(b) In order to gauge the success of the program, SBA may request that a HUBZone SBC submit updated financial information and information relating to the number of its employees.

§ 126.404 [Removed]

26. Remove § 126.404.

§ 126.405 [Removed]

27. Remove § 126.405.

28. Revise § 126.500 to read as follows:

§ 126.500 How does a qualified HUBZone SBC maintain HUBZone status?

Any qualified HUBZone SBC seeking to remain on the List must recertify every three years to SBA that it remains a qualified HUBZone SBC. Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days after the third anniversary of their date of certification and each subsequent three-year period. Failure to do so will result in SBA initiating decertification proceedings. Once decertified, the concern then would have to submit a new application for certification pursuant to § 126.309.

The recertification to SBA must be in writing and must represent that the circumstances relative to eligibility that existed on the date of certification showing on the List have not materially changed and that the concern meets any new eligibility requirements.

29. Revise § 126.501 to read as follows:

§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

A qualified HUBZone SBC must immediately notify SBA of any material change that could affect its eligibility. Material change includes, but is not limited to, a change in the ownership, business structure, or principal office of the concern, or a failure to meet the 35% HUBZone residency requirement. The notification must be in writing, and must be sent or delivered to the AA/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change may result in decertification and removal from the List pursuant to § 126.504. In addition, SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, it must apply for certification pursuant to §§ 126.300 through 126.306.

§ 126.503 [Redesignated as § 126.504]

30. Redesignate current § 126.503 as § 126.504.

31. Add new § 126.503 to read as follows:

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

If SBA is unable to verify a qualified HUBZone SBC's eligibility or determines it is not eligible for the program, SBA may propose decertification of the concern.

(a) *Proposing Decertification.* Except as set forth in paragraph (c) of this section, the Deputy AA/HUB or designee will first notify the qualified HUBZone SBC in writing of the reasons why decertification is being proposed. The qualified HUBZone SBC will have 30 calendar days from the date that it receives SBA's notification to respond, in writing, to the AA/HUB or designee.

(b) *SBA's Decision.* The AA/HUB or designee will consider the reasons for proposed decertification and the qualified HUBZone SBC's response before making a written decision whether to decertify. The AA/HUB may draw an adverse inference where a qualified HUBZone SBC fails to cooperate with SBA or provide the information requested. The AA/HUB's decision is the final agency decision.

(c) *Decertifying Pursuant to a Protest.* SBA may decertify a qualified HUBZone SBC and remove its name from the List without first proposing it for decertification if the AA/HUB upholds a protest pursuant to § 126.803 and the AA/HUB's decision is not overturned pursuant to § 126.805.

32. Revise § 126.601 to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) In order to submit an offer on a specific HUBZone contract, the qualified HUBZone SBC, together with its affiliates, must be small under the size standard corresponding to the NAICS code assigned to the contract.

(b) A firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract.

(c) At the time a qualified HUBZone SBC submits its initial offer, and where applicable its final offer, on a specific HUBZone contract, it must certify to the CO that:

(1) It is a qualified HUBZone SBC that appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List that could affect its HUBZone eligibility;

(3) It is small under the NAICS code assigned to the procurement; and

(4) If the qualified HUBZone SBC was certified pursuant to § 126.200(b), it must represent that it will attempt to maintain the required percentage of employees who are HUBZone residents during the performance of a HUBZone contract. If the qualified HUBZone SBC was certified pursuant to § 126.200(a) of this title, then it must represent that at least 35 percent of its employees engaged in performing the HUBZone contract reside within any Indian reservation governed by one or more of its Indian Tribal Government owners or reside within any HUBZone adjoining any such Indian reservation.

(d) If bidding as a joint venture, each qualified HUBZone SBC must make the certifications in paragraph (c) of this section separately under its own name.

(e) A qualified HUBZone SBC 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(b)(1) of this chapter, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(i) SBA will not issue contract-specific waivers as it does for small business set-aside and 8(a) contracts under § 121.406(b)(3)(i) of this chapter.

(ii) Class waivers issued under § 121.406(b)(3)(ii) of this chapter do not apply to HUBZone contracts.

(2) For HUBZone contracts at or below the simplified acquisition threshold in total value, a qualified HUBZone SBC may supply the end item of any manufacturer made in the United States, including a large business.

33. Revise § 126.602 to read as follows:

§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must attempt to maintain the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of its HUBZone status.

