§ 1044.08 Do you have to submit the documents for classification review before you give them to someone?

Yes, you must submit each document with a classification or control marking and any unmarked document generated in a classified or controlled subject area to the Inspector General. The Inspector General forwards each document to the Office of Nuclear and National Security Information for a determination as to whether the information in the document is properly classified, controlled, or may be released to the public.

§ 1044.09 What do you do if you plan to disclose classified or unclassified controlled nuclear information orally rather than by providing copies of documents?

You must describe in detail to the Inspector General what information you wish to disclose. The Inspector General may require that the information to be disclosed be put in writing in order to ensure the Inspector General obtains and provides accurate advice. The Inspector General will consult with the Office of Nuclear and National Security Information who will provide you with advice, through the Inspector General, as to whether the information is classified or controlled and any steps needed to protect the information.

§ 1044.10 Will your identity be protected?

Yes, both the Inspector General and the Office of Nuclear and National Security Information must protect, consistent with legal requirements, your identity and any information about your disclosure.

§ 1044.11 How do you protect the information that you want to disclose?

To protect classified information and unclassified controlled nuclear information you plan to disclose, you must:

(a) Only disclose the information to personnel who possess the appropriate clearance and need-to-know for the information disclosed as required in 10 CFR part 710, after verifying any special authorizations or accesses, such as Sensitive Compartmented Information, Special Access Program, and Weapon Data information;

(b) Use only equipment (such as computers or typewriters) that is approved for classified processing for the generation of classified documents;

(c) Mark documents as required by 10 CFR part 1045 (classified information), 10 CFR Part 1017 (unclassified controlled nuclear information), or as required by the Office of Nuclear and National Security Information.

(d) Use only approved copiers to reproduce documents;

(e) Store classified documents in facilities approved by the U.S. Government for the storage of classified material;

(f) Use only approved destruction devices to destroy classified documents;

(g) Use only appropriate secure means, such as secure facsimile or secure telephone, to provide classified information orally or electronically when transmitting or communicating that information (e.g. the applicable classified mailing address); and

(h) Follow any additional specific instructions from the Office of Safeguards and Security on how to protect the information.

§ 1044.12 What procedures can you invoke if you believe you have been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure?

If you believe you have been discriminated against as a reprisal for making a protected disclosure, you may submit a complaint to the Director of the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107, or you may send your complaint to the Director, Office of Hearings and Appeals, by facsimile to FAX number (202) 426–1415. In your complaint, you should give your reasons for believing that you have been discriminated against as a reprisal for making a protected disclosure, and include any information you think is relevant to your complaint. The Office of Hearings and Appeals will conduct an investigation of your complaint unless the Director determines your complaint is frivolous. The Director will notify you in writing if your complaint is found to be frivolous. If an investigation is conducted, the Director will submit a report of the investigation to you, to the employer named in your complaint, and to the Secretary of Energy, or the Secretary's designee. The Secretary, or the Secretary's designee, will take appropriate action, pursuant to 42 U.S.C. 7239(k), to abate any discriminatory actions taken as reprisal for making a protected disclosure.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

HUBZone Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the HUBZone Empowerment Contracting Program (HUBZone program). In particular, this rule clarifies the application of the HUBZone program to state and local governments, revises the definition of the term ''principal office,'' eliminates the program eligibility restrictions on allowable affiliations of HUBZone small business concerns, and eases the program eligibility requirements and procurement restrictions concerning qualified HUBZone small business concerns that operate as non-manufacturers.

DATES: This rule is effective on February 20, 2001.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Associate Administrator for the HUBZone Program, (202) 205–6731 or hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: On October 3, 2000, the Small Business Administration (SBA) published in the **Federal Register**, 65 FR 58963, a proposed rule to amend its regulations governing the HUBZone program. The rule proposed to update the list of Federal agencies covered by the HUBZone program and clarify that the program does not apply to contracts awarded by state and local governments. In addition, the rule proposed to amend the definition of the term principal office to accommodate service and construction concerns, and to eliminate the program eligibility restrictions on allowable affiliations of HUBZone small business concerns (SBCs). Finally, the rule proposed to ease the program eligibility requirements and procurement restrictions concerning qualified HUBZone small business concerns that operate as non-manufacturers. The proposed regulatory amendments were intended to improve the efficiency and effectiveness of the program in light of SBA's experience since the effective date of the final regulations implementing the HUBZone Act of 1997, Title VI of the Small Business Reauthorization Act of 1997, Public Law 105–135.

