

2004, 118 Stat. 3453, which enacted this section, amended sections 637, 648, 657b, and 657c of this title, enacted provisions set out as note under section 637 of this title, and amended provisions set out as a note under section 657b of this title. For complete classification of subtitle D to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Small Business Act which comprises this chapter.

§ 632. Definitions

(a) Small business concerns

(1) In general

For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, agriculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: *Provided*, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of \$750,000.

(2) Establishment of size standards

(A) In general

In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this chapter or any other Act.

(B) Additional criteria

The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) Requirements

Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years; or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) Variation by industry and consideration of other factors

When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4) Exclusion of certain security expenses from consideration for purpose of small business size standards

(A) Determination required

Not later than 30 days after January 6, 2006, the Administrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

(B) Action required

Not later than 60 days after January 6, 2006, the Administrator shall either—

(i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or

(ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) Qualified areas

In this paragraph, the term “qualified area” means—

(i) Iraq,

(ii) Afghanistan, and

(iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of title 26, at the time of performance of the relevant Federal contract or subcontract.

(5) Alternative size standard

(A) In general

The Administrator shall establish an alternative size standard for applicants for business loans under section 636(a) of this title and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) Interim rule

Until the date on which the alternative size standard established under subpara-

graph (A) is in effect, an applicant for a business loan under section 636(a) of this title or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and

(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) Proposed rulemaking

In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

(A) a detailed description of the industry for which the new size standard is proposed;

(B) an analysis of the competitive environment for that industry;

(C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and

(D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) Common size standards

In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) Number of size standards

The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(b) “Agency” defined

For purposes of this chapter, any reference to an agency or department of the United States, and the term “Federal agency”, shall have the meaning given the term “agency” by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office.

(c) Qualified employee trust; eligibility for loan guarantee; “qualified employee trust” defined; regulations for treatment of trust as qualified employee trust

(1) For purposes of this chapter, a qualified employee trust shall be eligible for any loan

guarantee under section 636(a) of this title with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this chapter, the term “qualified employee trust” means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of title 26)—

(i) which is maintained by such concern, and

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of title 26) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 636(a) of this title, the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

(i) the loan guaranteed under section 636(a) of this title shall be used solely for the purchase of qualifying employer securities of such concern,

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant’s account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 per cent of the employees of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of title 26),

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradeable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of title 26) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 636(a) of this title, such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d) "Qualified Indian tribe" defined

For purposes of section 636 of this title, the term "qualified Indian tribe" means an Indian tribe as defined in section 450b(e) of title 25, which owns and controls 100 per centum of a small business concern.

(e) "Public or private organization for the handicapped" defined

For purposes of section 636 of this title, the term "public or private organization for the handicapped" means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individuals;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f) "Handicapped individual" defined

For purposes of section 636 of this title, the term "handicapped individual" means an individual—

(1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or

(2) who is a service-disabled veteran.

(g) "Energy measures" defined

For purposes of section 636 of this title, the term "energy measures" includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy

efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) "Credit elsewhere" defined

For purposes of this chapter the term "credit elsewhere" means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

(i) "Homeowners" defined

For purposes of section 636 of this title, the term "homeowners" includes owners and lessees of residential property and also includes personal property.

(j) "Small agricultural cooperative" defined

For the purposes of this chapter, the term "small agricultural cooperative" means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k) "Disaster" defined

(1) For the purposes of this chapter, the term "disaster" means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(2) For purposes of section 636(b)(2) of this title, the term "disaster" includes—

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C) ice storms and blizzards.

(l) “Computer crime” defined

For purposes of this chapter—

(1)¹ the term “computer crime” means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) “Simplified acquisition threshold” defined

For purposes of this chapter, the term “simplified acquisition threshold” has the meaning given such term in section 134 of title 41.

(n) “Small business concern owned and controlled by women” defined

For the purposes of this chapter, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o) Definitions of bundling of contract requirements and related terms

In this chapter:

(1) Bundled contract

The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) Bundling of contract requirements

The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

(A) the diversity, size, or specialized nature of the elements of the performance specified;

(B) the aggregate dollar value of the anticipated award;

(C) the geographical dispersion of the contract performance sites; or

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) Separate smaller contract

The term “separate smaller contract”, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) Definitions relating to HUBZones

In this chapter:

(1) Historically underutilized business zone

The term “historically underutilized business zone” means any area located within 1 or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D) redesignated areas; or

(E) base closure areas.

(2) HUBZone

The term “HUBZone” means a historically underutilized business zone.

(3) HUBZone small business concern

The term “HUBZone small business concern” means—

(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 1626(e)(1) of title 43); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 1626(e)(1) of title 43, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 1626(e)(2) of title 43);

(C) a small business concern—

(i) 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; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(E) a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(4) Qualified areas

(A) Qualified census tract

The term “qualified census tract” has the meaning given that term in section 42(d)(5)(C)(ii)² of title 26.

