

include technical validations, market research, clarifying intellectual property rights position and strategy, and investigating commercial or business opportunities.

(B) Award guidelines

The administrator of a Proof of Concept Partnership program shall award grants in accordance with the following guidelines:

(i) The Proof of Concept Partnership shall use a market-focused project management oversight process, including—

(I) a rigorous, diverse review board comprised of local experts in translational and proof of concept research, including industry, start-up, venture capital, technical, financial, and business experts and university technology transfer officials;

(II) technology validation milestones focused on market feasibility;

(III) simple reporting effective at redirecting projects; and

(IV) the willingness to reallocate funding from failing projects to those with more potential.

(ii) Not more than \$100,000 shall be awarded towards an individual proposal.

(C) Educational resources and guidance

The administrator of a Proof of Concept Partnership program shall make educational resources and guidance available to researchers attempting to commercialize their innovations.

(4) Awards

(A) Size of award

The Director may make awards to a qualifying institution for up to \$1,000,000 per year for up to 4 years.

(B) Award criteria

In determining which qualifying institutions receive pilot program grants, the Director shall consider, in addition to any other criteria the Director determines necessary, the extent to which qualifying institutions—

(i) have an established and proven technology transfer or commercialization office and have a plan for engaging that office in the program's implementation;

(ii) have demonstrated a commitment to local and regional economic development;

(iii) are located in diverse geographies and are of diverse sizes;

(iv) can assemble project management boards comprised of industry, start-up, venture capital, technical, financial, and business experts;

(v) have an intellectual property rights strategy or office; and

(vi) demonstrate a plan for sustainability beyond the duration of the funding award.

(5) Limitations

The funds for the pilot program shall not be used—

(A) for basic research, but to evaluate the commercial potential of existing discoveries, including—

(i) proof of concept research or prototype development; and

(ii) activities that contribute to determining a project's commercialization path, to include technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities; or

(B) to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

(6) Evaluative report

The Director shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and the Committee on Small

Business and Entrepreneurship of the Senate an evaluative report regarding the activities of the pilot program. The report shall include—

- (A) a detailed description of the institutional and proposal selection process;
- (B) an accounting of the funds used in the pilot program;
- (C) a detailed description of the pilot program, including incentives and activities undertaken by review board experts;
- (D) a detailed compilation of results achieved by the pilot program, including the number of small business concerns included and the number of business packages developed, and the number of projects that progressed into subsequent STTR phases; and
- (E) an analysis of the program's effectiveness with supporting data.

(7) Sunset

The pilot program under this subsection shall terminate at the end of fiscal year 2025.

(kk) Phase III reporting

The annual SBIR or STTR report to Congress by the Administration under subsection (b)(7) shall include, for each Phase III award—

- (1) the name of the agency or component of the agency or the non-Federal source of capital making the Phase III award;
- (2) the name of the small business concern or individual receiving the Phase III award; and
- (3) the dollar amount of the Phase III award.

(ll) Consent to release contact information to organizations

(1) Enabling concern to give consent

Each Federal agency required by this section to conduct an SBIR program or an STTR program shall enable a small business concern that is an SBIR applicant or an STTR applicant to indicate to the Federal agency whether the Federal agency has the consent of the concern to—

- (A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant or an STTR applicant; and
- (B) release the contact information of the concern to such organizations.

(2) Rules

The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that a Federal agency include in the SBIR and STTR application a provision through which the applicant can indicate consent for purposes of paragraph (1).

(mm) Assistance for administrative, oversight, and contract processing costs

(1) In general

Subject to paragraph (3) and until September 30, 2025, the Administrator shall allow each Federal agency required to conduct an SBIR program to use not more than 3 percent of the funds allocated to the SBIR program of the Federal agency for—

- (A) the administration of the SBIR program or the STTR program of the Federal agency;
- (B) the provision of outreach and technical assistance relating to the SBIR program or STTR program of the Federal agency, including technical assistance site visits, personnel interviews, and national conferences;
- (C) the implementation of commercialization and outreach initiatives that were not in effect on December 31, 2011;
- (D) carrying out the program under subsection (y);
- (E) activities relating to oversight and congressional reporting, including waste, fraud, and abuse prevention activities;
- (F) targeted reviews of recipients of awards under the SBIR program or STTR program of the Federal agency that the head of the Federal agency determines are at high risk for fraud, waste, or abuse to ensure compliance with requirements of the SBIR program or STTR program, respectively;

(G) the implementation of oversight and quality control measures, including verification of reports and invoices and cost reviews;

(H) carrying out subsection (dd);

(I) contract processing costs relating to the SBIR program or STTR program of the Federal agency;

(J) funding for additional personnel and assistance with application reviews; and

(K) funding for improvements that increase commonality across data systems, reduce redundancy, and improve data oversight and accuracy.

(2) Outreach and technical assistance

(A) In general

Except as provided in subparagraph (B), a Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.

(B) Waiver

A Federal agency may request the Administrator to waive the requirement contained in subparagraph (A). Such request shall include an explanation of why the waiver is necessary. The Administrator may grant the waiver based on a determination that the agency has demonstrated a sufficient need for the waiver, that the outreach objectives of the agency are being met, and that there is increased participation by States with respect to which a low level of SBIR awards have historically been awarded.

(3) Performance criteria

A Federal agency may not use funds as authorized under paragraph (1) until after the effective date of performance criteria, which the Administrator shall establish, to measure any benefits of using funds as authorized under paragraph (1) and to assess continuation of the authority under paragraph (1).

(4) Rules

Not later than 180 days after December 31, 2011, the Administrator shall issue rules to carry out this subsection.

(5) Coordination with IG

Each Federal agency shall coordinate the activities funded under subparagraph (E), (F), or (G) of paragraph (1) with their respective Inspectors General, when appropriate, and each Federal agency that allocates more than \$50,000,000 to the SBIR program of the Federal agency for a fiscal year may share such funding with its Inspector General when the Inspector General performs such activities.

(6) Reporting

The Administrator shall collect data and provide to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report on the use of funds under this subsection, including funds used to achieve the objectives of paragraph (2)(A) and any use of the waiver authority under paragraph (2)(B).

(nn) Annual report on SBIR and STTR program goals

(1) Development of metrics

The head of each Federal agency required to participate in the SBIR program or the STTR program shall develop metrics to evaluate the effectiveness and the benefit to the people of the United States of the SBIR program and the STTR program of the Federal agency that—

(A) are science-based and statistically driven;

(B) reflect the mission of the Federal agency; and

(C) include factors relating to the economic impact of the programs.

(2) Evaluation

The head of each Federal agency described in paragraph (1) shall conduct an annual evaluation using the metrics developed under paragraph (1) of—

(A) the SBIR program and the STTR program of the Federal agency; and

(B) the benefits to the people of the United States of the SBIR program and the STTR program of the Federal agency.

(3) Report

(A) In general

The head of each Federal agency described in paragraph (1) shall submit to the appropriate committees of Congress and the Administrator an annual report describing in detail the results of an evaluation conducted under paragraph (2).

(B) Public availability of report

The head of each Federal agency described in paragraph (1) shall make each report submitted under subparagraph (A) available to the public online.

(C) Definition

In this paragraph, the term "appropriate committees of Congress" means—

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(oo) Competitive selection procedures for SBIR and STTR programs

All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(pp) Limitation on pilot programs

(1) Existing pilot programs

The Administrator may only carry out a covered pilot program that is in operation on December 31, 2011, during the 3-year period beginning on such date.

(2) New pilot programs

The Administrator may only carry out a covered pilot program established after December 31, 2011—

(A) during the 3-year period beginning on the date on which such program is established; and

(B) if such program does not continue and is not based on, in any manner, a previously established covered pilot program.

(3) Covered pilot program defined

In this subsection, the term "covered pilot program" means any initiative, project, innovation, or other activity—

(A) established by the Administrator;

(B) relating to an SBIR or STTR program; and

(C) not specifically authorized by law.

(qq) Minimum standards for participation

(1) Progress to Phase II success

(A) Establishment of system and minimum commercialization rate

Not later than 1 year after December 31, 2011, the head of each Federal agency participating in the SBIR or STTR program shall—

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have

received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) Consequence of failure to meet minimum commercialization rate

If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(2) Progress to Phase III success

(A) Establishment of system and minimum commercialization rate

Not later than 2 years after December 31, 2011, the head of each Federal agency participating in the SBIR or STTR program shall—

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) Consequence of failure to meet minimum commercialization rate

If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(3) Increased minimum performance standards for experienced firms

(A) Progress to Phase II success

(i) In general

With respect to a small business concern that received or receives more than 50 Phase I awards during a covered period, each minimum performance standard established under paragraph (1)(A)(ii) shall be doubled for such covered period.

(ii) Consequence of failure to meet standard

If the head of a Federal agency determines that a small business concern that received a Phase I award from the Federal agency is not meeting an applicable increased minimum performance standard modified under clause (i), the small business concern may not receive more than 20 total Phase I awards and Phase II awards under subsection (cc) from each Federal agency during the 1-year period beginning on the date on which such determination is made.

(iii) Covered period defined

In this subparagraph, the term "covered period" means a consecutive period of 5 fiscal years preceding the most recent fiscal year.

(B) Progress to Phase III success

(i) In general

Each minimum performance standard established under paragraph (2)(A)(ii) shall—

(I) with respect to a small business concern that received or receives more than 50 Phase II awards during a covered period, require an average of \$250,000 of aggregate sales and investments per Phase II award received during such covered period; and

(II) with respect to a small business concern that received or receives more than 100 Phase II awards during a covered period, require an average of \$450,000 of aggregate sales and investments per Phase II award received during such covered period.

(ii) Consequence of failure to meet standard

If the head of a Federal agency determines that a small business concern that received a Phase I award from the agency is not meeting an applicable increased minimum performance standard modified under clause (i), the small business concern may not receive more than 20 total Phase I awards and Phase II awards under subsection (cc) from each agency during the 1-year period beginning on the date on which such determination is made.

(iii) Documentation

(I) In general

A small business concern that is subject to an increased minimum performance standard described in clause (i) shall submit to the Administrator supporting documentation evidencing that all covered sales of the small business concern were properly used to meet the increased minimum performance standard.

(II) Covered sale defined

In this clause, the term "covered sale" means a sale by a small business concern—

(aa) that the small business concern claims to be attributable to an SBIR or STTR award;

(bb) for which no amount of the payment was or is made using Federal funds;

(cc) which the small business concern uses to meet an applicable increased minimum performance standard under clause (i); and

(dd) that was or is received during the 5 fiscal years immediately preceding the fiscal year in which the small business concern uses the sale to meet the increased minimum performance standard.

(iv) Covered period defined

In this subparagraph, the term "covered period" means a consecutive period of 10 fiscal years preceding the most recent 2 fiscal years.

(C) Patents for increased minimum performance standards

A small business concern with respect to which an increased minimum performance standard under subparagraph (B) applies may not meet the increased minimum performance standard by obtaining patents.

(D) Effective date

Subparagraphs (A) through (C) shall take effect on April 1, 2023.

(E) Waiver

(i) In general

The Administrator may, upon the request of a senior official of a Federal agency, grant a waiver with respect to a topic for the SBIR or STTR program of the Federal agency if—

(I) the topic is critical to the mission of the Federal agency or relates to national security; and

(II) the official submits to the Administrator a request for the waiver in accordance with clause (iii).

(ii) Waiver effects

If the Administration grants a waiver with respect to a topic for the SBIR or STTR program of a Federal agency, subparagraphs (A)(ii) and (B)(ii) shall not prohibit any covered small business concern from receiving an SBIR or STTR award under such topic.

(iii) Agency request and congressional notification

Not later than 15 days before the release of a solicitation including a topic for which a senior official of a Federal agency is requesting a waiver under clause (i), the senior official shall submit to the Administrator, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a request for the waiver.

(iv) Administrator determination and congressional notification

Not later than 15 days after receiving a request for a waiver under clause (i), the Administrator shall make a determination with respect to the request and notify the senior official at the Federal agency that made the request, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate of the determination.

(v) Definitions

In this subparagraph:

(I) Covered small business concern

The term "covered small business concern" means a small business concern that is subject to the consequences under subparagraph (A)(ii) or (B)(ii) pursuant to a determination by the head of a Federal agency that such small business concern did not meet an increased minimum performance standard that was applicable to such small business concern.

(II) Senior official

The term "senior official" means an individual appointed to a position in a Federal agency that is classified above GS-15 pursuant section 5108 of title 5, or any equivalent position, as determined by the Administrator.

(F) Reporting

(i) In general

Not later than July 1, 2023, and annually thereafter, the Administrator shall submit to Congress a list of the small business concerns that did not meet—

(I) an applicable minimum performance standard established under paragraph (1)(A)(ii) or (2)(A)(ii); or

(II) an applicable increased minimum performance standard.

(ii) Waivers

Each list submitted under clause (i) shall identify each small business concern that received an SBIR or STTR award pursuant to a waiver granted under subparagraph (E) by the Administrator during the period covered by the list.

(iii) Confidentiality

Each list submitted under clause (i) shall be confidential and exempt from disclosure under section 552(b)(3) of title 5 (commonly known as the "Freedom of Information Act").

(G) Implementation

Not later than April 1, 2023, the Administration shall implement the increased minimum performance standards under this paragraph.

(H) Rules of construction

Nothing in this paragraph shall be construed—

(i) to prohibit a small business concern from participating in a Phase I (or Phase II if under the authority of subsection (cc)) of an SBIR or STTR program under paragraph (1)(B) or (2)(B) solely on the basis of a determination by the head of a Federal agency that the small business concern is not meeting an increased minimum performance standard; or

(ii) to prevent the head of a Federal agency from implementing more restrictive limitations on the number of federally funded Phase I awards and direct to Phase II awards under subsection (cc) that may be awarded to a small business concern than the limitations described in subparagraphs (A)(ii) and (B)(ii).

(I) Termination

This paragraph shall terminate on September 30, 2025.

(4) Administration oversight

(A) Approval and publication of systems and minimum performance standards

Each system and minimum performance standard established under paragraph (1) or paragraph (2) shall be submitted by the head of the applicable Federal agency to the Administrator and shall be subject to the approval of the Administrator. In making a determination with respect to approval, the Administrator shall ensure that the minimum performance standard exceeds a de minimis level. The Administrator shall publish on the Internet Web site of the Administration the systems and minimum performance standards approved.

(B) Submission of evaluation results by agency

The head of each covered Federal agency shall submit to the Administrator the results of each evaluation conducted under paragraph (1) or paragraph (2).

(5) Requirement of notice and comment

Each system and minimum performance standard established under paragraph (1) or paragraph (2) and each approval provided by the Administrator under paragraph (4)(A), at least 60 days before becoming effective, shall be preceded by the provision of notice of and an opportunity for public comment on such system, standard, or approval.

(6) Inspector general audit

Not later than 1 year after the date on which the Administrator implements the increased minimum performance standards under paragraph (3), and periodically thereafter, the Inspector General of the Administration shall—

(A) conduct an audit on whether the small business concerns subject to increased minimum performance standards under paragraph (3)(B) verified—

(i) the sales by and investments in the small business concerns—

(I) during the 5 fiscal years immediately preceding the fiscal year in which the small business concern used such sales and investments to meet an applicable increased performance standard; and

(II) as a direct result of a Phase I award or Phase II award made under subsection (cc) during the covered period (as defined in paragraph (3)(B)(iv)), consistent with the definition of Phase III, as applicable;

(ii) any third-party revenue the small business concerns list as investments or incomes to meet the increased minimum performance standard—

(I) is a direct result of a Phase I award or Phase II award made under subsection (cc) during the covered period (as defined in paragraph (3)(B)(iv)); and

(II) consistent with the requirements of the Administrator as in effect on September 30, 2022, or any successor requirements; and

(iii) any dollar amounts such small business concerns list as investments or income to meet

such increased minimum performance standard the providence of which is unclear and that is not directly attributable to a Phase I award or Phase II award made under subsection (cc) during the covered period (as defined in paragraph (3)(B)(iv)), consistent with the definition of Phase III, as applicable;

(B) assess the self-certification requirements for the minimum performance standards established under paragraph (2)(A)(ii) and the increased minimum performance standards under paragraph (3)(B); and

(C) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report on the audit conducted under subparagraph (A) and the assessment conducted under subparagraph (B).

(7) Increased minimum performance standard defined

In this subsection, the term "increased minimum performance standard" means a minimum performance standard established under paragraph (1)(A)(ii) or (2)(A)(ii) as modified under subparagraph (A) or (B), respectively, of paragraph (3) with respect to a small business concern.

(rr) Publication of certain information

In order to increase the number of small businesses receiving awards under the SBIR or STTR programs of participating agencies, and to simplify the application process for such awards, the Administrator shall establish and maintain a public Internet Web site on which the Administrator shall publish such information relating to notice of and application for awards under the SBIR program and STTR program of each participating Federal agency as the Administrator determines appropriate.

(ss) Report on enhancement of manufacturing activities

Not later than October 1, 2013, and annually thereafter, the head of each Federal agency that makes more than \$50,000,000 in awards under the SBIR and STTR programs of the agency combined shall submit to the Administrator, for inclusion in the annual report required under subsection (b)(7), information that includes—

(1) a description of efforts undertaken by the head of the Federal agency to enhance United States manufacturing activities;

(2) a comprehensive description of the actions undertaken each year by the head of the Federal agency in carrying out the SBIR or STTR program of the agency in support of Executive Order 13329 (69 Fed. Reg. 9181; relating to encouraging innovation in manufacturing);

(3) an assessment of the effectiveness of the actions described in paragraph (2) at enhancing the research and development of United States manufacturing technologies and processes;

(4) a description of efforts by vendors selected to provide discretionary technical assistance under subsection (q)(1) to help SBIR and STTR concerns manufacture in the United States; and

(5) recommendations that the program managers of the SBIR or STTR program of the agency consider appropriate for additional actions to increase the effectiveness of enhancing manufacturing activities.

(tt) Outstanding reports and evaluations

(1) In general

Not later than March 30, 2019, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and the Committee on Science, Space, and Technology of the House of Representatives—

(A) each report, evaluation, or analysis, as applicable, described in subsection (b)(7), (g)(9), (o)(10), (y)(6)(C), (gg)(6), (jj)(6), and (mm)(6); and

(B) metrics regarding, and an evaluation of, the authority provided to the National Institutes of Health, the Department of Defense, and the Department of Education under subsection (cc).

(2) Information required

Not later than December 31, 2018, the head of each agency that is responsible for carrying out a provision described in subparagraph (A) or (B) of paragraph (1) shall submit to the Administrator any information that is necessary for the Administrator to carry out the responsibilities of the Administrator under that paragraph.

(uu) Commercialization assistance pilot programs

(1) Pilot programs implemented

(A) In general

Except as provided in subparagraph (B), not later than one year after August 13, 2018, a covered agency shall implement a commercialization assistance pilot program, under which an eligible entity may receive a subsequent Phase II SBIR award.

(B) Exception

If the Administrator determines that a covered agency has a program that is sufficiently similar to the commercialization assistance pilot program established under this subsection, such covered agency shall not be required to implement a commercialization assistance pilot program under this subsection.

(2) Percent of agency funds

The head of each covered agency may allocate not more than 5 percent of the funds allocated to the SBIR program of the covered agency for the purpose of making a subsequent Phase II SBIR award under the commercialization assistance pilot program.

(3) Termination

A commercialization assistance pilot program established under this subsection shall terminate on September 30, 2025.

(4) Application

To be selected to receive a subsequent Phase II SBIR award under a commercialization assistance pilot program, an eligible entity shall submit to the covered agency implementing such pilot program an application at such time, in such manner, and containing such information as the covered agency may require, including—

- (A) an updated Phase II commercialization plan; and
- (B) the source and amount of the matching funding required under paragraph (5).

(5) Matching funding

(A) In general

The Administrator shall require, as a condition of any subsequent Phase II SBIR award made to an eligible entity under this subsection, that a matching amount (excluding any fees collected by the eligible entity receiving such award) equal to the amount of such award be provided from an eligible third-party investor.

(B) Ineligible sources

An eligible entity may not use funding from ineligible sources to meet the matching requirement of subparagraph (A).

(6) Award

A subsequent Phase II SBIR award made to an eligible entity under this subsection—

- (A) may not exceed the limitation described under subsection (aa)(1); and
- (B) shall be disbursed during Phase II.

(7) Use of funds

The funds awarded to an eligible entity under this subsection may only be used for research and development activities that build on eligible entity's Phase II program and ensure the research

funded under such Phase II is rapidly progressing towards commercialization.

(8) Selection

In selecting eligible entities to participate in a commercialization assistance pilot program under this subsection, the head of a covered agency shall consider—

(A) the extent to which such award could aid the eligible entity in commercializing the research funded under the eligible entity's Phase II program;

(B) whether the updated Phase II commercialization plan submitted under paragraph (4) provides a sound approach for establishing technical feasibility that could lead to commercialization of such research;

(C) whether the proposed activities to be conducted under such updated Phase II commercialization plan further improve the likelihood that such research will provide societal benefits;

(D) whether the small business concern has progressed satisfactorily in Phase II to justify receipt of a subsequent Phase II SBIR award;

(E) the expectations of the eligible third-party investor that provides matching funding under paragraph (5); and

(F) the likelihood that the proposed activities to be conducted under such updated Phase II commercialization plan using matching funding provided by such eligible third-party investor will lead to commercial and societal benefit.

(9) Evaluation report

Not later than 6 years after August 13, 2018, the Comptroller General of the United States shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate, a report including—

(A) a summary of the activities of commercialization assistance pilot programs carried out under this subsection;

(B) a detailed compilation of results achieved by such commercialization assistance pilot programs, including the number of eligible entities that received awards under such programs;

(C) the rate at which each eligible entity that received a subsequent Phase II SBIR award under this subsection commercialized research of the recipient;

(D) the growth in employment and revenue of eligible entities that is attributable to participation in a commercialization assistance pilot program;

(E) a comparison of commercialization success of eligible entities participating in a commercialization assistance pilot program with recipients of an additional Phase II SBIR award under subsection (ff);

(F) demographic information, such as ethnicity and geographic location, of eligible entities participating in a commercialization assistance pilot program;

(G) an accounting of the funds used at each covered agency that implements a commercialization assistance pilot program under this subsection;

(H) the amount of matching funding provided by eligible third-party investors, set forth separately by source of funding;

(I) an analysis of the effectiveness of the commercialization assistance pilot program implemented by each covered agency; and

(J) recommendations for improvements to the commercialization assistance pilot program.

(10) Definitions

For purposes of this subsection:

(A) Covered agency

The term "covered agency" means a Federal agency required to have an SBIR program.

(B) Eligible entity

The term "eligible entity" means a small business concern that has received a Phase II award

under an SBIR program and an additional Phase II SBIR award under subsection (ff) from the covered agency to which such small business concern is applying for a subsequent Phase II SBIR award.

(C) Eligible third-party investor

The term "eligible third-party investor" means a small business concern other than an eligible entity, a venture capital firm, an individual investor, a non-SBIR Federal, State or local government, or any combination thereof.

(D) Ineligible sources

The term "ineligible sources" means the following:

- (i) The eligible entity's internal research and development funds.
- (ii) Funding in forms other than cash, such as in-kind or other intangible assets.
- (iii) Funding from the owners of the eligible entity, or the family members or affiliates of such owners.
- (iv) Funding attained through loans or other forms of debt obligations.

(E) Subsequent Phase II SBIR award

The term "subsequent Phase II SBIR award" means an award granted to an eligible entity under this subsection to carry out further commercialization activities for research conducted pursuant to an SBIR program.

(vv) Due diligence program to assess security risks

(1) Establishment

The head of each Federal agency required to establish an SBIR or STTR program, in coordination with the Administrator, shall establish and implement a due diligence program to assess security risks presented by small business concerns seeking a federally funded award.

(2) Risks

Each program established under paragraph (1) shall—

(A) assess, using a risk-based approach as appropriate, the cybersecurity practices, patent analysis, employee analysis, and foreign ownership of a small business concern seeking an award, including the financial ties and obligations (which shall include surety, equity, and debt obligations) of the small business concern and employees of the small business concern to a foreign country, foreign person, or foreign entity; and

(B) assess awards and proposals or applications, as applicable, using a risk-based approach as appropriate, including through the use of open-source analysis and analytical tools, for the nondisclosures of information required under (g)(13).⁵

(3) Administrative costs

(A) In general

In addition to the amount allocated under subsection (mm)(1), each Federal agency required to establish an SBIR program may allocate not more than 2 percent of the funds allocated to the SBIR program of the Federal agency for the cost of establishing the due diligence program required under this subsection.

(B) Reporting

(i) In general

Not later than December 31 of the year in which this subparagraph is enacted, and not later than December 31 of each year thereafter, the head of a Federal agency that exercises the authority under subparagraph (A) shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Administrator, for the covered year—

- (I) the total funds allowed to be allocated for the cost of establishing the due diligence

program required under this subsection;

(II) the total amount of funds obligated or expended under subparagraph (A); and

(III) the due diligence activities carried out or to be carried out using amounts allocated under subparagraph (A).

(ii) Annual report inclusion

The Administrator shall include the information submitted by head of a Federal agency under clause (i) in the next annual report submitted under subsection (b)(7) after the Administrator receives such information.

(iii) Covered year

In this subparagraph, the term "covered year" means, with respect to the information required under clause (i), the year covered by the annual report submitted under subsection (b)(7) in which the Administrator is required to include such information by clause (ii).

(C) Termination date

This paragraph shall terminate on September 30, 2025.

(ww) Program on innovation open topics

(1) Establishment

Not later than 180 days after September 30, 2022, the Secretary of Defense shall establish innovation open topic activities using the SBIR and STTR programs of the Department of Defense in order to—

(A) increase the transition of commercial technology to the Department of Defense;

(B) expand the small business nontraditional industrial base;

(C) increase commercialization derived from investments of the Department of Defense; and

(D) expand the ability for qualifying small business concerns to propose technology solutions to meet the needs of the Department of Defense.

(2) Frequency

The Secretary of Defense shall conduct not less than 1 open topic announcement at each component of the Department of Defense per fiscal year.

(3) Briefing

Not later than 180 days after September 30, 2022, the Secretary of Defense shall provide a briefing on the establishment of the program required under paragraph (1) to—

(A) the Committee on Armed Services and the Committee on Small Business and Entrepreneurship of the Senate; and

(B) the Committee on Small Business, the Committee on Armed Services, and the Committee on Science, Space, and Technology of the House of Representatives.

(xx) Additional provisions relating to solicitation topics

(1) In general

A Federal agency required to establish an SBIR or STTR program shall implement a multi-level review and approval process within the Federal agency for solicitation topics to ensure adequate competition and that no private individual or entity is shaping the requirements for eligibility for the solicitation topic after the selection of the solicitation topic, except that the Federal agency may amend the requirements to clarify the solicitation topic.

(2) Referral

A Federal agency that does not comply with paragraph (1) shall be referred to the Inspector General of the Administration for further investigation.

(Pub. L. 85–536, §2[9], July 18, 1958, 72 Stat. 391; Pub. L. 97–219, §§3–5, July 22, 1982, 96 Stat. 217, 218, 221; Pub. L. 99–443, §§1, 2, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 100–590, title I, §108, Nov. 3, 1988, 102 Stat. 2994; Pub. L. 102–484, div. D, title XLII, §4237(d), Oct. 23, 1992, 106 Stat.

2692; Pub. L. 102–564, title I, §§103, 104, title II, §202(a)–(c), title III, §§301(a), 305, Oct. 28, 1992, 106 Stat. 4250, 4254, 4256, 4257, 4261, 4262; Pub. L. 103–403, title VI, §607, Oct. 22, 1994, 108 Stat. 4204; Pub. L. 104–208, div. D, title I, §110, Sept. 30, 1996, 110 Stat. 3009–733; Pub. L. 105–135, title V, §501, Dec. 2, 1997, 111 Stat. 2620; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 106–554, §1(a)(9) [title I, §§103–107, 109, 110, 111(c), 113, 114(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–669, 2763A–673, 2763A–679, 2763A–681; Pub. L. 107–50, §§2, 3(a), 4–7, Oct. 15, 2001, 115 Stat. 263–265; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–163, div. A, title II, §252, Jan. 6, 2006, 119 Stat. 3177; Pub. L. 110–140, title XII, §1203(e), Dec. 19, 2007, 121 Stat. 1771; Pub. L. 111–84, div. A, title VIII, §§847(a), (b), 848, Oct. 28, 2009, 123 Stat. 2420, 2421; Pub. L. 111–383, div. A, title X, §1075(l), Jan. 7, 2011, 124 Stat. 4378; Pub. L. 112–17, §§3, 4, June 1, 2011, 125 Stat. 221, 222; Pub. L. 112–81, div. A, title X, §1067(a), div. E, title LI, §§5101–5107(a), 5108–5111, 5121–5123, 5125–5127, 5131–5135, 5138, 5140, 5141(a), (b)(1), (3), 5144, 5161, 5162, 5164–5167, Dec. 31, 2011, 125 Stat. 1589, 1824–1827, 1832–1836, 1838–1842, 1844–1847, 1851–1854, 1857–1861; Pub. L. 112–239, div. A, title X, §1076(a)(20)(A), title XVI, §1615(a), (b), Jan. 2, 2013, 126 Stat. 1949, 2066; Pub. L. 114–92, div. A, title VIII, §873(h), formerly §873(e), Nov. 25, 2015, 129 Stat. 940, renumbered §873(h), Pub. L. 114–328, div. A, title VIII, §896(3), Dec. 23, 2016, 130 Stat. 2326; Pub. L. 114–328, div. A, title XVIII, §1834, Dec. 23, 2016, 130 Stat. 2661; Pub. L. 115–91, div. A, title XVII, §1709(a), (b)(1), Dec. 12, 2017, 131 Stat. 1809; Pub. L. 115–232, div. A, title VIII, §§854(a)–(c)(1), 860, Aug. 13, 2018, 132 Stat. 1886–1888, 1893; Pub. L. 116–92, div. A, title VIII, §880(a)–(c), Dec. 20, 2019, 133 Stat. 1531, 1532; Pub. L. 116–283, div. A, title VIII, §865, Jan. 1, 2021, 134 Stat. 3785; Pub. L. 117–81, div. A, title XVII, §1702(e)(3), Dec. 27, 2021, 135 Stat. 2157; Pub. L. 117–183, §§3, 4(a), (b)(1), (c), (d), 5(a), (b), 7(a), 8, 9(a), Sept. 30, 2022, 136 Stat. 2180, 2181, 2183–2186, 2188, 2189, 2193; Pub. L. 117–263, div. A, title VIII, §872(a), Dec. 23, 2022, 136 Stat. 2739.)

EDITORIAL NOTES

REFERENCES IN TEXT

Executive Order 13329, referred to in subsecs. (b)(8), (g)(11), (o)(15), and (ss)(2), is set out as a note under this section.

The Federal Trade Commission Act, referred to in subsec. (d)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Executive Order 12333, referred to in subsec. (e)(2), is set out as a note under section 3001 of Title 50, War and National Defense.

Section 3703(5) of this title, referred to in subsec. (e)(8), was redesignated section 3703(3) by Pub. L. 110–69, title III, §3002(c)(3), Aug. 9, 2007, 121 Stat. 586.

Section 6683 of title 42, referred to in subsecs. (g)(3)(A), (j)(2)(E)(i), and (o)(3)(A), was omitted from the Code.

Section 2522 of title 10, referred to in subsecs. (g)(3)(B), (j)(2)(E)(ii), and (o)(3)(B), which related to annual defense critical technology plan, was repealed, and section 2518 (relating to Defense Advanced Manufacturing Technology Partnerships) was redesignated as section 2522, by Pub. L. 102–484, div. D, title XLII, §§4202(a), 4232(a), Oct. 23, 1992, 106 Stat. 2659, 2687, and subsequently repealed.

Section 105 of the Small Business Research and Development Enhancement Act of 1992, referred to in subsec. (j)(2)(I), is section 105 of Pub. L. 102–564, which is set out below.

The enactment of this paragraph, referred to in subsec. (j)(4), means the enactment of subsec. (j)(4) by Pub. L. 116–92, which was approved Dec. 20, 2019.

Section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note), referred to in subsec. (x)(2)(A), was formerly set out as a note under section 2501 of Title 10, Armed Forces, prior to repeal by Pub. L. 111–84, div. A, title II, §241, Oct. 28, 2009, 123 Stat. 2237.

The year in which this subparagraph is enacted, referred to in subsec. (vv)(3)(B)(i), is the year of enactment of Pub. L. 117–183, which was approved in 2022.

CODIFICATION

In subsec. (e)(8), "section 1303(a)(1) of title 41" substituted for "section 35(c)(1) of the Office of Federal

Procurement Policy Act", which probably should have been a reference to "section 25(c)(1) of the Office of Federal Procurement Policy Act" because that Act does not contain a section 35 and section 25(c) of that Act relates to issuance of the Federal Acquisition Regulation, on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (n)(2)(A), "section 1303(a)(1) of title 41" substituted for "section 25(c)(1) of the Office of Federal Procurement Policy Act" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, was previously classified to this section. See section 645 of this title and Codification note set out under section 631 of this title.

AMENDMENTS

2022—Pub. L. 117–183, §3, substituted "2025" for "2022" wherever appearing.

Subsec. (b)(7)(I), (J). Pub. L. 117–183, §7(a)(1), added subpars. (I) and (J).

Subsec. (b)(7)(K), (L). Pub. L. 117–183, §8(1), added subpars. (K) and (L).

Subsec. (e)(15) to (19). Pub. L. 117–183, §4(a), added pars. (15) to (19).

Subsec. (g)(13). Pub. L. 117–183, §4(c)(1), added par. (13).

Subsec. (g)(13)(D). Pub. L. 117–263 struck out "of concern" after "another foreign country".

Subsec. (g)(14). Pub. L. 117–183, §4(c)(1)(C), added par. (14).

Subsec. (g)(15). Pub. L. 117–183, §4(d)(1), added par. (15).

Subsec. (g)(16), (17). Pub. L. 117–183, §5(a), added pars. (16) and (17).

Subsec. (o)(17), (18). Pub. L. 117–183, §4(c)(2), added pars. (17) and (18).

Subsec. (o)(19). Pub. L. 117–183, §4(d)(2), added par. (19).

Subsec. (o)(20), (21). Pub. L. 117–183, §5(b), added pars. (20) and (21).

Subsec. (qq)(3), (4). Pub. L. 117–183, §8(2)(A), (B), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (qq)(5). Pub. L. 117–183, §8(2)(A), (C), redesignated par. (4) as (5) and substituted "paragraph (4)(A)" for "paragraph (3)(A)".

Subsec. (qq)(6), (7). Pub. L. 117–183, §8(2)(D), added pars. (6) and (7).

Subsec. (vv). Pub. L. 117–183, §4(b)(1), added subsec. (vv).

Subsec. (ww). Pub. L. 117–183, §7(a)(2), added subsec. (ww).

Subsec. (xx). Pub. L. 117–183, §9(a), added subsec. (xx).

2021—Subsec. (b)(7)(H). Pub. L. 116–283, §865(1), added subpar. (H).

Subsec. (g)(10). Pub. L. 116–283, §865(2), inserted ", which section shall describe whether or not the Federal agency complied with the requirements of subsection (f) for the year covered by that plan and include a justification for failure to comply (if applicable)," after "a section on its SBIR program".

Subsec. (o)(8). Pub. L. 116–283, §865(3), inserted ", which section shall describe whether or not the Federal agency complied with the requirements of subsection (n) for the year covered by that plan and include a justification for failure to comply (if applicable)," after "a section on its STTR program".

Subsec. (r)(4)(A). Pub. L. 117–81 substituted "sections 3201 through 3205" for "section 2304".

2019—Subsec. (b)(3). Pub. L. 116–92, §880(b)(2), struck out "and" at end.

Subsec. (b)(10). Pub. L. 116–92, §880(b)(1), added par. (10).

Subsec. (e)(14). Pub. L. 116–92, §880(a), added par. (14).

Subsec. (j)(4). Pub. L. 116–92, §880(c)(1), added par. (4).

Subsec. (p)(2)(G). Pub. L. 116–92, §880(c)(2), added subpar. (G).

2018—Subsec. (q). Pub. L. 115–232, §854(c)(1)(A), inserted "and business" after "technical" in heading.

Subsec. (q)(1). Pub. L. 115–232, §854(c)(1)(B)(i), in introductory provisions, substituted "1 or more vendors selected under paragraph (2)(A)" for "a vendor selected under paragraph (2)" and inserted "and business" before "assistance services" and "assistance with product sales, intellectual property protections, market research, market validation, and development of regulatory plans and manufacturing plans," after "technologies,".

Subsec. (q)(1)(D). Pub. L. 115–232, §854(c)(1)(B)(ii), inserted ", including intellectual property protections" before period at end.

Subsec. (q)(2). Pub. L. 115–232, §854(c)(1)(C), designated existing provisions as subpar. (A), inserted heading, substituted "Each agency may select 1 or more vendors from which small business concerns may obtain assistance in meeting" for "Each agency may select a vendor to assist small business concerns to meet", and added subpar. (B).

Subsec. (q)(3). Pub. L. 115–232, §854(c)(1)(D)(i), inserted "(A)" after "paragraph (2)" wherever appearing.

Subsec. (q)(3)(A). Pub. L. 115–232, §854(c)(1)(D)(ii), substituted "\$6,500 per year" for "\$5,000 per year"

in two places.

Subsec. (q)(3)(B)(i). Pub. L. 115–232, §854(c)(1)(D)(iii)(I), substituted "\$50,000 per project" for "\$5,000 per year".

Subsec. (q)(3)(B)(ii). Pub. L. 115–232, §854(c)(1)(D)(iii), substituted "\$50,000 per project, which may, as determined appropriate by the head of the Federal agency, be included as part of the recipient's award or be in addition to the amount of the recipient's award" for "\$5,000 per year, which shall be in addition to the amount of the recipient's award".

Subsec. (q)(3)(C). Pub. L. 115–232, §854(c)(1)(D)(iv), inserted "or business" after "technical", substituted "a vendor" for "the vendor", and inserted at end "Business-related services aimed at improving the commercialization success of a small business concern may be obtained from an entity, such as a public or private organization or an agency of or other entity established or funded by a State that facilitates or accelerates the commercialization of technologies or assists in the creation and growth of private enterprises that are commercializing technology."

Subsec. (q)(3)(D). Pub. L. 115–232, §854(c)(1)(D)(v)(I), inserted "or business" after "technical" in two places.

Subsec. (q)(3)(D)(i). Pub. L. 115–232, §854(c)(1)(D)(v)(II), substituted "1 or more vendors" for "the vendor".

Subsec. (q)(3)(E). Pub. L. 115–232, §854(c)(1)(D)(vi), added subpar. (E).

Subsec. (q)(4). Pub. L. 115–232, §854(c)(1)(E), added par. (4).

Subsec. (cc). Pub. L. 115–232, §854(a)(1), substituted "2022" for "2017".

Subsec. (gg)(7). Pub. L. 115–232, §854(a)(2), substituted "2022" for "2017".

Subsec. (hh). Pub. L. 115–232, §854(b)(1), designated existing provisions as par. (1), inserted heading, struck out "attempt to" before "shorten", and added par. (2).