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(a) must have at least 35 percent 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. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

34. Revise § 126.603 to read as follows:

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

HUBZone certification does not guarantee that a qualified HUBZone SBC will receive HUBZone contracts. Qualified HUBZone SBCs should market their capabilities to appropriate contracting activities in order to increase their prospects of having a requirement set aside for HUBZone contract award.

35. Amend § 126.605 by removing the semicolon and "or" at the end of paragraph (b), adding a period in its place, and removing paragraph (c).

36. Revise § 126.606 to read as follows:

§ 126.606 May a CO request that SBA release an 8(a) requirement for award as a HUBZone contract?

A CO may request that SBA release an 8(a) requirement for award as a HUBZone contract. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant can perform the requirement. The request must be made

to the AA/BD, who will make a determination after consulting with the AA/HUB.

37. Revise § 126.607 to read as follows:

§ 126.607 When must a CO set aside a requirement for qualified HUBZone SBCs?

(a) The CO first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) After determining that paragraph (a) of this section does not apply, the CO must next determine whether the requirement should be set aside for competition restricted to qualified HUBZone SBCs or offered to the 8(a) program. In making this determination, the CO must consider the contracting activity's achievement of its HUBZone and 8(a) goals, and other relevant factors.

(c) A CO must consider using a HUBZone set-aside to fulfill a requirement before considering whether award can be made as a small business set-aside.

(d) If the CO decides to set-aside the requirement for competition restricted to qualified HUBZone SBCs, the CO must:

- (1) Review SBA's List of Qualified HUBZone SBCs and have a reasonable expectation that at least two qualified HUBZone SBCs will submit offers; and
- (2) Determine that award can be made at a fair market price.

38. Revise § 126.608 to read as follows:

§ 126.608 Are there HUBZone contract opportunities at or below the simplified acquisition threshold or micropurchase threshold?

A CO may make a requirement available as a HUBZone set-aside if it is at or below the simplified acquisition threshold. In addition, a CO may award a requirement as a HUBZone contract to a qualified HUBZone SBC at or below the micropurchase threshold.

39. Revise § 126.610 to read as follows:

§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

(a) The Administrator may appeal a CO's decision not to make a particular requirement available for award as a HUBZone contract to the Secretary of the department or head of the agency.

(b) An appeal is initiated by SBA's Procurement Center Representative to the CO, and may be in response to information supplied by the AA/HUB, his or her designee, or other interested parties.

40. Revise § 126.611(c) to read as follows:

§ 126.611 What is the process for such an appeal?

* * * * *

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

* * * * *

41. Revise paragraphs (b)(1), (b)(2), and (e) of § 126.612 to read as follows:

§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?

* * * * *

(b) * * *

(1) \$5,000,000 for a requirement within the NAICS codes for manufacturing; or

(2) \$3,000,000 for a requirement within all other NAICS codes;

* * * * *

(e) In the estimation of the CO, contract award can be made at a fair and reasonable price.

42. Revise § 126.613 to read as follows:

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a)(1) Where a CO will award a contract on the basis of full and open competition, the CO must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another SBC) if the price offered by the qualified HUBZone SBC is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror. For a best value procurement, the CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation.

(2) Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone SBC is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone SBC is equal to the total evaluation points received by a large business), award shall be made to the qualified HUBZone SBC.

Example 1: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98, a non-HUBZone SBC submits an offer of \$95, and a large business submits an offer of

§93. The lowest, responsive, responsible offeror would be the large business. However, the CO must apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business' offer and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

Example 2: In a full and open competition, a qualified HUBZone SBC submits an offer of \$103, a non-HUBZone SBC submits an offer of \$100, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be that from a large business. The CO must then apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is more than 10 percent higher than the large business' offer and, consequently, the qualified HUBZone SBC does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone SBC's offer at \$100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone SBC.

Example 3: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98 and a non-HUBZone SBC submits an offer of \$93. The CO would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a SBC.

(b)(1) For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be:

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation for bids (IFB);

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single IFB; and

(iii) Zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single IFB.

(2) The 10 percent and 5 percent price evaluation preferences for agricultural commodities apply to all offers from qualified HUBZone SBCs up to the 25 percent and 40 percent volume limits specified in paragraph (b)(1) of this section. As such, more than one qualified HUBZone SBC may receive a price evaluation preference for any given commodity in a single IFB.