¹ So in original. No par. (2) has been enacted.

² See References in Text note below.

(B) Qualified nonmetropolitan county

The term “qualified nonmetropolitan county” means any county—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of title 26) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii)² of title 26; and

(ii) in which—

(I) 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;

(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii)² of title 26, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C) Redesignated area

The term “redesignated area” means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a “redesignated area” only until the later of—

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) Base closure area

The term “base closure area” means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(i) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(iii) section 2687 of title 10; or

(iv) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.

(5) Qualified HUBZone small business concern**(A) In general**

A HUBZone small business concern is “qualified”, if—

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I) it is a HUBZone small business concern—

(aa) pursuant to subparagraph (A), (B), (C), (D), or (E) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone; or

(bb) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title reside within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title; and

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that the requirements of section 657s of this title are satisfied; and

(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 657a(c)(1) of this title—

(I) successfully challenged by an interested party; or

(II) otherwise determined by the Administrator to be materially false.

(B) List of qualified small business concerns

The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually; and

(iii) be provided upon request to any Federal agency or other entity.

(6) Native American small business concerns

(A) Alaska Native Corporation

The term “Alaska Native Corporation” has the same meaning as the term “Native Corporation” in section 1602 of title 43.

(B) Alaska Native Village

The term “Alaska Native Village” has the same meaning as the term “Native village” in section 1602 of title 43.

(C) Indian reservation

The term “Indian reservation”—

(i) has the same meaning as the term “Indian country” in section 1151 of title 18, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on December 21, 2000, unless that tribe is recognized after December 21, 2000, 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 (part 83 of title 25, Code of Federal Regulations); and

(II) 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 on December 21, 2000; and

(ii) in the State of Oklahoma, means lands that—

(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on December 21, 2000).

(7) Agricultural commodity

The term “agricultural commodity” has the same meaning as in section 5602 of title 7.

(q) Definitions relating to veterans

In this chapter, the following definitions apply:

(1) Service-disabled veteran

The term “service-disabled veteran” means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38).

(2) Small business concern owned and controlled by service-disabled veterans

The term “small business concern owned and controlled by service-disabled veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(3) Small business concern owned and controlled by veterans

The term “small business concern owned and controlled by veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) Veteran

The term “veteran” has the meaning given the term in section 101(2) of title 38.

(5) Relief from time limitations

(A) In general

Any time limitation on any qualification, certification, or period of participation imposed under this chapter on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10 on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) Duration

Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) Exception for programs subject to Federal Credit Reform Act of 1990

The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(r) Definitions relating to small business lending companies

As used in section 650 of this title:

(1) Small business lending company

The term “small business lending company” means a business concern that is authorized by the Administrator to make loans pursuant

to section 636(a) of this title and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) Non-Federally regulated SBA lender

The term “non-Federally regulated SBA lender” means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 636 of this title;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(s) Major disaster

In this chapter, the term “major disaster” has the meaning given that term in section 5122 of title 42.

(t) Small business development center

In this chapter, the term “small business development center” means a small business development center described in section 648 of this title.

(u) Region of the Administration

In this chapter, the term “region of the Administration” means the geographic area served by a regional office of the Administration established under section 633(a) of this title.

(v) Multiple award contract

In this chapter, the term “multiple award contract” means—

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 4101, 4103, 4105, and 4106 of title 41; and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) Presumption

(1) In general

In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) Deemed certifications

The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, coop-

erative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) Certification by signature of responsible official

(A) In general

Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) Content of certifications

A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) Regulations

The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) Annual certification

(1) In general

Each business certified as a small business concern under this chapter shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) Regulations

Not later than 1 year after September 27, 2010, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) Policy on prosecutions of small business size and status fraud

Not later than 1 year after September 27, 2010, the Administrator, in consultation with the At-

torney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) Aquaculture business disaster assistance

Subject to section 647(a) of this title and notwithstanding section 647(b)(1) of this title, the Administrator may provide disaster assistance under section 636(b)(2) of this title to aquaculture enterprises that are small businesses.

(aa) Venture capital operating company

In this chapter, the term “venture capital operating company” means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) Hedge fund

In this chapter, the term “hedge fund” has the meaning given that term in section 1851(h)(2) of title 12.

(cc) Private equity firm

In this chapter, the term “private equity firm” has the meaning given the term “private equity fund” in section 1851(h)(2) of title 12.