Discussion of Comments on the Proposed Rule

SBA received 22 timely comments concerning the proposed amendments. The vast majority of the comments supported the proposed regulatory amendments and applauded SBA's efforts to improve and clarify the HUBZone regulations. In addition to expressing support for the amendments, a few commenters also recommended some modifications to two of the

proposed amendments. As discussed below, SBA carefully considered the comments and recommendations in developing this final rule. SBA received a few comments addressing other sections of the HUBZone regulations. Because this final rule does not involve any of those sections, SBA does not discuss those comments here but will consider them for future amendments to the HUBZone regulations.

Four comments addressed SBA's proposal to revise § 126.101, to add three additional Federal agencies to the list of agencies covered by the HUBZone Act and to clarify that the program does not apply to state and local governments. Three of those comments supported those amendments. One of the four commenters, however, pointed out that Section 212 of Public Law 106–113, which extended the HUBZone program to the three Federal agencies that SBA proposed to add to the list, was effective for the fiscal year ending September 30, 2000. That commenter also noted that although the current § 126.101(b) makes clear that after September 30, 2000, the HUBZone program applies to all federal agencies that hire one or more contracting officers, it may be useful to retain the current list of covered agencies under § 126.101(a) because it spells out the program's applicability to HUBZone contracts awarded prior to September 30, 2000. SBA concurs with that recommendation and therefore has retained the original § 126.101(a) without change and has adopted in full a new paragraph (c) to § 126.101, as proposed on October 3, 2000.

The comments concerning the definition of ''principle office,'' were all supportive of the proposed amendment of that definition in § 126.103. Under the proposed definition, ''principle office'' would continue to be defined as the location where the greatest number of the concern's employees perform their work, except that for concerns whose primary industry is service or construction, the determination of ''principal office'' would exclude the concern's employees who perform their work at separate job-site locations to fulfill specific contract obligations.

In the preamble to the proposed rule, SBA specifically requested public comments on the proposed employee exclusion provision for the construction and service industries. Responding commenters strongly supported that exclusion for firms engaged in the construction and service industries. They agreed that the current definition of ''principal office'' is appropriate for manufacturing concerns, because such firms tend to operate with fixed plant, equipment and personnel tied to one location, but that it did not make sense for service or construction industries. Accordingly, this final rule adopts the definition of ''principal office'' as proposed.

With one notable exception, commenters likewise endorsed the proposed amendment of § 126.204, to eliminate the current restriction on allowable affiliations of HUBZone SBCs to other qualified HUBZone SBCs, 8(a) Business Development program participants and women-owned small businesses. The one objecting commenter expressed concern that the proposed change would make it easier for large businesses to set up ''store-front'' affiliates to abuse the program. SBA disagrees. The proposed amendment to § 126.204 makes clear that the size of the HUBZone SBCs when combined with the size of all its affiliates must qualify as small under part 121 of title 13 of the Code of Federal Regulations. That requirement safeguards against possible abuse by large businesses in that regard.

Although supporting the proposed elimination of the existing restrictions on allowable affiliations, another commenter recommended that SBA relax the requirements of § 126.204 further by revising the directive for aggregating the size of the HUBZone SBC and its affiliates. That commenter suggested that SBA should only aggregate the ''business activity resulting from'' the affiliation. SBA declines to accept that recommendation. Given the broad definition of affiliation under § 121.103 of title 13 of the Code of Federal Regulations, it is not feasible to aggregate only the ''business activity resulting from'' the affiliation. Further, combining the size of a HUBZone concern with all its affiliates is consistent with governing size regulations under part 121, and does not impose undue burden on otherwise qualified HUBZone SBCs. SBA believes that a finding of affiliation should have the same consequences in each of SBA's programs. In other words, a finding of affiliation causes SBA to aggregate all of the receipts or employees of each of the affiliates. SBA does not look only at certain types of receipts of a firm's affiliates, but rather, combines all receipts of an affiliate from whatever source. SBA believes that that general rule is equally applicable to the HUBZone program. Consequently, the requirement for aggregating the size of a HUBZone SBC and all its affiliates is retained in this final rule.

Finally, SBA received several comments which were supportive of the proposed amendment to § 126.206 to eliminate the eligibility requirement that a non-manufacturer demonstrate that it can provide products manufactured by a qualified HUBZone SBC, and the proposed amendment to § 126.601(d) to allow qualified HUBZone SBCs that are non-manufacturers to supply the product of any business for HUBZone contracts at or below $25,000 in total value. Three of those commenters, however, requested that SBA adopt a higher maximum threshold of as high as $100,000 and $250,000. SBA does not believe that an increase in the proposed $25,000 threshold is justified at this time, since it would unfairly impact qualified HUBZone SBCs that are manufacturers. The $25,000 threshold also parallels the regulatory scheme of the Federal Acquisition Regulation, 48 CFR 19.502–2(c), which permits small businesses in small business set-asides where the anticipated cost of the procurement will not exceed $25,000, to provide the product or products of any domestic firm.

