

Clarion, PA, AXQ, Takeoff Minimums and Obstacle DP, Amdt 1
 Corry, PA, 8G2, Takeoff Minimums and Obstacle DP, Orig-B
 Georgetown, SC, GGE, Takeoff Minimums and Obstacle DP, Amdt 1A
 Coleman, TX, COM, Takeoff Minimums and Obstacle DP, Orig-A
 Dallas, TX, ADS, ILS OR LOC RWY 16, Amdt 11D
 Dallas, TX, ADS, RNAV (GPS) RWY 16, Amdt 1D
 Dallas-Fort Worth, TX, DFW, Takeoff Minimums and Obstacle DP, Amdt 8
 Shelton, WA, SHN, RNAV (GPS) RWY 5, Orig-B

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DEPARTMENT OF COMMERCE

Minority Business Development Agency

15 CFR Part 1400

[Docket No. 241121–0298]

RIN 0640–AA02

Removal of Racial and Ethnic Presumptions in Response to Court Ruling

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Minority Business Development Agency (MBDA) amends their regulations to remove the list of racial and ethnic presumptions in order to comply with the Court’s decision in *Nuziard et al v. Minority Business Development Agency et al.*, which struck down those racial and ethnic presumptions.

DATES: This rule is effective January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Donald Smith, Chief Operating Officer, MBDA, dsmith5@mbda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce’s Minority Business Development Agency (MBDA) derives authority from the Minority Business Development Act of 2021 (“the Act”), 15 U.S.C. 9501, *et seq.*, to appoint an Under Secretary of Commerce for Minority Business Development to carry out the Act’s activities and initiatives. MBDA’s mission is to promote the growth and global competitiveness of minority business enterprises (MBEs) in order to unlock the country’s full economic potential. One of the ways MBDA

accomplishes this mission is through the funding of a network of Business Centers, Specialty Centers, and other technical assistance programs to provide MBEs with business assistance services and resources.

For a business to access MBDA technical assistance programs that serve MBEs, the individual seeking services must certify that their business is “a business enterprise (i) that is not less than 51 percent-owned by 1 or more socially or economically disadvantaged individuals; and (ii) the management and daily business operations of which are controlled by 1 or more socially or economically disadvantaged individuals.” 15 U.S.C. 9501(9). “Socially or economically disadvantaged individual” is defined in the Act as “an individual who has been subjected to racial or ethnic prejudice or cultural bias (or the ability of whom to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area) because of the identity of the individual as a member of a group, without regard to any individual quality of the individual that is unrelated to that identity.” 15 U.S.C. 9501(15)(A). Additionally, the Act contains a presumption in which “the Under Secretary shall presume that the term ‘socially or economically disadvantaged individual’ includes any individual who is— (i) Black or African American; (ii) Hispanic or Latino; (iii) American Indian or Alaska Native; (iv) Asian; (v) Native Hawaiian or other Pacific Islander; or (vi) a member of a group that the Agency determines under part 1400 of title 15, Code of Federal Regulations, as in effect on November 23, 1984, is a socially disadvantaged group eligible to receive assistance.” 15 U.S.C. 9501(15)(B). This presumption was also found in MBDA’s regulations at 15 CFR 1400.1(b) and (c), and members of these racial groups are presumed to be eligible for MBDA assistance.

Court Decision in Nuziard

The racial presumptions found in the Minority Business Development Act of 2021 and 15 CFR part 1400 were challenged in *Nuziard, et. al. v. Minority Business Development Agency, et. al.*, in which the Court found any “provision of the MBDA Statute that is contingent on the presumption in 15 U.S.C. 9501(15)(B)” unconstitutional and prohibited MBDA from “imposing the racial and ethnic classifications defined in 15 U.S.C. 9501 and implemented in 15 U.S.C. 9511, 9512, 9522, 9523, 9524,

and 15 CFR 1400.1 .-..” No. 4:23–cv–00278–P (N.D. Tex. March 5, 2024). The court’s injunction applies to the sections of the Minority Business Development Act and related regulations that require the Under Secretary of Commerce for Minority Business Development to presume that a “socially or economically disadvantaged individual” “includes any individual who is—(i) Black or African American; (ii) Hispanic or Latino; (iii) American Indian or Alaska Native; (iv) Asian; (v) Native Hawaiian or other Pacific Islander.” 15 U.S.C. 9501(15)(B). Similarly, the Court enjoined the application of 15 CFR 1400.1(b) to the extent that it imposes racial and ethnic classifications, and designates “Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts” as individuals who are socially or economically disadvantaged. Finally, the Court also enjoined 15 CFR 1400.1(c), which designates “Hasidic Jews, Asian-Pacific Americans, and Asian Indians” as socially or economically disadvantaged.