(Pub. L. 85-536, §2[3], July 18, 1958, 72 Stat. 384; Pub. L. 94-305, title I, §112(b), June 4, 1976, 90 Stat. 667; Pub. L. 95-507, title II, §224(b), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 96-302, title V, §504, July 2, 1980, 94 Stat. 851; Pub. L. 96-481, title I, §108, Oct. 21, 1980, 94 Stat. 2323; Pub. L. 97-35, title XIX, §1903, Aug. 13, 1981, 95 Stat. 771; Pub. L. 98-270, title III, §310, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98-362, §6, July 16, 1984, 98 Stat. 434; Pub. L. 98-473, title I, §111A(b), Oct. 12, 1984, 98 Stat. 1966; Pub. L. 99-272, title XVIII, §18016, Apr. 7, 1986, 100 Stat. 371; Pub. L. 99-500, §101(c) [title X, §921(f)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-149, and Pub. L. 99-591, §101(c) [title X, §921(f)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-149; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-661, div. A, title IX, formerly title IV, §921(f), Nov. 14, 1986, 100 Stat. 3929, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §10(b)(2), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100-456, div. A, title VIII, §845, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 100-590, title I, §119(b), Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100-656, title VII, §732, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 101-510, div. A, title VIII, §806(e)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102-366, title II, §222(a), Sept. 4, 1992, 106 Stat. 999; Pub. L. 103-355, title IV, §4404(a), title VII, §7106(d), Oct. 13, 1994, 108 Stat. 3349, 3376; Pub. L. 103-403, title III, §301, Oct. 22, 1994, 108 Stat. 4187; Pub. L. 104-208, div. D, title I, §104(b)(1), Sept. 30, 1996, 110 Stat. 3009-730; Pub. L. 105-135, title IV, §412, title VI, §602(a), Dec. 2, 1997, 111 Stat. 2617, 2627; Pub. L. 106-50, title I, §103(a), title IV, §401(a), Aug. 17, 1999, 113 Stat. 234, 243; Pub. L. 106-554, §1(a)(9) [title VI, §§602-604, 611, 612(b)-615(a), title VIII, §806(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-697 to 2763A-701, 2763A-706; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108-447, div. K, title I, §§151, 152(a)(1), (3)-(c)(1), 162, Dec. 8, 2004, 118 Stat. 3456, 3457, 3465; Pub. L. 109-59, title X, §10203, Aug. 10, 2005, 119 Stat. 1933; Pub. L. 109-163, div. A, title VIII, §§844, 845(a)(1), Jan. 6, 2006, 119 Stat. 3389, 3390; Pub. L. 110-186, title

II, §205, Feb. 14, 2008, 122 Stat. 629; Pub. L. 110-234, title XII, §§12063(c)(1), 12071, May 22, 2008, 122 Stat. 1408, 1411; Pub. L. 110-246, §4(a), title XII, §§12063(c)(1), 12071, June 18, 2008, 122 Stat. 1664, 2170, 2173; Pub. L. 111-240, title I, §§1116, 1202(b)(1), 1311, 1341, 1342, 1343(b), 1501, Sept. 27, 2010, 124 Stat. 2509, 2521, 2536, 2543-2545, 2550; Pub. L. 112-81, div. E, title LI, §5107(b), Dec. 31, 2011, 125 Stat. 1829; Pub. L. 112-239, div. A, title XVI, §§1661, 1696(b)(1), Jan. 2, 2013, 126 Stat. 2083, 2090.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(5), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689. Title V of the Act is classified generally to subchapter V (§695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Agricultural Marketing Act (12 U.S.C. 1141j), referred to in subsec. (j), is act June 15, 1929, ch. 24, 46 Stat. 11, which is classified generally to chapter 7A (§1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(e) of Title 12 and Tables.

The Community Economic Development Act of 1981, referred to in subsec. (p)(3)(D)(i), is subchapter A (§§611-633) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 489. Part 1 of subchapter A of the Act is classified generally to part A (§9805 et seq.) of subchapter I of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

Subpar. (C) of section 42(d)(5) of title 26, referred to in subsec. (p)(4)(A), (B)(i), (ii)(III), was redesignated (B) by Pub. L. 110-289, div. C, title I, §3003(g)(3), July 30, 2008, 122 Stat. 2882.

The Federal Credit Reform Act of 1990, referred to in subsec. (q)(5)(C), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

CODIFICATION

“Section 450b(e) of title 25”, referred to in subsec. (d), was in the original “section 4(a) of the Indian Self-Determination and Education Assistance Act” which is classified to section 450b(a) of Title 25, Indians, but has been editorially translated as section 450b(e) of Title 25 as the probable intent of Congress, in that the definition of “Indian Tribes” is set out in subsec. (e) of section 450b of Title 25.

In subsec. (m), “section 134 of title 41” substituted for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (v)(1), “sections 4101, 4103, 4105, and 4106 of title 41” substituted for “sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

PRIOR PROVISIONS

Prior similar provisions were contained in section 203 of act July 30, 1953, ch. 282, title II, 67 Stat. 233, which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2013—Pub. L. 112-239, § 1661(1), inserted section catchline.

