



SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245-AH06

HUBZone Program Provisions for Governor-Designated Covered Areas

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule contains amendments to the regulations governing the HUBZone Program. The U.S. Small Business Administration (SBA) is making changes to its regulations to implement provisions of the National Defense Authorization Act for Fiscal Year 2018 which authorized the inclusion of “Governor-designated covered areas” under the HUBZone program. This direct final rule would merely replicate these statutory changes into SBA’s regulations.

DATES: This rule is effective on January 1, 2020, 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-AH06, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *For mail, paper, disk, or CD-ROM submissions:* Bruce Purdy, U.S. Small Business Administration, Office of the HUBZone Program, 409 Third Street SW, 8th Floor, Washington, DC 20416.

- *Hand Delivery/Courier:* Bruce Purdy, U.S. Small Business Administration, Office of the HUBZone Program, 409 Third Street SW, 8th Floor, Washington, DC 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Bruce Purdy, U.S. Small Business Administration, Office of the HUBZone Program, 409 Third Street SW, 8th Floor, Washington, DC 20416, or send an email to hubzone@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Bruce Purdy, Deputy Director, Office of the HUBZone Program, 409 Third Street SW, Washington, DC 20416, 202-205-7554, hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: This direct final rule implements a conforming amendment to SBA's regulations from the National Defense Authorization Act for Fiscal Year 2018, Pub. L. 115-91 (2018 NDAA). The 2018 NDAA became effective on December 12, 2017. Section 1701(e) of the 2018 NDAA authorized the inclusion of "Governor-designated covered areas" under the HUBZone program. Section 1701(j) of the 2018 NDAA provides that section 1701(e) shall be effective January 1, 2020.

SBA seeks to amend its HUBZone rules to mirror the changes made to the Small Business Act, to avoid public confusion and possible misinterpretations of SBA's HUBZone program. Since these are conforming amendments, with no extraneous interpretation or other expanded materials, SBA expects no significant adverse comments. Therefore, SBA has decided

to proceed with a direct final rule. If SBA receives a significant adverse comment during the comment period, SBA will withdraw the rule, and proceed with a new proposed rule.

In order to implement the changes made by section 1701(e) of the 2018 NDAA, SBA is amending § 126.103 of its regulations by adding a new definition for the term “Governor-designated covered area”, revising the definition of the term “HUBZone” to include Governor-designated covered areas, and adding a new § 126.104 to implement the statutory process by which a Governor can petition and the SBA Administrator may designate a specific covered area to be a qualified HUBZone area. The statute provides the guidelines under which a petition will be considered. Specifically, the Administrator will consider the following: the potential for job creation and investment in the covered area; the demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area; how State and local government officials have incorporated the covered area into an economic development strategy; and if the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition. SBA anticipates that included within the covered areas that a Governor may seek to be designated as a qualified HUBZone area are Opportunity Zones, authorized by Section 13823 of the Tax Cuts and Jobs Act of 2017, Pub. L. 115-97, that do not otherwise qualify as HUBZones.

Compliance with Executive Orders 12866, 13771, 13563, 12988, 13132, 13175, the Paperwork Reduction Act (44 U.S.C. Ch. 35), the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Administrative Procedure Act

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 Congressional Review Act.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 13563

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 also requires that regulations be based on the open exchange of information and perspectives among state and local officials, affected stakeholders in the private sector, and the public as a whole. SBA has developed this rule in a manner consistent with these requirements. While developing this rule, SBA responded to specific inquiries from government officials and the public regarding the implementation of the statutory authority for Governor-designated covered areas and discussed the implementation of the authority at nationwide conferences, including the HUBZone Council Conference. SBA continues to communicate with the public by responding to inquiries regarding this new authority.

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. This direct final rule would allow State Governors to petition SBA to designate as HUBZones certain areas that would otherwise not qualify as HUBZones. A Governor's petition must delineate the areas to be included and show: (1) the potential for job creation and investment in the covered area; (2) the demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area; (3) how State and local government officials have incorporated the covered area into an economic development strategy; and (4) if the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition. Governors may only submit one petition for their State every year and must annually provide data on Governor-designated covered areas previously approved by the SBA Administrator.