Updating Regulations

As a result of the Court’s decision, MBDA is updating their regulations at 15 CFR 1400.1(b) and (c) to remove the sections that contain the racial presumptions described in the decision above. MBDA also proposes to make a correction to 15 CFR 1400.2(a) pertaining to the definition of minority business enterprise and where it is defined in the Act. The last change pertains to striking out outdated language referring to Executive Order 11625 in 15 CFR 1400.3 because MBDA draws statutory authority directly from the Act and not from the Executive Order. See 15 U.S.C. 9597. These changes will clarify the eligibility requirements to qualify for MBDA technical assistance programs that serve MBEs.

Classification

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this final rule because this rule relates to “public property, loans, grants, benefits, or contracts.” In addition, 5 U.S.C. 553(b)(B) exempts rulemakings from prior notice and public comment procedures when an agency finds for good cause that such procedures “are impractical, unnecessary, or contrary to the public interest.” Here, MBDA has determined that there is good cause and that providing prior notice and opportunity

for public comment is impractical because MBDA is required to amend the CFR to implement the holding in *Nuziard*. The court order requires MBDA to amend the CFR in a specific manner, and there are no alternative ways to make the change other than as implemented in this final rule. Therefore, this final rule is being issued without notice and comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by another law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 1400

Federal financial assistance, technical assistance, administrative practice and procedure.

Dated: December 5, 2024.

Eric J. Morrisette,

Deputy Under Secretary of Commerce for Minority Business Development, Performing the delegated duties of the Under Secretary, Minority Business Development Agency, U.S. Department of Commerce.

For the reasons set out in the preamble, MBDA amends 15 CFR part 1400 as follows:

PART 1400—DETERMINATION OF GROUP ELIGIBILITY FOR MBDA ASSISTANCE

■ 1. The authority citation for part 1400 continues to read as follows:

Authority: 15 U.S.C. 1512, E.O. 11625, 3 CFR 616 (1971–75), 36 FR 19967 (1971); and E.O. 12432, 3 CFR 198 (1983), 48 FR 32551 (1983).

■ 2. Revise and republish § 1400.1 to read as follows:

§ 1400.1 Purpose and scope.

(a) The purpose of this part is to set forth regulations for determination of group eligibility for MBDA assistance.

(b) In order to be eligible to receive assistance from MBDA funded organizations, a concern must be a minority business enterprise as defined in 15 U.S.C. 9501(9). The purpose of this regulation is to provide guidance to groups not previously designated as eligible for assistance who believe they are entitled to formal designation as

“socially or economically disadvantaged.” Upon adequate showing by representatives of the group that the group is, as a whole, socially or economically disadvantaged, the group will be so designated and its members will be eligible for MBDA assistance. Designation under this regulation will not establish eligibility for any other Federal or Federally funded program.

■ 3. In § 1400.2, revise paragraph (a) to read as follows:

§ 1400.2 Definitions.

* * * * *

(a) Minority business enterprise is defined in 15 U.S.C. 9501(9).

* * * * *

§ 1400.3 [Amended]

■ 4. In § 1400.3:

■ a. Remove “Executive Order 11625” and add in its place “this part” in the introductory text; and

■ b. Designate the parenthetical following paragraph (d) as note 1 to paragraph (d) and remove the parentheses.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33–11337; 34–101867]

Commission’s Organization and Program Management Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is adopting technical amendments to update information relating to its regional offices listed in the Commission’s Organization and Program Management regulations.

DATES: Effective December 16, 2024.

FOR FURTHER INFORMATION CONTACT: Tiffany Moseley, Senior Special Counsel, (202) 551–5100, Office of the General Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–9150.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is amending the information in its Organization and Program Management regulations at 17 CFR 200.11 (Head Quarters Office—Regional Office Relationships) to reflect

the closure of the Salt Lake Regional Office on October 26, 2024 and to update the addresses of regional offices that have moved.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (“APA”), that the amendments to its rules to update the information for its regional offices relate solely to the agency’s organization, procedure, or practice. Accordingly, the APA’s provisions regarding notice of rulemaking and opportunity for public comment do not apply.¹ The Commission also finds that because these amendments do not substantially affect the rights or obligations of non-agency parties there is good cause not to provide advance publication of the amendments under the APA and therefore the amendments are effective on December 16, 2024.²

For the same reasons, the provisions of the Small Business Regulatory Enforcement Fairness Act³ and the provisions of the Regulatory Flexibility Act⁴ do not apply. These amendments also do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.⁵ Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of section 23(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”).⁶

III. Statutory Authority

These technical amendments are adopted pursuant to statutory authority granted to the Commission under section 19(a) of the Securities Act of 1933 and section 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendments

For the reasons set out above, the Commission is amending title 17, chapter II, of the Code of Federal

¹ 5 U.S.C. 553(b)(A).

² 5 U.S.C. 553(d).

³ 5 U.S.C. 804(3)(C) (the term “rule” does not include “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties”).

⁴ 5 U.S.C. 601(2) (provisions only applicable when notice and comment required by the APA).

⁵ 5 CFR 1320.3.

⁶ 15 U.S.C. 78w(a)(2).