Subsec. (ii). Pub. L. 115–232, §854(b)(2), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (jj)(4)(A). Pub. L. 115–232, §854(a)(3)(A), substituted "4" for "3".

Subsec. (jj)(7). Pub. L. 115–232, §854(a)(3)(B), substituted "2022" for "2017".

Subsec. (mm)(1). Pub. L. 115–232, §854(a)(4)(A)(i), substituted "2022" for "2017" in introductory provisions.

Subsec. (mm)(1)(K). Pub. L. 115–232, §854(a)(4)(A)(ii)–(iv), added subpar. (K).

Subsec. (tt). Pub. L. 115–232, §854(a)(5), added subsec. (tt).

Subsec. (uu). Pub. L. 115–232, §860, added subsec. (uu).

2017—Subsec. (r). Pub. L. 115–91, §1709(b)(1)(A), inserted ", competitive procedures, and justification for awards" after "agreements" in heading.

Subsec. (r)(4). Pub. L. 115–91, §1709(a), (b)(1)(B), substituted "Competitive procedures and justification for awards" for "Phase III awards" in heading and "shall—

"(A) consider an award under the SBIR program or the STTR program to satisfy the requirements under section 2304 of title 10 and any other applicable competition requirements; and

"(B) issue, without further justification, Phase III awards"

for "shall issue Phase III awards" in text.

2016—Subsec. (m). Pub. L. 114–328, §1834(a), substituted "September 30, 2022" for "September 30, 2017".

Subsec. (n)(1)(A). Pub. L. 114–328, §1834(b), substituted "fiscal year 2022" for "fiscal year 2017".

2015—Subsec. (mm)(1). Pub. L. 114–92 substituted "and until September 30, 2017," for ", for the 3 fiscal years beginning after December 31, 2011," in introductory provisions.

2013—Subsec. (b)(7). Pub. L. 112–239, §1076(a)(20)(A), repealed Pub. L. 112–81, §1067(a)(1). See 2011 Amendment note below.

Subsec. (y)(4). Pub. L. 112–239, §1615(b), made technical amendment to directory language of Pub. L. 112–81, §5141(b)(3)(B). See 2011 Amendment note below.

Pub. L. 112–239, §1615(a)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (y)(5). Pub. L. 112–239, §1615(a)(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 112–239, §1076(a)(20)(A), repealed Pub. L. 112–81, §1067(a)(2). See 2011 Amendment note below.

Subsec. (y)(6). Pub. L. 112–239, §1615(a)(1), redesignated par. (5) as (6).

2011—Subsec. (b)(7). Pub. L. 112–81, §5131(1)(B), substituted "(g)(8) and (o)(9);" for "(g)(10), (o)(9), and (o)(15) of this section, the number of proposals received from, and the number and total amount of awards to,

HUBZone small business concerns under each of the SBIR and STTR programs, and a description" in subpar. (A), added subpars. (B) to (F), and inserted "(G) a description" before "of the extent to which Federal agencies".

Pub. L. 112–81, §5131(1)(A), substituted "STTR programs, including—" for "STTR programs, including", and inserted subpar. (A) designation before "the data on output".

Pub. L. 112–81, §1067(a)(1), which inserted "and including an accounting of funds, initiatives, and outcomes under the Commercialization Pilot Program" after "and (o)(15) of this section," was repealed by Pub. L. 112–239, §1076(a)(20)(A).

Subsec. (b)(9). Pub. L. 112–81, §5131(1)(C), (2), (3), added par. (9).

Subsec. (e)(4)(B). Pub. L. 112–81, §5105(1), substituted "which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further" for "to further".

Subsec. (e)(4)(C). Pub. L. 112–81, §5125(a)(1), inserted "for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program" after "phase" in introductory provisions.

Subsec. (e)(4)(C)(ii). Pub. L. 112–81, §5125(b)(1)(A), substituted "merit-based selection procedures" for "scientific review criteria".

Subsec. (e)(6)(B). Pub. L. 112–81, §5105(2), substituted "which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that" for "to further develop proposed ideas to".

Subsec. (e)(6)(C). Pub. L. 112–81, §5125(a)(2), inserted "for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program" after "phase" in introductory provisions.

Subsec. (e)(9). Pub. L. 112–81, §5125(b)(1)(B), substituted "Phase II or Phase III" for "the second or the third phase".

Subsec. (e)(10). Pub. L. 112–81, §5125(a)(3)–(5), added par. (10).

Subsec. (e)(11) to (13). Pub. L. 112–81, §5125(b)(1)(C), added pars. (11) to (13).

Subsec. (f)(1). Pub. L. 112–81, §5102(a)(1), substituted "Except as provided in paragraph (2)(B), each" for "Each" in introductory provisions, added subpars. (C) to (I), and struck out former subpar. (C) which read as follows: "not less than 2.5 percent of such budget in each fiscal year thereafter,".

Subsec. (f)(2). Pub. L. 112–81, §5141(b)(3)(A), substituted "shall not—

"(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

"(B) make available for the purpose"

for "shall not make available for the purpose".

Pub. L. 112–81, §5141(b)(1)(A), substituted "shall not make available for the purpose" for "shall not—

"(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

"(B) make available for the purpose".

Subsec. (f)(4). Pub. L. 112–81, §5102(a)(2), added par. (4).

Subsec. (g)(4). Pub. L. 112–81, §5126(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(8) to (10). Pub. L. 112–81, §5132, added par. (8), redesignated former pars. (8) and (9) as (9) and (10), respectively, and struck out former par. (10) which read as follows: "collect, and maintain in a common format in accordance with subsection (v) of this section, such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k) of this section;".

Subsec. (g)(12). Pub. L. 112–81, §5110(a), added par. (12).

Subsec. (i)(1). Pub. L. 112–81, §5122(b), inserted "(including awards under subsection (y))" after "the number of awards".

Subsec. (j)(1)(B). Pub. L. 112–81, §5125(b)(2)(A), substituted "Phase II" for "phase two".

Subsec. (j)(2)(B). Pub. L. 112–81, §5125(b)(2)(B)(i), substituted "Phase III" for "the third phase" in two places and "Phase II" for "the second phase".

Subsec. (j)(2)(D). Pub. L. 112–81, §5125(b)(2)(B)(ii), substituted "Phase I" for "the first phase" and "Phase II" for "the second phase".

Pub. L. 112–81, §5103(c)(1), substituted "every year for inflation" for "once every 5 years to reflect economic adjustments and programmatic considerations".

Pub. L. 112–81, §5103(a), substituted "\$150,000" for "\$100,000" and "\$1,000,000" for "\$750,000".

Subsec. (j)(2)(F). Pub. L. 112–81, §5125(b)(2)(B)(iii), substituted "Phase III" for "the third phase".

Subsec. (j)(2)(G). Pub. L. 112-81, §5125(b)(2)(B)(iv), substituted "Phase I" for "the first phase" and "Phase II" for "the second phase".

Subsec. (j)(2)(H). Pub. L. 112-81, §5125(b)(2)(B)(v), substituted "Phase I" for "the first phase", "Phase II" for "second phase" in two places, and "Phase III" for "third phase".

Subsec. (j)(3)(A). Pub. L. 112-81, §5125(b)(2)(C)(i), substituted "Phase I" for "the first phase (as described in subsection (e)(4)(A) of this section)", "Phase II" for "(as described in subsection (e)(4)(B) of this section)", and "Phase III" for "the third phase (as described in subsection (e)(4)(C) of this section)".

Subsec. (j)(3)(B). Pub. L. 112-81, §5125(b)(2)(C)(ii), substituted "Phase II" for "second phase".

Subsec. (k). Pub. L. 112-81, §5125(b)(3), substituted "Phase I" for "first phase" and "Phase II" for "second phase" wherever appearing.

Subsec. (k)(1)(F). Pub. L. 112-81, §5134, added subpar. (F).

Subsec. (k)(2). Pub. L. 112-81, §5135(1), in introductory provisions, substituted "Not later than 90 days after December 31, 2011" for "Not later than 180 days after December 21, 2000", added subpars. (A), (D), and (G), redesignated former subpars. (A), (B), (D), and (E) as (B), (C), (E), and (F), respectively, and struck out former subpar. (C) which read as follows: "includes for each applicant for a Phase I or Phase II award that does not receive such an award—

"(i) the name, size, and location, and an identifying number assigned by the Administration;

"(ii) an abstract of the project; and

"(iii) the Federal agency to which the application was made;"

Subsec. (k)(3)(C). Pub. L. 112-81, §5135(2), added subpar. (C).

Subsec. (l)(2). Pub. L. 112-81, §5125(b)(4), substituted "Phase I" for "the first phase" and "Phase II" for "the second phase".

Subsec. (m). Pub. L. 112-81, §5101(a), substituted "2017" for "2011".

Pub. L. 112-17, §3(a), struck out par. (1) designation and heading, substituted "The authorization" for "Except as provided in paragraph (2), the authorization" and "2011" for "2008", and struck out par. (2). Text of par. (2) read as follows: "The Secretary of Defense and the Secretary of each military department are authorized to carry out the Small Business Innovation Research Program of the Department of Defense until September 30, 2010".

Subsec. (m)(2). Pub. L. 111-383 substituted "are authorized" for "is authorized".

Subsec. (n)(1)(A). Pub. L. 112-81, §5101(b), substituted "2017" for "2011".

Pub. L. 112-17, §3(b), struck out cl. (i) designation and heading, substituted "With respect" for "Except as provided in clause (ii), with respect" and "2011" for "2009", and struck out cl. (ii). Text of cl. (ii) read as follows: "The Secretary of Defense and the Secretary of each military department shall carry out clause (i) with respect to each fiscal year through fiscal year 2010."

Subsec. (n)(1)(B)(ii) to (v). Pub. L. 112-81, §5102(b), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: "0.3 percent for fiscal year 2004 and each fiscal year thereafter."

Subsec. (o)(4). Pub. L. 112-81, §5126(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (o)(9). Pub. L. 112-81, §5133, added par. (9) and struck out former par. (9) which read as follows: "collect such data from awardees as is necessary to assess STTR program outputs and outcomes;"

Subsec. (o)(13)(B). Pub. L. 112-81, §5125(b)(5)(A), substituted "Phase II" for "second phase".

Subsec. (o)(13)(C). Pub. L. 112-81, §5125(b)(5)(B), substituted "Phase III" for "third phase".

Subsec. (o)(15), (16). Pub. L. 112-81, §5110(b), added par. (16), redesignated former par. (16) as (15) and struck out former par. (15) which read as follows: "collect, and maintain in a common format in accordance with subsection (v) of this section, such information from awardees as is necessary to assess the STTR program, including information necessary to maintain the database described in subsection (k) of this section; and".

Subsec. (p)(2)(B)(vi). Pub. L. 112-81, §5125(b)(6)(A)(i), substituted "Phase II" for "the second phase" and "Phase III" for "the third phase".

Subsec. (p)(2)(B)(ix). Pub. L. 112-81, §5125(b)(6)(A)(ii), substituted "Phase I" for "the first phase" and "Phase II" for "the second phase".

Pub. L. 112-81, §5103(c)(2), inserted "(each of which the Administrator shall adjust for inflation annually)" after "\$1,000,000,".

Pub. L. 112-81, §5103(b), substituted "\$150,000" for "\$100,000" and "\$1,000,000" for "\$750,000".

Subsec. (p)(3). Pub. L. 112-81, §5125(b)(6)(B), substituted "Phase I" for "the first phase (as described in subsection (e)(6)(A) of this section)", "Phase II" for "the second phase (as described in subsection (e)(6)(B) of this section)", and "Phase III" for "the third phase (as described in subsection (e)(6)(C) of this section)".

Subsec. (q)(1). Pub. L. 112-81, §5121(1), inserted "or STTR program" after "SBIR program" and

substituted "SBIR or STTR projects" for "SBIR projects" in introductory provisions.

Subsec. (q)(2). Pub. L. 112-81, §5121(2), substituted "5 years" for "3 years".

Subsec. (q)(3). Pub. L. 112-81, §5121(3), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

"(A) First phase

"Each agency referred to in paragraph (1) may provide services described in paragraph (1) to first phase SBIR award recipients in an amount equal to not more than \$4,000, which shall be in addition to the amount of the recipient's award.

"(B) Second phase

"Each agency referred to in paragraph (1) may authorize any second phase SBIR award recipient to purchase, with funds available from their SBIR awards, services described in paragraph (1), in an amount equal to not more than \$4,000 per year."

Subsec. (r). Pub. L. 112-81, §5125(b)(7)(A), substituted "Phase III" for "Third phase" in heading.

Subsec. (r)(1). Pub. L. 112-81, §5125(b)(7)(B), substituted, in first sentence, "for Phase II" for "for the second phase", "Phase III" for "third phase", and "Phase II period" for "second phase period", and, in second sentence, "Phase II" for "second phase" and "Phase III" for "third phase".

Subsec. (r)(2). Pub. L. 112-81, §5125(b)(7)(C), substituted "Phase III" for "third phase".

Subsec. (r)(4). Pub. L. 112-81, §5108, added par. (4).

Subsec. (s). Pub. L. 112-17, §4, added subsec. (s).

Subsec. (u)(2)(B). Pub. L. 112-81, §5125(b)(8), substituted "Phase I" for "the first phase" in introductory provisions.

Subsec. (v). Pub. L. 112-81, §5144, substituted "Reducing paperwork and compliance burden" for "Simplified reporting requirements" in heading, designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (y). Pub. L. 112-81, §5122(a)(1), (2), substituted "Readiness" for "Pilot" wherever appearing in heading and text.

Subsec. (y)(1). Pub. L. 112-81, §5122(a)(3), inserted "or Small Business Technology Transfer Program" after "Small Business Innovation Research Program" and inserted at end "The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR program that enhances the insertion or transition of SBIR or STTR technologies, including any such program in effect on January 6, 2006."

Subsec. (y)(2). Pub. L. 112-81, §5122(a)(4), inserted "or Small Business Technology Transfer Program" after "Small Business Innovation Research Program".

Subsec. (y)(4). Pub. L. 112-81, §5141(b)(3)(B), as amended by Pub. L. 112-239, §1615(b), amended par. (4) generally. Prior to amendment, text read as follows: "For payment of expenses incurred to administer the Commercialization Readiness Program under this subsection, the Secretary of Defense and each Secretary of a military department is authorized to use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program. Such funds shall not be used to make Phase III awards."

Pub. L. 112-81, §5141(b)(1)(B), redesignated par. (5) as (4) and struck out former par. (4), which related to funding of expenses incurred to administer the Commercialization Readiness Program.

Subsec. (y)(5). Pub. L. 112-81, §5141(b)(1)(B)(ii), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 112-81, §5122(a)(7), added par. (5).

Pub. L. 112-81, §5122(a)(5), struck out par. (5) which required the Secretary of Defense to submit an annual evaluative report regarding activities under the Commercialization Pilot Program.

Pub. L. 112-81, §1067(a)(2), which struck out par. (5), requiring the Secretary of Defense to submit an annual evaluative report regarding activities under the Commercialization Pilot Program, was repealed by Pub. L. 112-239, §1076(a)(20)(A).

Subsec. (y)(6). Pub. L. 112-81, §5141(b)(1)(B)(ii), redesignated par. (6) as (5).

Pub. L. 112-81, §5122(a)(6), (7), added par. (6) and struck out former par. (6), which provided that pilot program would terminate at the end of fiscal year 2011.

Pub. L. 112-17, §3(c), substituted "2011" for "2010".

Subsec. (aa). Pub. L. 112-81, §5103(d), added subsec. (aa).

Subsec. (bb). Pub. L. 112-81, §5104, added subsec. (bb).

Subsec. (cc). Pub. L. 112-81, §5106, added subsec. (cc).

Subsec. (dd). Pub. L. 112-81, §5107(a), added subsec. (dd).

Subsec. (ee). Pub. L. 112-81, §5109, added subsec. (ee).

Subsec. (ff). Pub. L. 112-81, §5111, added subsec. (ff).
Subsec. (gg). Pub. L. 112-81, §5123, added subsec. (gg).
Subsecs. (hh), (ii). Pub. L. 112-81, §5126(b), added subsecs. (hh) and (ii).
Subsec. (jj). Pub. L. 112-81, §5127, added subsec. (jj).
Subsec. (kk). Pub. L. 112-81, §5138, added subsec. (kk).
Subsec. (ll). Pub. L. 112-81, §5140, added subsec. (ll).
Subsec. (mm). Pub. L. 112-81, §5141(a), added subsec. (mm).
Subsec. (nn). Pub. L. 112-81, §5161, added subsec. (nn).
Subsec. (oo). Pub. L. 112-81, §5162, added subsec. (oo).
Subsec. (pp). Pub. L. 112-81, §5164, added subsec. (pp).
Subsec. (qq). Pub. L. 112-81, §5165, added subsec. (qq).
Subsec. (rr). Pub. L. 112-81, §5166, added subsec. (rr).
Subsec. (ss). Pub. L. 112-81, §5167, added subsec. (ss).

2009—Subsec. (m). Pub. L. 111-84, §847(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted "Except as provided in paragraph (2), the authorization" for "The authorization", and added par. (2).

Subsec. (n)(1)(A). Pub. L. 111-84, §847(b), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Except as provided in clause (ii), with respect" for "With respect", and added cl. (ii).

Subsec. (y)(6). Pub. L. 111-84, §848, substituted "2010" for "2009".

2007—Subsec. (z). Pub. L. 110-140 added subsec. (z).

2006—Subsec. (b)(8). Pub. L. 109-163, §252(b)(1), added par. (8).

Subsec. (e)(9). Pub. L. 109-163, §252(c), added par. (9).

Subsec. (g)(11). Pub. L. 109-163, §252(b)(2), added par. (11).

Subsec. (o)(16). Pub. L. 109-163, §252(b)(3), added par. (16).

Subsecs. (x), (y). Pub. L. 109-163, §252(a), added subsecs. (x) and (y).

2004—Subsec. (j)(2)(I). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

2001—Subsec. (b)(4). Pub. L. 107-50, §2(b), struck out "pilot" before "programs";.

Subsec. (b)(7). Pub. L. 107-50, §6(d), substituted ", (o)(9), and (o)(15) of this section, the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIR and STTR programs," for "and (o)(9) of this section,".

Subsec. (e)(6). Pub. L. 107-50, §2(b), struck out "pilot" before "program" in introductory provisions.

Subsec. (k)(1). Pub. L. 107-50, §6(b)(1), inserted "or STTR" after "SBIR" in subpars. (A) to (C) and added subpar. (E).

Subsec. (k)(2). Pub. L. 107-50, §6(b)(2)(A), (B), in introductory provisions, inserted "or an STTR program pursuant to subsection (n)(1)" after "(f)(1)" and substituted "exclusively for SBIR and STTR" for "solely for SBIR".

Subsec. (k)(2)(A)(iii). Pub. L. 107-50, §6(b)(2)(C), inserted "and STTR" after "SBIR".

Subsec. (k)(2)(D). Pub. L. 107-50, §6(b)(2)(D), inserted "or STTR" after "SBIR".

Subsec. (n)(1). Pub. L. 107-50, §2(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "With respect to fiscal years 1998, 1999, 2000, and 2001, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, is authorized to expend with small business concerns not less than 0.15 percent of that extramural budget specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section."

Subsec. (o)(11). Pub. L. 107-50, §7(b), substituted "adopt the agreement developed by the Administrator under subsection (w) as the agency's model agreement" for "develop a model agreement not later than July 31, 1993, to be approved by the Administration,".

Subsec. (o)(14). Pub. L. 107-50, §4, added par. (14).

Subsec. (o)(15). Pub. L. 107-50, §6(a), added par. (15).

Subsec. (p)(2)(B)(ix). Pub. L. 107-50, §3, substituted "\$750,000" for "\$500,000" and inserted ", and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project" before the semicolon at the end.

Subsec. (p)(3). Pub. L. 107-50, §5, added par. (3).

Subsec. (v). Pub. L. 107-50, §6(c), inserted "or STTR" after "SBIR" in two places.

Subsec. (w). Pub. L. 107-50, §7(a), added subsec. (w).

2000—Subsec. (b)(7). Pub. L. 106-554, §1(a)(9) [title I, §107(b)], inserted before period at end ", including the data on output and outcomes collected pursuant to subsections (g)(10) and (o)(9) of this section, and a

description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k)".

Pub. L. 106-554, §1(a)(9) [title I, §104], substituted ", and to the Committee on Science and the Committee on Small Business of the House of Representatives," for "and the Committee on Small Business of the House of Representatives".

Subsec. (e)(4)(C)(i). Pub. L. 106-554, §1(a)(9) [title I, §105], substituted "; or" for "; and" at end.

Subsec. (g)(9). Pub. L. 106-554, §1(a)(9) [title I, §106], added par. (9).

Subsec. (g)(10). Pub. L. 106-554, §1(a)(9) [title I, §107(a)], added par. (10).

Subsec. (i). Pub. L. 106-554, §1(a)(9) [title I, §109], inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (j)(3). Pub. L. 106-554, §1(a)(9) [title I, §110], added par. (3).

Subsec. (k). Pub. L. 106-554, §1(a)(9) [title I, §107(c)], amended subsec. (k) generally, substituting present provisions for provisions which read "(k) [Reserved]".

Subsec. (m). Pub. L. 106-554, §1(a)(9) [title I, §103], amended heading and text generally. Prior to amendment, text read as follows: "The authorization to carry out the Small Business Innovation Research Program under this section shall terminate on October 1, 2000."

Subsec. (s)(2). Pub. L. 106-554, §1(a)(9) [title I, §114(b)], substituted "for each of the fiscal years 2000 through 2005," for "for fiscal year 1998, 1999, 2000, or 2001".

Subsec. (u). Pub. L. 106-554, §1(a)(9) [title I, §111(c)], added subsec. (u).

Subsec. (v). Pub. L. 106-554, §1(a)(9) [title I, §113], added subsec. (v).

1999—Subsec. (p)(1)(B). Pub. L. 106-113 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the Commissioner of Patents and Trademarks; and".

1997—Subsec. (e)(4)(A). Pub. L. 105-135, §501(b)(1)(B), substituted "subparagraph (B)" for "subparagraph (B)(ii)".

Subsec. (n)(1). Pub. L. 105-135, §501(a), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "Each Federal agency which has an extramural budget for research or research and development in excess of \$1,000,000,000 in fiscal year 1994, 1995, or 1996, is authorized to expend with small business concerns—

"(A) not less than 0.05 percent of such budget in fiscal year 1994;

"(B) not less than 0.1 percent of such budget in fiscal year 1995; and

"(C) not less than 0.15 percent of such budget in fiscal years 1996 and 1997,

specifically in connection with STTR programs which meet the requirements of this section, policy directives, and regulations issued under this section."

Subsec. (o)(8) to (13). Pub. L. 105-135, §501(b)(1)(A), added pars. (8) and (9) and redesignated former pars. (8) to (11) as (10) to (13), respectively.

Subsec. (s). Pub. L. 105-135, §501(b)(2), struck out subsec. (s), which related to outreach, including provisions defining eligible State and relating to program authority, amount of assistance, and use of assistance.

Pub. L. 105-135, §501(b)(1)(C), added subsec. (s).

Subsec. (t). Pub. L. 105-135, §501(b)(1)(C), added subsec. (t).

1996—Subsec. (n)(1)(C). Pub. L. 104-208 substituted "fiscal years 1996 and 1997" for "fiscal year 1996".

1994—Subsec. (q)(2). Pub. L. 103-403 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Annually, each agency may select a vendor for purposes of this subsection using competitive, merit-based criteria, to assist small business concerns to meet the goals listed in paragraph (1)."

1992—Subsec. (b)(4). Pub. L. 102-564, §202(a)(1), inserted before semicolon at end "and small business technology transfer pilot programs".

Subsec. (b)(5) to (7). Pub. L. 102-564, §202(a)(2), inserted "and STTR" after "SBIR" wherever appearing.

Subsec. (e)(1). Pub. L. 102-564, §103(c), substituted "for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs" for "for the Department of Defense it shall not include amounts obligated solely for operational systems development".

Pub. L. 102-484, §4237(d)(1), (2)(A), (h)(2), temporarily amended par. (1) by striking out "except that for the Department of Defense it shall not include amounts obligated solely for operational systems development, and" after "Government-operated facilities," and substituting ", and except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs for weapons and weapons-related activities or for naval reactor programs;" for semicolon at end. See section 4237(h)(2) of Pub. L. 102-484 set out in a Small Business Innovation Research Program in Department of Defense note below.

Subsec. (e)(4)(A). Pub. L. 102-564, §103(a)(1), inserted "that appear to have commercial potential, as described in subparagraph (B)(ii)," after "ideas".

Subsec. (e)(4)(B). Pub. L. 102-564, §103(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and, where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; and".

Subsec. (e)(4)(C). Pub. L. 102-564, §103(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: "where appropriate, a third phase in which non-Federal capital pursues commercial applications of the research or research and development and which may also involve follow-on non-SBIR funded production contracts with a Federal agency for products or processes intended for use by the United States Government; and".

Subsec. (e)(6) to (8). Pub. L. 102-564, §202(b), added pars. (6) to (8).

Subsec. (f). Pub. L. 102-564, §103(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) consisted of pars. (1) and (2) relating to Federal agency extramural budget expenditures for fiscal years 1982 and thereafter for small business concerns in connection with small business innovation research programs meeting the requirements of the Small Business Innovation Development Act of 1982.

Subsec. (f)(2). Pub. L. 102-484, §4237(d)(2)(B), (h)(2), temporarily struck out par. (2) which read "Amounts appropriated for atomic energy defense programs of the Department of Energy shall for the purposes of paragraph (1) be excluded from the amount of the research or research and development budget of that Department." See section 4237(h)(2) of Pub. L. 102-484 set out in a Small Business Innovation Research Program in Department of Defense note below.

Subsec. (g)(3), (4). Pub. L. 102-564, §103(d), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 102-564, §103(d)(1), (h)(2), (i), redesignated par. (4) as (5) and inserted "subject to subsection (l)," before "unilaterally" and "and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement" before semicolon at end. Former par. (5) redesignated (6).

Subsec. (g)(6). Pub. L. 102-564, §103(d)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (g)(7). Pub. L. 102-564, §103(d)(1), (e), redesignated par. (6) as (7) and inserted before semicolon at end "and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements". Former par. (7) redesignated (8).

Subsec. (g)(8). Pub. L. 102-564, §103(d)(1), redesignated par. (7) as (8).

Subsec. (j). Pub. L. 102-564, §103(f), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), former subpars. (A) to (H) of former par. (2) as cls. (i) to (viii), respectively, of subpar. (B) of par. (1), and former pars. (3) to (7) as subpars. (C) to (G), respectively, of par. (1), and added par. (2).

Subsec. (k). Pub. L. 102-564, §103(g), amended subsec. (k) generally, substituting "(k) [Reserved]" for prior provisions of subsec. (k) which read as follows: "The Director of the Office of Science and Technology Policy, in consultation with the Federal Coordinating Council for Science, Engineering and Research, shall, in addition to such other responsibilities imposed upon him by the Small Business Innovation Development Act of 1982—

"(1) independently survey and monitor all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, including compliance with the expenditures of funds according to the requirements of subsection (f) of this section; and

"(2) report not less than annually, and at such other times as the Director may deem appropriate, to the Committees on Small Business of the Senate and the House of Representatives on all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, together with such recommendations as the Director may deem appropriate."

Subsec. (l). Pub. L. 102-564, §103(h)(1), added subsec. (l).

Subsec. (m). Pub. L. 102-564, §104(b), added subsec. (m).

Subsecs. (n) to (p). Pub. L. 102-564, §202(c), added subsecs. (n) to (p).

Subsec. (q). Pub. L. 102-564, §301(a), added subsec. (q).

Subsec. (r). Pub. L. 102-564, §305, added subsec. (r).

1988—Subsec. (j)(6), (7). Pub. L. 100-590 added pars. (6) and (7).

1986—Subsec. (e)(1). Pub. L. 99-443, §1, inserted provision that for the Department of Defense, the

extramural budget shall not include amounts obligated solely for operational systems development.

1982—Subsec. (b)(4) to (7). Pub. L. 97–219, §3, added pars. (4) to (7).

Subsecs. (e) to (k). Pub. L. 97–219, §4, added subsecs. (e) to (k).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(20)(A) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

Pub. L. 112–239, div. A, title XVI, §1615(c), Jan. 2, 2013, 126 Stat. 2067, provided that: "The amendments made by this section [amending this section] shall take effect as of January 1, 2012."

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. E, title LI, §5141(b)(3), Dec. 31, 2011, 125 Stat. 1854, provided in part that the amendments made by section 5141(b)(3) of Pub. L. 112–81 (amending this section) were effective on the first day of the fourth full fiscal year following Dec. 31, 2011.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title VIII, §847(c), Oct. 28, 2009, 123 Stat. 2421, provided that: "The amendments made by this section [amending this section] shall take effect as of July 30, 2009."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–50, §3(b), Oct. 15, 2001, 115 Stat. 263, provided that: "The amendments made by subsection (a) [amending this section] shall be effective beginning in fiscal year 2004."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE AND TERMINATION DATES 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.

Pub. L. 105–135, title V, §501(b)(2), Dec. 2, 1997, 111 Stat. 2622, as amended by Pub. L. 106–554, §1(a)(9) [title I, §114(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–681, provided that: "Effective October 1, 2005, section 9(s) of the Small Business Act [15 U.S.C. 638(s)] (as added by paragraph (1) of this subsection) is repealed."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENT

For effective and termination dates of amendment by Pub. L. 102–484, see section 4237(g) and (h) of Pub. L. 102–484, set out in a Small Business Innovation Research Program in Department of Defense note below.

TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97–219, §5, July 22, 1982, 96 Stat. 221, as amended by Pub. L. 99–443, §2, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 102–484, div. D, title XLII, §4237(a), Oct. 23, 1992, 106 Stat. 2691, which provided that effective Oct. 1, 1993, subsecs. (b)(4) through (7) and (e) through (k) of this section were to be repealed, was repealed by Pub. L. 102–564, title I, §104(a), Oct. 28, 1992, 106 Stat. 4254.

RULE OF CONSTRUCTION

Pub. L. 117–183, §4(b)(5), Sept. 30, 2022, 136 Stat. 2183, provided that: "Nothing in subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), shall be construed to—

"(A) apply to any Federal agency with a due diligence program that applies to the SBIR or STTR programs required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), in existence as of the date of enactment of this Act [Sept. 30, 2022]; or

"(B) restrict any Federal agency from taking due diligence measures in addition to those required under such subsection (vv) at the Federal agency."

[For definitions of "Federal agency", "SBIR", and "STTR" as used in section 4(b)(5) of Pub. L. 117–183, set out above, see section 2 of Pub. L. 117–183, set out as a note below.]

DUE DILIGENCE PROGRAM

Pub. L. 117–263, div. A, title VIII, §872(b), Dec. 23, 2022, 136 Stat. 2739, provided that:

"(1) IN GENERAL.—Until the date on which the Under Secretary of Defense for Research and Engineering makes the certification described in paragraph (2), in carrying out the due diligence program required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), the Secretary of Defense and each Secretary of a military department shall perform the assessments required under such due diligence program—

"(A) only with respect to small business concerns selected by the applicable Secretary as the presumptive recipient of an award described in such subsection (vv); and

"(B) prior to notifying the small business concern that the small business concern has been selected to receive such an award.

"(2) FULL IMPLEMENTATION.—On the date on which the Under Secretary of Defense for Research and Engineering certifies to the Committees on Armed Services of the Senate and the House of Representatives that an automated capability for performing the assessments required under the due diligence program required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638) with respect to all small business concerns seeking an award described in such subsection is operational, paragraph (1) of this subsection shall sunset."

IMPLEMENTATION OF 2022 AMENDMENT

Pub. L. 117–183, §4(b)(2), Sept. 30, 2022, 136 Stat. 2182, provided that:

"(A) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Sept. 30, 2022], the head of a Federal agency required to establish an SBIR or STTR program shall implement a due diligence program under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), at the Federal agency that, to the extent practicable, incorporates the applicable best practices disseminated under paragraph (3) [set out as a note below].

"(B) PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act'), shall not apply to the implementation of a due diligence program under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1).

"(C) BRIEFING.—Not later than 30 days after the date of enactment of this Act, and on a recurring basis until implementation is complete, each Federal agency required to establish a due diligence program under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), shall brief the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives on the implementation of the due diligence program."

[For definitions of "Federal agency", "SBIR", and "STTR" as used in section 4(b)(2) of Pub. L. 117–183, set out above, see section 2 of Pub. L. 117–183, set out as a note below.]

Pub. L. 117–183, §5(c), Sept. 30, 2022, 136 Stat. 2187, provided that: "Chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act'), shall not apply to the implementation of paragraphs (16) and (17) of subsection (g) or paragraphs (20) and (21) of subsection (o) of section 9 of the Small Business Act (15 U.S.C. 638), as added by subsections (a) and (b)."

BEST PRACTICES

Pub. L. 117–183, §4(b)(3), Sept. 30, 2022, 136 Stat. 2182, provided that: "Not later than 180 days after the

date of enactment of this Act [Sept. 30, 2022], the Administrator shall—

"(A) in coordination with the Director of the Office of Science and Technology Policy and in consultation with the Committee on Foreign Investment in the United States, disseminate among Federal agencies required to establish an SBIR or STTR program best practices of those Federal agencies for due diligence programs required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1); and

"(B) in consultation with the Committee on Foreign Investment in the United States, provide to Federal agencies described in subparagraph (A) guidance on the business relationships required to be disclosed under paragraph (13)(G) of subsection (g) and paragraph (17)(G) of subsection (o) of section 9 of the Small Business Act (15 U.S.C. 638), as added by this Act."

[For definitions of terms used in section 4(b)(3) of Pub. L. 117–183, set out above, see section 2 of Pub. L. 117–183, set out as a note below.]

CYBERSECURITY TECHNICAL ASSISTANCE FOR SBIR AND STTR PROGRAMS

Pub. L. 116–92, div. A, title VIII, §881, Dec. 20, 2019, 133 Stat. 1533, provided that:

"(a) IN GENERAL.—The Secretary of Defense may enter into an agreement with 1 or more vendors selected under section 9(q)(2) of the Small Business Act (15 U.S.C. 638(q)(2)) to provide small business concerns engaged in SBIR or STTR projects with cybersecurity technical assistance, such as access to a network of cybersecurity experts and engineers engaged in designing and implementing cybersecurity practices.

"(b) AMOUNTS.—In carrying out subsection (a), the Secretary of Defense may provide the amounts described under section 9(q)(3) of such Act (15 U.S.C. 638(q)(3)) to a recipient that meets the eligibility requirements under the such [sic] paragraph, if the recipient requests to seek cybersecurity technical assistance from an individual or entity other than a vendor selected as described in subsection (a)."

PILOT PROGRAM FOR DOMESTIC INVESTMENT UNDER THE SBIR PROGRAM

Pub. L. 116–92, div. A, title VIII, §884, Dec. 20, 2019, 133 Stat. 1534, as amended by Pub. L. 117–81, div. A, title XVII, §1702(e)(4), Dec. 27, 2021, 135 Stat. 2157, provided that:

"(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 20, 2019] and subject to subsection (b), the Secretary of Defense shall establish and administer a program to be known as the 'Domestic Investment Pilot Program' under which the Secretary and the service acquisition executive for each military department may make a SBIR award under section 9(dd) of the Small Business Act (15 U.S.C. 638[(dd)]) to a small business concern without providing the written determination described under paragraph (2) of such section 9(dd) if such concern is—

"(1) exclusively owned by multiple United States-owned venture capital operating companies, hedge funds, or private equity firms, or

"(2) majority-owned by multiple United States-owned venture capital operating companies, hedge funds, or private equity firms, if the minority foreign ownership of such concern is limited to members of the national technology and industrial base as defined under section 4801 of title 10, United States Code.

"(b) LIMITATION.—During any fiscal year, the aggregate amount of awards made under the Domestic Investment Pilot Program shall not exceed an amount equal to 10 percent of the total amount that the Secretary of Defense may award under section 9 of the Small Business Act (15 U.S.C. 638) during such fiscal year.

"(c) EVALUATION CRITERIA.—In carrying out the Domestic Investment Pilot Program, the Secretary of Defense may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for the award of contracts under the SBIR program or STTR program.

"(d) ANNUAL REPORTING.—The Secretary of Defense shall include as part of each annual report required under section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) information on the implementation of the Domestic Investment Pilot Program with respect to the year covered by the report, including—

"(1) the number of applications for participation received from small business concerns;

"(2) the number of awards made to small business concerns, including an identification of such concerns;

"(3) the extent to which a small business concern participant is foreign-owned, including an identification of the foreign owners; and

"(4) an assessment of the effect of the Domestic Investment Pilot Program on—

"(A) inducing additional venture capital, hedge fund, or private equity funding of research as defined in section 9(e)(5) of the Small Business Act (15 U.S.C. 638(e)(5));

"(B) substantially contributing to the mission of the Department of Defense; and

"(C) otherwise fulfilling the capital needs of small business concerns for additional financing for SBIR projects.

"(e) NOTIFICATION.—The Secretary of Defense shall notify the Small Business Administration of an award made under the Domestic Investment Pilot Program not later than 30 days after such award is made.

"(f) TERMINATION.—The Domestic Investment Pilot Program established under this section shall terminate on September 30, 2022.

"(g) DEFINITIONS.—In this section:

"(1) MILITARY DEPARTMENT; SERVICE ACQUISITION EXECUTIVE.—The terms 'military department' and 'service acquisition executive' have the meanings given those terms, respectively, in section 101 of title 10, United States Code.

"(2) SBIR; STTR.—The terms 'SBIR' and 'STTR' have the meanings given those terms, respectively, in section 9(e) of the Small Business Act (15 U.S.C. 638(e)).

"(3) SMALL BUSINESS ACT DEFINITIONS.—The terms 'small business concern', 'venture capital operating company', 'hedge fund', and 'private equity firm' have the meanings given those terms, respectively, in section 3 of the Small Business Act (15 U.S.C. 632)."

FIRMS THAT ARE MAJORITY-OWNED BY MULTIPLE VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS ENTITLED TO PARTIAL PARTICIPATION IN SBIR PROGRAM; RULES FOR DETERMINING AFFILIATION

Pub. L. 112–81, div. E, title LI, §5107(c), (d), Dec. 31, 2011, 125 Stat. 1829, 1832, provided that:

"(c) RULEMAKING TO ENSURE THAT FIRMS THAT ARE MAJORITY-OWNED BY MULTIPLE VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS ARE ABLE TO PARTICIPATE IN A PORTION OF THE SBIR PROGRAM.—

"(1) STATEMENT OF CONGRESSIONAL INTENT.—It is the stated intent of Congress that the Administrator should promulgate regulations to carry out the authority under section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section, that—

"(A) permit small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to participate in the SBIR program in accordance with section 9(dd) of the Small Business Act;

"(B) provide specific guidance for small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms with regard to eligibility, participation, and affiliation rules; and

"(C) preserve and maintain the integrity of the SBIR program as a program for small business concerns in the United States by prohibiting large businesses or large entities or foreign-owned businesses or foreign-owned entities from participation in the program established under section 9 of the Small Business Act [15 U.S.C. 638].