Subsec. (a). Pub. L. 112-239, § 1661(2)(A), inserted heading.

Subsec. (a)(1), (3). Pub. L. 112-239, § 1661(2)(B), (C), inserted heading.

Subsec. (a)(5). Pub. L. 112-239, § 1661(2)(D), realigned margins.

Subsec. (a)(6) to (8). Pub. L. 112-239, § 1661(2)(E), added pars. (6) to (8).

Subsec. (p)(5)(A)(i)(III). Pub. L. 112-239, § 1696(b)(1)(A), added subcl. (III) and struck out former subcl. (III) which read as follows: “with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that—

“(aa) in the case of a contract for services (except construction), not less than 50 percent of the cost of contract performance incurred for personnel will be expended for its employees or for employees of other HUBZone small business concerns;

“(bb) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), not less than 50 percent of the cost of manufacturing the supplies (not including the cost of materials) will be incurred in connection with the performance of the contract in a HUBZone by 1 or more HUBZone small business concerns; and

“(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and”.

Subsec. (p)(5)(B) to (D). Pub. L. 112-239, § 1696(b)(1)(B), (C), redesignated subpar. (D) as (B) and struck out former subpars. (B) and (C) which read as follows:

“(B) Change in percentages

“The Administrator may utilize a percentage other than the percentage specified in item (aa) or (bb) of subparagraph (A)(i)(III), 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 category.

“(C) Construction and other contracts

“The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in items (aa) and (bb) of subparagraph (A)(i)(III) on contracts for general and specialty construction, and on contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B).”

2011—Subsecs. (aa) to (cc). Pub. L. 112-81 added subsecs. (aa) to (cc).

2010—Subsec. (a)(5). Pub. L. 111-240, § 1116, added par. (5).

Subsecs. (t), (u). Pub. L. 111-240, § 1202(b)(1), added subsecs. (t) and (u).

Subsec. (v). Pub. L. 111-240, § 1311, added subsec. (v).

Subsec. (w). Pub. L. 111-240, § 1341, added subsec. (w).

Subsec. (x). Pub. L. 111-240, § 1342, added subsec. (x).

Subsec. (y). Pub. L. 111-240, § 1343(b), added subsec. (y).

Subsec. (z). Pub. L. 111-240, § 1501, added subsec. (z).

2008—Subsec. (k)(2)(C). Pub. L. 110-246, § 12071, added subpar. (C).

Subsec. (q)(5). Pub. L. 110-186 added par. (5).

Subsec. (s). Pub. L. 110-246, § 12063(c)(1), added subsec. (s).

2006—Subsec. (a)(4). Pub. L. 109-163, § 844, added par. (4).

Subsec. (k). Pub. L. 109-163, § 845(a)(1), designated existing provisions as par. (1) and added par. (2).

2005—Subsec. (p)(4)(B)(ii)(III). Pub. L. 109-59 added subcl. (III).

2004—Subsec. (b). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

Subsec. (j). Pub. L. 108-447, § 151(b), struck out “of section 636(b)(2)” after “For the purposes”.

Subsec. (p)(1)(E). Pub. L. 108-447, § 152(a)(1), added subpar. (E).

Subsec. (p)(3)(A). Pub. L. 108-447, § 151(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “a small business concern that is owned and controlled by one or more persons, each of whom is a United States citizen;”.

Subsec. (p)(3)(E). Pub. L. 108-447, § 151(a)(1)(B)–(D), added subpar. (E).

Subsec. (p)(4)(B)(ii)(II). Pub. L. 108-447, § 152(b), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: “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.”

Subsec. (p)(4)(C). Pub. L. 108-447, § 152(c)(1), substituted “only until the later of—

“(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

“(ii) 3 years after”

for “only for the 3-year period following”.

Subsec. (p)(4)(D). Pub. L. 108-447, § 152(a)(3), added subpar. (D).

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 108-447, § 151(a)(2), substituted “(C), (D), or (E)” for “or (D)”.

Subsec. (r). Pub. L. 108-447, § 162, added subsec. (r).

2000—Subsec. (a)(1). Pub. L. 106-554, § 1(a)(9) [title VIII, § 806(b)], substituted “\$750,000” for “\$500,000”.

Subsec. (p)(1)(D). Pub. L. 106-554, § 1(a)(9) [title VI, § 613(1)], added subpar. (D).

Subsec. (p)(3). Pub. L. 106-554, § 1(a)(9) [title VI, § 602], amended heading and text of par. (3) generally, substituting present provisions for provisions which had defined “HUBZone small business concern” as a small business concern that is owned and controlled by 1 or more persons, each of whom is a United States citizen, and the principal office of which is located in a HUBZone.

Subsec. (p)(3)(D). Pub. L. 106-554, § 1(a)(9) [title VI, § 614(1)], added subpar. (D).