As suggested by one commenter, the final rule makes one clarification to the provisions regarding HUBZone non-manufacturers. In both § 126.206 and § 126.601(d), the final rule specifically references 13 CFR 121.406(b)(1)(i) and (ii), as the applicable definition of non-manufacturer. Other than that clarification, this final rule adopts without change the proposed amendments pertaining to HUBZone non-manufacturers.

Application of the Final Rule

As indicated above, this rule is effective thirty days from the date of publication. To ensure that applicants to and participants in the HUBZone program are subject to the same regulatory requirements, this final rule applies to all HUBZone applications submitted on or after the effective date of this rule, to all pending HUBZone applications, and to all currently certified HUBZone SBCs.

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)

The Office of Management and Budget (OMB) reviewed this final rule as a ''significant'' regulatory action under Executive Order 12866.

For purposes of Executive Order 12988, SBA has drafted this 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

final rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose new reporting or recordkeeping requirements.

SBA has determined that this final rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 601, *et seq.* This rule involves revising the definition of ''principal office'' and eliminating certain requirements governing the allowable affiliations of qualified HUBZone SBCs and SBCs that operate as non-manufacturers. The rule will affect a large percentage of the over 30,000 SBCs that SBA believes are now eligible or will become eligible for certification as qualified HUBZone SBCs over the life of the program.

Pursuant to the requirements of the RFA, SBA prepared an Initial Regulatory Flexibility Analysis (IRFA), fully discussing the economic impact of the amendments on small entities. SBA submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. No comments were submitted in response to the IRFA. Since this final rule implements the amendments without significant substantive change, this final rule does not change the nature of the economic impact of the amendments on small entities, nor alter the basis of SBA's IRFA. Accordingly, this Final Regulatory Flexibility Analysis incorporates by reference the entire IRFA. A copy of the Final Regulatory Flexibility Analysis and IRFA may be obtained by contacting the Chief Counsel for Advocacy of the Small Business Administration, (202) 205–6533.

The amendments that are the subject of this rule will affect primarily those SBCs that participate in Federal procurements, that have affiliates, or that are non-manufacturers. The amendments will make it easier for qualified SBCs to participate in the program because it provides a definition of ''principal office'' that accommodates the fluid nature of the construction and service industries and it allows qualified HUBZone SBCs to have any affiliates provided that they, together with their affiliates, do not exceed their applicable size standard under part 121 of title 13 of the Code of Federal Regulations. This final rule also will facilitate the certification of qualified HUBZone SBCs and open the door to more HUBZone contracts by eliminating the eligibility requirement that non-manufacturers must demonstrate that they can supply the goods of a qualified SBC as a prerequisite for program certification, and by exempting non-manufacturers from making that showing when submitting offers to supply goods for HUBZone contracts with a total value of $25,000 or less.

In addition, this final rule does not duplicate, overlap or conflict with relevant Federal regulations. SBA reviewed several alternatives to the amendments implemented by this rule and believes that the amendments are in the best interest of SBCs and the HUBZone Program.

(Catalog of Federal Domestic Assistance Programs, No. 59,009)

List of Subjects in 13 CFR Part 126

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

Accordingly, for the reasons set forth above, SBA amends 13 CFR part 126, as follows:

PART 126—HUBZONE PROGRAM [AMENDED]

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

Authority: 15 U.S.C. 632(a); Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592.

2. Amend § 126.101 by adding a new paragraph (c) to read as follows:

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

* * * * *

(c) The HUBZone program does not apply to contracts awarded by state and local governments. However, state and local governments may use the List of qualified HUBZone SBCs to identify qualified HUBZone SBCs for similar programs authorized under state or local law.

3. Amend § 126.103 to revise the definition of ''principal office'' to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Principal office means the location where the greatest number of the concern's employees at any one location perform their work. However, for those concerns whose ''primary industry'' (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

* * * * *

4. Revise § 126.204 to read as follows:

§ 126.204 May a qualified HUBZone SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the concern and all its affiliates is small as defined in part 121 of this title.

5. Revise § 126.206 to read as follows:

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

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

6. Amend § 126.601 by revising paragraph (d) to read as follows:

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

* * * * *

(d) A qualified HUBZone SBC which is a non-manufacturer may submit an offer on a HUBZone contract for supplies if it meets the requirements of the non-manufacturer rule set forth at § 121.406(b)(1)(i) and (ii) of this title, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC. However, for HUBZone contracts at or below $25,000 in total value, a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

Dated: January 10, 2001.

Aida Alvarez,

Administrator.

[FR Doc. 01–1543 Filed 1–17–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–57–AD; Amendment 39–12073; AD 2001–01–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.