"(2) RULEMAKING REQUIRED.—

"(A) PROPOSED REGULATIONS.—Not later than 120 days after the date of enactment of this Act [Dec. 31, 2011], the Administrator shall issue proposed regulations to amend section 121.103 (relating to determinations of affiliation applicable to the SBIR program) and section 121.702 (relating to ownership and control standards and size standards applicable to the SBIR program) of title 13, Code of Federal Regulations, for firms that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program solely under the authority under section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section.

"(B) FINAL REGULATIONS.—Not later than 1 year after the date of enactment of this Act, and after providing notice of and opportunity for comment on the proposed regulations issued under subparagraph (A), the Administrator shall issue final or interim final regulations under this subsection.

"(3) CONTENTS.—

"(A) IN GENERAL.—The regulations issued under this subsection shall permit the participation of applicants majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms in the SBIR program in accordance with section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section, unless the Administrator determines—

"(i) in accordance with the size standards established under subparagraph (B), that the applicant is—

"(I) a large business or large entity; or

"(II) majority-owned or controlled by a large business or large entity; or

"(ii) in accordance with the criteria established under subparagraph (C), that the applicant—

"(I) is a foreign-owned business or a foreign entity or is not a citizen of the United States or alien lawfully

admitted for permanent residence; or

"(II) is majority-owned or controlled by a foreign-owned business, foreign entity, or person who is not a citizen of the United States or alien lawfully admitted for permanent residence.

"(B) SIZE STANDARDS.—Under the authority to establish size standards under paragraphs (2) and (3) of section 3(a) of the Small Business Act (15 U.S.C. 632(a)), the Administrator shall, in accordance with paragraph (1) of this subsection, establish size standards for applicants seeking to participate in the SBIR program solely under the authority under section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section.

"(C) CRITERIA FOR DETERMINING FOREIGN OWNERSHIP.—The Administrator shall establish criteria for determining whether an applicant meets the requirements under subparagraph (A)(ii), and, in establishing the criteria, shall consider whether the criteria should include—

"(i) whether the applicant is at least 51 percent owned or controlled by citizens of the United States or domestic venture capital operating companies, hedge funds, or private equity firms;

"(ii) whether the applicant is domiciled in the United States; and

"(iii) whether the applicant is a direct or indirect subsidiary of a foreign-owned firm, including whether the criteria should include that an applicant is a direct or indirect subsidiary of a foreign-owned entity if—

"(I) any venture capital operating company, hedge fund, or private equity firm that owns more than 20 percent of the applicant is a direct or indirect subsidiary of a foreign-owned entity; or

"(II) in the aggregate, entities that are direct or indirect subsidiaries of foreign-owned entities own more than 49 percent of the applicant.

"(D) CRITERIA FOR DETERMINING AFFILIATION.—The Administrator shall establish criteria, in accordance with paragraph (1), for determining whether an applicant is affiliated with a venture capital operating company, hedge fund, private equity firm, or any other business that the venture capital operating company, hedge fund, or private equity firm has financed and, in establishing the criteria, shall specify that—

"(i) if a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an applicant is a minority investor in the applicant, the portfolio companies of the venture capital operating company, hedge fund, or private equity firm shall not be determined to be affiliated with the applicant, unless—

"(I) the venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or

"(II) the venture capital operating company, hedge fund, or private equity firm holds a majority of the seats on the board of directors of the portfolio company;

"(ii) subject to clause (i), the Administrator retains the authority to determine whether a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant, including establishing other criteria;

"(iii) the Administrator may not determine that a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based solely on 1 or more shared investors; and

"(iv) subject to clauses (i), (ii), and (iii), the Administrator retains the authority to determine whether a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based on factors independent of whether there is a shared investor, such as whether there are contractual obligations between the portfolio company and the applicant.

"(4) ENFORCEMENT.—If the Administrator does not issue final or interim final regulations under this subsection on or before the date that is 1 year after the date of enactment of this Act [Dec. 31, 2011], the Administrator may not carry out or establish any pilot program until the date on which the Administrator issues the final or interim final regulations under this subsection.

"(5) DEFINITION.—In this subsection, the terms 'venture capital operating company', 'hedge fund', and 'private equity firm' have the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632), as amended by this section.

"(d) ASSISTANCE FOR DETERMINING AFFILIATES.—

"(1) CLEAR EXPLANATION REQUIRED.—Not later than 30 days after the date of enactment of this Act [Dec. 31, 2011], the Administrator shall post on the Web site of the Administration (with a direct link displayed on the homepage of the Web site of the Administration or the SBIR and STTR Web sites of the Administration)—

"(A) a clear explanation of the SBIR and STTR affiliation rules under part 121 of title 13, Code of Federal Regulations; and

"(B) contact information for officers or employees of the Administration who—

"(i) upon request, shall review an issue relating to the rules described in subparagraph (A);
and

"(ii) shall respond to a request under clause (i) not later than 20 business days after the date on which the request is received.

"(2) INCLUSION OF AFFILIATION RULES FOR CERTAIN SMALL BUSINESS CONCERNS

.—On and after the date on which the final regulations under subsection (c) are issued, the Administrator shall post on the Web site of the Administration information relating to the regulations, in accordance with paragraph (1)."

[For definitions used in section 5107(c), (d) of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

ACCURACY IN FUNDING BASE CALCULATIONS

Pub. L. 112–81, div. E, title LI, §5136, Dec. 31, 2011, 125 Stat. 1849, provided that:

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 31, 2011], and every year thereafter until the date that is 5 years after the date of enactment of this Act, the Comptroller General of the United States shall—

"(1) conduct a fiscal and management audit of the SBIR program and the STTR program for the applicable period to—

"(A) determine whether Federal agencies comply with the expenditure amount requirements under subsections (f)(1) and (n)(1) of section 9 of the Small Business Act (15 U.S.C. 638), as amended by this title;

"(B) assess the extent of compliance with the requirements of section 9(i)(2) of the Small Business Act (15 U.S.C. 638(i)(2)) by Federal agencies participating in the SBIR program or the STTR program and the Administration;

"(C) assess whether it would be more consistent and effective to base the amount of the allocations under the SBIR program and the STTR program on a percentage of the research and development budget of a Federal agency, rather than the extramural budget of the Federal agency; and

"(D) determine the portion of the extramural research or research and development budget of a Federal agency that each Federal agency spends for administrative purposes relating to the SBIR program or STTR program, and for what specific purposes it is used, including the portion, if any, of such budget the Federal agency spends for salaries and expenses, travel to visit applicants, outreach events, marketing, and technical assistance; and

"(2) submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives regarding the audit conducted under paragraph (1), including the assessments required under subparagraph (B) and the determinations made under subparagraph (D) of paragraph (1).

"(b) DEFINITION OF APPLICABLE PERIOD.—In this section, the term 'applicable period' means—

"(1) for the first report submitted under this section, the period beginning on October 1, 2005, and ending on September 30 of the last full fiscal year before the date of enactment of this Act [Dec. 31, 2011] for which information is available; and

"(2) for the second and each subsequent report submitted under this section, the period—

"(A) beginning on October 1 of the first fiscal year after the end of the most recent full fiscal year relating to which a report under this section was submitted; and

"(B) ending on September 30 of the last full fiscal year before the date of the report."

[For definitions used in section 5136 of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

TRANSITIONAL RULE

Pub. L. 112–81, div. E, title LI, §5141(b)(2), Dec. 31, 2011, 125 Stat. 1853, provided that:

"Notwithstanding the amendments made by paragraph (1) [amending this section], subsections (f)(2) and (y)(4) of section 9 of the Small Business Act (15 U.S.C. 638), as in effect on the day before the date of enactment of this Act [Dec. 31, 2011], shall continue to apply to each Federal agency until the effective date of the performance criteria established by the [Small Business] Administrator under subsection (mm)(3) of section 9 of the Small Business Act [15 U.S.C. 638(mm)(3)], as added by subsection (a)."

CONFORMING AMENDMENTS TO THE SBIR AND THE STTR POLICY DIRECTIVES

Pub. L. 112–81, div. E, title LI, §5151, Dec. 31, 2011, 125 Stat. 1857, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 31, 2011], the

Administrator shall promulgate amendments to the SBIR Policy Directive and the STTR Policy Directive to conform such directives to this title [enacting sections 638a and 638b of this title, amending this section and section 632 of this title, and enacting and amending provisions set out as notes under this section] and the amendments made by this title.

"(b) PUBLISHING SBIR POLICY DIRECTIVE AND THE STTR POLICY DIRECTIVE IN THE FEDERAL REGISTER.—Not later than 180 days after the date of enactment of this Act, the Administrator shall publish the amended SBIR Policy Directive and the amended STTR Policy Directive in the Federal Register."

[For definitions used in section 5151 of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

COORDINATION OF THE SBIR PROGRAM AND THE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Pub. L. 112–81, div. E, title LI, §5168, Dec. 31, 2011, 125 Stat. 1862, provided that:

"(a) COORDINATION REQUIRED.—The head of a Federal agency that participates in the SBIR program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program shall coordinate, to the extent possible, the initiatives of the agency with respect to such programs.

"(b) COORDINATION REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 31, 2011], the head of each Federal agency that participates in the SBIR program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program shall submit to the Administrator, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report describing the actions taken during the preceding 1-year period to increase coordination between such programs to maximize existing resources.

"(c) PARTICIPATION REPORT.—Not later than 3 years after the date of enactment of this Act [Dec. 31, 2011], the head of each Federal agency that participates in the SBIR program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program shall submit to the Administrator, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report analyzing whether actions taken to increase the coordination of such programs have been successful in attracting entrepreneurs into the SBIR program and increasing the participation of States with respect to which a low level of SBIR awards have historically been awarded."

[For definitions used in section 5168 of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

CONTINUATION OF SBIR PROGRAM BEYOND TERMINATION DATE

Pub. L. 106–554, §1(a)(4) [div. B, title I, §149], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, provided that: "The Small Business Innovation Research program, otherwise expiring at the end of fiscal year 2000, is authorized to continue in effect during fiscal year 2001."

CONGRESSIONAL FINDINGS: SMALL BUSINESS INNOVATION RESEARCH PROGRAM REAUTHORIZATION ACT OF 2000

Pub. L. 106–554, §1(a)(9) [title I, §102], Dec. 21, 2000, 114 Stat. 2763, 2763A–668, provided that: "Congress finds that—

"(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title], and reauthorized by the Small Business Research and Development Enhancement Act of 1992 [see Short Title of 1992 Amendments note set out under section 631 of this title] (in this title [see Short Title of 2000 Amendment note set out under section 631 of this title] referred to as the 'SBIR program') is highly successful in involving small businesses in federally funded research and development;

"(2) the SBIR program made the cost-effective and unique research and development capabilities possessed by the small businesses of the Nation available to Federal agencies and departments;

"(3) the innovative goods and services developed by small businesses that participated in the SBIR program have produced innovations of critical importance in a wide variety of high-technology fields, including biology, medicine, education, and defense;

"(4) the SBIR program is a catalyst in the promotion of research and development, the commercialization of innovative technology, the development of new products and services, and the continued excellence of this Nation's high-technology industries; and

"(5) the continuation of the SBIR program will provide expanded opportunities for one of the Nation's

vital resources, its small businesses, will foster invention, research, and technology, will create jobs, and will increase this Nation's competitiveness in international markets."

NATIONAL RESEARCH COUNCIL REPORTS

Pub. L. 106-554, §1(a)(9) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A-671, as amended by Pub. L. 112-81, div. E, title LI, §5137, Dec. 31, 2011, 125 Stat. 1850, provided that:

"(a) **STUDY AND RECOMMENDATIONS.**—The head of each agency with a budget of more than \$50,000,000 for its SBIR program for fiscal year 1999, in consultation with the Small Business Administration, shall, not later than 6 months after the date of the enactment of this Act [Dec. 21, 2000], cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to—

"(1) conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs, including—

"(A) a review of the value to the Federal research agencies of the research projects being conducted under the SBIR program, and of the quality of research being conducted by small businesses participating under the program, including a comparison of the value of projects conducted under the SBIR program to those funded by other Federal research and development expenditures;

"(B) to the extent practicable, an evaluation of the economic benefits achieved by the SBIR program, including the economic rate of return, and a comparison of the economic benefits, including the economic rate of return, achieved by the SBIR program with the economic benefits, including the economic rate of return, of other Federal research and development expenditures;

"(C) an evaluation of the noneconomic benefits achieved by the SBIR program over the life of the program;

"(D) a comparison of the allocation for fiscal year 2000 of Federal research and development funds to small businesses with such allocation for fiscal year 1983, and an analysis of the factors that have contributed to such allocation; and

"(E) an analysis of whether Federal agencies, in fulfilling their procurement needs, are making sufficient effort to use small businesses that have completed a second phase award under the SBIR program; and

"(2) make recommendations with respect to—

"(A) measures of outcomes for strategic plans submitted under section 306 of title 5, United States Code, and performance plans submitted under section 1115 of title 31, United States Code, of each Federal agency participating in the SBIR program;

"(B) whether companies who can demonstrate project feasibility, but who have not received a first phase award, should be eligible for second phase awards, and the potential impact of such awards on the competitive selection process of the program;

"(C) whether the Federal Government should be permitted to recoup some or all of its expenses if a controlling interest in a company receiving an SBIR award is sold to a foreign company or to a company that is not a small business concern;

"(D) how to increase the use by the Federal Government in its programs and procurements of technology-oriented small businesses; and

"(E) improvements to the SBIR program, if any are considered appropriate.

"(b) **PARTICIPATION BY SMALL BUSINESS.**—

"(1) **IN GENERAL.**—In a manner consistent with law and with National Research Council study guidelines and procedures, knowledgeable individuals from the small business community with experience in the SBIR program shall be included—

"(A) in any panel established by the National Research Council for the purpose of performing the study conducted under this section; and

"(B) among those who are asked by the National Research Council to peer review the study.

"(2) **CONSULTATION.**—To ensure that the concerns of small business are appropriately considered under this subsection, the National Research Council shall consult with and consider the views of the Office of Technology and the Office of Advocacy of the Small Business Administration and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

"(c) **PROGRESS REPORTS.**—The National Research Council shall provide semiannual progress reports on the study conducted under this section to the Committee on Science [now Committee on Science, Space, and Technology] and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate.

"(d) REPORT.—The National Research Council shall transmit to the heads of agencies entering into an agreement under this section and to the Committee on Science [now Committee on Science, Space, and Technology] and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate—

"(1) not later than 3 years after the date of the enactment of this Act [Dec. 21, 2000], a report including the results of the study conducted under subsection (a)(1) and recommendations made under subsection (a)(2); and

"(2) not later than 6 years after that date of the enactment, an update of such report.

"(e) EXTENSIONS AND ENHANCEMENTS OF AUTHORITY.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of the SBIR/STTR Reauthorization Act of 2011 [div. E of Pub. L. 112–81, approved Dec. 31, 2011], the head of each agency described in subsection (a), in consultation with the Small Business Administration, shall cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to, not later than 4 years after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, and every 4 years thereafter—

"(A) continue the most recent study under this section relating to the issues described in subparagraphs (A), (B), (C), and (E) of subsection (a)(1);

"(B) conduct a comprehensive study of how the STTR program has stimulated technological innovation and technology transfer, including—

"(i) a review of the collaborations created between small businesses and research institutions, including an evaluation of the effectiveness of the program in stimulating new collaborations and any obstacles that may prevent or inhibit the creation of such collaborations;

"(ii) an evaluation of the effectiveness of the program at transferring technology and capabilities developed through Federal funding;

"(iii) to the extent practicable, an evaluation of the economic benefits achieved by the STTR program, including the economic rate of return;

"(iv) an analysis of how Federal agencies are using small businesses that have completed Phase II under the STTR program to fulfill their procurement needs;

"(v) an analysis of whether additional funds could be employed effectively by the STTR program; and

"(vi) an assessment of the systems and minimum performance standards relating to commercialization success established under section 9(qq) of the Small Business Act [15 U.S.C. 638(qq)];

"(C) make recommendations with respect to the issues described in subparagraphs (A), (D), and (E) of subsection (a)(2) and subparagraph (B) of this paragraph; and

"(D) estimate, to the extent practicable, the number of jobs created by the SBIR program or STTR program of the agency.

"(2) CONSULTATION.—An agreement under paragraph (1) shall require the National Research Council to ensure that there is participation by and consultation with the small business community, the Administration, and other interested parties as described in subsection (b).

"(3) REPORTING.—An agreement under paragraph (1) shall require that not later than 4 years after the date of enactment of the SBIR/STTR Reauthorization Act of 2011 [div. E of Pub. L. 112–81, approved Dec. 31, 2011], and every 4 years thereafter, the National Research Council shall submit to the head of the agency entering into the agreement, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, a report regarding the study conducted under paragraph (1) and containing the recommendations described in paragraph (1)."

CONGRESSIONAL FINDINGS AND PURPOSES: SMALL BUSINESS RESEARCH AND DEVELOPMENT ENHANCEMENT ACT OF 1992

Pub. L. 102–564, title I, §102, Oct. 28, 1992, 106 Stat. 4249, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title] (hereafter in this Act [see Short Title of 1992 Amendments note set out under section 631 of this title] referred to as the 'SBIR' program) has been a successful method of involving small business concerns in Federal research and development;

"(2) the small business innovation research program has been an effective catalyst for the development

of technological innovations by small business concerns;

"(3) small business innovation research program participants have provided high quality research and development in a cost-effective manner;

"(4) the innovative products and services developed by small business concerns participating in the small business innovation research program have been important to the national defense, as well as to the missions of the other participating Federal agencies;

"(5) the small business innovation research program has effectively stimulated the commercialization of technology developed through Federal research and development, benefiting both the public and private sectors of the Nation;

"(6) by encouraging the development and commercialization of technological innovations, the small business innovation research program has created jobs, expanded business opportunities for small firms, stimulated the development of new products and services, and improved the competitiveness of the Nation's high technology industries;

"(7) the small business innovation research program has also helped to increase exports from small business concerns;

"(8) despite the general success of the small business innovation research program, the proportion of Federal research and development funds received by small business concerns has not increased over the life of the program, but has remained at 3 percent; and

"(9) although the participating Federal agencies have successfully implemented most aspects of the small business innovation research program, additional outreach efforts are necessary to stimulate increased participation of socially and economically disadvantaged small business concerns.

"(b) PURPOSES.—The purposes of this title [see Short Title of 1992 Amendments note set out under section 631 of this title] are—

"(1) to expand and improve the small business innovation research program;

"(2) to emphasize the program's goal of increasing private sector commercialization of technology developed through Federal research and development;

"(3) to increase small business participation in Federal research and development; and

"(4) to improve the Federal Government's dissemination of information concerning the small business innovation research program, particularly with regard to program participation by women-owned small business concerns and by socially and economically disadvantaged small business concerns."

RECOMMENDATIONS OF SECRETARY OF DEFENSE

Pub. L. 102-564, title I, §106, Oct. 28, 1992, 106 Stat. 4256, required the Secretary of Defense, by Mar. 31, 1996, to submit a recommendation to Congress addressing whether there was a demonstrable reduction in the quality of research performed under the Small Business Innovation Research Program since the beginning of fiscal year 1993, such that increasing the percentage in fiscal years after 1996 under former 15 U.S.C. 638(f)(1)(C) would adversely affect the performance of the research programs of the Department of Defense.

TIMING OF ISSUANCE OF POLICY DIRECTIVE

Pub. L. 102-564, title II, §202(d), Oct. 28, 1992, 106 Stat. 4260, provided that: "The policy directive required by section 9(p) of the Small Business Act [15 U.S.C. 638(p)] (as added by subsection (c) of this section) shall be published—

"(1) in proposed form (with an opportunity for public comment of not less than 30 days), not later than April 30, 1993; and

"(2) in final form, not later than July 31, 1993."

SENSE OF CONGRESS CONCERNING AMERICAN-MADE EQUIPMENT AND PRODUCTS

Pub. L. 102-564, title III, §306, Oct. 28, 1992, 106 Stat. 4263, provided that:

"(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that an entity that is awarded a funding agreement under the SBIR program of a Federal agency under section 9 of the Small Business Act [15 U.S.C. 638] should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of that program.

"(b) NOTICE TO SBIR AWARDEES.—Each Federal agency that awards funding agreements under the SBIR program shall provide to each recipient of such an award a notice describing the sense of the Congress, as set forth in subsection (a)."

SMALL BUSINESS INNOVATION RESEARCH PROGRAM IN DEPARTMENT OF DEFENSE

Pub. L. 102-484, div. D, title XLII, §4237, Oct. 23, 1992, 106 Stat. 2691, provided that:

"(a) EXTENSION OF PROGRAM.—[Amended section 5 of Pub. L. 97–219, formerly set out as a note above.]

"(b) LIMITATION ON PROGRAM AWARDS.—Amounts paid to a small business concern by the Department of Defense under the Small Business Innovation Research Program for a project—

"(1) in phase I under the program may not exceed \$100,000; and

"(2) in phase II under the program may not exceed \$750,000.

"(c) COMMERCIAL APPLICATIONS STRATEGY.—Not later than 270 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the Administrator of the Small Business Administration, shall develop and issue a strategy for effectuating the transition of successful projects under the Small Business Innovation Research Program from phase II under the program into phase III under the program.

"(d) REPEAL OF EXCLUSION OF CERTAIN ACTIVITIES.—[Amended this section.]

"(e) PERCENTAGE OF REQUIRED EXPENDITURES FOR SBIR CONTRACTS.—(1) The Small Business Innovation Research Program shall apply to the Department of Defense (including the military departments) as if the percentage specified in section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) with respect to fiscal years after fiscal year 1982 were determined in accordance with the table set forth in paragraph (2) (rather than 1.25 percent).

"(2)(A) The percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for any fiscal year for the Department of Defense and each military department shall be determined in accordance with the following table:

"For fiscal year:	The percentage is:
1993	1.25
1994	1.5
1995	1.75
1996	2.0
1997	2.25
1998 and thereafter	2.5.

"(B) If the determination of the Secretary of Defense under subparagraph (C) is a negative determination (as set forth in that paragraph), then the percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for the Department of Defense and each military department for fiscal years after fiscal year 1996 shall remain at the level applicable for fiscal year 1996 (notwithstanding the percentages specified in subparagraph (A) for fiscal years after fiscal year 1996).

"(C) Not later than June 30, 1996, the Secretary of Defense during fiscal year 1996 shall determine whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the Department of Defense under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs. If the determination of the Secretary is that there has been such a demonstrable reduction in the quality of research such that increasing the percentage under subparagraph (B) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs, the Secretary shall be considered for purposes of subparagraph (B) to have made a negative determination. The determination of the Secretary concerned under this paragraph shall be made after considering the assessment of the Comptroller General with respect to that department in the report transmitted under subparagraph (D).

"(D) Not later than March 30, 1996, the Comptroller General shall transmit to the Congress and the Secretary of Defense a report setting forth the Comptroller General's assessment, with respect to the Department of Defense of whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the department under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs.

"(E) The results of each determination under subparagraph (C) shall be transmitted to the Congress not later than June 30, 1996.

"(f) DEFINITIONS.—In this section:

"(1) The term 'Small Business Innovation Research Program' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

"(A) Paragraphs (4) through (7) of subsection (b).

"(B) Subsections (e) through (k).

"(2) The term 'phase I', with respect to the Small Business Innovation Research Program, means the first phase described in subsection (e)(4)(A) of section 9 of the Small Business Act.

"(3) The term 'phase II', with respect to the Small Business Innovation Research Program, means the second phase described in subsection (e)(4)(B) of such section.

"(4) The term 'phase III', with respect to the Small Business Innovation Research Program, means the third phase described in subsection (e)(4)(C) of such section.

"(g) EFFECTIVE DATE.—Subject to subsection (h), this section, and the amendments made by this section, shall take effect on October 1, 1992, and shall apply with respect to fiscal years after fiscal year 1992.

"(h) EFFECTIVENESS OF SECTION CONDITIONAL ON FAILURE TO ENACT OTHER LEGISLATION.—(1) In the event of the enactment of H.R. 4400 or S. 2941 [S. 2941 was enacted into law as Pub. L. 102–564 on Oct. 28, 1992], 102d Congress, on or before the date of the enactment of this Act [Oct. 23, 1992], then this section and the amendments made by this section shall not take effect.

"(2)(A) In the event of the enactment of H.R. 4400 or S. 2941, 102d Congress, after the date of the enactment of this Act, then, effective immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress—

"(i) this section shall cease to be effective; and

"(ii) the provisions of a small business law that are amended by this section shall be effective and read as such provisions of that law were in effect immediately before the enactment of this Act, except that to the extent that any amendment is made to such a provision of a small business law by any other provision of law referred to in subparagraph (B), such provision of a small business law shall be effective and shall read as amended by that other provision of law.

"(B) For the purposes of subparagraph (A)(ii), a provision of law referred to in this subparagraph is the following:

"(i) A provision of this Act other than a provision of this section.

"(ii) A provision of any other Act if the provision takes effect during the period beginning on the date of the enactment of this Act and ending immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress.

"(C) In this paragraph, the term 'small business law' means—

"(i) the Small Business Act (15 U.S.C. 631 et seq.); and

"(ii) the Small Business Innovation Development Act of 1982 [Pub. L. 97–219] (15 U.S.C. 638 note)."

USE OF DEPARTMENT OF AGRICULTURE EXTRAMURAL BUDGET FUNDS IN SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Pub. L. 99–500, §101(a) [title VI, §630], Oct. 18, 1986, 100 Stat. 1783, 1783–30, and Pub. L. 99–591, §101(a) [title VI, §630], Oct. 30, 1986, 100 Stat. 3341, 3341–30, provided that: "All funds appropriated for this fiscal year and all funds appropriated hereafter by this or any other Act that are determined to be part of the 'extramural budget' of the Department of Agriculture for any fiscal year for purposes of meeting the requirements of section 9 of the Small Business Act (15 U.S.C. 638), as amended by the Small Business Innovation Development Act of 1982, Public Law 97–219, shall be available for contracts, grants or cooperative agreements with small business concerns for any purpose in furtherance of the small business innovation research program. Such funds may be transferred for such purpose from one appropriation to another or to a single account."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE: SMALL BUSINESS INNOVATION DEVELOPMENT ACT OF 1982

Pub. L. 97–219, §2, July 22, 1982, 96 Stat. 217, provided that:

"(a) The Congress finds that—

"(1) technological innovation creates jobs, increases productivity, competition, and economic growth, and is a valuable counterforce to inflation and the United States balance-of-payments deficit;

"(2) while small business is the principal source of significant innovations in the Nation, the vast majority of federally funded research and development is conducted by large businesses, universities, and Government laboratories; and

"(3) small businesses are among the most cost-effective performers of research and development and

are particularly capable of developing research and development results into new products.

"(b) Therefore, the purposes of the Act [amending this section] are—

"(1) to stimulate technological innovation;

"(2) to use small business to meet Federal research and development needs;

"(3) to foster and encourage participation by minority and disadvantaged persons in technological innovation; and

"(4) to increase private sector commercialization innovations derived from Federal research and development."

REPORTS OF COMPTROLLER GENERAL

Pub. L. 102–564, title I, §105, Oct. 28, 1992, 106 Stat. 4254, required the Comptroller General to submit to Congress an interim report, by Mar. 31, 1995, concerning the quality of research performed under Small Business Innovation Research Program funding agreements entered into during fiscal year 1993 and thereafter and a final report, no later than 5 years after Oct. 28, 1992, concerning various aspects of the Small Business Innovation Research Program.

Pub. L. 102–564, title II, §202(e), Oct. 28, 1992, 106 Stat. 4260, required the Comptroller General to submit a report to Congress and the head of each agency required to make expenditures under the Small Business Technology Transfer Program setting forth the Comptroller General's assessment of various aspects of the program and with the agencies' compliance with procedural requirements.

Pub. L. 97–219, §6, July 22, 1982, 96 Stat. 221, as amended by Pub. L. 99–443, §3, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 100–418, title VIII, §8008, Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–647, title IX, §9003, Nov. 10, 1988, 102 Stat. 3808, required the Comptroller General, by Dec. 31, 1988, to transmit a report to appropriate Congressional committees evaluating the effectiveness of the initial phases of the Small Business Innovation Research Program, by Dec. 31, 1991, to transmit to such committees an update of the earlier report, and by July 1, 1989, to transmit to such committees recommendations as to the advisability of certain amendments to the Small Business Innovation Research Program.

DEFINITIONS

Pub. L. 117–183, §2, Sept. 30, 2022, 136 Stat. 2180, provided that: "In this Act [amending this section and enacting provisions set out as notes under this section and section 631 of this title]:

"(1) ADMINISTRATION; ADMINISTRATOR.—The terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively.

"(2) FEDERAL AGENCY; PHASE I; PHASE II; PHASE III; SBIR; STTR.—The terms 'Federal agency', 'Phase I', 'Phase II', 'Phase III', 'SBIR', and 'STTR' have the meanings given those terms, respectively, in section 9(e) of the Small Business Act (15 U.S.C. 638(e))."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13329. ENCOURAGING INNOVATION IN MANUFACTURING

Ex. Ord. No. 13329, Feb. 24, 2004, 69 F.R. 9181, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, as amended (15 U.S.C. 631 *et seq.*), and to help ensure that Federal agencies properly and effectively assist the private sector in its manufacturing innovation efforts, it is hereby ordered as follows:

SECTION 1. *Policy.* Continued technological innovation is critical to a strong manufacturing sector in the United States economy. The Federal Government has an important role, including through the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs, in helping to advance innovation, including innovation in manufacturing, through small businesses.

SEC. 2. *Duties of Department and Agency Heads.* The head of each executive branch department or agency with one or more SBIR programs or one or more STTR programs shall:

(a) to the extent permitted by law and in a manner consistent with the mission of that department or agency, give high priority within such programs to manufacturing-related research and development to advance the policy set forth in section 1 of this order; and

(b) submit reports annually to the Administrator of the Small Business Administration and the Director of the Office of Science and Technology Policy concerning the efforts of such department or agency to implement subsection 2(a) of this order.

SEC. 3. *Duties of Administrator of the Small Business Administration.* The Administrator of the Small Business Administration:

(a) shall establish, after consultation with the Director of the Office of Science and Technology Policy, formats and schedules for submission of reports by the heads of departments and agencies under subsection 2(b) of this order; and

(b) is authorized to issue to departments and agencies guidelines and directives (in addition to the formats and schedules under subsection 3(a)) as the Administrator determines from time to time are necessary to implement subsection 2(a) of this order, after such guidelines and directives are submitted to the President, through the Director of the Office of Science and Technology Policy, for approval and are approved by the President.

SEC. 4. *Definitions.* As used in this order:

(a) "Small Business Innovation Research (SBIR) program" means a program to which section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)(4)) refers;

(b) "Small Business Technology Transfer (STTR) program" means a program to which section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)(6)) refers;

(c) "research and development" means an activity set forth in section 9(e)(5) of the Small Business Act (15 U.S.C. 638(e)(5)); and

(d) "manufacturing-related" means relating to: (i) manufacturing processes, equipment and systems; or (ii) manufacturing workforce skills and protection.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect the authority of the Director of the Office of Management and Budget with respect to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require disclosure of information the disclosure of which is prohibited by law or by Executive Order, including [former] Executive Order 12958 of April 17, 1995, as amended.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

¹ *See References in Text note below.*

² *So in original. Probably should be "investor;".*

³ *So in original.*

⁴ *So in original. Probably should be "subparagraph (B)".*

⁵ *So in original. Probably should be preceded by "subsection".*

§638a. GAO study with respect to venture capital operating company, hedge fund, and private equity firm involvement

Not later than 3 years after December 31, 2011, and every 3 years thereafter, the Comptroller General of the United States shall—

(1) conduct a study of the impact of requirements relating to venture capital operating company, hedge fund, and private equity firm involvement under section 638 of this title; and

(2) submit to Congress a report regarding the study conducted under paragraph (1).

(Pub. L. 112–81, div. E, title LI, §5142, Dec. 31, 2011, 125 Stat. 1854.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which

comprises this chapter.

§638b. Reducing vulnerability of SBIR and STTR programs to fraud, waste, and abuse

(a) Fraud, waste, and abuse prevention

(1) Amendments required for fraud, waste, and abuse prevention

Not later than 90 days after December 31, 2011, the Administrator shall amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse in the SBIR program and the STTR program.

(2) Content of amendments

The amendments required under paragraph (1) shall include—

- (A) definitions or descriptions of fraud, waste, and abuse;
- (B) guidelines for the monitoring and oversight of applicants to and recipients of awards under the SBIR program or the STTR program;
- (C) a requirement that each Federal agency that participates in the SBIR program or STTR program include information concerning the method established by the Inspector General of the Federal agency to report fraud, waste, and abuse (including any telephone hotline or Web-based platform)—
 - (i) on the Web site of the Federal agency; and
 - (ii) in any solicitation or notice of funding opportunity issued by the Federal agency for the SBIR program or the STTR program; and

(D) a requirement that each applicant for and small business concern that receives funding under the SBIR program or the STTR program shall certify whether the applicant or small business concern is in compliance with the laws relating to the SBIR program and the STTR program and the conduct guidelines established under the SBIR Policy Directive and the STTR Policy Directive.

(3) Consultation

The Administrator shall develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for the certification set forth under paragraph (2)(D) after providing notice of and an opportunity for public comment on such procedures and requirements.

(4) Certification

The certification developed under paragraph (3) may—

- (A) cover the lifecycle of an award to require certifications at the application, funding, reporting, and closeout phases of every SBIR and STTR award;
- (B) require the small business concern to certify compliance with the "principal investigator ¹ primary employment" requirement, the "small business concern" definition requirement, and the "performance of work" requirements as set forth in the Directive applicable to the award;
- (C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and
- (D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

(5) Inspectors General

The Inspector General of each Federal agency that participates in the SBIR program or STTR program shall cooperate to prevent fraud, waste, and abuse in the SBIR program and the STTR program by—

- (A) establishing fraud detection indicators;
- (B) reviewing regulations and operating procedures of the Federal agency;
- (C) coordinating information sharing between Federal agencies, to the extent otherwise permitted under Federal law; and
- (D) improving the education and training of and outreach to—
 - (i) administrators of the SBIR program and the STTR program of the Federal agency;
 - (ii) applicants to the SBIR program or the STTR program; and
 - (iii) recipients of awards under the SBIR program or the STTR program.

(b) Study and report

Not later than 1 year after December 31, 2011, to establish a baseline of changes made to the program to fight fraud, waste, and abuse, and every 4 years thereafter to evaluate the effectiveness of the agency strategies, the Comptroller General of the United States shall—

(1) conduct a study that evaluates—

(A) the implementation by each Federal agency that participates in the SBIR program or the STTR program of the amendments to the SBIR Policy Directive and the STTR Policy Directive made pursuant to subsection (a);

(B) the effectiveness of the management information system of each Federal agency that participates in the SBIR program or STTR program in identifying duplicative SBIR and STTR projects;

(C) the effectiveness of the risk management strategies of each Federal agency that participates in the SBIR program or STTR program in identifying areas of the SBIR program or the STTR program that are at high risk for fraud;

(D) technological tools that may be used to detect patterns of behavior that may indicate fraud by applicants to the SBIR program or the STTR program;

(E) the success of each Federal agency that participates in the SBIR program or STTR program in reducing fraud, waste, and abuse in the SBIR program or the STTR program of the Federal agency;

(F) the extent to which the Inspector General of each Federal agency that participates in the SBIR and STTR program effectively conducts investigations, audits, inspections, and outreach relating to the SBIR and STTR programs of the Federal agency; and

(G) the effectiveness of the Government and public databases described in section 638(k) of this title in reducing vulnerabilities of the SBIR program and the STTR program to fraud, waste, and abuse, particularly with respect to Federal agencies funding duplicative proposals and business concerns falsifying information in proposals; and

(2) submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the head of each Federal agency that participates in the SBIR program or STTR program a report on the results of the study conducted under paragraph (1).

(c) Inspector General reports

Not later than October 1 of each year, the Inspector General of each Federal agency that participates in the SBIR program or STTR program shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report describing—

(1) the number of cases referred to the Inspector General in the preceding year that related to fraud, waste, or abuse with respect to the SBIR program or STTR program;

(2) the actions taken in each case described in paragraph (1) if fraud, waste, or abuse was determined to have occurred;

(3) if no action was taken in a case described in paragraph (1) and fraud, waste, or abuse was determined to have occurred, the justification for action not being taken; and

(4) an accounting of the funds used to address fraud, waste, and abuse, including a description of personnel and resources funded and funds that were recovered or saved.

(Pub. L. 112–81, div. E, title LI, §5143, Dec. 31, 2011, 125 Stat. 1854.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

Pub. L. 112–81, div. E, title L, §5002, Dec. 31, 2011, 125 Stat. 1823, provided that: "In this division [enacting this section and section 638a of this title, amending sections 632 and 638 of this title, enacting provisions set out as notes under this section and sections 631 and 638 of this title, and amending provisions set out as a note under section 638 of this title]—

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

"(2) the terms 'extramural budget', 'Federal agency', 'Small Business Innovation Research Program', 'SBIR', 'Small Business Technology Transfer Program', and 'STTR' have the meanings given such terms in section 9 of the Small Business Act (15 U.S.C. 638); and

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

¹ So in original. Probably should be "investor".

§639. Reporting requirements and agency cooperation

(a) Annual reports to President and Congressional officers and committees

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this chapter provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this chapter.

(b) Cybersecurity reports

(1) Annual report

Not later than 180 days after December 21, 2022, and every year thereafter, the Administrator shall submit a report to the appropriate congressional committees that includes—

(A) a strategy to increase the cybersecurity of information technology infrastructure of the Administration;

(B) a supply chain risk management strategy and an implementation plan to address the risks of foreign manufactured information technology equipment utilized by the Administration, including specific risk mitigation activities for components originating from entities with principal places of business located in the People's Republic of China; and

(C) an account of—

(i) any incident that occurred at the Administration during the 2-year period preceding the date on which the first report is submitted, and, for subsequent reports, the 1-year period preceding the date of submission; and

(ii) any action taken by the Administrator to respond to or remediate any such incident.

(2) FISMA reports

Each report required under paragraph (1) may be submitted as part of the report required under section 3554 of title 44.

(3) Rule of construction

Nothing in this subsection shall be construed to affect the reporting requirements of the Administrator under chapter 35 of title 44, in particular the requirement to notify the Federal information security incident center under section 3554(b)(7)(C)(ii) of such title, any guidance issued by the Office of Management and Budget, or any other provision of law or Federal policy.

(4) Definitions

In this subsection:

(A) Appropriate congressional committees

The term "appropriate congressional committees" means—

- (i) the Committee on Small Business and Entrepreneurship of the Senate;
- (ii) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (iii) the Committee on Small Business of the House of Representatives; and
- (iv) the Committee on Oversight and Reform of the House of Representatives.

(B) Incident

The term "incident" has the meaning given the term in section 3552 of title 44.

(C) Information technology

The term "information technology" has the meaning given the term in section 3502 of title 44.

(c) Repealed. Pub. L. 104–66, title I, §1091(f), Dec. 21, 1995, 109 Stat. 722

(d) Annual report of Department of Defense

For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

(e) Retention of records

- (1) ¹ The Administration and the Inspector General of the Administration shall retain all

correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives, or their duly authorized representatives.