Example. There is an IFB for 100,000 pounds of wheat. Bid 1 (from a large business) is \$1/pound for 100,000 pounds of wheat. Bid 2 (from a HUBZone SBC) is \$1.05/pound for 20,000 pounds of wheat. Bid 3

(from a HUBZone SBC) is \$1.04/pound for 20,000 pounds. Bid 3 receives a 10% price evaluation adjustment for 20,000 pounds, since 20,000 is less than 25% of 100,000 pounds. With the 10% price evaluation adjustment, Bid 1 changes from \$20,000 for the first 20,000 pounds to \$22,000. Bid 3's price of \$20,800 ($\$1.04 \times 20,000$) is now lower than any other bid for 20,000 pounds. Thus, Bid 3 will be accepted for the full 20,000 pounds. Bid 2 receives a 10% price evaluation adjustment for that amount of its bid when added to the volume in Bid 3 that does not exceed 25% of the total volume being procured. Since 25,000 pounds is 25% of the total volume of wheat under the IFB, and Bid 3 totaled 20,000 pounds, a 10% price evaluation adjustment will be applied to the first 5,000 pounds of Bid 2. With the price evaluation adjustment, the price for Bid 1, as measured against Bid 2, for 5,000 pounds changes from \$5,000 to \$5,500. Bid 2's price of \$5,250 ($\$1.05 \times 5,000$) is lower than Bid 1 for 5,000 pounds. Bid 2 will then receive a 5% price evaluation adjustment for the remaining 15,000 pounds, since the total volume of Bids 3 and 2 receiving an adjustment does not exceed 40% of the total volume of wheat under the IFB (i.e., 40,000 pounds). With the 5% price evaluation adjustment, Bid 1's price for the next 15,000 pounds changes from \$15,000 to \$15,750. Bid 2's price for that 15,000 pounds is also \$15,750 ($\$1.05 \times 15,000$). Because the evaluation price for Bid 2 is *not more than* 10 percent higher than the price offered by Bid 1, Bid 2's price is deemed to be lower than the price offered by Bid 1. Since the evaluation price for both the first 5,000 pounds (receiving a 10% price evaluation adjustment) and the remaining 15,000 pounds (receiving a 5% price evaluation adjustment) is less than Bid 1, Bid 2 will be accepted for the full 20,000 pounds.

(c) A contract awarded to a qualified HUBZone SBC under a preference described in paragraph (b) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

43. Revise § 126.614 to read as follows:

§ 126.614 How does a CO apply HUBZone and SDB price evaluation preferences in full and open competition?

A CO may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. The CO must first apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. The CO must then apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.613 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the

Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103-355, in a full and open competition.

Example 1: In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of \$102; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; and a large business submits an offer of \$93. The CO first applies the SDB price evaluation preference and adds 10 percent to the qualified HUBZone SBC's offer thereby making that offer \$112.2, and to the large business's offer thereby making that offer \$102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Next, the CO applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the CO must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

Example 2: A qualified HUBZone SBC (but not an SDB) submits an offer of \$102; a qualified HUBZone SBC that is also an SDB submits an offer of \$105; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of \$100; and a large business submits an offer of \$93. The CO must first apply the SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes \$112.2; the qualified HUBZone SBC/SDB's offer remains \$105; the SDB's offer remains \$107; the small business concern's offer becomes \$110; and the large business's offer becomes \$102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror. Next, the CO must apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price, the CO must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of \$112.2 is not more than 10 percent higher than the large business's price, however, the qualified HUBZone/SDB's price of \$105 is also not more than 10 percent higher than the large business's price and is lower than the qualified HUBZone SBC's price. Consequently, the CO must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

44. Revise § 126.616 to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

A joint venture may submit an offer on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with another qualified HUBZone SBC for the purpose of performing a specific HUBZone contract. The joint venture itself need

not be certified as a qualified HUBZone SBC.

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(i) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; and

(ii) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(2) For a procurement that does not exceed the applicable dollar amount specified in paragraph (b)(1) of this section, a joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as the qualified HUBZone SBCs in the aggregate are small under the size standard corresponding to the NAICS code assigned to the contract.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by 13 CFR 125.6.

45. Add new § 126.617 to read as follows:

§ 126.617 Who decides contract disputes arising between a qualified HUBZone SBC and a contracting activity after the award of a HUBZone contract?

For purposes of the Disputes Clause of a specific HUBZone contract, the contracting activity will decide disputes arising between a qualified HUBZone SBC and the contracting activity.