Subsec. (p)(4)(A). Pub. L. 106-554, § 1(a)(9) [title VI, § 611(a)], substituted “section 42(d)(5)(C)(ii)” for “section 42(d)(5)(C)(ii)(I)”.

Subsec. (p)(4)(B). Pub. L. 106-554, § 1(a)(9) [title VI, § 611(b)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: “The term ‘qualified nonmetropolitan county’ means any county—

“(i) that, based on the most recent data available from the Bureau of the Census of the Department of Commerce—

“(I) is not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of title 26); and

“(II) in which the median household income is less than 80 percent of the nonmetropolitan State median household income; or

“(ii) that, based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located.”

Subsec. (p)(4)(C). Pub. L. 106-554, § 1(a)(9) [title VI, § 613(2)], added subpar. (C).

Subsec. (p)(5)(A)(i)(I). Pub. L. 106-554, § 1(a)(9) [title VI, § 603(a)], added subcl. (I) and struck out former subcl. (I) which read as follows: “it is a HUBZone small business concern;”.

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 106-554, § 1(a)(9) [title VI, § 614(2)], substituted “subparagraph (A), (B), or (D)” for “subparagraph (A) or (B)”.

Subsec. (p)(5)(A)(i)(II). Pub. L. 106-554, §1(a)(9) [title VI, §603(a)], added subcl. (II) and struck out former subcl. (II) which read as follows: "not less than 35 percent of the employees of the small business concern reside in a HUBZone, and the small business concern will attempt to maintain this employment percentage during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title; and".

Subsec. (p)(5)(A)(i)(III)(cc). Pub. L. 106-554, §1(a)(9) [title VI, §612(b)(1)], added item (cc).

Subsec. (p)(5)(C). Pub. L. 106-554, §1(a)(9) [title VI, §615(a)], which directed amendment of subpar. (C) by substituting "items (aa) and (bb) of subparagraph (A)(i)(III)" for "subclause (IV) and (V) of subparagraph (A)(i)", was executed by making the substitution for "subclauses (IV) and (V) of subparagraph (A)(i)", to reflect the probable intent of Congress.

Subsec. (p)(5)(D)(i). Pub. L. 106-554, §1(a)(9) [title VI, §603(b)], inserted "once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern." before "include".

Subsec. (p)(6). Pub. L. 106-554, §1(a)(9) [title VI, §604], added par. (6).

Subsec. (p)(7). Pub. L. 106-554, §1(a)(9) [title VI, §612(b)(2)], added par. (7).

1999—Subsec. (f). Pub. L. 106-50, §401(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of section 636 of this title, the term 'handicapped individual' means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable."

Subsec. (q). Pub. L. 106-50, §103(a), added subsec. (q). 1997—Subsec. (o). Pub. L. 105-135, §412, added subsec. (o).

Subsec. (p). Pub. L. 105-135, §602(a), added subsec. (p).

1996—Subsec. (k). Pub. L. 104-208 inserted "commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16)," after "tidal waves,".

1994—Subsec. (a)(2). Pub. L. 103-403 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern for the purposes of this chapter or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

"(A) is being proposed after an opportunity for public notice and comment;

"(B) provides for determining, over a period of not less than 3 years—

"(i) the size of a manufacturing concern on the basis of the number of its employees during that period; and

"(ii) the size of a concern providing services on basis of the average gross receipts of the concern during that period; and

"(C) is approved by the Administrator."

Subsec. (m). Pub. L. 103-355, §4404(a), substituted "simplified acquisition threshold" for "small purchase threshold".

Subsec. (n). Pub. L. 103-355, §7106(d), added subsec. (n).

1992—Subsec. (a). Pub. L. 102-366 added pars. (2) and (3) and struck out at end of par. (1) "In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business: *Provided*, That the Administration shall not promul-

gate, amend, or rescind any rule [or] regulation with respect to size standards prior to March 31, 1981. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this chapter, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors."

1990—Subsec. (m). Pub. L. 101-510 added subsec. (m).

1988—Subsec. (a). Pub. L. 100-656 struck out pars. (2) to (5) which established a program for review of size standards for eligibility of business concerns in certain industry categories for a procurement restricted to small business concerns under section 637(a) or 644(a) of this title and provided for adjustment of those standards and periodic review of the program.

Pub. L. 100-456 inserted provisions in par. (4)(C) respecting applicability of regulations to contracts entered into on or after Oct. 1, 1988.

Subsecs. (j) to (l). Pub. L. 100-590 added subsec. (k) and redesignated subsec. (j), defining "computer crime", as (l).

1987—Subsec. (a)(3). Pub. L. 100-26, §10(b)(2)(A), substituted "dollar value of the contracts to be awarded in that industry category" for "value of contracts to be awarded under such sections".

Subsec. (a)(4)(A)(i). Pub. L. 100-26, §10(b)(2)(B), substituted "paragraph (3)" for "paragraph (3)(A)".