(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 636(j) or 637(a) of this title. Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request by such office.

(f) Consultation and cooperation with Government departments and agencies

To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration

The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(h) Report to Congress on secondary market operations

The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

(Pub. L. 85-536, §2[10], July 18, 1958, 72 Stat. 393; Pub. L. 87-305, §5(a), Sept. 26, 1961, 75 Stat. 666; Pub. L. 89-348, §1(3), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93-237, §7, Jan. 2, 1974, 87 Stat. 1025; Pub. L. 93-386, §4, Aug. 23, 1974, 88 Stat. 746; Pub. L. 93-608, §3(4), (5), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95-89, title II, §§203-208, 211, Aug. 4, 1977, 91 Stat. 557, 558; Pub. L. 95-315, §6, July 4, 1978, 92 Stat. 379; Pub. L. 97-35, title XIX, §1904, Aug. 13, 1981, 95 Stat. 772; Pub. L.

98–352, §4, July 10, 1984, 98 Stat. 331; Pub. L. 100–656, title IV, §406, Nov. 15, 1988, 102 Stat. 3876; Pub. L. 101–37, §15, June 15, 1989, 103 Stat. 73; Pub. L. 101–574, title II, §241, Nov. 15, 1990, 104 Stat. 2826; Pub. L. 104–66, title I, §1091(f), Dec. 21, 1995, 109 Stat. 722; Pub. L. 115–189, §7, June 21, 2018, 132 Stat. 1498; Pub. L. 117–259, §2(a), Dec. 21, 2022, 136 Stat. 2387.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior similar provisions were contained in sections 211 and 215 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, 238, as amended by act Aug. 9, 1955, ch. 628, §§6, 10, 11, 69 Stat. 550, 551, which were previously classified to sections 640 and 644 of this title. The provisions of section 210 of act July 30, 1953, formerly classified to this section, were transferred to section 2 [8] of Pub. L. 85–536, and are classified to section 637(b)(2) of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2022—Subsec. (b). Pub. L. 117–259 added subsec. (b).

2018—Subsec. (b). Pub. L. 115–189 struck out subsec. (b). Text read as follows: "The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business and to the Committee on Small Business of the House of Representatives, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids. Such report shall contain the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by this chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives."

1995—Subsec. (c). Pub. L. 104–66 struck out subsec. (c) which related to surveys, and their corresponding reports and recommendations, for the determination of factors tending to injure small businesses.

1990—Subsec. (d). Pub. L. 101–574 substituted "the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives" for "the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than 45 ["forty-five" in original text] days after the close of the month", "small business concerns" for "small-business concerns", and "such reports" for "such monthly reports".

1989—Subsec. (e)(2). Pub. L. 101–37 substituted ", of the disposition of the request" for "of the disposition of the matter".

1988—Subsec. (e). Pub. L. 100–656 inserted "and the Inspector General of the Administration" after "Administration", which was executed by making the insertion after the first reference to "Administration", and added par. (2).

1984—Subsec. (h). Pub. L. 98–352 added subsec. (h).

1981—Subsec. (b). Pub. L. 97–35 substituted "this chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives" for "subsection, and on the projected and actual energy savings and numbers of jobs created by firms through loans made under section 636(l) of this title. The Department of Energy shall assist the Administration in obtaining information and compiling this report".

1978—Subsec. (b). Pub. L. 95–315 inserted provisions requiring the report to contain number and amount of loans, applications for loans, etc.

1977—Subsec. (a). Pub. L. 95–89, §§203, 211, included the Senate Select Committee on Small Business as an additional recipient of the annual report and provided for the contents of the report as it relates to minority small business concerns.

Subsec. (b). Pub. L. 95–89, §204, substituted "Committee on Small Business of the House of Representatives" for "House Select Committee to Conduct a Study and Investigation of the Problems of Small Business".

Subsec. (c)(2). Pub. L. 95–89, §205, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (d). Pub. L. 95–89, §206, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (e). Pub. L. 95–89, §207, substituted "Committee on Small Business of the House of Representatives" for "House Select Committee To Conduct a Study and Investigation of the Problems of Small Business".

Subsec. (g). Pub. L. 95–89, §208, substituted "Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives" for "Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives".

1975—Subsec. (a). Pub. L. 93–608, §3(4), substituted "fiscal" for "calendar" in two places and struck out provisions requiring report to contain information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation and other information deemed appropriate by the Administration.

Subsec. (b). Pub. L. 93–608, §3(5), substituted "as soon as practicable each fiscal year" for "on December 31 of each year".

1974—Subsec. (a). Pub. L. 93–237 substituted provisions requiring the Administration to make comprehensive annual reports to the President and Congressional Officers as soon as practicable describing the state of the small business in the Nation and the States, the operations of the Administration, and recommendations for legislation, for provisions requiring the Administration to make reports on Dec. 31 of each year to the President and Congressional Officers.

Subsec. (g). Pub. L. 93–386 added subsec. (g).

1965—Subsec. (a). Pub. L. 89–348 repealed provision of subsec. (a) which required as part of the annual report to the President and to Congress by the Small Business Administration, a report on the progress in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation.

1961—Subsec. (a). Pub. L. 87–305, §5(a)(1), changed the reporting requirements from semiannual to annual basis and required the inclusion of information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation, such requirement to be in lieu of progress reports on a quarterly basis.

Subsec. (b). Pub. L. 87–305, §5(a)(2), struck out "June 30 and" before "December 31".

Subsec. (c). Pub. L. 87–305, §5(a)(3), designated existing provisions of first and second sentences as pars. (1) and (2), substituted "direct" for "request" and "promote undue concentration of economic power, or otherwise injure small business" for "injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this chapter" and inserted "of any activity of the Government which may affect small business," after "surveys" in par. (1) and required reports to be made not less than once every year in par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (a), (b), and (d) of this section relating to submitting annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 64 and 191 of House Document No. 103-7.

SMALL BUSINESS ADMINISTRATION PROGRAM DATA AND EVALUATION; REPORT; IMPLEMENTATION

Pub. L. 100-590, title I, §109, Nov. 3, 1988, 102 Stat. 2994, provided that: "The Small Business Administration shall develop a comprehensive system to systematically acquire data on the number of small businesses which participate in Administration programs, the nature and extent of their participation, the type of business, the results of such participation, and such other information as the Administration deems appropriate. It shall also include the number and dollar amount of guaranteed loans by lender, and the interest rate thereon, and the number and dollar amount of sales in the secondary market both by lender and by purchaser. The data shall be compiled and maintained to permit a statistically valid analysis and computation and evaluation of costs and benefits. The Administration shall submit a report to the Small Business Committees of the Senate and the House of Representatives not later than March 31, 1989, such report to include its conclusions and recommendations and estimate of the costs involved in implementing such a program and shall implement the system for all program assistance made available on or after October 1, 1989."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 11518. INCREASED REPRESENTATION OF INTERESTS OF SMALL BUSINESS CONCERNS BEFORE GOVERNMENT DEPARTMENTS AND AGENCIES

Ex. Ord. No. 11518, Mar. 20, 1970, 35 F.R. 4939, provided:

WHEREAS the policy of the Government of the United States is to insure the continuance of a strong and healthy free enterprise system; and

WHEREAS the existence of a strong and healthy free enterprise system is directly related to the well being and competitive strength of small business concerns and their opportunities for free entry into business, growth, and expansion; and

WHEREAS the departments and agencies of the United States Government exercise, through their regulatory and other programs and practices, a significant influence on the well being and competitive strength of business concerns, particularly minority-owned business concerns, and their opportunities for free entry into business, growth and expansion; and

WHEREAS members of minority groups traditionally have aspired to own their own businesses and thereby to participate in our free enterprise system; and

WHEREAS members of certain minority groups through no fault of their own have been denied the full opportunity to achieve these aspirations; and

WHEREAS the policy of the Executive Branch of the United States Government continues to be, as was described by President Dwight D. Eisenhower, "to strive to eliminate obstacles to the growth of small business"; and

WHEREAS the Small Business Act (72 Stat. 384, 15 U.S.C. 631) declares the Congressional policy that the United States Government should aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns; and

WHEREAS the Small Business Administration is the agency within the Executive Branch of the United States Government especially responsible for and with an established program of advocacy in matters relating to small business; and

WHEREAS section 8(b)(12) of the Small Business Act (72 Stat. 391, 15 U.S.C. 637(b)(12)) empowers the Small Business Administration to consult and cooperate with all Government agencies for the purpose of insuring that small business concerns receive fair and reasonable treatment from such agencies, and section 10(f) of that Act (72 Stat. 393, 15 U.S.C. 639(f)) requires each department and agency of the Federal Government, when requested by the Administrator of the Small Business Administration, to consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small business concerns, in order to insure that small business interests will be recognized, protected, and preserved:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Small Business Act, it is ordered as follows:

SECTION 1. The Small Business Administration, as the spokesman for and advocate of the small business community, shall advise and counsel small business concerns in their dealings with the departments and agencies of the United States Government to the end that the views of small business concerns will be fully

heard, their rights fully protected, and their valid interests fully advanced.

SEC. 2. Departments and agencies of the Executive Branch of the United States Government shall call upon the Small Business Administration for advice, guidance, and assistance when considering matters which reasonably can be construed as materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. In taking action on such matters, these departments and agencies shall act in a manner calculated to advance the valid interests of small business concerns.

SEC. 3. The Small Business Administration, whenever it determines that the valid interests of small business concerns so warrant, shall take such action as may be appropriate to insure the timely presentation to departments and agencies of the United States Government of matters materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. To this end, the Small Business Administration may participate in investigations, hearings, or other proceedings pending before such departments or agencies and submit evidence, briefs, and arguments in accordance with, and to the extent permitted by, the department's or agency's rules of practice and procedure.

SEC. 4. In performing the responsibilities and duties placed on it by this order, the Small Business Administration shall particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community.

SEC. 5. Nothing in this order shall be construed to authorize the Small Business Administration to act as an attorney for an individual concern in any investigation, hearing, or other proceeding pending before any department or agency of the United States Government. Nothing in this order shall be construed to subject any department or agency to the authority of any other department or agency, to affect the present authority of any department or agency to participate in the proceedings of another department or agency, or to affect the authority of the Attorney General under 28 U.S.C. 519.

SEC. 6. The term "small business concern" as used in this order shall have the same meaning as in the Small Business Act.

RICHARD NIXON.

¹ Paragraph designation "(1)" supplied editorially.

§639a. Review of loan program; submission of estimated needs for additional authorization

It is the sense of the Congress that the regular business loan program of the Small Business Administration should be reviewed by the Congress at least once every two years. It is further the sense of the Congress that the Small Business Administration should submit its estimated needs for additional authorization for such program to the Congress at least one year in advance of the date on which such authorization is to be provided, in order to assure an orderly and recurring review of such program and to avoid emergency appeals for additional authorization. Compliance by the Small Business Administration with the foregoing policy will enable the Congress on and after July 25, 1962, to provide additional authorization for such program on a two-year basis.

(Pub. L. 87-550, §1(b), July 25, 1962, 76 Stat. 221.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§639b. Oversight

(a) Compliance with oversight requirements

(1) In general

Except as provided in paragraph (2), on and after December 27, 2020, the Administrator shall comply with any data or information requests or inquiries made by the Comptroller General of the

United States not later than 15 days (or such later date as the Comptroller General may specify) after receiving the request or inquiry.

(2) Exception

If the Administrator is unable to comply with a request or inquiry described in paragraph (1) before the applicable date described in that paragraph, the Administrator shall, before such applicable date, submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a notification that includes a detailed justification for the inability of the Administrator to comply with the request or inquiry.

(b) Testimony

Not later than the date that is 120 days after December 27, 2020, and not less than twice each year thereafter until the date that is 2 years after December 27, 2020, the Administrator and the Secretary of the Treasury shall testify before the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding implementation of this Act and the amendments made by this Act.

(Pub. L. 116–260, div. N, title III, §321, Dec. 27, 2020, 134 Stat. 2017.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (b), probably means title III of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 1993, known as the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act. For complete classification of title III to the Code, see Short Title of 2020 Amendment note set out under section 9001 of this title and Tables.

CODIFICATION

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as an Effective Date of 2020 Amendment note under section 636 of this title.

DEFINITION OF "ADMINISTRATOR"

"Administrator" means the Administrator of the Small Business Administration, see section 302 of Pub. L. 116–260, set out as a note under section 9001 of this title.

§640. Voluntary agreements among small-business concerns

(a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

(b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.] of the United States. A copy of each such request

intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) Delegation of authority; consultation; approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

(d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

(Pub. L. 85-536, §2[11], July 18, 1958, 72 Stat. 394.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 646 of this title. The provisions of section 211 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85-536, and are classified to section 639(d), (f) of this title. See Codification note set out under section 631 of this title.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 10493. DELEGATION OF FUNCTIONS

Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, provided:

SECTION 1. The functions conferred upon the President by section 217 of the Small Business Act of 1953 [covered by this section] are hereby delegated to the Administrator of the Small Business Administration and shall be carried out as provided in the said section 217.

SEC. 2. There is hereby delegated to the Administrator of the Small Business Administration so much of the functions conferred upon the President by section 708 of the Defense Production Act of 1950, as amended [50 U.S.C. 4558], as necessary to effect changes in the composition of, or to take other action respecting voluntary agreements and programs relating to, small-business production pools approved prior to July 31, 1953, pursuant to the said section 708 [50 U.S.C. 4558]: *Provided*, That this section shall not be construed as limiting the authority of the Director of the Office of Defense Mobilization under Executive Order No. 10480 of August 14, 1953 (18 F.R. 4939) [formerly set out as a note under section 2153 of the former Appendix to Title 50]. The functions delegated to the Administrator by this section shall be carried out as provided in section 708 of the Defense Production Act of 1950, as amended [50 U.S.C. 4558].

SEC. 3. Without prejudice to any action taken thereunder, Executive Order No. 10370 of July 7, 1952 (17 F.R. 6141), is hereby revoked.

DWIGHT D. EISENHOWER.

§641. Transfer to Administration of other functions, powers, and duties

The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

(Pub. L. 85-536, §2[12], July 18, 1958, 72 Stat. 394.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior similar provisions were contained in section 218 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, as amended by act Aug. 9, 1955, ch. 628, §12, 69 Stat. 551, which was previously classified to section 647 of this title. The provisions of section 212 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are classified to section 637(b) of this title. See Codification note set out under section 631 of this title.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 10504

Ex. Ord. No. 10504, Dec. 1, 1953, 18 F.R. 7667, which provided for the transfer of functions of the Small Defense Plants Administration to the Small Business Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11871

Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, which transferred the functions of ACTION Agency relating to the Service Corps of Retired Executives and Active Corps of Executives to the Small Business Administration, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§642. Requirements for loans

No loan shall be made or equipment, facilities, or services furnished by the Administration under this chapter to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this chapter; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

(Pub. L. 85-536, §2[13], July 18, 1958, 72 Stat. 394.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior similar provisions were contained in section 219 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

§643. Fair charge for use of Government-owned property

To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

(Pub. L. 85–536, §2[14], July 18, 1958, 72 Stat. 395.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior similar provisions were contained in section 220 of act July 30, 1953, ch. 282, title II, 67 Stat. 240, which was previously classified to section 649 of this title. The provisions of section 214 of act July 30, 1953, formerly classified to this section, were transferred to section 2[15] of Pub. L. 85–536, and are classified to section 644 of this title. See Codification note set out under section 631 of this title.

§644. Awards or contracts

(a) Small business procurements

(1) In general

For purposes of this chapter, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

- (A) maintaining or mobilizing the full productive capacity of the United States;
- (B) war or national defense programs; or
- (C) assuring that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

(2) Industry category defined

(A) In general

In this subsection, the term "industry category" means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

- (i) due to special capital equipment needs;
- (ii) due to special labor requirements;
- (iii) due to special geographic requirements, except as provided in subparagraph (B);
- (iv) due to unique Federal buying patterns or requirements; or
- (v) to recognize a new industry.

(B) Exception for geographic requirements

The Administrator may not further segment an industry category based on geographic requirements unless—

- (i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;
- (ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and
- (iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or

similar economic factors.

(3) Determinations with respect to awards or contracts

Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.

(4) Increasing prime contracting opportunities for small business concerns

(A) Description of covered proposed procurements

The requirements of this paragraph shall apply to a proposed procurement that includes in its statement of work goods or services currently being supplied or performed by a small business concern and, as determined by the Administrator—

- (i) is in a quantity or of an estimated dollar value which makes the participation of a small business concern as a prime contractor unlikely;
- (ii) in the case of a proposed procurement for construction, seeks to bundle or consolidate discrete construction projects; or
- (iii) is a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(B) Notice to procurement center representatives

With respect to proposed procurements described in subparagraph (A), at least 30 days before issuing a solicitation and concurrent with other processing steps required before issuing the solicitation, the contracting agency shall provide a copy of the proposed procurement to the procurement center representative of the contracting agency (as described in subsection (1)) along with a statement explaining—

- (i) why the proposed procurement cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;
- (ii) why delivery schedules cannot be established on a realistic basis that will encourage the participation of small business concerns in a manner consistent with the actual requirements of the Government;
- (iii) why the proposed procurement cannot be offered to increase the likelihood of the participation of small business concerns;
- (iv) in the case of a proposed procurement for construction, why the proposed procurement cannot be offered as separate discrete projects; or
- (v) why the contracting agency has determined that the bundling of contract requirements is necessary and justified.

(C) Alternatives to increase prime contracting opportunities for small business concerns

If the procurement center representative believes that the proposed procurement will make the participation of small business concerns as prime contractors unlikely, the procurement center representative, within 15 days after receiving the statement described in subparagraph (B), shall recommend to the contracting agency alternative procurement methods for increasing prime contracting opportunities for small business concerns.

(D) Failure to agree on an alternative procurement method

If the procurement center representative and the contracting agency fail to agree on an alternative procurement method, the Administrator shall submit the matter to the head of the appropriate department or agency for a determination.

(5) Contracts for sale of government property

With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(6) Sale of electrical power or other property

Nothing in this subsection shall be construed to change any preferences or priorities established

by law with respect to the sale of electrical power or other property by the Federal Government.

(7) Costs exceeding fair market price

A contract may not be awarded under this subsection if the cost of the contract to the awarding agency exceeds a fair market price.

(b) Placement of contracts by contracting procurement agency

With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Programs for blind and handicapped individuals

(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41.

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 632(e) of this title.

(C) The term "handicapped individual" has the same meaning given such term in section 632(f) of this title.

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed \$40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 8503 of title 41.

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) Priority

For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or

underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) Procurement strategies; contract bundling

(1) In general

To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers, and each such Federal department or agency shall—

(A) provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

(2) Market research

(A) In general

Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) Factors

For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- (i) Cost savings.
- (ii) Quality improvements.
- (iii) Reduction in acquisition cycle times.
- (iv) Better terms and conditions.
- (v) Any other benefits.

(C) Reduction of costs not determinative

The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

(3) Strategy specifications

If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include the following information:

- (A) The specific benefits anticipated to be derived from the bundling of contract requirements

and a determination that such benefits justify the bundling.

(B) An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.

(C) An assessment of—

(i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and

(ii) the specific actions designed to maximize participation of small business concerns as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.

(4) Contract teaming

(A) In general

In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern that provides for use of a particular team of subcontractors or a joint venture of small business concerns may submit an offer for the performance of the contract.

(B) Evaluation of offers

The head of the agency shall evaluate an offer described in subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:

(i) Teams

When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(ii) Joint ventures

When evaluating an offer of a joint venture of small business concerns, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(C) Status as a small business concern

Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern for any other purpose.

(5) Past performance ratings of joint ventures for small business concerns

With respect to evaluating an offer for a prime contract made by a small business concern that previously participated in a joint venture with another business concern (whether or not such other business concern was a small business concern), the Administrator shall establish regulations—

(A) allowing the small business concern to elect to use the past performance of the joint venture if the small business concern has no relevant past performance of its own;

(B) requiring the small business concern, when making an election under subparagraph (A)—

(i) to identify to the contracting officer the joint venture of which the small business concern was a member; and

(ii) to inform the contracting officer what duties and responsibilities the small business concern carried out as part of the joint venture; and

(C) requiring a contracting officer, if the small business concern makes an election under subparagraph (A), to consider the past performance of the joint venture when evaluating the past performance of the small business concern, giving due consideration to the information provided under subparagraph (B)(ii).

(f) Contracting preference for small business concerns in a major disaster area

(1) Definition

In this subsection, the term "disaster area" means the area for which the President has declared a major disaster, during the period of the declaration.

(2) Contracting preference

An agency shall provide a contracting preference for a small business concern located in a disaster area if the small business concern will perform the work required under the contract in the disaster area.

(3) Credit for meeting contracting goals

If an agency awards a contract to a small business concern under the circumstances described in paragraph (2), the value of the contract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A).

(g) Goals for participation of small business concerns in procurement contracts

(1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. In meeting this goal, the Government shall ensure the participation of small business concerns from a wide variety of industries and from a broad spectrum of small business concerns within each industry.

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iv) The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(v) The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(B) ACHIEVEMENT OF GOVERNMENTWIDE GOALS.—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

(2)(A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and

controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency. Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts. Contracts excluded from review by procurement center representatives pursuant to subsection (l)(9)(B) shall not be considered when establishing these goals.

(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

(D) After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(E) The head of each Federal agency, in attempting to attain expanded participation under subparagraph (D), shall consider—

- (i) contracts awarded as the result of unrestricted competition; and
- (ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(a) of this title.

(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses ¹ concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(h) Reporting on goals for procurement contracts awarded to small business concerns

(1) Agency reports

At the conclusion of each fiscal year, the head of each Federal agency shall submit to the Administrator a report describing—

- (A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

(B) whether the agency achieved the goals established for the agency under subsection (g)(2) with respect to such fiscal year;

(C) any justifications for a failure to achieve such goals; and

(D) a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

(2) Reports by Administrator

Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public Web site, a report that includes—

(A) a copy of each report submitted to the Administrator under paragraph (1);

(B) a determination of whether each goal established by the President under subsection (g)(1) for such fiscal year was achieved;

(C) a determination of whether each goal established by the head of a Federal agency under subsection (g)(2) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator's comments and recommendations on the proposed remediation plan; and

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

(i) small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through unrestricted competition;

(V) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns for purposes of the initial contract; and

(VI) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(ii) small business concerns owned and controlled by service-disabled veterans—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans;

(V) through unrestricted competition;

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by service-disabled veterans for purposes of the initial contract; and

(VII) that were awarded using a procurement method that restricted competition to qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iii) qualified HUBZone small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to qualified HUBZone small business concerns;
(V) through unrestricted competition where a price evaluation preference was used;
(VI) through unrestricted competition where a price evaluation preference was not used;
(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be qualified HUBZone small business concerns for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(V) through unrestricted competition;

(VI) by reason of that concern's certification as a small business owned and controlled by socially and economically disadvantaged individuals;

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by socially and economically disadvantaged individuals for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by women, or a subset of any such concerns;

(v) small business concerns owned by an Indian tribe (as such term is defined in section 637(a)(13) of this title) other than an Alaska Native Corporation—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Indian tribe other than an Alaska Native Corporation for purposes of the initial contract;

(vi) small business concerns owned by a Native Hawaiian Organization—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by a Native Hawaiian Organization for purposes of the initial contract;

(vii) small business concerns owned by an Alaska Native Corporation—

- (I) in the aggregate;
- (II) through sole source contracts;
- (III) through competitions restricted to small business concerns;
- (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
- (V) through unrestricted competition; and
- (VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Alaska Native Corporation for purposes of the initial contract; and

(viii) small business concerns owned and controlled by women—

- (I) in the aggregate;
- (II) through competitions restricted to small business concerns;
- (III) through competitions restricted using the authority under section 637(m)(2) of this title;
- (IV) through competitions restricted using the authority under section 637(m)(2) of this title and in which the waiver authority under section 637(m)(3) of this title was used;
- (V) through sole source contracts awarded using the authority under subsection ² 637(m)(7) of this title;
- (VI) through sole source contracts awarded using the authority under section 637(m)(8) of this title;
- (VII) by industry for contracts described in subclause (III), (IV), (V), or (VI);
- (VIII) through unrestricted competition;
- (IX) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by women for purposes of the initial contract; and
- (X) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or a subset of any such concerns; and

(F) for the Federal Government, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, provided that such information is publicly available through data systems developed pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), or otherwise available as provided in paragraph (3).

(3) Procurement data

(A) Federal Procurement Data System

(i) In general

To assist in the implementation of this section, the Administrator shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(ii) GSA report

On the date that the Administrator makes available the report required under paragraph (2), the Administrator of the General Services Administration shall submit to the President and

Congress, and shall make available on a public website, a report in the same form and manner, and including the same information, as the report required under paragraph (2). The report shall include all procurements made for the period covered by the report and may not exclude any contract awarded.

(B) Agency procurement data sources

To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administrator, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(4) Best in class small business participation reporting

(A) Addendum

In addition to the requirements under paragraph (2) and for each best in class designation, the Administrator shall include in the report required by such paragraph—

- (i) the total amount of spending Governmentwide in such designation; and
- (ii) the number of small business concerns awarded contracts and the dollar amount of such contracts awarded within each such designation to each of the following—
 - (I) qualified HUBZone small business concerns;
 - (II) small business concerns owned and controlled by women;
 - (III) small business concerns owned and controlled by service-disabled veterans; and
 - (IV) small business concerns owned and controlled by socially and economically disadvantaged individuals.

(B) Best in class defined

The term "best in class" has the meaning given such term by the Director of the Office of Management and Budget.

(C) Effective date

The Administrator shall report on the information described by subparagraph (A) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any successor to such systems.

(i) Small business set-asides

Nothing in this chapter or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j) Small business reservation

(1) Each contract for the purchase of goods and services that has an anticipated value greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than \$100,000 under the authority of subsection (a) of section 637 of this title, section 712 ³ of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) Office of Small and Disadvantaged Business Utilization; Director

There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each

such office shall be vested in an officer or employee of such agency, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 637, 644, 657a, 657f, or 657q of this title. Such officer or employee—

(1) shall be known as the "Director of Small and Disadvantaged Business Utilization" for such agency;

(2) shall be appointed by the head of such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 657q(a) of this title) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS-15 of the General Schedule under section 5332 of title 5 (including comparability payments under section 5304 of title 5);

(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary's designee;

(4) shall be responsible for the implementation and execution of the functions and duties under sections 637, 644, 657a, 657f, and 657q of this title which relate to such agency;

(5) shall identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) shall assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation,⁴

(7) shall have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 637, 644, 657a, 657f, and 657q of this title;

(8) shall assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 637, 644, 657a, 657f, and 657q of this title,⁴

(9) shall cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection;

(10) shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a) or section 637, 644, 657a, or 657f of this title, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(11) shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on acquisition strategies, market research, and justifications related to section 657q of this title;

(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

(15) shall carry out exclusively the duties enumerated in this chapter, and shall, while the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection;

(16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (13) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year;

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year; and

(D) any failure of the agency to comply with section 637, 644, 657a, or 657f of this title;

(17) shall, when notified by a small business concern prior to the award of a contract that the small business concern believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business concern to compete for the award—

(A) submit the notice of the small business concern to the contracting officer and, if necessary, recommend ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition;

(B) inform the advocate for competition of such agency (as established under section 1705 of title 41 or section 3249 of title 10) of such notice; and

(C) ensure that the small business concern is aware of other resources and processes available to address unduly restrictive provisions in a solicitation, request for proposal, or request for quotation, even if such resources and processes are provided by such agency, the Administration, the Comptroller General, or a procurement technical assistance program established under chapter 388 of title 10;

(18) shall review summary data provided by purchase card issuers of purchases made by the agency greater than the micro-purchase threshold (as defined under section 1902 of title 41) and less than the simplified acquisition threshold to ensure that the purchases have been made in compliance with the provisions of this chapter and have been properly recorded in the Federal Procurement Data System, if the method of payment is a purchase card issued by the Department of Defense pursuant to section 4754 of title 10 or by the head of an executive agency pursuant to section 1909 of title 41;

(19) shall provide assistance to a small business concern awarded a contract or subcontract under this chapter or under title 10 or title 41 in finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract;

(20) shall review all subcontracting plans required by paragraph (4) or (5) of section 637(d) of this title to ensure that the plan provides maximum practicable opportunity for small business concerns to participate in the performance of the contract to which the plan applies; [5](#)

(21) shall consult with the appropriate personnel from the relevant Federal agency to assist

small business concerns participating in a SBIR or STTR program under section 638 of this title with researching applicable solicitations for the award of a Federal contract (particularly with the Federal agency that has a funding agreement, as defined under section 638 of this title, with the concern) to market the research developed by such concern under such SBIR or STTR program.

This subsection shall not apply to the Administration.

(l) Procurement center representatives

(1) **ASSIGNMENT AND ROLE.**—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

(2) **ACTIVITIES.**—A procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, barriers to small business participation in Federal contracting previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) review any bundled or consolidated solicitation or contract in accordance with this chapter;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification, with such data provided upon request in electronic format, when available;

(F) receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph [6](#) (7) and (8) of subsection (k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified;

(I) assist small business concerns with finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract;

(J) consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in a SBIR or STTR program under section 9 with Phase III; [5](#)

(K) carry out any other responsibility assigned by the Administrator.

(3) **APPEALS.**—A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

(5) POSITION REQUIREMENTS.—

(A) IN GENERAL.—A procurement center representative assigned under this subsection shall—

- (i) be a full-time employee of the Administration;
- (ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and
- (iii) have the certification described in subparagraph (C).

(B) COMPENSATION.—The Administrator shall establish personnel positions for procurement center representatives assigned under this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(C) CERTIFICATION REQUIREMENTS.—

(i) IN GENERAL.—Consistent with the requirements of clause (ii), a procurement center representative shall have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(ii) DELAY OF CERTIFICATION REQUIREMENTS.—

(I) TIMING.—The certification described in clause (i) is not required for any person serving as a procurement center representative until the date that is one calendar year after the date such person is appointed as a procurement center representative.

(II) APPLICATION.—The requirements of subclause (I) shall—

(aa) be included in any initial job posting for the position of a procurement center representative; and

(bb) apply to any person appointed as a procurement center representative after January 3, 2013.

(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.

(7) TRAINING.—

(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, the breakout procurement center representative ⁷ shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) LIMITATION.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8) ANNUAL BRIEFING AND REPORT.—A procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(9) SCOPE OF REVIEW.—The Administrator—

(A) may not limit the scope of review by the procurement center representative for any solicitation of a contract or task order without regard to whether the contract or task order or part of the contract or task order is set aside for small business concerns, whether 1 or more contracts or task order awards are reserved for small business concerns under a multiple award contract, or

whether or not the solicitation would result in a bundled or consolidated contract (as defined in subsection (s)) or a bundled or consolidated task order; and

(B) shall, unless the contracting agency requests a review, limit the scope of review by the procurement center representative for any solicitation of a contract or task order if such solicitation is awarded by or for the Department of Defense and—

- (i) is conducted pursuant to section 2762 of title 22;
- (ii) is a humanitarian operation as defined in section 401(e) of title 10;
- (iii) is for a contingency operation, as defined in section 101(a)(13) of title 10;
- (iv) is to be awarded pursuant to an agreement with the government of a foreign country in which Armed Forces of the United States are deployed; or
- (v) both the place of award and the place of performance are outside of the United States and its territories.

(m) Additional duties of procurement center representatives

All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section and section 637(a) of this title.

(n) Determination of labor surplus areas

For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) Limitations on subcontracting

A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 657s of this title.

(p) Access to data

(1) Bundled or consolidated contract defined

In this subsection, the term "bundled or consolidated contract" has the meaning given in subsection (s).

(2) Database

Not later than 180 days after December 21, 2000, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

- (A) each bundled contract awarded by a Federal agency; and
- (B) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) Analysis

For each bundled contract that is to be recompeted as a bundled contract, the Administrator shall determine—

- (A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and
- (B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) Annual report on bundled or consolidated contracts

(A) In general

Not later than 1 year after December 21, 2000, and annually in March thereafter, the

Administration shall transmit a report on bundled or consolidated contracts to the Committees on Small Business of the House of Representatives and the Senate.

(B) Contents

Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled or consolidated contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled or consolidated contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were included in bundled or consolidated contracts; and

(II) with respect to each bundled or consolidated contract, data or information on—

(aa) the justification for the bundling of contract requirements or the consolidation of contract requirements (as applicable);

(bb) the cost savings realized by the bundling of contract requirements or the consolidation of contract requirements (as applicable) over the life of the contract;

(cc) the extent to which maintaining contract requirements in a bundled or consolidated contract is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements or the consolidation of contract requirements (as applicable) complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements or the consolidation of contract requirements (as applicable) on small business concerns unable to compete as prime contractors for the contract and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

(5) Access to data

(A) Federal procurement data system

To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) Agency procurement data sources

To assist in the implementation of this section, the head of each contracting agency shall provide to the Administrator data and information described in paragraphs (2) and (4).

(q) Reports related to procurement center representatives

(1) Teaming and joint venture requirements

(A) In general

Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(B) Teams

When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(C) Joint ventures

When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(2) Policies on reduction of contract bundling

(A) In general

Not later than 1 year after September 27, 2010, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41 shall amend the Federal Acquisition Regulation issued under section 1303(a) of title 41 to—

- (i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and
- (ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) Rationale for contract bundling

Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

(3) Reporting

Not later than 90 days after September 27, 2010, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

- (A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;
- (B) explain why the Administration selected the areas identified under subparagraph (A); and
- (C) describe the activities performed by procurement center representatives and commercial market representatives.

(r) Multiple award contracts

Not later than 1 year after September 27, 2010, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

- (1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);
- (2) notwithstanding the fair opportunity requirements under section 3406(c) of title 10 and section 4106(c) of title 41, set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and
- (3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(s) Data quality improvement plan

(1) In general

Not later than October 1, 2015, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator for

Federal Procurement Policy, and the Administrator of General Services, shall develop a plan to improve the quality of data reported on bundled or consolidated contracts in the Federal procurement data system (described in section 1122(a)(4)(A) of title 41).

(2) Plan requirements

The plan shall—

(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, each Director of Small and Disadvantaged Business Utilization, the Administrator for Federal Procurement Policy, the Administrator of General Services, senior procurement executives, and Chief Acquisition Officers in—

(i) improving the quality of data reported on bundled or consolidated contracts in the Federal procurement data system; and

(ii) contributing to the annual report required by subsection (p)(4);

(B) recommend changes to policies and procedures, including training procedures of relevant personnel, to properly identify and mitigate the effects of bundled or consolidated contracts;

(C) recommend requirements for periodic and statistically valid data verification and validation; and

(D) recommend clear data verification responsibilities.

(3) Plan submission

The Administrator of the Small Business Administration shall submit the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than December 1, 2016.

(4) Implementation

Not later than October 1, 2016, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

(5) Certification

The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a certification of the accuracy and completeness of data reported on bundled and consolidated contracts.

(6) Definitions

In this subsection, the following definitions apply:

(A) Chief Acquisition Officer; senior procurement executive

The terms "Chief Acquisition Officer" and "senior procurement executive" have the meanings given such terms in section 657q(a) of this title.

(B) Bundled or consolidated contract

The term "bundled or consolidated contract" means a bundled contract (as defined in section 632(o) of this title) or a contract resulting from the consolidation of contracting requirements (as defined in section 657q(a)(2) of this title).

(t) GAO report on Small Business Administration programs in Puerto Rico

Not later than one year after June 30, 2016, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the application and utilization of contracting activities of the Administration (including contracting activities relating to HUBZone small business concerns) in Puerto Rico. The report shall also identify any provisions of Federal law that may create an obstacle to the efficient implementation of such contracting activities.

(u) Post-award compliance resources

The Administrator shall provide to small business development centers and entities participating

in the Procurement Technical Assistance Cooperative Agreement Program under chapter 388 of title 10 and shall make available on the website of the Administration, a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract.

(v) Regulatory changes and training materials

Not less than annually, the Administrator shall provide to the Defense Acquisition University (established under section 1746 of title 10), the Federal Acquisition Institute (established under section 1201 of title 41), the individual responsible for mandatory training and education of the acquisition workforce of each agency (described under section 1703(f)(1)(C) of title 41), small business development centers, and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 388 of title 10—

(1) a list of all changes made in the prior year to regulations promulgated—

(A) by the Administrator that affect Federal acquisition; and

(B) by the Federal Acquisition Council that implement amendments to this chapter; and

(2) any materials the Administrator has developed that explain, train, or assist Federal agencies or departments or small business concerns with compliance with the regulations described in paragraph (1).

(w) Solicitation notice regarding administration of change orders for construction

(1) In general

With respect to any solicitation for the award of a contract for construction anticipated to be awarded to a small business concern, the agency administering such contract shall provide a notice along with the solicitation to prospective bidders and offerors that includes—

(A) information about the agency's policies or practices in complying with the requirements of the Federal Acquisition Regulation relating to the timely definitization of requests for an equitable adjustment; and

(B) information about the agency's past performance in definitizing requests for equitable adjustments in accordance with paragraph (2).

(2) Requirements for agencies

An agency shall provide the past performance information described under paragraph (1)(B) as follows:

(A) For the 3-year period preceding the issuance of the notice, to the extent such information is available.

(B) With respect to an agency that, on August 13, 2018, has not compiled the information described under paragraph (1)(B)—

(i) beginning 1 year after August 13, 2018, for the 1-year period preceding the issuance of the notice;

(ii) beginning 2 years after August 13, 2018, for the 2-year period preceding the issuance of the notice; and

(iii) beginning 3 years after August 13, 2018, and each year thereafter, for the 3-year period preceding the issuance of the notice.

(3) Format of past performance information

In the notice required under paragraph (1), the agency shall ensure that the past performance information described under paragraph (1)(B) is set forth separately for each definitization action that was completed during the following periods:

(A) Not more than 30 days after receipt of a request for an equitable adjustment.

(B) Not more than 60 days after receipt of a request for an equitable adjustment.

(C) Not more than 90 days after receipt of a request for an equitable adjustment.

(D) Not more than 180 days after receipt of a request for an equitable adjustment.

(E) Not more than 365 days after receipt of a request for an equitable adjustment.

(F) More than 365 days after receipt of a request for an equitable adjustment.

(G) After the completion of the performance of the contract through a contract modification addressing all undefinitized requests for an equitable adjustment received during the term of the contract.

(x) Small business credit for Puerto Rico businesses and covered territory businesses

(1) Credit for meeting contracting goals

If an agency awards a prime contract to Puerto Rico business or a covered territory business, or a prime contractor awards a subcontract (at any tier) to a subcontractor that is a Puerto Rico business or a covered territory business, during the period beginning on August 13, 2018, and ending on the date that is 4 years after such date, the value of the contract or subcontract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A) during such period.

(2) Report

Along with the report required under subsection (h)(1), the head of each Federal agency shall submit to the Administrator, and make publicly available on the scorecard (as defined in subsection (y)), an analysis of the number and dollar amount of prime contracts awarded pursuant to paragraph (1) for each fiscal year of the period described in such paragraph.