We have analyzed this direct final rule and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Executive Order 13175

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct

effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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

SBA has determined that this direct final rule imposes reporting requirements under the Paperwork Reduction Act (PRA). Specifically, the rule would require State Governors to submit petitions to SBA in order for SBA to determine whether to designate certain areas as Governor-designated covered areas. At a minimum, such petitions would provide a list of covered areas for which the Governor requests designation and information on the potential for job creation and investment in the covered area, the demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area, how State and local government officials have incorporated the covered area into an economic development strategy, and if the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did-not approve the petition. As permitted by 13 CFR 1320.13, SBA sought emergency PRA review and approval of this information collection, including waiver of the required 60-day public comment notice, from the Office of Management and Budget (OMB). OMB approved SBA's request and assigned OMB Control Number 3245-0403. Before this approval expires on April 30, 2020, SBA will publish the 60-day notice in the Federal Register and resubmit this information collection to OMB for standard review. The disposition of any comments received will be addressed with that resubmission.

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

Administrative Procedure Act—Justification for Direct Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest.

SBA is publishing this rule as a direct final rule because public participation is unnecessary. SBA views this as a non-controversial administrative action because it merely implements a change required by the Small Business Act, as amended by section 1701(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. 115-91 (2018 NDAA). This rule will be effective on the date shown in the DATES section unless SBA receives any significant adverse comments on or before the deadline for comments set forth in the DATES section. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. SBA does not expect to receive any significant adverse comments because the rule simply mirrors the statutory language contained in section 1701(e) of the 2018 NDAA, with no extraneous interpretation or other expanded text.

Implementation of this change will benefit the public by expanding the HUBZone program and will allow SBA to meet the statutory deadline mandated by section 1701(j) of the 2018 NDAA, which provides that this change is effective January 1, 2020. If SBA receives any significant adverse comments, SBA will publish a notice in the Federal Register withdrawing this rule before the effective date. If SBA receives no significant adverse comments, SBA will publish a document in the Federal Register confirming the effective date.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Small businesses.

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

PART 126—HUBZONE PROGRAM

1. The authority for 13 CFR part 126 continues to read as follows:

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

2. Amend § 126.103 by adding a definition alphabetically for the term “Governor-designated covered area” and revising the definition of the term “HUBZone” to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Governor-designated covered area means an area that the Administrator has designated as a HUBZone by approving a Governor-generated petition as described in § 126.104.

HUBZone means a historically underutilized business zone, which is an area located within one or more:

- (1) Qualified census tracts;
- (2) Qualified non-metropolitan counties;

- (3) Lands within the external boundaries of an Indian reservation;
- (4) Redesignated areas;
- (5) Qualified base closure areas;
- (6) Qualified disaster areas; or
- (7) Governor-designated covered areas.

* * * * *

3. Add § 126.104 to read as follows:

§ 126.104 How can a Governor petition for the designation of a Governor-designated covered area?

(a) For a specific covered area to receive a designation as a Governor-designated covered area, the Governor of the State in which the identified covered area is wholly contained shall include such area in a petition to the Administrator requesting such a designation. In reviewing a request for designation included in such a petition, the Administrator may consider—

- (1) The potential for job creation and investment in the covered area;
- (2) The demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area;
- (3) How State and local government officials have incorporated the covered area into an economic development strategy; and
- (4) If the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition.

(b) Each calendar year, a Governor may submit not more than 1 petition described in this section. Such petition shall include all covered areas in a State for which the Governor seeks designation as a Governor-designated covered area, except that the total number of covered areas

included in such petition may not exceed 10 percent of the total number of covered areas in the State.

(c) If the Administrator grants a petition described in this section, the Governor of the Governor-designated covered area shall, not less frequently than annually, submit data to the Administrator certifying that each Governor-designated covered area continues to meet the requirements of paragraph (d)(1) of this section.

(d) In this section:

(1) The term “covered area” means an area in a State—

(i) That is located outside of an urbanized area, as determined by the Bureau of the Census;

(ii) With a population of not more than 50,000; and

(iii) For which the average unemployment rate is not less than 120 percent of the average unemployment rate of the United States or of the State in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Bureau of the Census.

(2) The term “Governor” means the chief executive of a State.

(3) The term “State” means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Christopher Pilkerton,

Acting Administrator.

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