Subsec. (a)(5). Pub. L. 100-26, §10(b)(2)(C), substituted "shall be made not later than 180 days after the end of each such" for "made with the expiration of 180 days after each".

1986—Subsec. (a). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 amended subsec. (a) identically designating existing provision as par. (1) and adding pars. (2) to (5).

Pub. L. 99-272 inserted proviso that notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it, including its affiliates, has annual receipts not in excess of \$500,000.

Subsec. (c)(2)(A), (3)(B)(i), (iv). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Subsec. (j). Pub. L. 98-473 in subsec. (j) added by Pub. L. 98-270 substituted "as a business concern and shall not include the income or employees of any member shareholder of such cooperative" for "as an entity and shall not include the income or employees of any member shareholder of such cooperative: *Provided*, That such an association shall not be deemed to be a small agricultural cooperative unless each member of the board of directors of the association, or each member of the governing body of the association if it is not incorporated, also individually qualifies as a small business concern".

Pub. L. 98-362 added subsec. (j) defining "computer crime".

Pub. L. 98-270 added subsec. (j) defining "small agricultural cooperative".

1981—Subsecs. (d) to (i). Pub. L. 97-35 added subsecs. (d) to (i).

1980—Subsec. (a). Pub. L. 96-481, in the additional criteria inserted proviso that the Administration shall not promulgate, amend, or rescind any rule or regulation with respect to size standards prior to March 31, 1981.

Subsec. (c). Pub. L. 96-302 added subsec. (c).

1978—Pub. L. 95-507 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94-305 inserted reference to enterprises that are engaged in business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. D, title I, §104(b)(2), Sept. 30, 1996, 110 Stat. 3009-731, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective with respect to any disaster occurring on or after March 1, 1994.”

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-26, §12(c), Apr. 21, 1987, 101 Stat. 289, provided that: “The amendments made by sections 5 [amending section 2365 of Title 10, Armed Forces, and amending provisions set out as notes under sections 1621, 2326, and 2437 of Title 10] and 10 [amending this section, sections 637 and 644 of this title, and provisions set out as a note under this section] shall apply as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2) [title X of section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and title IX of div. A of Pub. L. 99-661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively].”

EFFECTIVE DATE OF 1986 AMENDMENT; INITIAL REVIEW OF STANDARDS

Section 101(c) [title X, §921(g), (h)] of Pub. L. 99-500 and Pub. L. 99-591, and section 921(g), (h) of title IX, formerly title IV, of Pub. L. 99-661; renumbered title IX and amended by Pub. L. 100-26, §§3(5), 10(a)(2), Apr. 21, 1987, 101 Stat. 273, 288; Pub. L. 100-180, div. A, title VIII, §809(d), Dec. 4, 1987, 101 Stat. 1130, provided that:

“(g) EFFECTIVE DATES.—Except as otherwise provided in subsection (h), the amendments made by this section [amending this section and sections 637 and 644 of this title and enacting provisions set out as notes below] shall take effect on October 1, 1987.

“(h) INITIAL REVIEW OF SIZE STANDARDS.—(1) Paragraph (2) of section 3(a) of the Small Business Act (as added by subsection (f)) [15 U.S.C. 632(a)(2)] shall take effect on the date of the enactment of this Act [Oct. 18, 1986].

“(2) The first review conducted by the Administrator under such paragraph shall review the periods beginning on October 1, 1983, and ending on September 30, 1986, and shall be completed not later than 180 days after the date of the enactment of this Act.

“(3) If the Administrator of the Small Business Administration determines, on the basis of the review referred to in paragraph (2), that contracts awarded under the set-aside programs under sections 8(a) and 15(a) of the Small Business Act [15 U.S.C. 637(a), 644(a)] in any industry category subject to that review exceed 30 percent of the dollar value of the total contract awards for that industry category, as determined in accordance with the last sentence of section 15(a)(3) of such Act, the Administrator shall propose adjustments to the size standards for such industry category establishing eligibility for a set-aside program to a size that will likely reduce the number of contracts which may be set aside to approximately 30 percent of the dollar value of the contracts to be awarded in that industry

category. The Administrator shall publish proposed regulations, including any revised size standards, in the Federal Register by November 30, 1987, or the date of enactment of the National Defense Authorization Act for Fiscal Years 1988 and 1989 [Pub. L. 100-180, Dec. 4, 1987], whichever is later. The proposed regulations shall provide not less than 60 days for public comment. The Administrator shall issue final regulations not later than May 31, 1988.

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98-270, title III, §312, Apr. 18, 1984, 98 Stat. 161, provided that: “The amendments made by sections 310 and 311 of this title [amending this section and section 636 of this title] shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2) (A), (B), or (C) of the Small Business Act [15 U.S.C. 636(b)(2)(A), (B), (C)] or with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act.”