(y) Scorecard program for evaluating Federal agency compliance with small business contracting goals

(1) Use of scorecard

The Administrator shall use a scorecard to annually evaluate whether each Federal agency is creating the maximum practicable opportunities for the award of prime contracts and subcontracts to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, by assigning a score to each Federal agency for the previous fiscal year.

(2) Contents of scorecard

The scorecard shall include, for each Federal agency and Governmentwide, the following information:

(A) A determination of whether a Federal agency or the Federal Government, as applicable, met each of the prime contract goals established pursuant to subsection (g)(1)(B) with respect to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) A determination of whether a Federal agency or the Federal Government, as applicable, met each of the subcontract goals established pursuant to such section with respect to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(C) The number of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women awarded prime contracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded contracts during the prior fiscal year, if available.

(D) The number of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business

concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women awarded subcontracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded subcontracts during the prior fiscal year, if available.

(E) Any other factors that the Administrator deems important to achieve the maximum practicable utilization of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(3) Weighted factors

In using the scorecard to evaluate and assign a score to a Federal agency, the Administrator shall base—

(A) fifty percent of the score on the dollar value of prime contracts described in paragraph (2)(A); and

(B) fifty percent of the score on the information provided in subparagraphs (B) through (E) of paragraph (2), weighted in a manner determined by the Administrator to encourage the maximum practicable opportunity for the award of prime contracts and subcontracts to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(4) Additional requirements for scorecards

The scorecard shall include, for each Federal agency and Governmentwide, the following information with respect to prime contracts:

(A) The number (expressed as a percentage) and total dollar amount of awards made to small business concerns owned and controlled by women through sole source contracts and competitions restricted to small business concerns owned and controlled by women under section 637(m) of this title.

(B) The number (expressed as a percentage) and total dollar amount of awards made to small business concerns owned and controlled by qualified HUBZone small business concerns through sole source contracts and competitions restricted to qualified HUBZone small business concerns under section 657a(c)(2) of this title.

(C) The number (expressed as a percentage) and total dollar amount of awards made to small business concerns owned and controlled by service-disabled veterans through sole source contracts and competitions restricted to small business concerns owned and controlled by service-disabled veterans under section 657f of this title.

(D) The number (expressed as a percentage) and total dollar amount of awards made to socially and economically disadvantaged small business concerns under section 637(a) of this title through sole source contracts and competitions restricted to socially and economically disadvantaged small business concerns, disaggregated by awards made to such concerns that are owned and controlled by individuals and awards made to such concerns that are owned and controlled by an entity.

(5) Publication

The scorecard used by the Administrator under this subsection shall be submitted to the President and Congress along with the report submitted under subsection (h)(2).

(6) Scorecard defined

In this subsection, the term "scorecard" means any summary using a rating system to evaluate the efforts of a Federal agency to meet goals established under subsection (g)(1)(B) that—

(A) includes the measures described in paragraph (2); and

(B) assigns a score to each Federal agency evaluated.

Stat. 562; Pub. L. 95–507, title II, §§221, 232, 233, Oct. 24, 1978, 92 Stat. 1770, 1772; Pub. L. 96–302, title I, §§116, 117, July 2, 1980, 94 Stat. 839; Pub. L. 98–577, title IV, §403(a), Oct. 30, 1984, 98 Stat. 3080; Pub. L. 99–272, title XVIII, §18003(a), Apr. 7, 1986, 100 Stat. 363; Pub. L. 99–500, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, 1783–147 to 1783–149, 1783–152, and Pub. L. 99–591, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132, 3341–147 to 3341–149, 3341–152; Pub. L. 99–661, div. A, title IX, formerly title IV, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c), Nov. 14, 1986, 100 Stat. 3912, 3926–3928, 3932, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(a)(1), (b)(1), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–180, div. A, title VIII, §809(a)–(c), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 100–496, §12, Oct. 17, 1988, 102 Stat. 2465; Pub. L. 100–590, title I, §§110, 133(a), Nov. 3, 1988, 102 Stat. 2994, 3005; Pub. L. 100–656, title V, §§502, 503, title VI, §§601, 603, Nov. 15, 1988, 102 Stat. 3881, 3887, 3888; Pub. L. 101–37, §§19, 21, June 15, 1989, 103 Stat. 74, 75; Pub. L. 101–510, div. A, title VIII, §806(e)(3), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101–574, title II, §208, Nov. 15, 1990, 104 Stat. 2820; Pub. L. 102–190, div. A, title VIII, §806(d), Dec. 5, 1991, 105 Stat. 1419; Pub. L. 102–366, title II, §232(b), Sept. 4, 1992, 106 Stat. 1002; Pub. L. 102–484, div. A, title VIII, §801(h)(8), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102–569, title IX, §911(b), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103–355, title IV, §4004, title VII, §§7101(a), 7106(a), Oct. 13, 1994, 108 Stat. 3338, 3367, 3374; Pub. L. 103–403, title III, §305, Oct. 22, 1994, 108 Stat. 4189; Pub. L. 104–106, div. D, title XLIII, §4321(c)(3), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105–135, title IV, §413, title VI, §603(b), Dec. 2, 1997, 111 Stat. 2618, 2632; Pub. L. 106–50, title V, §502, title VI, §601, Aug. 17, 1999, 113 Stat. 247, 248; Pub. L. 106–554, §1(a)(9) [title VIII, §§806(a), 810], Dec. 21, 2000, 114 Stat. 2763, 2763A–706; Pub. L. 111–240, title I, §§1312(a), (b), 1331, 1333, 1346, 1347(b)(2), Sept. 27, 2010, 124 Stat. 2537, 2541, 2542, 2546, 2547; Pub. L. 112–239, div. A, title XVI, §§1621, 1623, 1631(a), (b), 1632, 1691, 1696(a), (b)(3), Jan. 2, 2013, 126 Stat. 2067, 2069–2071, 2073, 2087, 2090, 2091; Pub. L. 113–66, div. A, title XVI, §1613, Dec. 26, 2013, 127 Stat. 948; Pub. L. 113–76, div. D, title III, §318, Jan. 17, 2014, 128 Stat. 178; Pub. L. 113–291, div. A, title VIII, §§822(a), 825(b), Dec. 19, 2014, 128 Stat. 3435, 3438; Pub. L. 114–88, div. B, title I, §2108, Nov. 25, 2015, 129 Stat. 694; Pub. L. 114–92, div. A, title VIII, §§862(a), 863(a), 865(c), 867, 868(a), 870, Nov. 25, 2015, 129 Stat. 925, 926, 928, 932, 933, 938; Pub. L. 114–187, title IV, §408, June 30, 2016, 130 Stat. 592; Pub. L. 114–328, div. A, title XVIII, §§1801, 1802, 1811–1813(a), (c), (d), 1814(a), 1821(b), Dec. 23, 2016, 130 Stat. 2648, 2650–2654; Pub. L. 115–91, div. A, title XVII, §§1702(a), (c), 1703(a), Dec. 12, 2017, 131 Stat. 1803; Pub. L. 115–232, div. A, title VIII, §§812(a)(2)(C)(viii), 855, 861(b), Aug. 13, 2018, 132 Stat. 1847, 1890, 1896; Pub. L. 116–92, div. A, title VIII, §§871, 875, 880(d), (e), Dec. 20, 2019, 133 Stat. 1525, 1528, 1532; Pub. L. 116–283, div. A, title VIII, §§866(a)(2), 868(a), Jan. 1, 2021, 134 Stat. 3785, 3787; Pub. L. 117–81, div. A, title XVII, §1702(e)(5), Dec. 27, 2021, 135 Stat. 2157; Pub. L. 117–263, div. A, title VIII, §§871, 873, Dec. 23, 2022, 136 Stat. 2738, 2740; Pub. L. 118–31, div. A, title VIII, §863, Dec. 22, 2023, 137 Stat. 347.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (h)(2)(F), is Pub. L. 109–282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

Section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), referred to in subsec. (j)(3), was repealed by Pub. L. 111–240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (j)(3), is section 7102 of Pub. L. 103–355, which is set out below.

CODIFICATION

In subsec. (c)(1)(A), "section 8502 of title 41" substituted for "the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938

(41 U.S.C. 46)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c)(2)(B), "section 8503 of title 41" substituted for "section 2 of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 47)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (q)(2)(A), "section 1302(a) of title 41" substituted for "section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a) [421(a)])" and "section 1303(a) of title 41" substituted for "section 25 of such Act" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (r)(2), "section 4106(c) of title 41" substituted for "section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section 868(b) of Pub. L. 114–92, formerly set out as a note below, which was transferred to the end of this section, redesignated as subsec. (y), and amended by Pub. L. 117–263, §871(a), was based on Pub. L. 114–92, div. A, title VIII, §868(b), Nov. 25, 2015, 129 Stat. 933.

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

PRIOR PROVISIONS

Prior similar provisions were contained in section 214 of act July 30, 1953, ch. 282, title II, 67 Stat. 238, as amended by act Aug. 9, 1955, ch. 628, §9, 69 Stat. 551, which was previously classified to section 643 of this title. The provisions of section 215 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85–536, and are classified to section 639 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2023—Subsec. (g)(1)(A)(ii). Pub. L. 118–31 substituted "5 percent" for "3 percent".

2022—Subsec. (p)(1). Pub. L. 117–263, §873(a)(1), amended par. (1) generally. Prior to amendment, text read as follows: "In this subsection, the term 'bundled contract' has the meaning given such term in section 632(o)(1) of this title."

Subsec. (p)(2). Pub. L. 117–263, §873(b), struck out subpar. (A) designation and heading "In general" after par. heading and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (p)(4). Pub. L. 117–263, §873(a)(2)(A), substituted "bundled or consolidated contracts" for "contract bundling" in heading.

Subsec. (p)(4)(A). Pub. L. 117–263, §873(a)(2)(B), substituted "bundled or consolidated contracts" for "contract bundling".

Subsec. (p)(4)(B)(i). Pub. L. 117–263, §873(a)(2)(C)(i), substituted "bundled or consolidated contracts" for "bundled contracts".

Subsec. (p)(4)(B)(ii). Pub. L. 117–263, §873(a)(2)(C)(ii)(I), substituted "bundled or consolidated contracts" for "bundled contracts" in introductory provisions.

Subsec. (p)(4)(B)(ii)(I). Pub. L. 117–263, §873(a)(2)(C)(ii)(II), substituted "were included in bundled or consolidated contracts" for "were bundled".

Subsec. (p)(4)(B)(ii)(II). Pub. L. 117–263, §873(a)(2)(C)(ii)(III)(aa), substituted "bundled or consolidated contract" for "bundled contract" in introductory provisions.

Subsec. (p)(4)(B)(ii)(II)(aa). Pub. L. 117–263, §873(a)(2)(C)(ii)(III)(bb), inserted "or the consolidation of contract requirements (as applicable)" after "bundling of contract requirements".

Subsec. (p)(4)(B)(ii)(II)(bb). Pub. L. 117–263, §873(a)(2)(C)(ii)(III)(cc), substituted "the bundling of contract requirements or the consolidation of contract requirements (as applicable)" for "bundling the contract requirements".

Subsec. (p)(4)(B)(ii)(II)(cc). Pub. L. 117–263, §873(a)(2)(C)(ii)(III)(dd), substituted "contract requirements in a bundled or consolidated contract" for "the bundled status of contract requirements".

Subsec. (p)(4)(B)(ii)(II)(dd). Pub. L. 117–263, §873(a)(2)(C)(ii)(III)(bb), inserted "or the consolidation of contract requirements (as applicable)" after "bundling of contract requirements".

Subsec. (p)(4)(B)(ii)(II)(ee). Pub. L. 117–263, §873(a)(2)(C)(ii)(III)(bb), (ee), inserted "or the consolidation of contract requirements (as applicable)" after "bundling of contract requirements" and substituted "contractors for the contract" for "contractors for the consolidated requirements".

Subsec. (p)(5)(B). Pub. L. 117–263, §873(a)(3), substituted "provide to the Administrator data and information described in paragraphs (2) and (4)." for "provide, upon request of the Administration,

procurement information collected through existing agency data collection sources."

Subsec. (x)(2). Pub. L. 117-263, §871(b), substituted "scorecard (as defined in subsection (y))" for "scorecard described in section 868(b) of the National Defense Authorization Act for Fiscal Year 2016 (15 U.S.C. 644 note)".

Subsec. (y). Pub. L. 117-263, §871(a), transferred section 868(b) of Pub. L. 114-92 to the end of this section and redesignated it as subsec. (y). See Codification note above.

Subsec. (y)(1). Pub. L. 117-263, §871(a)(4), substituted "The Administrator shall use a scorecard to annually evaluate" for "Beginning in fiscal year 2017, the Administrator shall establish and carry out a program to use the scorecard developed under paragraph (1) to evaluate".

Pub. L. 117-263, §871(a)(1), (2), redesignated par. (2) as (1) and struck out former par. (1) which authorized Administrator to develop methodology for calculating a score to be used to evaluate compliance of each Federal agency with meeting goals established pursuant to subsection (g)(1)(B) and a scorecard based on such methodology.

Subsec. (y)(2). Pub. L. 117-263, §871(a)(5)(B), struck out "developed under paragraph (1)" after "The scorecard" and inserted "and Governmentwide" after "each Federal agency" in introductory provisions.

Pub. L. 117-263, §871(a)(2), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (y)(2)(A). Pub. L. 117-263, §871(a)(5)(A), (C), substituted "a Federal agency or the Federal Government, as applicable," for "the Federal agency" and "subsection (g)(1)(B)" for "section 15(g)(1)(B) of the Small Business Act (15 U.S.C. 644(g)(1)(B))".

Subsec. (y)(2)(B). Pub. L. 117-263, §871(a)(5)(A), substituted "a Federal agency or the Federal Government, as applicable," for "the Federal agency".

Subsec. (y)(3). Pub. L. 117-263, §871(a)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (y)(3)(A). Pub. L. 117-263, §871(a)(6)(A), substituted "paragraph (2)(A)" for "paragraph (3)(A)".

Subsec. (y)(3)(B). Pub. L. 117-263, §871(a)(6)(B), substituted "paragraph (2)" for "paragraph (3)".

Subsec. (y)(4). Pub. L. 117-263, §871(a)(7), added par. (4). Former par. (4) redesignated (3).

Subsec. (y)(5). Pub. L. 117-263, §871(a)(8), substituted "subsection (h)(2)" for "section 15(h)(2) of the Small Business Act (15 U.S.C. 644(h)(2))".

Subsec. (y)(6). Pub. L. 117-263, §871(a)(9), amended par. (6) generally. Prior to amendment, par. (6) defined Administrator, Federal agency, scorecard, small business concern, small business concern owned and controlled by service-disabled veterans, qualified HUBZone small business concern, small business concern owned and controlled by women, and small business concern owned and controlled by socially and economically disadvantaged individuals.

Pub. L. 117-263, §871(a)(1), (3), redesignated par. (8) as (6) and struck out former par. (6) which related to report that Administrator submitted to Committee on Small Business of the House of Representatives and Committee on Small Business and Entrepreneurship of the Senate.

Subsec. (y)(7). Pub. L. 117-263, §871(a)(1), struck out par. (7) which related to GAO report on scorecard methodology that Comptroller General submitted to Committee on Small Business of the House of Representatives and Committee on Small Business and Entrepreneurship of the Senate.

Subsec. (y)(8). Pub. L. 117-263, §871(a)(3), redesignated par. (8) as (6).

2021—Subsec. (e)(5). Pub. L. 116-283, §868(a), added par. (5).

Subsec. (k)(17)(B). Pub. L. 117-81, §1702(e)(5)(A)(i), substituted "section 3249" for "section 2318".

Subsec. (k)(17)(C). Pub. L. 117-81, §1702(e)(5)(A)(ii), substituted "chapter 388" for "chapter 142".

Subsec. (k)(18). Pub. L. 117-81, §1702(e)(5)(A)(iii), substituted "section 4754" for "section 2784".

Subsec. (r)(2). Pub. L. 117-81, §1702(e)(5)(B), substituted "section 3406(c)" for "section 2304c(b)".

Subsecs. (u), (v). Pub. L. 117-81, §1702(e)(5)(C), substituted "chapter 388" for "chapter 142".

Subsec. (x)(3). Pub. L. 116-283, §866(a)(2), struck out par. (3) which defined covered territory business. See section 632(ff) of this title.

2019—Subsec. (h)(4). Pub. L. 116-92, §871, added par. (4).

Subsec. (k)(21). Pub. L. 116-92, §880(e), added par. (21).

Subsec. (l)(2)(J), (K). Pub. L. 116-92, §880(d), added subpar. (J) and redesignated former subpar. (J) as (K).

Subsec. (x). Pub. L. 116-92, §875(1), inserted "and covered territory businesses" after "Puerto Rico businesses" in heading.

Subsec. (x)(1). Pub. L. 116-92, §875(2), inserted "or a covered territory business, or a prime contractor awards a subcontract (at any tier) to a subcontractor that is a Puerto Rico business or a covered territory business," after "Puerto Rico business" and "or subcontract" after "the contract" and substituted "subsection (g)(1)(A)" for "subsection (g)(1)(A)(i)".

Subsec. (x)(3). Pub. L. 116-92, §875(3), added par. (3).

2018—Subsec. (j)(3). Pub. L. 115–232, §812(a)(2)(C)(viii)(I), struck out "section 2323 of title 10," after "section 637 of this title,".

Subsec. (k)(10). Pub. L. 115–232, §812(a)(2)(C)(viii)(II), substituted "subsection (a) or" for "subsection (a)," and struck out "or section 2323 of title 10, which shall be made with due regard to the requirements of subsection (m)," after "or 657f of this title,".

Subsec. (m). Pub. L. 115–232, §812(a)(2)(C)(viii)(III), amended subsec. (m) generally. Prior to amendment, subsec. (m) related to policies and procedures for each agency subject to former section 2323 of title 10 to follow when implementing requirements under that section.

Subsec. (w). Pub. L. 115–232, §855, added subsec. (w).

Subsec. (x). Pub. L. 115–232, §861(b), added subsec. (x).

2017—Subsec. (a)(1)(C). Pub. L. 115–91, §1702(c), substituted "total purchases and contracts for goods and services" for "total purchase and contracts for goods and services".

Subsec. (h)(2)(E)(i)(V), (VI). Pub. L. 115–91, §1703(a)(1), added subcls. (V) and (VI).

Subsec. (h)(2)(E)(ii)(VI), (VII). Pub. L. 115–91, §1703(a)(2), added subcls. (VI) and (VII).

Subsec. (h)(2)(E)(iii)(VII), (VIII). Pub. L. 115–91, §1703(a)(3), added subcls. (VII) and (VIII).

Subsec. (h)(2)(E)(iv)(VII), (VIII). Pub. L. 115–91, §1703(a)(4), added subcls. (VII) and (VIII).

Subsec. (h)(2)(E)(v)(VI). Pub. L. 115–91, §1703(a)(5), added subcl. (VI).

Subsec. (h)(2)(E)(vi)(VI). Pub. L. 115–91, §1703(a)(6), added subcl. (VI).

Subsec. (h)(2)(E)(vii)(VI). Pub. L. 115–91, §1703(a)(7), added subcl. (VI).

Subsec. (h)(2)(E)(viii)(IX), (X). Pub. L. 115–91, §1703(a)(8), added subcls. (IX) and (X).

Subsec. (j)(1). Pub. L. 115–91, §1702(a), substituted "greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold" for "greater than \$2,500 but not greater than \$100,000".

2016—Subsec. (a). Pub. L. 114–328, §1801, amended subsec. (a) generally. Prior to amendment, subsec. (a) related to determination of awards or contracts, including notice requirement for certain large, consolidated, or bundled proposed procurements.

Subsec. (g)(2)(B). Pub. L. 114–328, §1811(b), inserted at end "Contracts excluded from review by procurement center representatives pursuant to subsection (l)(9)(B) shall not be considered when establishing these goals."

Subsec. (h)(3). Pub. L. 114–328, §1802, amended par. (3) generally. Prior to amendment, par. (3) related to access to data collected through the Federal Procurement Data System and provision of collected data upon request.

Subsec. (k). Pub. L. 114–328, §1812(1), (2), substituted "section 637, 644, 657a, 657f, or 657q" for "section 637, 644 or 657q" in introductory provisions and "sections 637, 644, 657a, 657f, and 657q" for "this section and section 637" wherever appearing.

Subsec. (k)(10). Pub. L. 114–328, §1812(3), substituted "section 637, 644, 657a, or 657f" for "section 637(a)".

Subsec. (k)(16)(D). Pub. L. 114–328, §1812(6), added subpar. (D).

Subsec. (k)(18). Pub. L. 114–328, §1812(4), (5), added par. (18).

Subsec. (k)(19). Pub. L. 114–328, §1813(a), added par. (19).

Subsec. (k)(20). Pub. L. 114–328, §1821(b), added par. (20).

Subsec. (l)(2)(I), (J). Pub. L. 114–328, §1813(d), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (l)(9). Pub. L. 114–328, §1811(a), added par. (9).

Subsec. (t). Pub. L. 114–187 added subsec. (t).

Subsec. (u). Pub. L. 114–328, §1813(c), added subsec. (u).

Subsec. (v). Pub. L. 114–328, §1814(a), added subsec. (v).

2015—Subsec. (e)(3). Pub. L. 114–92, §863(a), amended par. (3) generally. Prior to amendment, par. (3) set forth required elements for a proposed procurement strategy for a procurement involving a substantial bundling of contract requirements.

Subsec. (e)(4). Pub. L. 114–92, §867(a), amended par. (4) generally. Prior to amendment, text read as follows: "In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose."

Subsec. (f). Pub. L. 114–88 added subsec. (f).

Subsec. (g)(1)(A)(i). Pub. L. 114–92, §868(a), inserted at end "In meeting this goal, the Government shall

ensure the participation of small business concerns from a wide variety of industries and from a broad spectrum of small business concerns within each industry."

Subsec. (k)(17). Pub. L. 114-92, §870, added par. (17).

Subsec. (l)(5)(A)(iii). Pub. L. 114-92, §865(c)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on January 2, 2013, may continue to serve in that position for a period of 5 years without the required certification."

Subsec. (l)(5)(C). Pub. L. 114-92, §865(c)(2), added subpar. (C).

Subsec. (q)(1). Pub. L. 114-92, §867(b), inserted "and joint venture" before "requirements" in par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, and added subpars. (B) and (C).

Subsec. (s)(4) to (6). Pub. L. 114-92, §862(a), added pars. (4) and (5) and redesignated former par. (4) as (6).

2014—Subsec. (g)(3). Pub. L. 113-76 added par. (3).

Subsec. (h)(2)(E)(viii)(V) to (VIII). Pub. L. 113-291, §825(b), added subcls. (V) to (VII) and redesignated former subcl. (V) as (VIII).

Subsec. (s). Pub. L. 113-291, §822(a), added subsec. (s).

2013—Subsec. (e)(1). Pub. L. 112-239, §1623, substituted "a Federal department or agency" for "the various agencies" and ", and each such Federal department or agency shall—" and subpars. (A) and (B) for period at end.

Subsec. (g)(1). Pub. L. 112-239, §1631(a), amended par. (1) generally. Prior to amendment, par. (1) related to annual Government-wide goals for participation of small business concerns in procurement contracts.

Subsec. (g)(2)(A). Pub. L. 112-239, §1631(b)(1), inserted at end "Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered."

Subsec. (g)(2)(D). Pub. L. 112-239, §1631(b)(2), substituted "After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women." for "For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women."

Subsec. (g)(2)(E), (F). Pub. L. 112-239, §1631(b)(3), added subpars. (E) and (F) and struck out former subpars. (E) and (F) which read as follows:

"(E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D), shall consider—

"(i) contracts awarded as the result of unrestricted competition; and

"(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(a) of this title.

"(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

"(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority."

Subsec. (h). Pub. L. 112-239, §1632, amended subsec. (h) generally. Prior to amendment, subsec. (h) related to annual Federal agency reports to Small Business Administration and inclusion of Administration information in President's annual state of small business report to Congress.

Subsec. (h)(1)(D). Pub. L. 113-66 added subpar. (D).

Subsec. (k). Pub. L. 112-239, §1691(d), substituted ", with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for

Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 637, 644 or 657q of this title. Such officer or employee" for "who shall" in introductory provisions.

Subsec. (k)(1). Pub. L. 112-239, §1691(e)(1), substituted "shall be known" for "be known" and "such agency;" for "such agency,".

Subsec. (k)(2). Pub. L. 112-239, §1691(e)(2), substituted "shall be appointed by" for "be appointed by".

Pub. L. 112-239, §1691(a), substituted "such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 657q(a) of this title) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS-15 of the General Schedule under section 5332 of such title (including comparability payments under section 5304 of such title);" for "such agency,".

Subsec. (k)(3). Pub. L. 112-239, §1691(e)(3), substituted "Director" for "director" and "Secretary's designee;" for "Secretary's designee,".

Pub. L. 112-239, §1691(b), substituted "shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head" for "be responsible only to, and report directly to, the head" and "be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary" for "be responsible only to, and report directly to, such Secretary".

Subsec. (k)(4). Pub. L. 112-239, §1691(e)(4), substituted "shall be responsible" for "be responsible" and "such agency;" for "such agency,".

Subsec. (k)(5). Pub. L. 112-239, §1691(e)(5), substituted "shall identify proposed" for "identify proposed".

Subsec. (k)(6). Pub. L. 112-239, §1691(e)(6), substituted "shall assist small" for "assist small".

Subsec. (k)(7). Pub. L. 112-239, §1691(e)(7), substituted "shall have supervisory" for "have supervisory" and "this title;" for "this title,".

Subsec. (k)(8). Pub. L. 112-239, §1691(e)(8)(A), substituted "shall assign a" for "assign a" in introductory provisions.

Subsec. (k)(8)(A). Pub. L. 112-239, §1691(e)(8)(B), substituted "the activity; and" for "the activity, and".

Subsec. (k)(9). Pub. L. 112-239, §1691(e)(9), substituted "shall cooperate, and" for "cooperate, and" and "subsection;" for "subsection, and".

Subsec. (k)(10). Pub. L. 112-239, §1691(e)(10), substituted "shall make recommendations" for "make recommendations", "subsection (a), section 637(a) of this title, or section 2323 of title 10, which shall" for "subsection (a) of this section, or section 637(a) of this title or section 2323 of title 10. Such recommendations shall", and "contract file;" for "contract file."

Subsec. (k)(11) to (16). Pub. L. 112-239, §1691(c), added pars. (11) to (16).

Subsec. (l). Pub. L. 112-239, §1621(a), inserted heading.

Subsec. (l)(1). Pub. L. 112-239, §1621(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section."

Subsec. (l)(2). Pub. L. 112-239, §1621(c)(1), inserted heading and substituted "A" for "In addition to carrying out the responsibilities assigned by the Administration, a breakout" in introductory provisions.

Subsec. (l)(2)(B). Pub. L. 112-239, §1621(c)(2), substituted "review, at any time, barriers to small business participation in Federal contracting" for "review, at any time, restrictions on competition", "goods and services" for "items" and "barriers" for "limitations".

Subsec. (l)(2)(C). Pub. L. 112-239, §1621(c)(3), substituted "review barriers to small business participation in Federal contracting" for "review restrictions on competition".

Subsec. (l)(2)(D). Pub. L. 112-239, §1621(c)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: "obtain from any governmental source, and make available to personnel of the

appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;"

Subsec. (l)(2)(E). Pub. L. 112-239, §1621(c)(5), added subpar. (E) and struck out former subpar. (E) which read as follows: "have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;"

Subsec. (l)(2)(F) to (I). Pub. L. 112-239, §1621(c)(6), added subpars. (F) to (I) and struck out former subpars. (F) and (G) which read as follows:

"(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

"(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive."

Subsec. (l)(3). Pub. L. 112-239, §1621(d), inserted heading and substituted "A procurement center representative" for "A breakout procurement center representative".

Subsec. (l)(4). Pub. L. 112-239, §1621(e), substituted "procurement center representative" for "breakout procurement center representative".

Subsec. (l)(5). Pub. L. 112-239, §1621(f), inserted par. heading, added subpar. (A), redesignated subpar. (C) as (B), inserted subpar. heading and substituted "The Administrator shall establish personnel positions for procurement center representatives assigned under" for "The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to" in subpar. (B), and struck out former subpars. (A) and (B) which read as follows:

"(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

"(i) full-time employees of the Administration; and

"(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

"(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer."

Subsec. (l)(6). Pub. L. 112-239, §1621(g), inserted heading and substituted in text "goods or services, including goods or services that are commercially available" for "other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative".

Subsec. (l)(7). Pub. L. 112-239, §1621(h)(1), (2), (4), inserted par. heading, inserted subpar. (A) heading, and added subpar. (B). Former par. (7)(B) redesignated (8).

Subsec. (l)(8). Pub. L. 112-239, §1621(h)(3), redesignated subpar. (7)(B) as par. (8), inserted heading, and substituted "A procurement center representative" for "The breakout procurement center representative" and "60" for "sixty".

Subsec. (o). Pub. L. 112-239, §1696(b)(3), added subsec. (o) and struck out former subsec. (o) which related to requirements for performance of contracts by employees of small business concerns.

Subsec. (p). Pub. L. 112-239, §1696(a)(1), substituted "Access to data" for "Database, analysis, and annual report with respect to bundled contracts" in heading.

Subsec. (q). Pub. L. 112-239, §1696(a)(2), substituted "Reports related to procurement center representatives" for "Bundling accountability measures" in heading.

2010—Subsec. (g)(1). Pub. L. 111-240, §1347(b)(2), inserted "and subcontract" before "awards for fiscal year 2003" in fourth sentence.

Pub. L. 111-240, §1312(b), substituted "Administrator for Federal Procurement Policy" for "Administrator of the Office of Federal Procurement Policy".

Subsec. (g)(2). Pub. L. 111-240, §1333, designated first to fifth sentences as subpars. (A) to (E), respectively, substituted "the participation described in subparagraph (D)" for "such participation" in subpar. (E), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (E), and added subpar. (F).

Pub. L. 111-240, §1312(b), substituted "Administrator for Federal Procurement Policy" for "Administrator

of the Office of Federal Procurement Policy".

Subsec. (h)(2). Pub. L. 111-240, §1346, in introductory provisions, substituted "submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the compilation and analysis, which shall include the following:" for "submit them to the President and the Congress. The Administration's submission to the President shall include the following:".

Subsec. (q). Pub. L. 111-240, §1312(a), added subsec. (q).

Subsec. (r). Pub. L. 111-240, §1331, added subsec. (r).

2000—Subsec. (a). Pub. L. 106-554, §1(a)(9) [title VIII, §806(a)], in eighth sentence, substituted "definition of a 'United States industry' under the North American Industry Classification System, as established" for "four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published".

Subsec. (p). Pub. L. 106-554, §1(a)(9) [title VIII, §810], added subsec. (p).

1999—Subsec. (g)(1). Pub. L. 106-50, §502(a)(3), inserted "small business concerns owned and controlled by service-disabled veterans," after "the maximum practicable opportunity for small business concerns," in penultimate sentence.

Pub. L. 106-50, §502(a)(2), inserted after second sentence "The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year."

Pub. L. 106-50, §502(a)(1), inserted "small business concerns owned and controlled by service disabled veterans," after "small business concerns," the first place appearing in first sentence.

Subsec. (g)(2). Pub. L. 106-50, §502(b)(3), inserted "small business concerns owned and controlled by service-disabled veterans, by" after "including participation by" in fourth sentence.

Pub. L. 106-50, §502(b)(2), inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns," the first place appearing in second sentence.

Pub. L. 106-50, §502(b)(1), inserted "by small business concerns owned and controlled by service-disabled veterans," after "small business concerns," the first place appearing in first sentence.

Subsec. (h)(1). Pub. L. 106-50, §601(a), inserted "small business concerns owned and controlled by veterans (including service-disabled veterans)," after "small business concerns," the first place appearing.

Subsec. (h)(2). Pub. L. 106-50, §601(b)(1), inserted "and the Congress" before period at end of first sentence in introductory provisions.

Subsec. (h)(2)(A), (D), (E). Pub. L. 106-50, §601(b)(2), inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns," the first place appearing.

1997—Subsec. (a). Pub. L. 105-135, §413(b), in third sentence, inserted "or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration," after "discrete construction projects," substituted "(4)" for "or (4)", and inserted before period at end ", or (5) why the agency has determined that the bundled contract (as defined in section 632(o) of this title) is necessary and justified".

Subsec. (e). Pub. L. 105-135, §413(a), added subsec. (e).

Subsec. (g)(1). Pub. L. 105-135, §603(b)(1), inserted "qualified HUBZone small business concerns," after "small business concerns," in two places, substituted "not less than 23 percent of the total value" for "not less than 20 percent of the total value", and inserted after second sentence "The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter."

Subsec. (g)(2). Pub. L. 105-135, §603(b)(2)(B), (C), inserted "qualified HUBZone small business concerns," after "small business concerns," in second sentence and substituted "by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women" for "by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by socially and economically disadvantaged individuals and participation by small business concerns owned and controlled by women" before period at end of fourth sentence.

Pub. L. 105-135, §603(b)(2)(A), which directed substitution of ", by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged

individuals" for ", by small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence, was executed by making the insertion for the quoted language which started with a single comma to reflect the probable intent of Congress and the amendment by Pub. L. 104-106, §4321(c)(3). See 1996 Amendment note below.

Subsec. (h). Pub. L. 105-135, §603(b)(3), inserted "qualified HUBZone small business concerns," after "small business concerns," wherever appearing.

Subsec. (k)(5) to (10). Pub. L. 105-135, §413(c)(1), (2), added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1996—Subsec. (g)(2). Pub. L. 104-106 struck out second comma after "goals for the participation by small business concerns,".

1994—Subsec. (c)(2)(A). Pub. L. 103-403, §305(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "During each of fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year as follows: In 1989 not more than \$30,000,000, in 1990 not more than \$40,000,000, and in each of 1991, 1992 and 1993 not more than \$50,000,000."

Subsec. (c)(7). Pub. L. 103-403, §305(2), added par. (7).

Subsec. (e). Pub. L. 103-355, §7101(a), struck out subsec. (e) which read as follows: "In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

"(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

"(2) concerns which are small business concerns, on the basis of a total set-aside;

"(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;

"(4) concerns which are small business concerns, on the basis of a partial set-aside."

Subsec. (f). Pub. L. 103-355, §7101(a), struck out subsec. (f) which read as follows: "After priority is given to the small business concerns specified in subsection (e) of this section, priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which—

"(1) are not eligible under subsection (e) of this section;

"(2) are not small business concerns; and

"(3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas."

Subsec. (g)(1). Pub. L. 103-355, §7106(a)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence and in sentence beginning with "Notwithstanding the".

Pub. L. 103-355, §7106(a)(2)(A), inserted after third sentence "The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year."

Subsec. (g)(2). Pub. L. 103-355, §7106(a)(2)(B), in first sentence substituted ", by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women" for "and by small business concerns owned and controlled by socially and economically disadvantaged individuals,".

Pub. L. 103-355, §7106(a)(1), in second sentence substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Pub. L. 103-355, §7106(a)(2)(C), in fourth sentence inserted at end "and participation by small business concerns owned and controlled by women".

Subsec. (h)(1), (2)(A), (D), (E). Pub. L. 103-355, §7106(a)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (h)(2)(F). Pub. L. 103-355, §7106(a)(3), substituted "small business concerns owned and controlled by women" for "women-owned small business enterprises".

Subsec. (j). Pub. L. 103-355, §4004, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "Each contract for the procurement of goods and services which has an anticipated value not in

excess of the small purchase threshold and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors."

1992—Subsec. (c)(1)(A). Pub. L. 102-569 substituted "From People Who Are Blind or Severely Disabled" for "from the Blind and Other Severely Handicapped".

Subsec. (c)(2)(B). Pub. L. 102-366, §232(b)(1), which directed the substitution of "Blind-made" for "Blindmade", could not be executed to text because "Blindmade" did not appear in subpar. (B).

Subsec. (k)(3), (5). Pub. L. 102-366, §232(b)(2), substituted comma for semicolon at end of pars. (3) and (5).

Subsec. (k)(9). Pub. L. 102-484, §801(h)(8)(A), substituted "section 2323 of title 10" for "section 1207 of Public Law 99-661".

Subsec. (l)(6). Pub. L. 102-366, §232(b)(3), inserted period at end.

Subsec. (m)(1). Pub. L. 102-484, §801(h)(8)(B), substituted "section 2323 of title 10" for "section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)".

Subsec. (m)(2)(B). Pub. L. 102-366, §232(b)(4), substituted "requirements" for "requirement".

Subsec. (m)(2)(C). Pub. L. 102-484, §801(h)(8)(C), substituted "section 2323 of title 10" for "section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)".

1991—Subsec. (k)(5). Pub. L. 102-190 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "assist small business concerns to obtain payments, late payment interest penalties, or information due to such concerns, in conformity with chapter 39 of title 31;".

1990—Subsec. (a). Pub. L. 101-574 inserted after second sentence "If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities."

Subsec. (j). Pub. L. 101-510 substituted "not in excess of the small purchase threshold" for "of less than \$25,000".

1989—Subsec. (h)(2)(A). Pub. L. 101-37, §19, inserted "individuals" after "economically disadvantaged".

Subsec. (m)(1)(A). Pub. L. 101-37, §21, substituted "procedures" for "procedure".

1988—Subsec. (c). Pub. L. 100-590, §133(a), amended subsec. (c) generally, substituting provisions relating to programs for blind and handicapped individuals for provisions relating to eligibility, participating organizations, monitoring and evaluation, and report to Congressional committees.

Subsec. (g). Pub. L. 100-656, §502, added par. (1) and designated existing provisions as par. (2) and former pars. (1) and (2) as subpars. (A) and (B).

Subsec. (h). Pub. L. 100-656, §503, designated existing provisions as par. (1), struck out at end "The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.", and added pars. (2) and (3).

Subsec. (k)(3). Pub. L. 100-656, §603(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "be responsible only to, and report directly to, the head of such agency or to his deputy, except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition,".

Subsec. (k)(5) to (8). Pub. L. 100-496 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8),

respectively.

Subsec. (k)(9). Pub. L. 100-656, §603(2)-(4), added par. (9).

Subsec. (l)(2)(D). Pub. L. 100-590, §110(1), struck out "unrestricted" before "technical data" in two places.

Subsec. (l)(2)(E). Pub. L. 100-590, §110(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "have access to the unclassified procurement records and other data of the procurement center;".

Subsec. (l)(3). Pub. L. 100-590, §110(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A breakout procurement center representative is authorized to appeal a failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt."

Subsec. (l)(6). Pub. L. 100-590, §110(4), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "For purposes of this subsection, the term 'major procurement center' means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least \$150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator."

Subsec. (l)(7). Pub. L. 100-590, §110(5), added par. (7).

Subsec. (m). Pub. L. 100-656, §601, amended subsec. (m) generally, substituting provisions related to implementation of section 1207 of Pub. L. 99-661 for former provisions related to labor surplus area procurement and manpower programs.

1987—Subsec. (a). Pub. L. 100-26, §10(a)(1), made technical amendment to directory language of section 921(a)(1) of Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661. See 1986 Amendment note below.

Subsec. (g). Pub. L. 100-180, §809(a)(2), struck out "having a value of \$25,000 or more" after "procurement contracts of such agency".

