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SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245-AG92

HUBZone and Puerto Rico Oversight, Management, and Economic Stability Act
(PROMESA) Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule amends the definition of “qualified census tract” in the HUBZone program regulations. The U.S. Small Business Administration (SBA) is making this change to its regulations to implement section 412(a) of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). Section 412(a) of PROMESA amended the definition of “qualified census tract” contained in section 3(p)(4)(A) of the Small Business Act.

DATES: This rule is effective on [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by RIN 3245-AG92 by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or Hand Delivery/Courier: Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416 and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416, 202-205-2985, hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: On June 30, 2016, the President signed into law the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Public Law No. 114-187, 130 Stat. 149. Section 412(a) of PROMESA amended the definition of “qualified census tract” (QCT) contained in section 3(p)(4)(A) of the Small Business Act, 15 U.S.C. 632(p)(4)(A), which is relevant to SBA’s HUBZone program. Amended section 3(p)(4)(A) provides that a QCT is defined as set forth in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986, except for areas in Puerto Rico, which for a limited time will use the Internal Revenue Code definition without regard to subclause (II) of that definition.

Section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 provides that a QCT is a tract in which either 50 percent or more of the households have an income which is less than 60 percent of the area's median gross income, or which has a poverty rate of at least 25 percent. However, subclause (II) of section 42(d)(5)(B)(ii) sets forth a population cap that limits the portion of a metropolitan statistical area (MSA) which may be designated as a QCT to an area having 20 percent of the population of such MSA. If more than 20 percent of the population in an MSA would otherwise qualify, the U.S. Department of Housing and Urban Development (HUD) ranks the tracts in that area from highest percentage of eligible households to lowest, and then designates as QCTs those tracts with the highest percentages of eligible households until the 20 percent population cap is reached.

Since PROMESA's passage, the amended definition of QCT in the Small Business Act provides that the definition of QCT contained in section 42(d)(5)(B)(ii) of the Internal Revenue Code shall apply to the HUBZone program - with one enumerated exception. The exception states that the 20 percent population cap shall not apply to census tracts located in Puerto Rico, for a period of 10 years after the date the Administrator implements this clause (or until the Financial Oversight and Management Board for the Commonwealth of Puerto Rico ceases to exist) , whichever event occurs first. This change will result in approximately 516 new HUBZones in Puerto Rico.

This direct final rule merely adopts the statutory change that is specific to Puerto Rico as a conforming amendment. The statutory language is specific, limited and requires no interpretation. As such, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed with a direct final rule but giving the public 30 days to comment. If SBA receives a significant adverse comment during the comment period, SBA will withdraw the rule, and proceed with a proposed rule.

In order to implement the change made by section 412(a) of PROMESA, SBA is amending § 126.103 of its regulations by revising the definition of the term "Qualified census tract". This rule adopts the definition of this term provided in amended section 3(p)(4)(A) of the Small Business Act, 15 U.S.C. 632(p)(4)(A).

Compliance with Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866.

This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

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

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This final rule is not an EO 13771 regulatory action because it is not significant under EO 12866.

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

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Small businesses.

Accordingly, for the reasons stated in the supplementary information, SBA amends 13 CFR part 126 as follows:

PART 126—HUBZONE PROGRAM

1. The authority for part 126 is revised to read as follows:

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

2. Amend § 126.103 by revising the definition of “Qualified census tract”, to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Qualified census tract has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986. However, for any metropolitan statistical area in

the Commonwealth of Puerto Rico, the term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 as applied without regard to subclause (II) of such section, except that this clause shall apply only until December 22, 2027, or the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist, whichever event occurs first.

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Dated: October 10, 2017.

Linda E. McMahon,
Administrator.

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