Pub. L. 98-270, title III, §313, Apr. 18, 1984, 98 Stat. 162, provided that: “This title [amending this section and sections 633, 636, and 647 of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as a note under section 631 of this title] shall take effect October 1, 1983.”

Amendment by Pub. L. 98-362 effective Oct. 1, 1984, see section 7(a) of Pub. L. 98-362, set out as an Effective and Termination Dates of 1984 Amendments note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97-35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 effective Oct. 1, 1980, see section 507 of Pub. L. 96-302, set out as a note under section 631 of this title.

REGULATIONS

Pub. L. 112-239, div. A, title XVI, §1696(c), Jan. 2, 2013, 126 Stat. 2091, provided that: “Not later than 180 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue guidance with respect to the changes made to the Small Business Act [15 U.S.C. 631 et seq.] by the amendments in this subtitle [subtitle C (§§1621-1699a) of title XVI of div. A of Pub. L. 112-239, see Tables for classification], with opportunities for notice and comment.”

Pub. L. 109-163, div. A, title VIII, §845(d), Jan. 6, 2006, 119 Stat. 3391, provided that: “Not later than 45 days after the date of enactment of this Act [Jan. 6, 2006], the Administrator of the Small Business Administration shall promulgate final rules to carry out this section [amending this section and section 636 of this title] and the amendments made by this section.”

Pub. L. 105-135, title VI, §605, Dec. 2, 1997, 111 Stat. 2635, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall publish in the Federal Register such final regulations as may be necessary to carry out this title [see Short Title of 1997 Amendment note set out under section 631 of this title] and the amendments made by this title.

“(b) FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date on which final regulations are published under subsection (a), the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation in order to ensure consistency between the Federal Acquisition Regulation, this title and the amendments made by this title, and the final regulations published under subsection (a).”

Pub. L. 102-366, title II, § 222(b), Sept. 4, 1992, 106 Stat. 999, provided that:

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Sept. 4, 1992], the Administrator of the Small Business Administration shall issue proposed regulations to implement the amendments made by subsection (a) [amending this section]. Final regulations shall be issued not later than 270 days after such date of enactment.

“(2) LISTING OF ADDITIONAL SIZE STANDARDS.—The regulations required by paragraph (1) shall include a listing of all small business size standards prescribed by statute or by individual Federal departments and agencies, identifying the programs or purposes to which such size standards apply.”

SMALL BUSINESS COMPLIANCE GUIDE

Pub. L. 112-239, div. A, title XVI, § 1681(c), Jan. 2, 2013, 126 Stat. 2086, provided that: “Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue (pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104-121; 5 U.S.C. 601 note]) a compliance guide to assist business concerns in accurately determining their status as a small business concern.”

PROHIBITION ON USING TARP FUNDS OR TAX INCREASES

Pub. L. 111-240, title I, § 1136, Sept. 27, 2010, 124 Stat. 2520, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), nothing in section 1111 [amending section 636 of this title and enacting provisions set out as a note under section 636 of this title], 1112 [amending section 696 of this title], 1113 [amending section 636 of this title], 1114 [124 Stat. 2508], 1115 [amending section 689d of this title], 1116 [amending this section], 1117 [amending section 634 of this title], 1118 [124 Stat. 2509], 1122 [amending section 696 of this title and enacting provisions set out as a note under section 696 of this title], or 1131 [amending section 636 of this title and enacting provisions set out as notes under section 636 of this title], or an amendment made by such sections, shall be construed to limit the ability of Congress to appropriate funds.

“(b) TARP FUNDS AND TAX INCREASES.—

“(1) IN GENERAL.—Any covered amounts may not be used to carry out section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections.

“(2) DEFINITION.—In this subsection, the term ‘covered amounts’ means—

“(A) the amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 S.C. [sic] 5201 et seq.) [12 U.S.C. 5211 et seq.] to purchase (under section 101 [12 U.S.C. 5211]) or guarantee (under section 102 [12 U.S.C. 5212]) assets under that Act [12 U.S.C. 5201 et seq.]; and

“(B) any revenue increase attributable to any amendment to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] made during the period beginning on the date of enactment of this Act [Sept. 27, 2010] and ending on December 31, 2010.”

UPDATED SIZE STANDARDS

Pub. L. 111-240, title I, § 1344, Sept. 27, 2010, 124 Stat. 2545, provided that:

“(a) ROLLING REVIEW.—

“(1) IN GENERAL.—The Administrator shall—

“(A) during the 18-month period beginning on the date of enactment of this Act [Sept. 27, 2010], and during every 18-month period thereafter, conduct a detailed review of not less than 1/3 of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

“(B) after completing each review under subparagraph (A) make appropriate adjustments to the size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

“(C) make publicly available—

“(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

“(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and

“(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report regarding the review, including why the Administrator—

“(i) used the factors and criteria described in subparagraph (C); and

“(ii) adjusted or did not adjust each size standard that was reviewed under the review.