46. Add new § 126.618 to read as follows:

§ 126.618 How does a HUBZone SBC's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?

(a) Qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements.

(b) For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small under part 121 of this chapter, SBA will not find affiliation between the applicant or HUBZone SBC and the firm that is its mentor in a Federally-approved mentor-protégé relationship on the basis of the mentor-protégé agreement.

(c)(1) A qualified HUBZone SBC that is a prime contractor on a HUBZone

contract may team with and subcontract work to its mentor.

(i) The HUBZone SBC must meet the applicable performance of work requirement set forth in § 125.6(b) of this chapter.

(ii) SBA may find affiliation between a prime HUBZone contractor and its mentor subcontractor where the mentor will perform primary and vital requirements of the contract. *See* § 121.103(f)(4) of this chapter.

(2) A qualified HUBZone SBC may not joint venture with its mentor on a HUBZone contract unless the mentor is also a qualified HUBZone SBC.

47. Revise § 126.700 to read as follows:

§ 126.700 What are the performance of work requirements for HUBZone contracts?

A prime contractor receiving an award as a HUBZone SBC must meet the performance of work requirements set forth in § 125.6(b) of this chapter.

48. Revise § 126.702 to read as follows:

§ 126.702 How can the subcontracting percentage requirements be changed?

SBA may change the required subcontracting percentage for a specific industry if the Administrator determines that such action is necessary to reflect conventional industry practices among SBCs that are below the numerical size standard for businesses in that industry group. The procedures for requesting changes in subcontracting percentages are set forth in § 125.6 of this chapter.

§ 126.703 [Removed]

49. Remove § 126.703, "What are the procedures for requesting changes in subcontracting percentages."

50. Revise § 126.800(b) to read as follows:

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

* * * * *

(b) *For all other procurements.* SBA, the CO, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

51. Revise paragraphs (a), (d)(2) and (e) of § 126.801 to read as follows:

§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC 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 SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process protests concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does review protest issues concerning the conduct or administration of a HUBZone contract.

* * * * *

(d) *Timeliness.*

(1) * * *

(2) Any protest received after the time limits is untimely, unless it is from SBA or the CO.

* * * * *

(e) *Referral to SBA.* The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: The solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

52. Revise § 126.803(d) to read as follows:

§ 126.803 How will SBA process a HUBZone status protest?

* * * * *

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&BD, pursuant to § 126.805. If SBA upholds the protest, SBA will decertify the concern.

53. Revise paragraphs (a), (b), and (h) of § 126.805 to read as follows:

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the CO

may file appeals of protest determinations with the ADA/GC&BD.

(b) *Timeliness of appeal.* The ADA/GC&BD must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

* * * * *

(h) *Decision.* The ADA/GC&BD will make a decision within five business days of receipt of the appeal, if practicable, and will base his or her decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the CO, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&BD's decision is the final agency decision.

54. Revise paragraph (b) of § 126.900 to read as follows:

§ 126.900 What penalties may be imposed under this part?

* * * * *

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

* * * * *

Dated: January 16, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02–1834 Filed 1–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell, Inc., Part Number HG1075AB05 and HG1075GB05 Inertial Reference Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 inertial reference units (IRU) that are installed on aircraft. This proposed AD would require you to inspect the affected IRU's

for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection. This proposed AD is the result of a report that these IRU's may not function when using backup battery power in certain installations. The actions specified by this proposed AD are intended to ensure the correct transition of the IRU to backup battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 29, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Honeywell, Inc., Commercial Aviation Products, 8840 Evergreen Boulevard, Minneapolis, Minnesota 55433–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7564; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

A ground test for proper inertial reference unit (IRU) function revealed a wiring defect that is attributed to a manufacturing error on certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 IRU's. This wiring defect disables the IRU's capability to detect a loss of primary input power and transition to backup battery input power in some installations.

The affected IRU's incorporate the following:

- P/N HG1075AB05: any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659) that incorporates modification status 3; and
- P/N HG1075GB05: serial number (last four digits) 0652 or 0659 that incorporates modification status 2.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

Is There Service Information That Applies to This Subject?

Honeywell, Inc. has issued the following:

- Alert Service Bulletin HG1075AB–34–A0013, dated May 21, 2001; and
- Alert Service Bulletin HG1075GB–34–A0005, dated May 21, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for inspecting the affected IRU's for proper function. It also