Pub. L. 100-180, §809(a)(1), provided for temporarily inserting "having a value of \$25,000 or more" after "procurement contracts of such agency". See Effective Date of 1987 Amendments note below.

Subsec. (o)(1). Pub. L. 100-180, §809(b)(1), substituted "subsection (a)" for "this subsection" in introductory provisions.

Subsec. (o)(1)(A). Pub. L. 100-26, §10(b)(1)(A), substituted "at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern" for "the concern will perform at least 50 percent of the cost of the contract with its own employees".

Subsec. (o)(3). Pub. L. 100-26, §10(b)(1)(B), substituted "requirements of such paragraph" for "requirements of such subparagraph" and inserted at end "The percentage applicable to any such requirement shall be determined in accordance with paragraph (2)."

Subsec. (p). Pub. L. 100-180, §809(c), struck out subsec. (p) which read as follows:

"(1) Except as provided in paragraphs (2) and (3), the head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of the small business concerns expected to respond to the procurement to any person who requests such information.

"(2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.

"(3) The head of a Federal agency is not required to release any information under paragraph (1) that is not required to be released under section 552 of title 5."

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(a), (b)], Pub. L. 99-661, §921(a), (b), as amended by Pub. L. 100-26, §10(a)(1), amended subsec. (a) identically, inserting "in each industry category" in cl. (3), and inserting provision identifying an industry category, providing for determination of such category by the Administrator, and permitting segmentation of a market for goods and services under certain circumstances and provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (g). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(d)], Pub. L. 99-661, §921(d), amended subsec. (g) identically, striking out "having values of \$10,000 or more" after "such agency" and inserting provision requiring the head of each Federal agency to make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency.

Subsec. (j). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§922(c)], Pub. L. 99-661, §922(c), amended subsec. (j) identically, substituting "\$25,000" for "\$10,000".

Subsec. (k)(3). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§903(d)], Pub. L. 99-661, §903(d), which

directed identical amendments to par. (3) by inserting ", except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition" was executed by inserting that phrase immediately before the comma at the end as the probable intent of Congress.

Subsec. (n). Pub. L. 99-272 added subsec. (n).

Subsecs. (o), (p). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(c)(2), (e)], Pub. L. 99-661, §921(c)(2), (e), amended section identically, adding subsecs. (o) and (p).

1984—Subsecs. (l), (m). Pub. L. 98-577 added subsec. (l) and redesignated former subsec. (l) as (m).

1980—Subsec. (c). Pub. L. 96-302, §116, substituted provisions covering participation of not-for-profit organizations in certain authorized programs during fiscal years 1981, through 1983, the monitoring and evaluation of such participation as causing severe economic injury to for-profit small businesses and transmission of report to congressional committees not later than Jan. 1, 1982, respecting impact of contracts on the for-profit small businesses for provisions respecting eligibility during fiscal year 1978, of public and private organizations and individuals to participate in the award of contracts and requiring transmission of a report by March 1, 1979.

Subsec. (d). Pub. L. 96-302, §117(a), substituted "small business concerns" for "concerns".

Subsec. (e). Pub. L. 96-302, §117(b), in revising text, struck out from introductory clause reference to labor surplus areas; reenacted par. (1) reversing order of reference to small business concerns and location in labor surplus areas; reenacted par. (2); added par. (3); redesignated former par. (3) as (4); and struck out former par. (4) as to concerns located in labor surplus areas on basis of total set-aside, as covered in par. (1).

Subsec. (f). Pub. L. 96-302, §117(b), substituted provision respecting other priorities in placement of contracts for requirement that subsecs. (d) and (e) of this section cease to be effective subsequent to Sept. 30, 1980, unless renewed prior to such date.

1978—Subsec. (f). Pub. L. 95-507, §232, substituted "September 30, 1980" for "September 30, 1979".

Subsecs. (g) to (k). Pub. L. 95-507, §221, added subsecs. (g) to (k).

Subsec. (l). Pub. L. 95-507, §233, added subsec. (l).

1977—Pub. L. 95-89 designated existing provisions as subsec. (a) and added subsecs. (b) to (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-91, div. A, title XVII, §1703(b), Dec. 12, 2017, 131 Stat. 1806, provided that: "The Administrator of the Small Business Administration shall be required to report on the information required by clauses (i)(V), (ii)(VI), (iii)(VII), (iv)(VII), (v)(VI), (vi)(VI), (vii)(VI), and (viii)(IX) of section 15(h)(2)(E) of the Small Business Act (15 U.S.C. 644(h)(2)(E)) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any new or successor system."

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

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2220 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by sections 4004 and 7106(a) of Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 8752 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-37 applicable as if included in Pub. L. 100-656, see section 32 of Pub. L. 101-37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 502 and 503 of Pub. L. 100-656 effective Oct. 1, 1989, and amendment by

sections 601 and 603 of Pub. L. 100–656 effective Nov. 15, 1988, see section 803(a)(7), (b)(4)(C), of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by Pub. L. 100–496 applicable to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100–496, set out as a note under section 3902 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, §809(a)(1), Dec. 4, 1987, 101 Stat. 1130, provided that the amendment made by that section is in effect until Sept. 30, 1988.

Pub. L. 100–180, div. A, title VIII, §809(a)(2), Dec. 4, 1987, 101 Stat. 1130, as amended by Pub. L. 100–656, title VII, §731, Nov. 15, 1988, 102 Stat. 3897, provided that the amendment made by that section is effective Oct. 1, 1989.

Amendment by section 10(a)(1), (b)(1) of Pub. L. 100–26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100–26) [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], see section 12(c) of Pub. L. 100–26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XVIII, §18003(b), Apr. 7, 1986, 100 Stat. 364, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the ninetieth day after the date of the enactment of this Act [Apr. 7, 1986]."

Amendment by section 101(c) [title X, §921(a), (b)(1), (c)(2)–(e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(a), (b)(1), (c)(2)–(e) of Pub. L. 99–661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g) of Pub. L. 99–661, set out as a note under section 632 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.

ELIMINATING SELF-CERTIFICATION FOR SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES

Pub. L. 118–31, div. A, title VIII, §864, Dec. 22, 2023, 137 Stat. 347, provided that:

"(a) DEFINITIONS.—In this section:

"(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Small Business Administration.

"(2) SMALL BUSINESS CONCERN; SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The terms 'small business concern' and 'small business concerns owned and controlled by service-disabled veterans' have the meanings given those terms in section 3 of the Small Business Act (15 U.S.C. 632).

"(b) ELIMINATING SELF-CERTIFICATION IN PRIME CONTRACTING AND SUBCONTRACTING FOR SDVOSBS.—

"(1) IN GENERAL.—Each prime contract award and subcontract award that is counted for the purpose of meeting the goals for participation by small business concerns owned and controlled by service-disabled veterans in procurement contracts for Federal agencies, as established in section 15(g)(2) of the Small Business Act (15 U.S.C. 644(g)(2)), shall be entered into with small business concerns certified by the Administrator as small business concerns owned and controlled by service-disabled veterans under section 36 of such Act (15 U.S.C. 657f).

"(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on October 1 of the fiscal year beginning after the Administrator promulgates the regulations required under subsection (d).

"(c) PHASED APPROACH TO ELIMINATING SELF-CERTIFICATION FOR SDVOSBS.—Notwithstanding any other provision of law, any small business concern that self-certified as a small business concern owned and controlled by service-disabled veterans may—

"(1) if the small business concern files a certification application with the Administrator before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 22, 2023], maintain such self-certification until the Administrator makes a determination with respect to such certification; and

"(2) if the small business concern does not file a certification application before the end of the 1-year

period beginning on the date of enactment of this Act, lose, at the end of such 1-year period, any self-certification of the small business concern as a small business concern owned and controlled by service-disabled veterans.

"(d) RULEMAKING.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall promulgate regulations to carry out this section."

COMPLIANCE OF OFFICES OF SMALL BUSINESS AND DISADVANTAGED BUSINESS UTILIZATION

Pub. L. 116–283, div. A, title VIII, §870, Jan. 1, 2021, 134 Stat. 3788, provided that:

"(a) REPORT.—If the Comptroller General of the United States has determined that a Director of Small and Disadvantaged Business Utilization of a Federal agency is not in compliance with the requirements of section 15(k) of the Small Business Act (15 U.S.C. 644(k)), such Director shall submit, not later than the specified date, to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that includes the reasons for such noncompliance and the specific actions the Director shall take to remedy such noncompliance.

"(b) SPECIFIED DATE DEFINED.—In this section, the term 'specified date' means the later of—

"(1) the date that is 120 days after the date on which a determination is made under subsection (a); and

"(2) 120 days after the date of the enactment of this Act [Jan. 1, 2021]."

TRAINING TO BE UPDATED

Pub. L. 114–328, div. A, title XVIII, §1814(b), Dec. 23, 2016, 130 Stat. 2654, provided that: "After receipt of information from the Administrator of the Small Business Administration pursuant to section 15(v) of the Small Business Act [15 U.S.C. 644(v)], the Defense Acquisition University (established under section 1746 of title 10, United States Code) and the Federal Acquisition Institute (established under section 1201 of title 41, United States Code) shall periodically update the training provided to the acquisition workforce to incorporate such information."

SCORECARD PROGRAM FOR EVALUATING FEDERAL AGENCY COMPLIANCE WITH SMALL BUSINESS CONTRACTING GOALS

Pub. L. 114–92, div. A, title VIII, §868(b), Nov. 25, 2015, 129 Stat. 933, which authorized the Administrator of the Small Business Administration, in consultation with the Federal agencies, to develop a methodology for calculating a score to be used to evaluate the compliance of each Federal agency with meeting the goals established pursuant to subsec. (g)(1)(B) of this section based on each such goal and a scorecard based on such methodology, was transferred to the end of this section and redesignated as subsec. (y) by Pub. L. 117–263, div. A, title VIII, §871(a), Dec. 23, 2022, 136 Stat. 2738.

ADDITIONAL REQUIREMENTS FOR THE SMALL BUSINESS PREFERENCE PROGRAMS FOR PRIME AND SUBCONTRACT FEDERAL PROCUREMENT GOALS AND ACHIEVEMENTS

Pub. L. 112–239, div. A, title XVI, §1631(c), Jan. 2, 2013, 126 Stat. 2072, provided that: "Not later than 180 days after the date of the enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall review and revise the Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals and Achievements to the extent necessary to ensure that—

"(1) agency subcontracting goals are established on the basis of realistically achievable improvements to levels of subcontracting rather than on the basis of an average of previous years' subcontracting performance;

"(2) agency contracting and subcontracting goals are established in a manner that does not exclude categories of contracts on the basis of—

"(A) the type of goods or services for which the agency contracts;

"(B) in the case of contracts subject to competitive procedures under chapter 33 of title 41, United States Code—

"(i) whether or not funding for the contracts is made directly available to the agency by an Appropriations Act or is made available by reimbursement from another agency or account; or

"(ii) whether or not the contract is subject to the Federal Acquisition Regulation; and

"(3) whenever an agency contracting or subcontracting goal is established at a level lower than the Governmentwide goal for small business concerns or the relevant category of small business concerns, the Administration is required to document the basis for the decision to establish such lower goal."

ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE

Pub. L. 111–240, title I, §1312(d), Sept. 27, 2010, 124 Stat. 2538, provided that:

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator [of the Small Business Administration] shall implement a 3-year pilot electronic procurement center representative program.

"(2) REPORT.—Not later than 30 days after the pilot program under paragraph (1) ends, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the pilot program."

SMALL BUSINESS TEAMS PILOT PROGRAM

Pub. L. 111–240, title I, §1314, Sept. 27, 2010, 124 Stat. 2540, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'Pilot Program' means the Small Business Teaming Pilot Program established under subsection (b); and

"(2) the term 'eligible organization' means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Administrator) relating to—

"(A) customer relations and outreach;

"(B) team relations and outreach; and

"(C) performance measurement and quality assurance.

"(b) ESTABLISHMENT.—The Administrator shall establish a Small Business Teaming Pilot Program for teaming and joint ventures involving small business concerns.

"(c) GRANTS.—Under the Pilot Program, the Administrator may make grants to eligible organizations to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts.

"(d) CONTRACTING OPPORTUNITIES.—The Administrator shall work with eligible organizations receiving a grant under the Pilot Program to recommend appropriate contracting opportunities for teams or joint ventures of small business concerns.

"(e) REPORT.—Not later than 1 year before the date on which the authority to carry out the Pilot Program terminates under subsection (f), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of the Pilot Program.

"(f) TERMINATION.—The authority to carry out the Pilot Program shall terminate 5 years after the date of enactment of this Act [Sept. 27, 2010].

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (c) \$5,000,000 for each of fiscal years 2010 through 2015."

[For definitions of "Administrator" and "small business concern" as used in section 1314 of Pub. L.

111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

MANUFACTURING CONTRACTS THROUGH MANUFACTURING APPLICATION AND EDUCATION CENTERS

Pub. L. 103–403, title III, §303, Oct. 22, 1994, 108 Stat. 4188, authorized the Small Business Administration to promote the award of Federal manufacturing contracts to small business concerns that participate in manufacturing application and education centers by working with the Department of Commerce and other agencies to identify components and subsystems that are both critical and currently foreign-sourced, such authority to terminate on Sept. 30, 1997.

PILOT PROGRAM FOR VERY SMALL BUSINESS CONCERNS

Pub. L. 103–403, title III, §304, Oct. 22, 1994, 108 Stat. 4188, as amended by Pub. L. 105–135, title V, §508, Dec. 2, 1997, 111 Stat. 2627; Pub. L. 106–554, §1(a)(9) [title V, §503(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, required the Administrator of the Small Business Administration to establish and carry out a pilot program related to improved access to Federal contract opportunities for very small business concerns beginning not later than Aug. 30, 1995, and expiring on Sept. 30, 2003.

EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS

Pub. L. 103–355, title II, §2353, Oct. 13, 1994, 108 Stat. 3323, provided that:

"(a) REGULATIONS REQUIRED.—(1) The Federal Acquisition Regulation shall include provisions that require a contracting officer—

"(A) to make every reasonable effort to respond in writing within 30 days to any written request made to a contracting officer with respect to a matter relating to the administration of a contract that is received

from a small business concern; and

"(B) in the event that the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

"(2) The provisions shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 ([former] 41 U.S.C. 601 et seq.) [see 41 U.S.C. 7101 et seq.].

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be considered as creating any rights under the Contract Disputes Act of 1978 ([former] 41 U.S.C. 601 et seq.) [see 41 U.S.C. 7101 et seq.].

"(c) DEFINITION.—In this section, the term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section."

CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESSES

Pub. L. 103–355, title VII, §7102, Oct. 13, 1994, 108 Stat. 3367, as amended by Pub. L. 106–554, §1(a)(9) [title V, §503(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, provided that:

"(a) PROCUREMENT PROCEDURES AUTHORIZED.—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

"(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and

"(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

"(2) Paragraph (1) does not apply to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

"(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

"(1) IN GENERAL.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).

"(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

"(A) conditions for the use of advance payments;

"(B) provisions for contract payment terms that provide for—

"(i) accelerated payment for work performed during the period for contract performance; and

"(ii) full payment for work performed;

"(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to subsection (a)(1)(B), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

"(D)(i) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

"(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

"(c) TERMINATION.—This section shall cease to be effective at the end of September 30, 2003."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL

Pub. L. 103–355, title VII, §7104, Oct. 13, 1994, 108 Stat. 3369, formerly set out as a note under this section, was transferred to section 644a of this title.

**PROCUREMENT PROCEDURES UNDER SMALL BUSINESS COMPETITIVENESS
DEMONSTRATION PROGRAM ACT OF 1988**

Pub. L. 102-366, title II, §202(h), Sept. 4, 1992, 106 Stat. 996, provided for procurement procedures under the Small Business Competitiveness Demonstration Program Act of 1988 prior to implementation of improvements to the collection of data regarding prime contract awards and of a system for collecting such data.

**MODIFICATIONS OF TEST PLAN AND POLICY DIRECTION UNDER SMALL BUSINESS
COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988**

Pub. L. 102-366, title II, §202(i), Sept. 4, 1992, 106 Stat. 996, required the Administrator for Federal Procurement Policy to issue certain modifications to the test plan and policy direction under the Small Business Competitiveness Demonstration Program Act of 1988.

CONTRACT BUNDLING STUDY

Pub. L. 102-366, title III, §321, Sept. 4, 1992, 106 Stat. 1006, provided that the Administrator of the Small Business Administration was to conduct a study regarding the impact of the practice known as "contract bundling" on the participation of small business concerns in the Federal procurement process and, not later than May 15, 1993, to submit a report on the results of the study to the Committees on Small Business of the Senate and the House of Representatives.

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Pub. L. 100-656, title VII, §§701-722, Nov. 15, 1988, 102 Stat. 3889-3895, as amended by Pub. L. 101-37, §§23-29, June 15, 1989, 103 Stat. 75, 76; Pub. L. 101-574, title II, §243, Nov. 15, 1990, 104 Stat. 2827; Pub. L. 102-54, §13(e), June 13, 1991, 105 Stat. 275; Pub. L. 102-366, title II, §§201-202(g), 203, Sept. 4, 1992, 106 Stat. 993-996; Pub. L. 102-484, div. A, title VIII, §801(h)(9), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102-564, title III, §307(a), Oct. 28, 1992, 106 Stat. 4263; Pub. L. 103-160, div. A, title VIII, §850(2), Nov. 30, 1993, 107 Stat. 1726; Pub. L. 103-446, title XII, §1202(a)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104-208, div. D, title I, §108(a)-(c)(1), Sept. 30, 1996, 110 Stat. 3009-732, 3009-733; Pub. L. 105-18, title II, §2002, June 12, 1997, 111 Stat. 174; Pub. L. 105-135, title IV, §§401-405, Dec. 2, 1997, 111 Stat. 2616; Pub. L. 108-375, div. A, title VIII, §821, Oct. 28, 2004, 118 Stat. 2016, known as the Small Business Competitiveness Demonstration Program Act of 1988, established a Small Business Competitiveness Demonstration Program, prior to repeal by Pub. L. 111-240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

[Pub. L. 111-240, title I, §1335(b), Sept. 27, 2010, 124 Stat. 2543, provided that: "The amendment made by this section [repealing sections 701-722 of Pub. L. 100-656, formerly set out above, and section 741 of Pub. L. 100-656, formerly set out below]—

["(1) shall take effect on the date of enactment of this Act [Sept. 27, 2010]; and

["(2) apply to the first full fiscal year after the date of enactment of this Act."]

SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR

Pub. L. 100-656, title VII, §741, Nov. 15, 1988, 102 Stat. 3897, authorized the Small Business Administration to segment the industry category of shipbuilding and ship repair, prior to repeal by Pub. L. 111-240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

**PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS; REPORT ON IMPACT ON
SMALL BUSINESS CONCERNS**

Pub. L. 100-590, title I, §133(b), Nov. 3, 1988, 102 Stat. 3006, provided that not later than Sept. 30, 1992, the General Accounting Office was to prepare a report describing the impact that contracts awarded under subsec. (c) of this section had on for-profit small business concerns for fiscal years 1989 through 1991, and transmit the report to the Committees on Small Business of the Senate and the House of Representatives.

**TASK FORCE ON PURCHASES FROM BLIND AND SEVERELY HANDICAPPED INDIVIDUALS;
ESTABLISHMENT; MEETINGS; RECOMMENDATIONS**

Pub. L. 100-590, title I, §133(c), Nov. 3, 1988, 102 Stat. 3006, provided that: "There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affairs [sic] of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 ([former]

41 U.S.C. 46) [now 41 U.S.C. 8502]. The task force shall meet at least once every six months for the purpose of reviewing the award of contracts under section 15(c) of the Small Business Act [15 U.S.C. 644(c)] and recommending to the Small Business Administration such administrative or statutory changes as it deems appropriate."

STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

Pub. L. 98-577, title IV, §403(b), Oct. 30, 1984, 98 Stat. 3082, provided that:

"(1) The Administrator of the Small Business Administration and the Comptroller General of the United States shall jointly establish standards for measuring cost savings achieved through the efforts of breakout procurement center representatives and for measuring the extent to which competition has been increased as a result of such efforts. Thereafter, the Administrator shall annually prepare and submit to the Congress a report setting forth—

"(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

"(B) an evaluation of the extent to which competition has been increased as a result of such efforts;
and

"(C) such other information as the Administrator may deem appropriate.

"(2) Within 180 days following the submission of the second annual report to Congress by the Administrator, the Comptroller General shall report to the Congress an evaluation of the Administration's adherence to the standards jointly established and the accuracy of the information the Administration has submitted to the Congress."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13157. INCREASING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

Ex. Ord. No. 13157, May 23, 2000, 65 F.R. 34035, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631, *et seq.*, section 7106 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) [amending 15 U.S.C. 632, 637, 644, 645], and the Office of Federal Procurement Policy [Act], [former] 41 U.S.C. 403, *et seq.*, and in order to strengthen the executive branch's commitment to increased opportunities for women-owned small businesses, it is hereby ordered as follows:

SECTION 1. *Executive Branch Policy.* In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(g)(1), it shall be the policy of the executive branch to take the steps necessary to meet or exceed the 5 percent Government-wide goal for participation in procurement by women-owned small businesses (WOSBs). Further, the executive branch shall implement this policy by establishing a participation goal for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year.

SEC. 2. *Responsibilities of Federal Departments and Agencies.* Each department and agency (hereafter referred to collectively as "agency") that has procurement authority shall develop a long-term comprehensive strategy to expand opportunities for WOSBs. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year. The agency's plans shall include, where appropriate, methods and programs as set forth in section 4 of this order.

SEC. 3. *Responsibilities of the Small Business Administration.* The Small Business Administration (SBA) shall establish an Assistant Administrator for Women's Procurement within the SBA's Office of Government Contracting. This officer shall be responsible for:

(a) working with each agency to develop and implement policies to achieve the participation goals for WOSBs for the executive branch and individual agencies;

(b) advising agencies on how to implement strategies that will increase the participation of WOSBs in Federal procurement;

(c) evaluating, on a semiannual basis, using the Federal Procurement Data System (FPDS), the achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

(d) preparing a report, which shall be submitted by the Administrator of the SBA to the President,

through the Interagency Committee on Women's Business Enterprise and the Office of Federal Procurement Policy (OFPP), on findings based on the FPDS, regarding prime contracts and subcontracts awarded to WOSBs;

(e) making recommendations and working with Federal agencies to expand participation rates for WOSBs, with a particular emphasis on agencies in which the participation rate for these businesses is less than 5 percent;

(f) providing a program of training and development seminars and conferences to instruct women on how to participate in the SBA's 8(a) [15 U.S.C. 637(a)] program, the Small Disadvantaged Business (SDB) program, the HUBZone program, and other small business contracting programs for which they may be eligible;

(g) developing and implementing a single uniform Federal Government-wide website, which provides links to other websites within the Federal system concerning acquisition, small businesses, and women-owned businesses, and which provides current procurement information for WOSBs and other small businesses;

(h) developing an interactive electronic commerce database that allows small businesses to register their businesses and capabilities as potential contractors for Federal agencies, and enables contracting officers to identify and locate potential contractors; and

(i) working with existing women-owned business organizations, State and local governments, and others in order to promote the sharing of information and the development of more uniform State and local standards for WOSBs that reduce the burden on these firms in competing for procurement opportunities.

SEC. 4. *Other Responsibilities of Federal Agencies.* To the extent permitted by law, each Federal agency shall work with the SBA to ensure maximum participation of WOSBs in the procurement process by taking the following steps:

(a) designating a senior acquisition official who will work with the SBA to identify and promote contracting opportunities for WOSBs;

(b) requiring contracting officers, to the maximum extent practicable, to include WOSBs in competitive acquisitions;

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-protégé programs, which include women-owned small business firms; and

(e) offering industry-wide as well as industry-specific outreach, training, and technical assistance programs for WOSBs including, where appropriate, the use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

SEC. 5. *Subcontracting Plans.* The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or section 834 of Public Law 101-189, as amended (15 U.S.C. 637 note), including subcontracting plans involving WOSBs.

SEC. 6. *Action Plans.* If a Federal agency fails to meet its annual goals in expanding contract opportunities for WOSBs, it shall work with the SBA to develop an action plan to increase the likelihood that participation goals will be met or exceeded in future years.

SEC. 7. *Compliance.* Independent agencies are requested to comply with the provisions of this order.

SEC. 8. *Consultation and Advice.* In developing the long-term comprehensive strategies required by section 2 of this order, Federal agencies shall consult with, and seek information and advice from, State and local governments, WOSBs, other private-sector partners, and other experts.

SEC. 9. *Judicial Review.* This order is for internal management purposes for the Federal Government. It does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13170. INCREASING OPPORTUNITIES AND ACCESS FOR DISADVANTAGED BUSINESSES

Ex. Ord. No. 13170, Oct. 6, 2000, 65 F.R. 60827, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act (15 U.S.C. 631 *et seq.*), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 15 U.S.C. 644 note), the Office of Federal Procurement

Policy Act ([former] 41 U.S.C. 403 *et seq.*), Executive Order 11625 [15 U.S.C. 631 note], and to provide for increased access for disadvantaged businesses to Federal contracting opportunities, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the executive branch to ensure nondiscrimination in Federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the section 8(a) Business Development program of the Small Business Administration (8(a)s), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11625, of October 13, 1971, and to take affirmative action to ensure inclusion of these businesses in Federal contracting. These businesses are of vital importance to job growth and the economic strength of the United States but have faced historic exclusion and underutilization in Federal procurement. All agencies within the executive branch with procurement authority are required to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and SDBs, 8(a)s, and MBEs.

SEC. 2. *Responsibilities of Executive Departments and Agencies with Procurement Authority.* The head of each executive department and agency shall carry out the terms of this order and shall designate, where appropriate, his or her Deputy Secretary or equivalent to implement the terms of this order.

(a) Each department and agency with procurement authority shall:

(i) aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements, including sources likely to reach 8(a)s, SDBs, other small businesses, and MBEs. Each department and agency shall use all available forms of communication to implement this provision, including the Internet, speciality press, and trade press;

(ii) work with the Small Business Administration (SBA) to ensure that information regarding sole source contracts awarded through the section 8(a) program receives the widest dissemination possible to 8(a)s;

(iii) ensure that the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Tables for classification] are used to the maximum extent permitted by law in areas of economic activity in which SDBs have historically been underused;

(iv) aggressively use the firms in the section 8(a) program, particularly in the developmental stage of the program, so that these firms have an opportunity to overcome artificial barriers to Federal contracting and gain access to the Federal procurement arena;

(v) ensure that department and agency heads take all reasonable steps so that prime contractors meet or exceed Federal subcontracting goals, and enforce subcontracting commitments as required by the Small Business Act (15 U.S.C. 637(d)) and other related laws. In particular, they shall ensure that prime contractors actively solicit bids for subcontracting opportunities from 8(a)s and SDBs, and fulfill their SDB and section 8(d) subcontracting obligations. Enforcement of SDB subcontracting plan commitments shall include assessments of liquidated damages, where appropriate, pursuant to applicable contract clauses;

(vi) encourage the establishment of business-to-business mentoring and teaming relationships, including the implementation of Mentor-Protege programs, to foster the development of the technical and managerial capabilities of 8(a)s and SDBs and to facilitate long-term business relationships;

(vii) offer information, training, and technical assistance programs for 8(a)s and SDBs including, where appropriate, Government acquisition forecasts in order to assist 8(a)s and SDBs in developing their products, skills, business planning practices, and marketing techniques;

(viii) train program and procurement officials regarding the policy of including 8(a)s and SDBs in Federal procurement. This includes prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by SDBs and 8(a)s, including their participation in the competition of multiple award requirements;

(ix) provide the information required by the Department of Commerce when it requests data to develop the benchmarks used in the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994;

(x) ensure that Directors of Offices of Small and Disadvantaged Business Utilization carry out their responsibilities to maximize the participation of 8(a)s and SDBs in Federal procurement and, in particular, ensure that the Directors report directly to the head of each department or agency as required by law; and

(xi) as required by law, establish with the Small Business Administration small business goals to ensure that the government-wide goal for participation of small business concerns is not less than 23 percent of Federal prime contracts. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for SDBs of not less than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)]. These

goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

(b) Each department and agency with procurement authority shall:

(i) develop a long-term comprehensive plan to implement the requirements of section 2(a) of this order and submit this plan to the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The Director of OMB shall review each plan and report to the President on the sufficiency of each plan to carry out the terms of this order; and

(ii) annually, by April 30 each year, assess its efforts and the results of those efforts to increase utilization of 8(a)s, SDBs, and MBEs as both prime contractors and subcontractors and report on those efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

SEC. 3. Responsibilities of the Small Business Administration. The Administrator of the SBA shall:

(a) evaluate on a semi-annual basis, using the Federal Procurement Data System (FPDS), the achievement of government-wide prime and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA's evaluation;

(b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and aggressively seek opportunities for maximizing the use of 8(a)s and SDBs in department and agency procurements; and

(c) ensure that each department and agency's small and disadvantaged business procurement goals as well as the amount of procurement of each department and agency with 8(a)s, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

SEC. 4. Federal Advertising. Each department or agency that contracts with businesses to develop advertising for the department or agency or to broadcast Federal advertising shall take an aggressive role in ensuring substantial minority-owned entities' participation, including 8(a), SDB, and MBE, in Federal advertising-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation's diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

SEC. 5. Information Technology. Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each department and agency shall coordinate with procurement officials to implement this section.

SEC. 6. General Services Administration Schedules. The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procurement and program officials at all levels that use GSA Schedules aggressively seek to utilize the Schedule contracts of 8(a)s and SDBs. The GSA shall allow agencies ordering from designated 8(a) firms under the Multiple Award Schedule to count those orders toward their 8(a) procurement goals.

SEC. 7. Bundling Contracts. To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

SEC. 8. Awards Program. The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

SEC. 9. Applicability. Independent agencies are requested to comply with the provisions of this order.

SEC. 10. Administration, Enforcement, and Judicial Review.

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON.

**DELEGATION OF AUTHORITY TO ESTABLISH ANNUAL GOALS FOR PARTICIPATION OF
SMALL BUSINESS CONCERNS IN PROCUREMENT CONTRACTS**

Memorandum of the President of the United States, June 6, 1990, 55 F.R. 27453-27455, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 15(g) of the Small Business Act, as amended [subsec. (g) of this section], and section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to establish the annual goals required by Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100-656) [amending this section].

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

**CONTINUED COMMITMENT TO SMALL, SMALL DISADVANTAGED, AND SMALL
WOMEN-OWNED BUSINESSES IN FEDERAL PROCUREMENT**

Memorandum of President of the United States, Oct. 13, 1994, 59 F.R. 52397, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

It is the policy of the Federal Government that a fair proportion of its contracts be placed with small, small disadvantaged, and small women-owned businesses. Such businesses should also have the maximum practicable opportunity to participate as subcontractors in contracts awarded by the Federal Government consistent with efficient contract performance. I am committed to the continuation of this policy. Therefore, I ask that you encourage the use of various tools, including set-asides, price preferences, and section 8(a) of the Small Business Act (15 U.S.C. 637(a)), as necessary to achieve this policy objective.

The Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Short Title of 1994 Act note set out under section 101 of Title 41, Public Contracts] authorizes civilian agencies to utilize set-aside procurements for small disadvantaged businesses. The Act also, for the first time, establishes goals for contracting with small women-owned businesses. These provisions, along with others in the Act, will provide greater access to Federal Government business opportunities for small, small disadvantaged, and small women-owned businesses. Department and agency heads should ensure that efforts to streamline acquisition procedures encourage the participation of these businesses in Federal procurements.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

¹ *So in original. Probably should be "business".*

² *So in original. Probably should be "section".*

³ *See References in Text note below.*

⁴ *So in original. The comma probably should be a semicolon.*

⁵ *So in original. Probably should be followed by "and".*

⁶ *So in original. Probably should be "paragraphs".*

⁷ *So in original. Probably should be "the procurement center representative".*

§644a. Small Business Procurement Advisory Council

(a) Establishment

There is hereby established an interagency council to be known as the "Small Business Procurement Advisory Council" (hereinafter in this section referred to as the "Council").

(b) Duties

The duties of the Council are—

- (1) to develop positions on proposed procurement regulations affecting the small business community;
- (2) to submit comments reflecting such positions to appropriate regulatory authorities;
- (3) to conduct reviews of each Office of Small and Disadvantaged Business Utilization established under section 644(k) of this title to determine the compliance of each Office with requirements under such section;
- (4) to identify best practices for maximizing small business utilization in Federal contracting that may be implemented by Federal agencies having procurement powers; and
- (5) to submit, annually, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—
 - (A) the comments submitted under paragraph (2) during the 1-year period ending on the date on which the report is submitted, including any outcomes related to the comments;
 - (B) the results of reviews conducted under paragraph (3) during such 1-year period; and
 - (C) best practices identified under paragraph (4) during such 1-year period.

(c) Membership

The Council shall be composed of the following members:

- (1) The Administrator of the Small Business Administration (or the designee of the Administrator).
- (2) The Director of the Minority Business Development Agency.
- (3) The head of each Office of Small and Disadvantaged Business Utilization in each Federal agency having procurement powers.

(d) Chairman

The Council shall be chaired by the Administrator of the Small Business Administration (or the designee of the Administrator).

(e) Meetings

The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

(f) Consideration of Council comments

The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner pursuant to subsection (b)(2).

(Pub. L. 103–355, title VII, §7104, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 112–239, div. A, title XVI, §1692, Jan. 2, 2013, 126 Stat. 2089.)

EDITORIAL NOTES

CODIFICATION

Section was formerly set out as a note under section 644 of this title.

Section was enacted as part of the Federal Acquisition Streamlining Act of 1994, and not as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2013—Subsec. (b)(3) to (5). Pub. L. 112–239, §1692(a), added pars. (3) to (5).

Subsec. (c)(3). Pub. L. 112–239, §1692(b), struck out "(established under section 644(k) of this title)" after "Utilization".

Subsec. (d). Pub. L. 112–239, §1692(c), inserted "(or the designee of the Administrator)" after "Small Business Administration".

§645. Offenses and penalties

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

(b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

(c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d) Misrepresentation, etc.

(1) Whoever misrepresents the status of any concern or person as a "small business concern", a "qualified HUBZone small business concern", a "small business concern owned and controlled by service-disabled veterans", a "small business concern owned and controlled by veterans", a "small business concern owned and controlled by socially and economically disadvantaged individuals", or a "small business concern owned and controlled by women", in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 637, 638, 644, 657a, 657f, or 657f–1 of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 637(d) of this title for a definition of program eligibility,¹ shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(3) **LIMITATION ON LIABILITY.**—This subsection shall not apply to any conduct in violation of subsection (a) if the defendant acted in good faith reliance on a written advisory opinion from a Small Business Development Center (as defined in this chapter), or an entity participating in the Procurement Technical Assistance Cooperative Agreement Program defined in chapter 388 of title 10; however nothing in this chapter shall obligate either entity to provide such a letter nor shall the provision of such a letter in any way render the providing entity liable to the business concern should the Administrator later determine that the concern is not a small business concern. Upon issuance of an advisory opinion under this paragraph, the entity issuing the advisory opinion shall remit a copy of the opinion to the General Counsel of the Administration, who may reject the advisory opinion. If the General Counsel of the Administration rejects the advisory opinion, the Administration shall notify the entity issuing the advisory opinion and the recipient of the opinion, after which time the business concern may not rely upon the opinion.

(e) Representations under subsection (d) to be in writing

Any representation of the status of any concern or person as a "small business concern", a "HUBZone small business concern", a "small business concern owned and controlled by service-disabled veterans", a "small business concern owned and controlled by veterans", a "small business concern owned and controlled by socially and economically disadvantaged individuals", or a "small business concern owned and controlled by women" in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

(f) Misrepresentation of compliance with section 636(j)(10)(I)

Whoever falsely certifies past compliance with the requirements of section 636(j)(10)(I) of this title shall be subject to the penalties prescribed in subsection (d).

(g) Subcontracting limitations

(1) In general

Whoever violates a requirement established under section 657s of this title shall be subject to the penalties prescribed in subsection (d), except that, for an entity that exceeded a limitation on subcontracting under such section, the fine described in subsection (d)(2)(A) shall be treated as the greater of—

(A) \$500,000; or

(B) the dollar amount expended, in excess of permitted levels, by the entity on subcontractors.

(2) Monitoring

Not later than 1 year after January 2, 2013, the Administrator shall take such actions as are necessary to ensure that an existing Federal subcontracting reporting system is modified to notify the Administrator, the appropriate Director of the Office of Small and Disadvantaged Business Utilization, and the appropriate contracting officer if a requirement established under section 657s of this title is violated.

(Pub. L. 85–536, §2[16], July 18, 1958, 72 Stat. 395; Pub. L. 88–264, §2, Feb. 5, 1964, 78 Stat. 8; Pub. L. 99–272, title XVIII, §18009, Apr. 7, 1986, 100 Stat. 368; Pub. L. 100–656, title IV, §405, Nov. 15, 1988, 102 Stat. 3875; Pub. L. 103–355, title VII, §7106(c), Oct. 13, 1994, 108 Stat. 3376; Pub. L. 105–85, div. A, title X, §1073(g)(4), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–135, title VI, §603(c), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 112–239, div. A, title XVI, §§1652, 1681(a), 1682(a), Jan. 2, 2013, 126 Stat. 2081, 2085, 2086; Pub. L. 116–283, div. A, title VIII, §862(d)(2), Jan. 1, 2021, 134 Stat. 3780; Pub. L. 117–81, div. A, title XVII, §1702(e)(6), Dec. 27, 2021, 135 Stat. 2157.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), referred to in subsec. (d)(2)(B), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (d)(2)(D), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) 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.

PRIOR PROVISIONS

Prior similar provisions were contained in section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, which was previously classified to section 638 of this title. The provisions of section 216 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, which was classified to section 637(c) of this title prior to repeal by Pub. L. 102–191. See section 656 of this title.

AMENDMENTS

2021—Subsec. (d)(1). Pub. L. 116–283, §862(d)(2)(A)(i), substituted " 'small business concern'," for " 'small business concern',," and ", a 'small business concern owned and controlled by service-disabled veterans', a 'small business concern owned and controlled by veterans', a 'small business concern owned and controlled by socially and economically disadvantaged individuals' " for ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals' " in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 116–283, §862(d)(2)(A)(ii), substituted "section 637, 638, 644, 657a, 657f, or 657f–1" for "section 638, 644, or 657a".

Subsec. (d)(3). Pub. L. 117–81 substituted "chapter 388" for "chapter 142".

Subsec. (e). Pub. L. 116–283, §862(d)(2)(B), substituted " 'small business concern'," for " 'small business concern',," and ", a 'small business concern owned and controlled by service-disabled veterans', a 'small business concern owned and controlled by veterans', a 'small business concern owned and controlled by socially and economically disadvantaged individuals' " for ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals' ".

2013—Subsec. (d)(2)(C). Pub. L. 112–239, §1682(a), struck out "on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract" after "regulation)".

Subsec. (d)(3). Pub. L. 112–239, §1681(a), added par. (3).

Subsec. (g). Pub. L. 112–239, §1652, added subsec. (g).