“(2) COMPLETE REVIEW OF SIZE STANDARDS.—The Administrator shall ensure that each size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) is reviewed under paragraph (1) not less frequently than once every 5 years.

“(b) RULES.—Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator shall promulgate rules for conducting the reviews required under subsection (a).”

[For definitions of “Administrator” and “small business concern” as used in section 1344 of Pub. L. 111-240, set out above, see section 1001 of Pub. L. 111-240, set out under this section.]

HUBZONE STATUS TIME LINE AND COMMENCEMENT

Pub. L. 112-239, div. A, title XVI, § 1698, Jan. 2, 2013, 126 Stat. 2091, provided that:

“(a) DEFINITION.—In this section, the term ‘covered base closure area’ means a base closure area that, on or before the date of enactment of this Act [Jan. 2, 2013], was treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) pursuant to section 152(a)(2) of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 [Pub. L. 108-447] (15 U.S.C. 632 note).

“(b) TREATMENT AS HUBZONE.—

“(1) IN GENERAL.—Subject to paragraph (2), a covered base closure area shall be treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) during the 5-year period beginning on the date of enactment of this Act.

“(2) LIMITATION.—The total period of time that a covered base closure area is treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) pursuant to this section and section 152(a)(2) of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 632 note) may not exceed 5 years.”

Pub. L. 108-447, div. K, title I, § 152(a)(2), Dec. 8, 2004, 118 Stat. 3457, provided that: “A base closure area that has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act [15 U.S.C. 631 et seq.] for a period of 5 years.”

CONTINUED EFFECTIVENESS OF NUMERICAL SIZE STANDARDS IN EFFECT ON SEPTEMBER 30, 1988

The last sentence of section 732 of Pub. L. 100-656 which provided that any numerical size standard that pertained to any of the designated industry groups, and that was in effect on Sept. 30, 1988, was to remain in effect for the duration of the Program, was repealed by Pub. L. 103-160, div. A, title VIII, § 850(1), Nov. 30, 1993, 107 Stat. 1726.

REPORT ON EFFECT OF 1986 AMENDMENTS

Section 101(c) [title X, § 921(i)] of Pub. L. 99-500 and Pub. L. 99-591, and section 921(i) of title IX, formerly

title IV, of Pub. L. 99-661; renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, directed Administrator of the Small Business Administration, not later than July 15, 1987, to submit to Congress a report on the amendments to sections 632, 637, and 644 of this title made by this section which was to include Administrator's views on the advisability and feasibility of implementing such amendments, Administrator's findings and determinations under the review of size standards for businesses that qualify as small businesses carried out pursuant to 15 U.S.C. 632(a)(2)(B), a determination of whether or not the amendments to section 632 of this title would further the interests of the set-aside program, and recommendations for furthering certain interests in a more efficient or effective manner than provided in such amendments.

DEFINITIONS

Pub. L. 111-240, title I, §1001, Sept. 27, 2010, 124 Stat. 2507, provided that: "In this title [enacting sections 634g, 648b, and 657q of this title and section 4713a of Title 12, Banks and Banking, amending this section, sections 631, 633, 634, 634c, 636, 637, 644, 648, 649, 656, 657a, 689d, 695, and 696 of this title, section 604 of Title 5, Government Organization and Employees, and section 2382 of Title 10, Armed Forces, repealing former section 634g of this title, enacting provisions set out as notes under this section and sections 631, 636, 637, 644, 649, 649b, and 696 of this title, and sections 428 and 433 of Title 41, Public Contracts, amending provisions set out as notes under section 631 of this title, and repealing provisions set out as notes under section 644 of this title]—

"(1) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively; and

"(2) the term 'small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632)."

§ 633. Small Business Administration

(a) Creation; principal, branch, and regional offices

In order to carry out the policies of this chapter there is created an agency under the name "Small Business Administration" (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this chapter, the term "United States" includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

(b) Appointment of Administrator, Deputy Administrator, and Associate Administrators; duties of Administrator: preparation of data base and publication of economic indices and annual report; risk management database; computer security and education program

(1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic

with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 657b of this title. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 636(j) and 637(a) of this title which provide assistance to minority small business concerns. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator. One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 649 of this title.

(2) The Administrator also shall be responsible for—

(A) establishing and maintaining an external small business economic data base for the purpose of providing the Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector. To that end, the Administrator shall publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include, but need not be limited to, data on—

- (i) employment, layoffs, and new hires;
- (ii) number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;
- (iii) number of business formations and failures;
- (iv) sales and new orders;
- (v) back orders;
- (vi) investment in plant and equipment;
- (vii) changes in inventory and rate of inventory turnover;