1997—Subsec. (d)(1). Pub. L. 105–135, §603(c)(1)(A), inserted ", a 'qualified HUBZone small business concern'," after " 'small business concern',".

Pub. L. 105–85 substituted "concern owned and controlled by women" for "concerns owned and controlled by women".

Subsec. (d)(1)(A). Pub. L. 105–135, §603(c)(1)(B), substituted "section 638, 644, or 657a" for "section 638 or 644".

Subsec. (e). Pub. L. 105–135, §603(c)(2), inserted ", a 'HUBZone small business concern'," after " 'small business concern',".

Pub. L. 105–85 substituted "concern owned and controlled by women" for "concerns owned and controlled by women".

1994—Subsec. (d)(1). Pub. L. 103–355, §7106(c)(1), substituted ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women' " for "or 'small business concern owned and controlled by socially and economically disadvantaged individuals' ".

Subsec. (e). Pub. L. 103–355, §7106(c)(2), substituted ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women' " for "or 'small business concern owned and controlled by socially and economically disadvantaged individuals' ".

1988—Subsec. (d). Pub. L. 100–656, §405(a), amended subsec. (d) generally, designating existing provisions as par. (1), redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, and in subpar. (D), substituting "subject to the penalties and remedies described in paragraph (2)" for "punished by a fine of not more than \$50,000 or by imprisonment for not more than five years, or both", and adding par. (2).

Subsec. (f). Pub. L. 100–656, §405(b), added subsec. (f).

1986—Subsecs. (d), (e). Pub. L. 99–272 added subsecs. (d) and (e).

1964—Subsec. (c). Pub. L. 88–264 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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 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 8752 of Title 10, Armed Forces.

REGULATIONS

Pub. L. 112–239, div. A, title XVI, §1681(b), Jan. 2, 2013, 126 Stat. 2085, 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 rules defining what constitutes an adequate advisory opinion for purposes of section 16(d)(3) of the Small Business Act [15 U.S.C. 645(d)(3)]."

DEVELOPMENT AND PROMULGATION OF GUIDANCE

Pub. L. 112–239, div. A, title XVI, §1682(b), 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 develop and promulgate guidance implementing this section [amending this section and enacting provisions set out as a note below]."

PUBLICATION OF PROCEDURES REGARDING SUSPENSION AND DEBARMENT

Pub. L. 112–239, div. A, title XVI, §1682(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 publish and maintain on the [Small Business] Administration's Web site the current standard operating procedures of the Administration for suspension and debarment, and the name and contact information for the individual designated by the Administrator as the senior individual responsible for suspension and debarment proceedings."

¹ So in original. Following provision probably should be set flush with par. (1).

§645a. Annual report on suspensions and debarments proposed by Small Business Administration

(a) Report requirement

The Administrator of the Small Business Administration shall submit each year to the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report on the suspension and debarment actions taken by the Administrator during the year preceding the year of submission of the report.

(b) Matters covered

The report required by subsection (a) shall include the following information for the year covered by the report:

(1) Number

The number of contractors proposed for suspension or debarment.

(2) Source

The office within a Federal agency that originated each proposal for suspension or debarment.

(3) Reasons

The reason for each proposal for suspension or debarment.

(4) Results

The result of each proposal for suspension or debarment, and the reason for such result.

(5) Referrals

The number of suspensions or debarments referred to the Inspector General of the Small Business Administration or another agency, or to the Attorney General (for purposes of this paragraph, the Administrator may redact identifying information on names of companies or other information in order to protect the integrity of any ongoing criminal or civil investigation).

(Pub. L. 112–239, div. A, title XVI, §1683, Jan. 2, 2013, 126 Stat. 2086.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Small Business Act which comprises this chapter.

§646. Liens

Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(Pub. L. 85–536, §2[17], July 18, 1958, 72 Stat. 396.)

EDITORIAL NOTES

PRIOR PROVISIONS

Section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, was previously classified to this section. See section 640 of this title, and Codification note set out under section 631 of this title.

§647. Duplication of activities of other Federal departments or agencies

(a) General prohibition; exception

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government,¹ and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

(b) "Agricultural enterprises" defined

As used in this chapter, the term "agricultural enterprises" means those small business concerns engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural-related industries.

(Pub. L. 85–536, §2[18], July 18, 1958, 72 Stat. 396; Pub. L. 93–386, §5, Aug. 23, 1974, 88 Stat. 746; Pub. L. 94–305, title I, §112(e), June 4, 1976, 90 Stat. 667; Pub. L. 96–38, title I, §101(c), July 25, 1979, 93 Stat. 119; Pub. L. 96–302, title I, §119(c), July 2, 1980, 94 Stat. 841; Pub. L. 98–270, title III, §303, Apr. 18, 1984, 98 Stat. 160; Pub. L. 98–369, div. B, title IV, §2401, July 18, 1984, 98

Stat. 1116; Pub. L. 99-272, title XVIII, §18006(a)(3), Apr. 7, 1986, 100 Stat. 366; Pub. L. 114-328, div. A, title XVIII, §1831(a), Dec. 23, 2016, 130 Stat. 2657; Pub. L. 115-189, §4(b), June 21, 2018, 132 Stat. 1497.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior similar provisions were contained in section 225, of act July 30, 1953, ch. 282, as added by act Aug. 9, 1955, ch. 628, §14, 69 Stat. 551, which was previously classified to section 651 of this title. The provisions of section 218 of act July 30, 1953, formerly classified to this section, were transferred to section 2[12] of Pub. L. 85-536, and are classified to section 641 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-189 amended subsec. (b) generally. Prior to amendment, text read as follows: "As used in this chapter—

"(1) 'agricultural enterprises' means those small business concerns engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

"(2) 'credit elsewhere' means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time."

2016—Subsec. (b)(1). Pub. L. 114-328 substituted "small business concerns" for "businesses".

1986—Subsec. (a). Pub. L. 99-272 struck out agricultural enterprises exception and proviso that, prior to Oct. 1, 1987, an agricultural enterprise not be eligible for loan assistance under section 636(b)(1) of this title to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act.

1984—Subsec. (a). Pub. L. 98-369 substituted "October 1, 1987" for "October 1, 1986".

Pub. L. 98-270 substituted "October 1, 1986" for "October 1, 1983".

1980—Subsec. (a). Pub. L. 96-302, §119(c)(1), inserted proviso relating to eligibility for loan assistance prior to October 1, 1983.

Subsec. (b). Pub. L. 96-302, §119(c)(2), added par. (1) and designated as par. (2) existing definition of "credit elsewhere".

1979—Pub. L. 96-38 designated existing provisions as subsec. (a) and added subsec. (b).

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

1974—Pub. L. 93-386 inserted provision authorizing the refusal of loan applications and the denial of loans, for purposes of this section, to be deemed nonduplication of activities.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 inapplicable to disasters commencing on or before Oct. 1, 1980, see section 119(d) of Pub. L. 96-302, set out as a note under section 636 of this title.

PROGRAMS ADMINISTERED BY THE DEPARTMENT OF COMMERCE

Pub. L. 95-507, §207, Oct. 24, 1978, 92 Stat. 1767, provided that: "Nothing in this chapter [meaning chapter 1 of title II of Pub. L. 95-507, consisting of sections 201-206 of Pub. L. 95-507 which amended sections 631, 633, 636, and 637 of this title] is intended to duplicate or limit any programs or projects administered by the Department of Commerce."

¹ *So in original.*

§648. Small business development center program authorization

(a) Grants, contracts and cooperative agreements for establishment of small business development centers and for small business activities and purposes; role of Administration; non-Federal additional amount; amount of grant; eligibility

(1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women's business center operating pursuant to section 656 of this title, any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as "applicants") to assist in establishing small business development centers and to any such body for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises; management and technical assistance regarding small business participation in international markets, export promotion and technology transfer; delivery or distribution of such services and information; providing access to business analysts who can refer small business concerns to available experts; and, to the extent practicable, providing assistance in furtherance of the Small Business Development Center Cyber Strategy developed under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017: *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 656 of this title as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The previous sentence shall not apply to an applicant that has its principal office located in the Commonwealth of the Northern Mariana Islands. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 656 of this title to provide services to the small business community. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.

(2) COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.—

(A) INFORMATION AND SERVICES.—The small business development centers shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State and local agencies (including State trade agencies), and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy and trade data collection programs of particular utility for small businesses.

(B) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.—A small business development center that counsels a small business concern on issues relating to international trade shall—

- (i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and
- (ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

(C) DEFINITION.—In this paragraph, the term "Export Assistance Center" has the same meaning as in section 649 of this title.

(3) The Small Business Development Center Program shall be under the general management and oversight of the Administration for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon,

with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration.

(A) Small business development centers are authorized to form an association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing the annual scope of activities pursuant to this section, (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers.

(B) Provisions governing audits, cost principles and administrative requirements for Federal grants, contracts and cooperative agreements which are included in uniform requirements of Office of Management and Budget (OMB) Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations.

(C) On an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National ¹ and a State basis.

(4) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM LEVEL.—

(A) IN GENERAL.—The Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(B) RESTRICTION.—The matching amount described in subparagraph (A) shall not include any indirect costs or in-kind contributions derived from any Federal program.

(C) FUNDING FORMULA.—

(i) IN GENERAL.—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

(I) The annual amount made available under section 20(a) ² for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (I) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed

in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

(iii) **MINIMUM FUNDING LEVEL.**—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

(I) If the amount made available is not less than \$81,500,000 and not more than \$90,000,000, the minimum funding level shall be \$500,000.

(II) If the amount made available is less than \$81,500,000, the minimum funding level shall be the remainder of \$500,000 minus a percentage of \$500,000 equal to the percentage amount by which the amount made available is less than \$81,500,000.

(III) If the amount made available is more than \$90,000,000, the minimum funding level shall be the sum of \$500,000 plus a percentage of \$500,000 equal to the percentage amount by which the amount made available exceeds \$90,000,000.

(iv) **DISTRIBUTIONS.**—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

(I) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A).

(v) **USE OF AMOUNTS.**—

(I) **IN GENERAL.**—Of the amounts made available in any fiscal year to carry out this section—

(aa) not more than \$500,000 may be used by the Administration to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1); ² and

(bb) not more than \$500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).²

(II) **LIMITATION.**—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E) ² if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph to less than \$85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general small business development center program) or would further reduce the amount of such grants below such amount.

(vi) **EXCLUSIONS.**—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G), or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

(vii) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this subparagraph—

(I) \$130,000,000 for fiscal year 2005; and

(II) \$135,000,000 for fiscal year 2006.

(viii) LIMITATION.—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than \$1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed \$100,000, and shall be used for small business development center personnel expenses and related small business programs and services.

(ix) STATE DEFINED.—In this subparagraph, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—Subject to the conditions set forth in subparagraph (B), a small business development center may enter into a contract with a Federal department or agency to provide specific assistance to small business concerns.

(B) CONTRACT PREREQUISITES.—Before bidding on a contract described in subparagraph (A), a small business development center shall receive approval from the Associate Administrator of the small business development center program of the subject and general scope of the contract. Each approval under subparagraph (A) shall be based upon a determination that the contract will provide assistance to small business concerns and that performance of the contract will not hinder the small business development center in carrying out the terms of the grant received by the small business development center from the Administration.

(C) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under this paragraph shall not be subject to the matching funds or eligibility requirements of paragraph (4).

(D) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, a contract for assistance under this paragraph shall not be applied to any Federal department or agency's small business, woman-owned business, or socially and economically disadvantaged business contracting goal under section 644(g) of this title.

(6) Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist—

(A) with the development and enhancement of exports by small business concerns;

(B) in technology transfer; and

(C) with outreach, development, and enhancement of minority-owned small business startups or expansions, HUBZone small business concerns, veteran-owned small business startups or expansions, and women-owned small business startups or expansions, in communities impacted by base closings or military or corporate downsizing, or in rural or underserved communities;

as provided under subparagraphs (B) through (G) of subsection (c)(3). Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a \$15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be \$100,000.

(7) PRIVACY REQUIREMENTS.—

(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

- (i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or
- (ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

- (i) restrict Administrator access to program activity data; or
- (ii) prevent the Administrator from using client information to conduct client surveys.

(C) REGULATIONS.—

- (i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

- (I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

- (II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

- (ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

- (iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.

(8) CYBERSECURITY ASSISTANCE.—

(A) IN GENERAL.—The Department of Homeland Security, and any other Federal department or agency in coordination with the Department of Homeland Security, may leverage small business development centers to provide assistance to small business concerns by disseminating information relating to cybersecurity risks and other homeland security matters to help small business concerns in developing or enhancing cybersecurity infrastructure, awareness of cyber threat indicators, and cyber training programs for employees.

(B) DEFINITIONS.—In this paragraph, the terms "cybersecurity risk" and "cyber threat indicator" have the meanings given such terms, respectively, under section 650 of title 6.

(b) Area plan inconsistent with applicant's plan: assistance unavailable 1981 through 1983; plan of applicant: submittal to Administration, action on plan, review by Administration, assistance to out-of-State businesses

(1) Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

(2) An applicant may apply to participate in the program by submitting to the Administration for approval a plan naming those authorized in subsection (a) to participate in the program, the geographic area to be served, the services that it would provide, the method for delivering services, a budget, and any other information and assurances the Administration may require to insure that the applicant will carry out the activities eligible for assistance. The Administration is authorized to approve, conditionally approve or reject a plan or combination of plans submitted. In all cases, the Administration shall review plans for conformity with the plan submitted pursuant to paragraph (1) of this subsection, and with a view toward providing small business with the most comprehensive and coordinated assistance in the State or part thereof to be served.

(3) ASSISTANCE TO OUT-OF-STATE SMALL BUSINESS CONCERNS.—

(A) IN GENERAL.—At the discretion of the Administration, the Administration is authorized to permit a small business development center to provide advice, information and assistance, as described in subsection (c), to small businesses located outside the State, but only to the extent such businesses are located within close geographical proximity to the small business development center, as determined by the Administration.

(B) DISASTER RECOVERY ASSISTANCE.—

(i) IN GENERAL.—At the discretion of the Administrator, the Administrator may authorize a small business development center to provide advice, information, and assistance, as described in subsection (c), to a small business concern located outside of the State, without regard to geographic proximity to the small business development center, if the small business concern is located in an area for which the President has declared a major disaster.

(ii) TERM.—

(I) IN GENERAL.—A small business development center may provide advice, information, and assistance to a small business concern under clause (i) for a period of not more than 2 years after the date on which the President declared a major disaster for the area in which the small business concern is located.

(II) EXTENSION.—The Administrator may, at the discretion of the Administrator, extend the period described in subclause (I).

(iii) CONTINUITY OF SERVICES.—A small business development center that provides counselors to an area described in clause (i) shall, to the maximum extent practicable, ensure continuity of services in any State in which the small business development center otherwise provides services.

(iv) ACCESS TO DISASTER RECOVERY FACILITIES.—For purposes of this subparagraph, the Administrator shall, to the maximum extent practicable, permit the personnel of a small business development center to use any site or facility designated by the Administrator for use to provide disaster recovery assistance.

(c) Problem-solving assistance; development center extension services; staff and access requirements; assistance services; changing services for evolving needs; qualified small business vendors; non-profit entities; cooperation with regional and local offices, etc.; information sharing system

(1) Applicants receiving grants under this section shall assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations. Applicants receiving grants under this section may also assist small businesses by providing, where appropriate, education on the requirements applicable to small businesses under the regulations issued under section 2778 of title 22 and on compliance with those requirements.

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have—

(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

(B) access to business analysts to counsel, assist, and inform small business clients;

(C) access to technology transfer agents to provide state of art technology to small businesses through coupling with national and regional technology data sources;

(D) access to information specialists to assist in providing information searches and referrals to small business;

(E) access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises;

(F) access to laboratory and adaptive engineering facilities; and

(G) access to cybersecurity specialists to counsel, assist, and inform small business concern clients, in furtherance of the Small Business Development Center Cyber Strategy developed under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017.

(3) Services provided by a small business development center shall include, but shall not be limited to—

(A) furnishing one-to-one individual counseling to small businesses, including—

(i) working with individuals to increase awareness of basic credit practices and credit requirements;

(ii) working with individuals to develop business plans, financial packages, credit applications, and contract proposals;

(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

(iv) working with individuals referred by the local offices of the Administration and Administration participating lenders;

(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including—

(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

(ii) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;

(C) in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center and the Administration may work in cooperation with the State to establish a State international trade center for these purposes;

(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

(E) working closely with the small business community, small business consultants, State agencies, universities and other appropriate groups to make translation services more readily available to small business firms doing business, or attempting to develop business, in foreign markets;

(F) in providing assistance under this subsection, applicants shall cooperate with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;

(G) assisting small businesses to develop and implement strategic business plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program—

(i) by developing broad economic assessments of the adverse impacts of—

(I) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to such facility or to the military and civilian personnel

currently stationed or working at such facility; and

(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

(iv) by assisting small business concerns to develop and implement an individualized transition business plan.³

(H) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel⁴ small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(I) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(J) providing and maintaining a comprehensive library that contains current information and statistical data needed by small businesses;

(K) maintaining a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associates in order to help address the various needs of the small business community;

(L) conducting in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality;

(M) in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

(N) assisting rural small businesses—

(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

(ii) by providing technical assistance needed by rural small businesses;

(iii) by making available managerial assistance to rural small business concerns; and

(iv) by providing information and assistance in obtaining financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists;

(P) maintaining lists of local and regional private consultants to whom small businesses can be referred;

(Q) providing information to small business concerns regarding compliance with regulatory requirements;

(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) ² of the Small Business Regulatory Enforcement Fairness Act of 1996;

(S) providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the Export Assistance Center program;

(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2006; and

(U) ⁵ encouraging and assisting the provision of succession planning to small business concerns with a focus on transitioning to cooperatives, as defined in section 636(a)(35) of this title, and qualified employee trusts (collectively referred to in this subparagraph as "employee-owned business concerns"), including by—

(i) providing training to individuals to promote the successful management, governance, or operation of a business purchased by those individuals in the formation of an employee-owned business concern;

(ii) assisting employee-owned business concerns that meet applicable size standards established under section 632(a) of this title with education and technical assistance with respect to financing and contracting programs administered by the Administration;

(iii) coordinating with lenders on conducting outreach on financing through programs administered by the Administration that may be used to support the transition of ownership to employees;

(iv) supporting small business concerns in exploring or assessing the possibility of transitioning to an employee-owned business concern; and

(v) coordinating with the cooperative development centers of the Department of Agriculture, the land grant extension network, the Manufacturing Extension Partnership, community development financial institutions, employee ownership associations and service providers, and local, regional and national cooperative associations.

(U) ⁵ in conjunction with the United States Patent and Trademark Office, providing training—

(i) to small business concerns relating to—

(I) domestic and international intellectual property protections; and

(II) how the protections described in subclause (I) should be considered in the business plans and growth strategies of the small business concerns; and

(ii) that may be delivered—

(I) in person; or

(II) through a website.

(4) A small business development center shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(5) In addition to the methods prescribed in paragraph (2), a small business development center shall utilize and compensate as one of its resources qualified small business vendors, including but not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services as described in this subsection to small businesses on behalf of such small business development center.

(6) In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a), or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under subsection (a)(1) to such center or the date the Administration notifies the

grantee funded under subsection (a)(1) that funds are available for grant applications pursuant to subsection (a)(6), whichever date occurs last, the Administration may make grants to a non-profit entity in that State to carry out the activities specified in paragraph (6) of subsection (a). Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a). Such grants shall be effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a).

(7) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(8) The Associate Administrator for Small Business Development Centers, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter ⁶ cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall—

(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

(B) provide information central to technology transfer.

(d) Enhancing export potential of businesses within State; State Office of International Trade

Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small businesses located within the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performance of small businesses within the State.

(e) Laboratory assistance; reimbursement for services

Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administration in developing and establishing programs to support small business development centers by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. The Administration is authorized to reimburse the laboratories for such services.

(f) National Science Foundation; cooperation with Administration and Small Business Development Centers; center support

The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers.

(g) National Aeronautics and Space Administration and regional technology transfer centers

The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.

(h) Associate Administrator for Small Business Development Centers

(1) Appointment and compensation

The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing

appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS-17 of the General Schedule.

(2) Duties

(A) In general

The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore,⁷ selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

(B) Consultation requirements

In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) and Administration officials in areas served by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of such Administration officials.

(i) National Small Business Development Center Advisory Board; establishment; membership; term; Chairman; advisory and counseling functions; meetings; compensation

(1) There is established a National Small Business Development Center Advisory Board (herein referred to as "Board") which shall consist of nine members appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose term shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Associate Administrator for Small Business Development Centers in carrying out the duties described in this section. The Board shall meet at least semiannually and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of the per diem, equivalent of the highest rate of pay for individuals occupying the position under GS-18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

(j) Small business development center advisory board; establishment; chairman; conferences with director on policy

(1) Each small business development center shall establish an advisory board.

(2) Each small business development center advisory board shall elect a chairman and advise, counsel, and confer with the director of the small business development center on all policy matters pertaining to the operation of the small business development center, including who may be eligible to receive assistance from, and how local and regional private consultants may participate with the small business development center.

(k) Program examination and accreditation

(1) Examination

Not later than 180 days after October 22, 1994, the Administration shall develop and implement

a biennial programmatic and financial examination of each small business development center established pursuant to this section.

(2) Accreditation

The Administration may provide financial support, by contract or otherwise, to the association authorized by subsection (a)(3)(A) for the purpose of developing a small business development center accreditation program.

(3) Extension or renewal of cooperative agreements

(A) In general

In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

(B) Accreditation requirement

After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the Associate Administrator for Small Business Development Centers may waive such accreditation requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain accreditation.

(l) Contract authority

The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore ⁷ and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5. If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.

(m) Prohibition on certain fees

A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

(n) Veterans assistance and services program

(1) In general

A small business development center may apply for a grant under this subsection to carry out a veterans assistance and services program.

(2) Elements of program

Under a program carried out with a grant under this subsection, a small business development center shall—

(A) create a marketing campaign to promote awareness and education of the services of the center that are available to veterans, and to target the campaign toward veterans, service-disabled veterans, military units, Federal agencies, and veterans organizations;

(B) use technology-assisted online counseling and distance learning technology to overcome the impediments to entrepreneurship faced by veterans and members of the Armed Forces; and

(C) increase coordination among organizations that assist veterans, including by establishing virtual integration of service providers and offerings for a one-stop point of contact for veterans who are entrepreneurs or owners of small business concerns.

(3) Amount of grants

A grant under this subsection shall be for not less than \$75,000 and not more than \$250,000.

(4) Funding

Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter into cooperative agreements to carry out the provisions of this subsection.

(o) Cyber strategy training for small business development centers

(1) Definitions

In this subsection—

(A) the term "cyber strategy" means resources and tactics to assist in planning for cybersecurity and defending against cyber risks and attacks; and

(B) the term "lead small business development center" means a small business development center that receives reimbursement from the Administrator under paragraph (5).

(2) Certification program

The Administrator shall establish a cyber counseling certification program, or designate 1 or more substantially similar governmental or private cybersecurity certification programs, to certify the employees of lead small business development centers in providing cyber planning assistance to small business concerns.

(3) Number of certified employees

The Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing cyber planning assistance is not less than the lesser of—

(A) 5; or

(B) 10 percent of the total number of employees of the lead small business development center.

(4) Cyber strategy

In carrying out paragraph (2), the Administrator, to the extent practicable, shall consider any cyber strategy methods included in the Small Business Development Center Cyber Strategy developed under section 1841(a)(3)(B) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2662).

(5) Reimbursement for certification

(A) In general

Subject to the availability of appropriations, the Administrator may reimburse each lead small business development center for costs relating to the certification of 1 or more employees of the lead small business center in providing cyber planning assistance under a program established or designated under paragraph (2).

(B) Limitation

The total amount reimbursed by the Administrator under subparagraph (A) may not exceed \$350,000 in any fiscal year.

(Pub. L. 85–536, §2[21], as added Pub. L. 96–302, title II, §202, July 2, 1980, 94 Stat. 843; amended Pub. L. 98–395, §2, Aug. 21, 1984, 98 Stat. 1366; Pub. L. 100–418, title VIII, §8006(b), Aug. 23, 1988, 102 Stat. 1557; Pub. L. 100–590, title I, §§134, 135(3), Nov. 3, 1988, 102 Stat. 3006, 3007; Pub. L. 101–515, title V, §§5(a), 6, Nov. 5, 1990, 104 Stat. 2142; Pub. L. 101–574, title II, §201(a)(1), title III, §303, Nov. 15, 1990, 104 Stat. 2818, 2828; Pub. L. 102–366, title II, §§212, 223(a), Sept. 4, 1992, 106 Stat. 998, 1000; Pub. L. 103–81, §9(a), Aug. 13, 1993, 107 Stat. 783; Pub. L. 103–403, title IV, §§402–404, Oct. 22, 1994, 108 Stat. 4190, 4191; Pub. L. 104–66, title II, §2121, Dec. 21, 1995, 109 Stat. 730; Pub. L. 104–121, title II, §214(a), Mar. 29, 1996, 110 Stat. 859; Pub. L. 104–208, div. D, title I, §106, Sept. 30, 1996, 110 Stat. 3009–731; Pub. L. 105–135, title V, §§502, 506(a), Dec. 2, 1997, 111 Stat. 2622, 2624; Pub. L. 105–277, div. C, title IX, §905, Oct. 21, 1998, 112 Stat. 2681–710; Pub. L. 106–554, §1(a)(9) [title V, §503(e), title VIII, §804(b)], Dec. 21,

2000, 114 Stat. 2763, 2763A–695, 2763A–703; Pub. L. 107–20, title II, §2203(b), July 24, 2001, 115 Stat. 170; Pub. L. 108–447, div. K, title I, §§122, 142, Dec. 8, 2004, 118 Stat. 3449, 3454; Pub. L. 110–186, title I, §107, Feb. 14, 2008, 122 Stat. 627; Pub. L. 111–240, title I, §1209, Sept. 27, 2010, 124 Stat. 2536; Pub. L. 113–291, div. A, title VIII, §823(a), Dec. 19, 2014, 128 Stat. 3436; Pub. L. 114–88, div. B, title I, §2103(a), Nov. 25, 2015, 129 Stat. 690; Pub. L. 114–328, div. A, title XVIII, §§1842, 1843, Dec. 23, 2016, 130 Stat. 2663, 2664; Pub. L. 115–232, div. A, title VIII, §862(e)(2)(B), Aug. 13, 2018, 132 Stat. 1899; Pub. L. 115–259, §5, Oct. 9, 2018, 132 Stat. 3665; Pub. L. 115–278, §2(h)(2), Nov. 16, 2018, 132 Stat. 4183; Pub. L. 116–283, div. A, title VIII, §867(1), Jan. 1, 2021, 134 Stat. 3786; Pub. L. 117–263, div. G, title LXXI, §7143(d)(9), Dec. 23, 2022, 136 Stat. 3664; Pub. L. 117–319, §2(a), Dec. 27, 2022, 136 Stat. 4424.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsecs. (a)(1), (c)(2)(G), and (o)(4), is section 1841(a) of Pub. L. 114–328, div. A, title XVIII, Dec. 23, 2016, 130 Stat. 2662, which is not classified to the Code.

Section 20(a), referred to in subsec. (a)(4)(C)(i)(I), (v), means section 2[20(a)] of Pub. L. 85–536, which is set out as a note under section 631 of this title.

Section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, referred to in subsec. (c)(3)(R), probably means section 212(a) of Pub. L. 104–121, which is set out in a note under section 601 of Title 5, Government Organization and Employees, because Pub. L. 104–121 does not contain a section 312.

The General Schedule, referred to in subsecs. (h)(1) and (i)(2), is set out under section 5332 of Title 5.

CODIFICATION

October 22, 1994, referred to in subsec. (k)(1), was in the original "the date of enactment of this subsection", which was translated as meaning the date of enactment of Pub. L. 103–403, which amended subsec. (k) generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 648 of this title, act July 30, 1953, ch. 282, title II, §219, 67 Stat. 239, which related to requirements for loans, was omitted as superseded by section 642 of this title. See Codification note set out under section 631 of this title.

A prior section 2[21] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2022—Subsec. (a)(8)(B). Pub. L. 117–263 substituted "section 650 of title 6" for "section 659(a) of title 6". Subsec. (o). Pub. L. 117–319 added subsec. (o).

2021—Subsec. (a)(1). Pub. L. 116–283, §867(1)(A), inserted "The previous sentence shall not apply to an applicant that has its principal office located in the Commonwealth of the Northern Mariana Islands." before "The Administration shall require".

Subsec. (a)(4)(C)(ix). Pub. L. 116–283, §867(1)(B), substituted "American Samoa, and the Commonwealth of the Northern Mariana Islands" for "and American Samoa".

2018—Subsec. (a)(8)(B). Pub. L. 115–278 substituted "section 659(a) of title 6" for "section 148(a) of title 6".

Subsec. (c)(3)(U). Pub. L. 115–259 added subpar. (U) relating to training in conjunction with the Patent and Trademark Office.

Pub. L. 115–232 added subpar. (U) relating to succession planning to small business concerns with a focus on transitioning to cooperatives.

2016—Subsec. (a)(1). Pub. L. 114–328, §1842(1), substituted "providing access to business analysts who can refer small business concerns to available experts; and, to the extent practicable, providing assistance in furtherance of the Small Business Development Center Cyber Strategy developed under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017:" for "and providing access to business analysts who can refer small business concerns to available experts:".

Subsec. (a)(8). Pub. L. 114–328, §1843, added par. (8).

Subsec. (c)(2)(G). Pub. L. 114–328, §1842(2), added subpar. (G).

2015—Subsec. (b)(3). Pub. L. 114–88 inserted par. heading, designated existing provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

2014—Subsec. (c)(1). Pub. L. 113–291 inserted at end "Applicants receiving grants under this section may also assist small businesses by providing, where appropriate, education on the requirements applicable to small businesses under the regulations issued under section 2778 of title 22 and on compliance with those requirements."

2010—Subsec. (a)(2). Pub. L. 111–240 designated existing provisions as subpar. (A), inserted par. (2) and subpar. (A) headings, substituted "The small business development centers" for "The Small Business Development Centers", inserted "(including State trade agencies)," after "local agencies", and added subpars. (B) and (C).

2008—Subsec. (n). Pub. L. 110–186 added subsec. (n).

2004—Subsec. (a)(4)(C)(vii) to (ix). Pub. L. 108–447, §122(b), added cls. (vii) and (viii), redesignated former cl. (viii) as (ix), and struck out heading and text of former cl. (vii). Text read as follows: "There is authorized to be appropriated to carry out this subparagraph \$125,000,000 for each of fiscal years 2001, 2002, and 2003."

Subsec. (a)(7). Pub. L. 108–447, §142(a), added par. (7).

Subsec. (c)(3)(T). Pub. L. 108–447, §122(a), substituted "October 1, 2006" for "October 1, 2003".

Subsec. (k). Pub. L. 108–447, §142(b), substituted "Accreditation" for "Certification" and "accreditation" for "certification" wherever appearing in headings and text.

2001—Subsec. (a)(4)(C)(v)(II). Pub. L. 107–20 inserted ", or accompanying report language," after "in appropriations Acts".

2000—Subsec. (a)(4)(C). Pub. L. 106–554, §1(a)(9) [title VIII, §804(b)], amended heading and text of subpar. (C) generally, substituting present provisions for provisions providing that the amount of a grant received by a State under this section would be equal to the greater of \$500,000, or the sum of the State's pro rata share of the national program, plus \$300,000 in fiscal year 1998, \$400,000 in fiscal year 1999, and \$500,000 in each fiscal year thereafter, provisions relating to pro rata reductions, matching requirement, and exception for grants provided to a small business development center to carry out the provisions of subsection (c)(3)(G), and provisions setting forth appropriations of \$85,000,000 for fiscal year 1998, \$90,000,000 for fiscal year 1999, and \$95,000,000 for fiscal year 2000 and each fiscal year thereafter.

Subsec. (c)(3)(T). Pub. L. 106–554, §1(a)(9) [title V, §503(e)], substituted "2003" for "2000".

1998—Subsec. (c)(3)(T). Pub. L. 105–277 added subpar. (T).

1997—Subsec. (a)(1). Pub. L. 105–135, §502(a)(1), inserted "any women's business center operating pursuant to section 656 of this title," after "credit or finance corporation," "or a women's business center operating pursuant to section 656 of this title" after "other than an institution of higher education", and "and women's business centers operating pursuant to section 656 of this title" after "utilize institutions of higher education".

Subsec. (a)(3). Pub. L. 105–135, §502(a)(2)(A), substituted "for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration" for ", but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties".

Subsec. (a)(3)(C). Pub. L. 105–135, §502(a)(2)(B), added subpar. (C).

Subsec. (a)(4)(C)(i). Pub. L. 105–135, §502(a)(3)(A), added cl. (i) and struck out heading and text of former cl. (i). Text read as follows: "Except as provided in clause (ii), no State receiving funds under this section shall receive a grant that exceeds—

"(I) for fiscal year 1995, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and \$125,000; or

"(II) in each succeeding fiscal year, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and \$200,000."

Subsec. (a)(4)(C)(iii). Pub. L. 105–135, §502(a)(3)(B), added cl. (iii) and struck out former cl. (iii) which read as follows:

"(iii) AMOUNT.—The amount of the national program shall be—

"(I) \$70,000,000 through September 30, 1996;

"(II) \$77,500,000 from October 1, 1996 through September 30, 1997; and

"(III) \$85,000,000 beginning October 1, 1997."

Subsec. (a)(6)(C). Pub. L. 105–135, §502(a)(4), added subpar. (C).

Subsec. (c)(3). Pub. L. 105-135, §502(b)(4), redesignated closing provisions as par. (4). Former par. (4) redesignated (5).

Subsec. (c)(3)(A). Pub. L. 105-135, §502(b)(1)(A), substituted "businesses, including—" for "businesses;" in introductory provisions and added cls. (i) to (iv).

Subsec. (c)(3)(B). Pub. L. 105-135, §502(b)(1)(B), realigned margins.

Subsec. (c)(3)(C). Pub. L. 105-135, §502(b)(1)(B), (C), realigned margins and inserted "and the Administration" after "Small Business Development Center".

Subsec. (c)(3)(D) to (G), (M) to (O), (Q), (R). Pub. L. 105-135, §502(b)(1)(B), realigned margins.

Subsec. (c)(3)(S). Pub. L. 105-135, §506(a), added subpar. (S).

Subsec. (c)(4). Pub. L. 105-135, §502(b)(4), redesignated closing provisions of par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 105-135, §502(b)(3), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 105-135, §502(b)(2), realigned margins, substituted "subsection (a)(1)" for "paragraph (a)(1)" and "whichever date occurs last," for "which ever date occurs last,,".

Subsec. (c)(6) to (8). Pub. L. 105-135, §502(b)(3), redesignated pars. (5) to (7) as (6) to (8), respectively.

Subsec. (I). Pub. L. 105-135, §502(c), inserted at end "If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis."

Subsec. (m). Pub. L. 105-135, §502(d), added subsec. (m).

1996—Subsec. (c)(3)(Q), (R). Pub. L. 104-121 added subpars. (Q) and (R).

Subsec. (c)(7). Pub. L. 104-208, §106(a)(2)(A), substituted "Associate Administrator for Small Business Development Centers" for "Deputy Associate Administrator of the Small Business Development Center program".

Subsec. (h). Pub. L. 104-208, §106(a)(1), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

"(h)(1) The Administrator shall appoint a Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS-17 of the General Schedule.

"(2) The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Associate Administrator for Small Business Development Centers shall confer with and seek the advise and counsel of the Board in carrying out the responsibilities described in this subsection."

Subsec. (i)(2). Pub. L. 104-208, §106(a)(2)(B), substituted "Associate Administrator for Small Business Development Centers" for "Deputy Associate Administrator for Management Assistance".

Subsec. (k)(3). Pub. L. 104-208, §106(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2)."

Subsec. (l). Pub. L. 104-208, §106(c), amended heading and text of subsec. (l) generally. Prior to amendment, text read as follows: "The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefor and affording the applicant an opportunity for a hearing, appeal or other administrative proceeding under the provisions of the Administrative Procedures Act."

1995—Subsec. (g). Pub. L. 104-66 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in this program. The National Aeronautics and Space Administration shall report annually on the performance of such industrial application centers with

recommendations to the Administration and the Congress on how such industrial application centers can be strengthened and expanded. The National Aeronautics and Space Administration shall include in its report to Congress information on the ability of industrial application centers to interact with the Nation's small business community and recommendations to the Administration on continued funding."

1994—Subsec. (a)(4). Pub. L. 103-403, §402, amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: *Provided*, That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: *Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus \$100,000 for each State, but no State shall receive less than \$200,000."

Subsec. (a)(5). Pub. L. 103-403, §403, amended par. (5) generally, substituting present provisions for former provisions which required matching amount from non-Federal sources equal to amount of Federal grant.

Subsec. (k). Pub. L. 103-403, §404, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "Within six months of August 21, 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis."

1993—Subsec. (c)(7). Pub. L. 103-81 substituted "system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall" for "system which will" in introductory provisions.

1992—Subsec. (a)(3)(A), (B). Pub. L. 102-366, §223(a), added subpars. (A) and (B).

Subsec. (c)(3)(D) to (G). Pub. L. 102-366, §212, redesignated former subpars. (E) to (G) as (D) to (F), respectively, added subpar. (G), and struck out former subpar. (D) which read as follows: "assisting small businesses in developing and implementing marketing and production strategies that will enable them to better compete within the domestic market;"

1990—Subsec. (a)(1). Pub. L. 101-515, §6, struck out period at end of first sentence and inserted ": *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education to provide services to the small business community."

Subsec. (a)(4). Pub. L. 101-515, §5(a), and Pub. L. 101-574, §201(a)(1), amended par. (4) identically, substituting "*Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus \$100,000 for each State, but no State shall receive less than \$200,000." for "*Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or \$200,000, whichever is greater."

Subsec. (c)(3)(M) to (P). Pub. L. 101-574, §303, added subpars. (M) to (O) and redesignated former subpar. (M) as (P).

1988—Subsec. (a)(1). Pub. L. 100-418, §8006(b)(1), inserted provision relating to management and technical assistance regarding small business participation in international markets, export promotion and technology transfer.

Subsec. (a)(2) to (6). Pub. L. 100-418, §8006(b)(2), (3), added par. (2), redesignated former pars. (2) to (4) as (3) to (5), respectively, and added par. (6).

Subsec. (c)(3)(B) to (M). Pub. L. 100-418, §8006(b)(4), (5), added subpars. (B) to (G), redesignated former subpars. (C) to (H) as (H) to (M), respectively, and struck out former subpar. (B) which read as follows:

"assisting in technology transfer, research, and coupling from existing sources to small businesses;"

Subsec. (c)(5). Pub. L. 100-590, §135(3), inserted "or the date the Administration notifies the grantee funded under subsection (a)(1) that funds are available for grant applications pursuant to subsection (a)(6), whichever date occurs last," after "such center".

Pub. L. 100-418, §8006(b)(6), added par. (5).

Subsec. (c)(6), (7). Pub. L. 100-418, §8006(b)(6), added pars. (6) and (7).

Subsecs. (d) to (g). Pub. L. 100-418, §8006(b)(7), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100-590, §134(1), (2), which directed that subsec. (g) be amended by substituting "Associate Administrator for Small Business Development Centers" for "Deputy Associate Administrator for Management Assistance" in three places, and in par. (1) by substituting "an official who is not more than one level below the Office of the Administrator" for "the Associate Administrator for Management Assistance", was executed to subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by section 8006(b)(7) of Pub. L. 100-418.

Pub. L. 100-418, §8006(b)(7), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i) to (k). Pub. L. 100-418, §8006(b)(7), redesignated former subsecs. (h) to (j) as (i) to (k), respectively. Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 100-590, §134(3), which directed that subsec. (k) be amended by inserting provisions which prohibited Administration from suspending, terminating or failing to renew or extend any contract without written notification and opportunity for hearing, appeal or other administrative proceeding, was executed to subsec. (l) to reflect the probable intent of Congress and the intervening redesignation of subsec. (k) as (l) by section 8006(b)(7) of Pub. L. 100-418.

Pub. L. 100-418, §8006(b)(7), redesignated former subsec. (k) as (l).

1984—Subsec. (a)(1). Pub. L. 98-395, §2(1), inserted "The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year."

Subsec. (a)(2) to (4). Pub. L. 98-395, §2(2), added pars. (2) to (4). Former par. (2), which contained provisions similar to par. (3), was struck out.

Subsec. (b)(1). Pub. L. 98-395, §2(3), substituted "Financial" for "During fiscal years 1981, 1982, and 1983, financial".

Subsec. (c)(2). Pub. L. 98-395, §2(4), inserted in provisions preceding subpar. (A) "The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve."

Subsec. (c)(2)(A). Pub. L. 98-395, §2(5), substituted "including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;" for "including a staff director to manage the program activities."

Subsec. (e). Pub. L. 98-395, §2(6), substituted provisions authorizing the National Science Foundation to cooperate with the Administration and with Small Business Development Centers in developing and establishing programs to support the centers, for former provisions which related to the National Science Foundation and innovation centers, and reports to be made to the Administration and Congress.

Subsec. (h)(2). Pub. L. 98-395, §2(7), substituted "at least semiannually" for "at least quarterly".

Subsec. (i)(1). Pub. L. 98-395, §2(8), substituted "shall" for "may".

Subsec. (j). Pub. L. 98-395, §2(9), substituted provisions mandating that the Administration develop and implement program proposals for onsite evaluation of each Small Business Development Center for provisions which related to the establishment of program evaluation plans and their submission to Congressional committees.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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 AMENDMENTS

Amendment by Pub. L. 104-208 effective Oct. 1, 1996, see section 3 of Pub. L. 104-208, set out as a note under section 633 of this title.

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, see section 216 of Pub. L. 104-121, set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1990 AMENDMENTS

Pub. L. 101-574, title II, §201(a)(2), Nov. 15, 1990, 104 Stat. 2818, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts, grants, or cooperative agreements for performance commencing on or after October 1, 1991. Contracts, grants, or cooperative agreements the performance of which commences before October 1, 1991, shall receive funding for the entire term of performance without regard to the amendment made by paragraph (1) and according to the State's pro rata share of a \$65,000,000 program as computed on the effective date of this section [Nov. 15, 1990] under population estimates used for calendar year 1990 agreements, plus \$50,000 for each State, but no State shall receive less than \$200,000."

Pub. L. 101-515, title V, §5(c), Nov. 5, 1990, 104 Stat. 2142, provided that: "The amendments to the second proviso in subsection (a)(4) [15 U.S.C. 648(a)(4)] made by subsection (a) of this section shall apply to contracts, grants or cooperative agreements for performance commencing on or after October 1, 1991; contracts, grants or cooperative agreements for performance commencing prior thereto shall receive funding for the entire term of performance without regard to this amendment and according to the State's pro rata share of a \$65,000,000 program as computed on the effective date of this section [Nov. 5, 1990] under population estimates used for calendar year 1990 agreements, plus \$50,000 for each State, but no State shall receive less than \$200,000."

EFFECTIVE AND TERMINATION DATES

Pub. L. 96-302, title II, §204, July 2, 1980, 94 Stat. 848, as amended by Pub. L. 98-177, Nov. 29, 1983, 97 Stat. 1125; Pub. L. 98-395, §4, Aug. 21, 1984, 98 Stat. 1368; Pub. L. 101-162, title V, (6), Nov. 21, 1989, 103 Stat. 1028, which provided for the repeal, effective Oct. 1, 1991, of sections 201 and 202 of Pub. L. 96-302, which enacted this section and provisions set out as a note under section 631 of this title and redesignated section 2[21] as 2[30] of Pub. L. 85-536, set out as a note under section 631 of this title, was repealed by Pub. L. 101-515, §5(b), Nov. 5, 1990, 104 Stat. 2142, and Pub. L. 101-574, title II, §201(b), Nov. 15, 1990, 104 Stat. 2818.

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

SHORT TITLE

For short title of title II of Pub. L. 96-302 as the Small Business Development Center Act of 1980, see Short Title of 1980 Amendment note set out under section 631 of this title.

REGULATIONS

Pub. L. 102-366, title II, §223(b), Sept. 4, 1992, 106 Stat. 1000, as amended by Pub. L. 103-81, §9(c), Aug. 13, 1993, 107 Stat. 783, provided that not later than 180 days after Sept. 4, 1992, the Administrator of the Small Business Administration was to submit to the Committees on Small Business and the Committees on Appropriations of the Senate and the House of Representatives proposed regulations for the Small Business Development Center Program authorized by this section.

IMPLEMENTATION

Pub. L. 117-319, §2(b), Dec. 27, 2022, 136 Stat. 4425, provided that: "Not later than 180 days after the date of enactment of this Act [Dec. 27, 2022], the Administrator of the Small Business Administration shall implement paragraphs (2), (3), and (4) of section 21(o) of the Small Business Act [15 U.S.C. 648(o)(2)-(4)], as added by subsection (a)."

OPPORTUNITIES FOR EMPLOYEE-OWNED BUSINESS CONCERNS THROUGH SMALL BUSINESS ADMINISTRATION LOAN PROGRAMS

Pub. L. 115-232, div. A, title VIII, §862(a), (c)-(e)(2)(A), Aug. 13, 2018, 132 Stat. 1897-1899, provided that:

"(a) DEFINITIONS.—In this Act [probably should be "section"]—

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

"(2) the term 'cooperative' means an entity that is determined to be a cooperative by the Administrator, in accordance with applicable Federal and State laws and regulations;

"(3) the term 'employee-owned business concern' means—

"(A) a cooperative; and

"(B) a qualified employee trust;

"(4) the terms 'qualified employee trust' and 'small business concern' have the meanings given those terms in section 3 of the Small Business Act (15 U.S.C. 632); and

"(5) the term 'small business development center' means a small business development center described in section 21 of the Small Business Act (15 U.S.C. 648).

"(c) SMALL BUSINESS INVESTMENT COMPANY PROGRAM OUTREACH.—The Administrator shall provide outreach and educational materials to companies licensed under section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) to increase the use of funds to make investments in company transitions to employee-owned business concerns.

"(d) SMALL BUSINESS MICROLOAN PROGRAM OUTREACH.—The Administrator shall provide outreach and educational materials to intermediaries under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) to increase the use of funds to make loans to employee-owned business concerns, including transitions to employee-owned business concerns.

"(e) SMALL BUSINESS DEVELOPMENT CENTER OUTREACH AND ASSISTANCE.—

"(1) Establishment.—The Administrator shall establish a Small Business Employee Ownership and Cooperatives Promotion Program to offer technical assistance and training on the transition to employee ownership through cooperatives and qualified employee trusts.

"(2) SMALL BUSINESS DEVELOPMENT CENTERS.—

"(A) IN GENERAL.—In carrying out the program established under subsection (a) [probably should be "paragraph (1)"], the Administrator shall enter into agreements with small business development centers under which the centers shall—

"(i) provide access to information and resources on employee ownership through cooperatives or qualified employee trusts as a business succession strategy;

"(ii) conduct training and educational activities; and

"(iii) carry out the activities described in subparagraph (U) of section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3))."

SMALL BUSINESS TECHNOLOGY TRANSFER DEMONSTRATION PROGRAM

Pub. L. 101–574, title II, §231, Nov. 15, 1990, 104 Stat. 2823, as amended by Pub. L. 102–564, title III, §302, Oct. 28, 1992, 106 Stat. 4262, established within the Small Business Administration a Small Business Technology Transfer Demonstration Program to demonstrate the feasibility of providing small businesses with education, training, and technical assistance with respect to technology transfer and application and provided that the Program would terminate on Sept. 30, 1995.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

¹ *So in original. Probably should not be capitalized.*

² *See References in Text note below.*

³ *So in original. The period probably should be a semicolon.*

⁴ *So in original. Probably should be "counseling".*

⁵ *So in original. Two subpars. (U) have been enacted.*

⁶ *So in original. Probably should be "enter into".*

⁷ *So in original. Probably should be "therefor,".*

Section, Pub. L. 85–536, §2[21A], as added Pub. L. 101–515, title V, §9(a), Nov. 5, 1990, 104 Stat. 2144, related to Small Business Development Center Technical Assistance Program.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL; TERMINATION OF FUNDING

Pub. L. 102–140, title VI, §609(e), Oct. 28, 1991, 105 Stat. 826, provided that: "Notwithstanding any other law, no funds shall be appropriated to carry out section 21A of the Small Business Act [15 U.S.C. 648a] after September 30, 1991, and such section is repealed October 1, 1992."

§648b. Grants for SBDCs

(a) In general

The Administrator may make grants to small business development centers under section 648 of this title to provide targeted technical assistance to small business concerns seeking access to capital or credit, Federal procurement opportunities, energy efficiency audits to reduce energy bills, opportunities to export products or provide services to foreign customers, adopting, making innovations in, and using broadband technologies, or other assistance.

(b) Allocation

(1) In general

Subject to paragraph (2), and notwithstanding the requirements of section 648(a)(4)(C)(iii) of this title, the amount appropriated to carry out this section shall be allocated under the formula under section 648(a)(4)(C)(i) of this title.

(2) Minimum funding

The amount made available under this section to each State shall be not less than \$325,000.

(3) Types of uses

Of the total amount of the grants awarded by the Administrator under this section—

- (A) not less than 80 percent shall be used for counseling of small business concerns; and
- (B) not more than 20 percent may be used for classes or seminars.

(c) No non-Federal share required

Notwithstanding section 648(a)(4)(A) of this title, the recipient of a grant made under this section shall not be required to provide non-Federal matching funds.

(d) Distribution

Not later than 30 days after the date on which amounts are appropriated to carry out this section, the Administrator shall disburse the total amount appropriated.

(e) Authorization of appropriations

There is authorized to be appropriated to the Administrator \$50,000,000 to carry out this section. (Pub. L. 111–240, title I, §1402, Sept. 27, 2010, 124 Stat. 2550.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Small Business Jobs Act of 2010, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definition of "Administrator" and "small business concern" as used in this section, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.

§648c. SBA and USPTO partnerships

(a) In general

Beginning not later than 180 days after October 9, 2018, the Administrator, in consultation with the Director, shall develop partnership agreements that—

(1) provide for the—

(A) development of high-quality training, including in-person or modular training sessions, for small business concerns relating to domestic and international protection of intellectual property;

(B) leveraging of training materials already developed for the education of inventors and small business concerns; and

(C) participation of a nongovernmental organization; and

(2) provide training—

(A) through electronic resources, including Internet-based webinars; and

(B) at physical locations, including—

(i) a small business development center; and

(ii) the headquarters or a regional office of the USPTO.

(Pub. L. 115–259, §4, Oct. 9, 2018, 132 Stat. 3664.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Small Business Innovation Protection Act of 2017, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FINDINGS

Pub. L. 115–259, §3, Oct. 9, 2018, 132 Stat. 3664, provided that: "Congress finds that—

"(1) the USPTO and the SBA are positioned to—

"(A) build upon several successful intellectual property and training programs aimed at small business concerns; and

"(B) increase the availability of and the participation in the programs described in subparagraph (A) across the United States; and

"(2) any education and training program administered by the USPTO and the SBA should be scalable so that the program is able to reach more small business concerns."

DEFINITIONS

Pub. L. 115–259, §2, Oct. 9, 2018, 132 Stat. 3664, provided that: "In this Act [see Short Title of 2018 Amendment note set out under section 631 of this title]—

"(1) the term 'Administrator' means the Administrator of the SBA;

"(2) the term 'Director' means the Under Secretary of Commerce for Intellectual Property and Director of the USPTO;

"(3) the term 'SBA' means the Small Business Administration;

"(4) the term 'small business concern' has the meaning given the term in section 3(a) of the Small Business Act (15 U.S.C. 632(a));

"(5) the term 'small business development center' means a center described in section 21 of the Small Business Act (15 U.S.C. 648); and

"(6) the term 'USPTO' means the United States Patent and Trademark Office."

§649. Office of International Trade

(a) Establishment

(1) Office

There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section for the primary purposes of increasing—

- (A) the number of small business concerns that export; and
- (B) the volume of exports by small business concerns.

(2) Associate Administrator

The head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator.

(b) Trade distribution network

The Associate Administrator, working in close cooperation with the Secretary of Commerce, the United States Trade Representative, the Secretary of Agriculture, the Secretary of State, the President of the Export-Import Bank of the United States, the Board of Directors of the United States International Development Finance Corporation, the Director of the United States Trade and Development Agency, and other relevant Federal agencies, small business development centers engaged in export promotion efforts, Export Assistance Centers, regional and district offices of the Administration, the small business community, and relevant State and local export promotion programs, shall—

(1) maintain a distribution network, using regional and district offices of the Administration, the small business development center network, networks of women's business centers, the Service Corps of Retired Executives authorized by section 637(b)(1) of this title, and Export Assistance Centers, for programs relating to—

- (A) trade promotion;
- (B) trade finance;
- (C) trade adjustment assistance;
- (D) trade remedy assistance; and
- (E) trade data collection;

(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on exporting trends, market-specific growth, industry trends, and international prospects for exports;

(3) promote export assistance programs through the district and regional offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives, State and local export promotion programs, and partners in the private sector; and

(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (c)(9) to otherwise qualified applicants who are fluent in a language in addition to English, to—

- (A) accompany small business concerns on foreign trade missions; and
- (B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.

(c) Promotion of sales opportunities

The Associate Administrator shall promote sales opportunities for small business goods and services abroad. To accomplish this objective the office shall—

(1) establish annual goals for the Office relating to—

- (A) enhancing the exporting capability of small business concerns and small manufacturers;
- (B) facilitating technology transfers;
- (C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently in foreign markets;

- (D) increasing the ability of small business concerns to access capital; and
- (E) disseminating information concerning Federal, State, and private programs and initiatives;

(2) in cooperation with the Department of Commerce, other relevant agencies, regional and local Administration offices, the Small Business Development Center network, and State programs, develop a mechanism for—

- (A) identifying subsectors of the small business community with strong export potential;
- (B) identifying areas of demand in foreign markets;
- (C) prescreening foreign buyers for commercial and credit purposes; and
- (D) assisting in increasing international marketing by disseminating relevant information regarding market leads, linking potential sellers and buyers, and catalyzing the formation of joint ventures, where appropriate;

(3) in cooperation with the Department of Commerce, actively assist small business concerns in forming and using export trading companies, export management companies and research and development pools authorized under section 638 of this title;

(4) work in conjunction with other Federal agencies, regional and district offices of the Administration, the small business development center network, and the private sector to identify and publicize translation services, including those available through colleges and universities participating in the small business development center program;

(5) work closely with the Department of Commerce and other relevant Federal agencies to—

(A) collect, analyze and periodically update relevant data regarding the small business share of United States exports and the nature of State exports (including the production of Gross State Product figures) and disseminate that data to the public and to Congress;

(B) make recommendations to the Secretary of Commerce and to Congress regarding revision of the North American Industry Classification System codes to encompass industries currently overlooked and to create North American Industry Classification System codes for export trading companies and export management companies;

(C) improve the utility and accessibility of existing export promotion programs for small business concerns; and

(D) increase the accessibility of the Export Trading Company contact facilitation service;

(6) make available to the small business community information regarding conferences on exporting and international trade sponsored by the public and private sector;

(7) provide small business concerns with access to up to date and complete export information by—

(A) making available, at the regional and district offices of the Administration through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

(B) maintaining a list of financial institutions that finance export operations;

(C) maintaining a directory of all Federal, regional, State and private sector programs that provide export information and assistance to small business concerns; and

(D) preparing and publishing such reports as it determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of small business exporting firms so as to insure that the maximum information is made available to small business concerns in a readily usable form;

(8) encourage through cooperation with the Department of Commerce, greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce;

(9) facilitate decentralized delivery of export information and assistance to small business concerns by assigning primary responsibility for export development to one individual in each

district office and providing each Administration regional office with a full-time export development specialist, who shall—

(A) assist small business concerns in obtaining export information and assistance from other Federal departments and agencies;

(B) maintain a directory of all programs which provide export information and assistance to small business concerns in the region;

(C) encourage financial institutions to develop and expand programs for export financing;

(D) provide advice to personnel of the Administration involved in making loans, loan guarantees, and extensions and revolving lines of credit, and providing other forms of assistance to small business concerns engaged in exports;

(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine the needs of small business concerns for export information and assistance;

(F) participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and

(G) develop and conduct training programs for exporters and lenders, in cooperation with the Export Assistance Centers, the Department of Commerce, the Department of Agriculture, small business development centers, women's business centers, the Export-Import Bank of the United States, the United States International Development Finance Corporation, and other relevant Federal agencies;

(10) make available on the website of the Administration the name and contact information of each individual described in paragraph (9);

(11) carry out a nationwide marketing effort using technology, online resources, training, and other strategies to promote exporting as a business development opportunity for small business concerns;

(12) disseminate information to the small business community through regional and district offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives authorized by section 637(b)(1) of this title, State and local export promotion programs, and partners in the private sector regarding exporting trends, market-specific growth, industry trends, and prospects for exporting; and

(13) establish and carry out training programs for the staff of the regional and district offices of the Administration and resource partners of the Administration on export promotion and providing assistance relating to exports.

(d) Export financing programs

(1) In general

The Associate Administrator shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop a program through which export specialists in the regional offices of the Administration, regional and local loan officers, and Small Business Development Center personnel can facilitate the access of small businesses to relevant export financing programs of the Export-Import Bank of the United States and to export and pre-export financing programs available from the Administration and the private sector.

(2) Trade finance specialist

To accomplish the goal established under paragraph (1), the Associate Administrator shall—

(A) designate at least 1 individual within the Administration as a trade finance specialist to oversee international loan programs and assist Administration employees with trade finance issues; and

(B) work in cooperation with the Export-Import Bank and the small business community, including small business trade associations, to—

- (i) aggressively market existing Administration export financing and pre-export financing programs;
- (ii) identify financing available under various Export-Import Bank programs, and aggressively market those programs to small businesses;
- (iii) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs;
- (iv) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under this chapter, in export finance; and
- (v) provide for the participation of appropriate Administration personnel in training programs conducted by the Export-Import Bank.

(e) Trade remedies

The Associate Administrator shall—

- (1) work in cooperation with other Federal agencies and the private sector to counsel small businesses with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws; and
- (2) work with the Department of Commerce, the Office of the United States Trade Representative, and the International Trade Commission to increase access to trade remedy proceedings for small businesses.

(f) Reporting requirement

The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

- (1) a description of the progress of the Office in implementing the requirements of this section;
- (2) a detailed account of the results of export growth activities of the Administration, including the activities of each district and regional office of the Administration, based on the performance measures described in subsection (i); ¹
- (3) an estimate of the total number of jobs created or retained as a result of export assistance provided by the Administration and resource partners of the Administration;
- (4) for any travel by the staff of the Office, the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel; and
- (5) a description of the participation by the Office in trade negotiations.

(g) Studies

The Associate Administrator, in cooperation, where appropriate, with the Division of Economic Research of the Office of Advocacy, and with other Federal agencies, shall undertake studies regarding the following issues and shall report to the Committees on Small Business of the House of Representatives and the Senate, and to other relevant Committees of the House and Senate within 6 months after August 23, 1988, with specific recommendations on—

- (1) the viability and cost of establishing an annual, competitive small business export incentive program similar to the Small Business Innovation Research program and alternative methods of structuring such a program;
- (2) methods of streamlining trade remedy proceedings to increase access for, and reduce expenses incurred by, smaller firms;
- (3) methods of improving the current small business foreign sales corporation tax incentives and providing small businesses with greater benefits from this initiative;
- (4) methods of identifying potential export markets for United States small businesses; maintaining and disseminating current foreign market data; and devising a comprehensive export marketing strategy for United States small business goods and services, and shall include data on the volume and dollar amount of goods and services, identified by type, imported by United States trading partners over the past 10 years; and
- (5) the results of a survey of major United States trading partners to identify the domestic policies, programs and incentives, and the private sector initiatives, which exist to encourage the

formation and growth of small business.

(h) Discharge of international trade responsibilities of Administration

The Administrator shall ensure that—

- (1) the responsibilities of the Administration regarding international trade are carried out by the Associate Administrator;
- (2) the Associate Administrator has sufficient resources to carry out such responsibilities; and
- (3) the Associate Administrator has direct supervision and control over—
 - (A) the staff of the Office; and
 - (B) any employee of the Administration whose principal duty station is an Export Assistance Center, or any successor entity.

(i) Export and trade counseling

(1) Definition

In this subsection—

- (A) the term "lead small business development center" means a small business development center that has received a grant from the Administration; and
- (B) the term "lead women's business center" means a women's business center that has received a grant from the Administration.

(2) Certification program

The Administrator shall establish an export and trade counseling certification program to certify employees of lead small business development centers and lead women's business centers in providing export assistance to small business concerns.

(3) Number of certified employees

The Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing export assistance is not less than the lesser of—

- (A) 5; or
- (B) 10 percent of the total number of employees of the lead small business development center.

(4) Reimbursement for certification

(A) In general

Subject to the availability of appropriations, the Administrator shall reimburse a lead small business development center or a lead women's business center for costs relating to the certification of an employee of the lead small business center or lead women's business center in providing export assistance under the program established under paragraph (2).

(B) Limitation

The total amount reimbursed by the Administrator under subparagraph (A) may not exceed \$350,000 in any fiscal year.

(j) Performance measures

(1) In general

The Associate Administrator shall develop performance measures for the Administration to support export growth goals for the activities of the Office under this section that include—

- (A) the number of small business concerns that—
 - (i) receive assistance from the Administration;
 - (ii) had not exported goods or services before receiving the assistance described in clause (i); and
 - (iii) export goods or services;

(B) the number of small business concerns receiving assistance from the Administration that export goods or services to a market outside the United States into which the small business

concern did not export before receiving the assistance;

(C) export revenues by small business concerns assisted by programs of the Administration;

(D) the number of small business concerns referred to an Export Assistance Center or a small business development center by the staff of the Office;

(E) the number of small business concerns referred to the Administration by an Export Assistance Center or a small business development center; and

(F) the number of small business concerns referred to the Department of Commerce, the Department of Agriculture, the Department of State, the Export-Import Bank of the United States, the United States International Development Finance Corporation, or the United States Trade and Development Agency by the staff of the Office, an Export Assistance Center, or a small business development center.

(2) Joint performance measures

The Associate Administrator shall develop joint performance measures for the district offices of the Administration and the Export Assistance Centers that include the number of export loans made under—

(A) section 636(a)(16) of this title;

(B) the Export Working Capital Program established under section 636(a)(14) of this title;

(C) the Preferred Lenders Program, as defined in section 636(a)(2)(C)(ii) of this title; and

(D) the export express program established under section 636(a)(34) of this title.

(3) Consistency of tracking

The Associate Administrator, in coordination with the departments and agencies that are represented on the Trade Promotion Coordinating Committee established under section 4727 of this title and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under paragraph (1), that is consistent with systems used by the departments and agencies and the network.

(k) Export Assistance Centers

(1) Export finance specialists

(A) Minimum number of export finance specialists

On and after the date that is 90 days after September 27, 2010, the Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists is not less than the number of such employees so assigned on January 1, 2003.

(B) Export finance specialists assigned to each region of the Administration

On and after the date that is 2 years after September 27, 2010, the Administrator, in coordination with the Secretary of Commerce, shall ensure that there are not fewer than 3 export finance specialists in each region of the Administration.

(2) Placement of export finance specialists

(A) Priority

The Administrator shall give priority, to the maximum extent practicable, to placing employees of the Administration at any Export Assistance Center that—

(i) had an Administration employee assigned to the Export Assistance Center before January 2003; and

(ii) has not had an Administration employee assigned to the Export Assistance Center during the period beginning January 2003, and ending on September 27, 2010, either through retirement or reassignment.

(B) Needs of exporters

The Administrator shall, to the maximum extent practicable, strategically assign Administration employees to Export Assistance Centers, based on the needs of exporters.

(C) Rule of construction

Nothing in this subsection may be construed to require the Administrator to reassign or remove an export finance specialist who is assigned to an Export Assistance Center on September 27, 2010.

(3) Goals

The Associate Administrator shall work with the Department of Commerce, the Export-Import Bank of the United States, and the United States International Development Finance Corporation to establish shared annual goals for the Export Assistance Centers.

(4) Oversight

The Associate Administrator shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Assistance Centers.

(I) State Trade Expansion Program

(1) Definitions

In this subsection—

(A) the term "eligible small business concern" means a business concern that—

(i) is organized or incorporated in the United States;

(ii) is operating in the United States;

(iii) meets—

(I) the applicable industry-based small business size standard established under section 632 of this title; or

(II) the alternate size standard applicable to the program under section 636(a) of this title and the loan programs under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

(iv) has been in business for not less than 1 year, as of the date on which assistance using a grant under this subsection commences; and

(v) has access to sufficient resources to bear the costs associated with trade, including the costs of packing, shipping, freight forwarding, and customs brokers;

(B) the term "program" means the State Trade Expansion Program established under paragraph (2);

(C) the term "rural small business concern" means an eligible small business concern located in a rural area, as that term is defined in section 1393(a)(2) of title 26;

(D) the term "socially and economically disadvantaged small business concern" has the meaning given that term in section 637(a)(4)(A) of this title; and

(E) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(2) Establishment of program

The Associate Administrator shall establish a trade expansion program, to be known as the "State Trade Expansion Program", to make grants to States to carry out programs that assist eligible small business concerns in—

(A) participation in foreign trade missions;

(B) a subscription to services provided by the Department of Commerce;

(C) the payment of website fees;

(D) the design of marketing media;

(E) a trade show exhibition;

(F) participation in training workshops;

(G) a reverse trade mission;

(H) procurement of consultancy services (after consultation with the Department of

Commerce to avoid duplication); or

(I) any other initiative determined appropriate by the Associate Administrator.

(3) Grants

(A) Joint review

In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State exploring significant new trade opportunities.

(B) Considerations

In making grants under this subsection, the Associate Administrator may give priority to an application by a State that proposes a program that—

(i) focuses on eligible small business concerns as part of a trade expansion program;

(ii) demonstrates intent to promote trade expansion by—

(I) socially and economically disadvantaged small business concerns;

(II) small business concerns owned or controlled by women; and

(III) rural small business concerns;

(iii) promotes trade facilitation from a State that is not 1 of the 10 States with the highest percentage of eligible small business concerns that are engaged in international trade, based upon the most recent data from the Department of Commerce; and

(iv) includes—

(I) activities which have resulted in the highest return on investment based on the most recent year; and

(II) the adoption of shared best practices included in the annual report of the Administration.

(C) Limitations

(i) Single application

A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

(ii) Proportion of amounts

The total value of grants made under the program during a fiscal year to the 10 States with the highest percentage of eligible small business concerns, based upon the most recent data available from the Department of Commerce, shall be not more than 40 percent of the amounts appropriated for the program for that fiscal year.

(iii) Duration

The Associate Administrator shall award a grant under this program for a period of not more than 2 years.

(D) Application

(i) In general

A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

(ii) Consultation to reduce duplication

A State desiring a grant under the program shall—

(I) before submitting an application under clause (i), consult with applicable trade agencies of the Federal Government on the scope and mission of the activities the State proposes to carry out using the grant, to ensure proper coordination and reduce duplication in services; and

(II) document the consultation conducted under subclause (I) in the application submitted under clause (i).

(4) Competitive basis

The Associate Administrator shall award grants under the program on a competitive basis.

(5) Federal share

The Federal share of the cost of a trade expansion program carried out using a grant under the program shall be—

(A) for a State that has a high trade volume, as determined by the Associate Administrator, not more than 65 percent; and

(B) for a State that does not have a high trade volume, as determined by the Associate Administrator, not more than 75 percent.

(6) Non-Federal share

The non-Federal share of the cost of a trade expansion program carried out using a grant under the program shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(7) Reports

(A) Initial report

Not later than 120 days after February 24, 2016, the Associate Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

(i) a description of the structure of and procedures for the program;

(ii) a management plan for the program; and

(iii) a description of the merit-based review process to be used in the program.

(B) Annual reports

(i) In general

The Associate Administrator shall publish on the website of the Administration an annual report regarding the program, which shall include—

(I) the number and amount of grants made under the program during the preceding year;

(II) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with each grant;

(III) the effect of each grant on the eligible small business concerns in the State receiving the grant;

(IV) the total return on investment for each State; and

(V) a description of best practices by States that showed high returns on investment and significant progress in helping more eligible small business concerns.

(ii) Notice to Congress

On the date on which the Associate Administrator publishes a report under clause (i), the Associate Administrator shall notify the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that the report has been published.

(8) Reviews by Inspector General

(A) In general

The Inspector General of the Administration shall conduct a review of—

(i) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

(ii) the overall management and effectiveness of the program.

(B) Reports

(i) Pilot program

Not later than 6 months after February 24, 2016, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the use of amounts made available under the State Trade and Export Promotion Grant Program under section 1207 of the Small Business Jobs Act of 2010 (15 U.S.C. 649b note).

(ii) New step program

Not later than 18 months after the date on which the first grant is awarded under this subsection, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under subparagraph (A).

(9) Authorization of appropriations

There is authorized to be appropriated to carry out the program \$30,000,000 for each of fiscal years 2016 through 2020.

(m) Definitions

In this section—

(1) the term "Associate Administrator" means the Associate Administrator for International Trade described in subsection (a)(2);

(2) the term "Export Assistance Center" means a one-stop shop for United States exporters established by the United States and Foreign Commercial Service of the Department of Commerce pursuant to section 4721(b)(8) of this title;

(3) the term "export finance specialist" means a full-time equivalent employee of the Office assigned to an Export Assistance Center to carry out the duties described in subsection (e); and

(4) the term "Office" means the Office of International Trade established under subsection (a)(1).

(Pub. L. 85–536, §2[22], as added Pub. L. 96–481, title I, §113(a), Oct. 21, 1980, 94 Stat. 2323; amended Pub. L. 100–418, title VIII, §8003, Aug. 23, 1988, 102 Stat. 1554; Pub. L. 111–240, title I, §§1203(a), (c), 1204(a), 1205(a), Sept. 27, 2010, 124 Stat. 2521, 2522, 2527; Pub. L. 114–125, title V, §503, Feb. 24, 2016, 130 Stat. 174; Pub. L. 115–254, div. F, title VI, §1470(c), Oct. 5, 2018, 132 Stat. 3516.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (l)(1)(A)(iii)(II), 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.

Section 1207 of the Small Business Jobs Act of 2010, referred to in subsec. (l)(8)(B)(i), is section 1207 of Pub. L. 111–240, which is set out as a note under section 649b of this title.

PRIOR PROVISIONS

A prior section 649, act July 30, 1953, ch. 282, title II, §220, 67 Stat. 240, which required a fair charge for use of Government-owned property, was omitted as superseded by section 643 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2018—Pub. L. 115–254, §1470(c)(2), substituted "United States International Development Finance Corporation" for "Overseas Private Investment Corporation" wherever appearing.

Subsec. (b). Pub. L. 115–254, §1470(c)(1), substituted "the Board of Directors of the United States International Development Finance Corporation, the Director" for "the President of the Overseas Private Investment Corporation, Director" in introductory provisions.

2016—Subsecs. (l), (m). Pub. L. 114–125 added subsec. (l) and redesignated former subsec. (l) as (m).

2010—Pub. L. 111–240, §1203(a)(1), inserted section catchline.

Subsec. (a). Pub. L. 111–240, §1203(a), inserted subsec. (a) heading, designated existing provisions as par. (1), inserted par. (1) heading, substituted "for the primary purposes of increasing—" for period at end, added subpars. (A) and (B) of par. (1), and added par. (2).

Subsec. (b). Pub. L. 111–240, §1204(a)(1), added subsec. (b) and struck out former subsec. (b) which related to development of distribution network, marketing of programs and dissemination of information, and bilingual job applicants.

Subsec. (c). Pub. L. 111–240, §1204(a)(2)(A), inserted heading and substituted "The Associate Administrator" for "The Office" in introductory provisions.

Subsec. (c)(1). Pub. L. 111–240, §1204(a)(2)(C), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 111–240, §1204(a)(2)(D), substituted "mechanism for—"

"(A) identifying subsectors of the small business community with strong export potential;

"(B) identifying areas of demand in foreign markets;

"(C) prescreening foreign buyers for commercial and credit purposes; and

"(D) assisting"

for "mechanism for (A) identifying sub-sectors of the small business community with strong export potential; (B) identifying areas of demand in foreign markets; (C) prescreening foreign buyers for commercial and credit purposes; and (D) assisting".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 111–240, §1204(a)(2)(E), substituted "assist small business concerns in forming and using" for "assist small businesses in the formation and utilization of".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (c)(4). Pub. L. 111–240, §1204(a)(2)(F), substituted "district" for "local", "small business development center network" for "Small Business Development Center network", and "small business development center program" for "Small Business Development Center Program" and struck out "existing" before "translation".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(5)(A). Pub. L. 111–240, §1204(a)(2)(G)(i), substituted "Gross State Product" for "Gross State Produce".

Subsec. (c)(5)(B). Pub. L. 111–240, §1204(a)(2)(G)(ii), substituted "North American Industry Classification System" for "SIC" in two places.

Subsec. (c)(5)(C). Pub. L. 111–240, §1204(a)(2)(G)(iii), substituted "small business concerns" for "small businesses".

Subsec. (c)(6). Pub. L. 111–240, §1204(a)(2)(H), substituted semicolon for period at end.

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 111–240, §1204(a)(2)(I)(i)(II), (v), substituted "small business concerns" for "small businesses" and "up to date" for "current" in introductory provisions.

Pub. L. 111–240, §1204(a)(2)(I)(i)(I), which directed amendment of introductory provisions by inserting "concerns" after "small business", could not be executed because the words "small business" did not appear.

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(7)(A). Pub. L. 111–240, §1204(a)(2)(I)(ii), substituted "regional and district offices of the Administration" for "Administration's regional offices".

Subsec. (c)(7)(B). Pub. L. 111–240, §1204(a)(2)(I)(iii), struck out "current" before "list".

Subsec. (c)(7)(C). Pub. L. 111–240, §1204(a)(2)(I)(iv), (v), struck out "current" before "directory" and substituted "small business concerns" for "small businesses".

Subsec. (c)(7)(D). Pub. L. 111–240, §1204(a)(2)(I)(v), substituted "small business concerns" for "small businesses".

Subsec. (c)(8). Pub. L. 111–240, §1204(a)(2)(J), struck out "and" at end. The amendment was made to reflect the probable intent of Congress, in the absence of quotation marks around the word "and" in the directory language.

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 111–240, §1204(a)(2)(K)(i), (vi), in introductory provisions, substituted "small business concerns" for "small businesses" and "individual in each district office and providing each

Administration regional office with a full-time export development specialist, who" for "person in each district office. Such specialists" and struck out "full-time export development specialists to each Administration regional office and assigning" before "primary responsibility".

Pub. L. 111-240, §1204(a)(2)(B), redesignated par. (8) as (9).

Subsec. (c)(9)(A). Pub. L. 111-240, §1204(a)(2)(K)(vi), substituted "small business concerns" for "small businesses".

Subsec. (c)(9)(B). Pub. L. 111-240, §1204(a)(2)(K)(vi), substituted "small business concerns" for "small businesses".

Pub. L. 111-240, §1204(a)(2)(K)(ii)(II), which directed amendment by substituting "in" for "with", was executed by making the substitution for "within", to reflect the probable intent of Congress.

Pub. L. 111-240, §1204(a)(2)(K)(ii)(I), struck out "current" before "directory".

Subsec. (c)(9)(D). Pub. L. 111-240, §1204(a)(2)(K)(iii), (vi), substituted "personnel of the Administration involved in making" for "Administration personnel involved in granting" and "small business concerns" for "small businesses" and struck out "and" at end.

Subsec. (c)(9)(E). Pub. L. 111-240, §1204(a)(2)(K)(iv), substituted "the needs of small business concerns" for "small businesses' needs" and semicolon for period at end.

Subsec. (c)(9)(F), (G). Pub. L. 111-240, §1204(a)(2)(K)(v), added subpars. (F) and (G).

Subsec. (c)(10) to (13). Pub. L. 111-240, §1204(a)(2)(L), added pars. (10) to (13).

Subsec. (d). Pub. L. 111-240, §1204(a)(3), inserted subsec. (d) heading, designated first sentence of existing provisions as par. (1), inserted par. (1) heading, substituted "The Associate Administrator" for "The Office" in par. (1), designated second sentence of existing provisions as par. (2), inserted par. (2) heading, substituted "To accomplish the goal established under paragraph (1), the Associate Administrator shall—" for "To accomplish this goal, the Office shall work" in par. (2), added subpar. (A) and inserted "(B) work" before "in cooperation", redesignated former pars. (1) to (5) as cls. (i) to (v), respectively, of subpar. (B) of par. (2), and realigned margins.

Subsec. (e). Pub. L. 111-240, §1204(a)(4), inserted heading and substituted "The Associate Administrator" for "The Office" in introductory provisions.

Subsec. (f). Pub. L. 111-240, §1204(a)(5), amended subsec. (f) generally. Prior to amendment, text read as follows: "The Office shall report to the Committees on Small Business of the House of Representatives and the Senate on an annual basis as to its progress in implementing the requirements under this section."

Subsec. (g). Pub. L. 111-240, §1204(a)(6), inserted heading and substituted "The Associate Administrator" for "The Office" in introductory provisions.

Subsec. (h). Pub. L. 111-240, §1203(c), added subsec. (h).

Subsecs. (i), (j). Pub. L. 111-240, §1204(a)(7), added subsecs. (i) and (j).

Subsecs. (k), (l). Pub. L. 111-240, §1205(a), added subsecs. (k) and (l).

1988—Subsecs. (b) to (g). Pub. L. 100-418 added subsec. (b), redesignated former subsec. (b) as (c) and added pars. (1) to (5) and redesignated former pars. (1) to (3) as (6) to (8), respectively, and added subsecs. (d) to (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-254 effective at the end of the transition period, as defined in section 9681 of Title 22, Foreign Relations and Intercourse, see section 1470(w) of Pub. L. 115-254, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE

Pub. L. 96-481, title I, §113(b), Oct. 21, 1980, 94 Stat. 2324, provided that: "The amendment made by subsection (a) [enacting this section] shall take effect on October 1, 1980, or the date of enactment of this Act [Oct. 21, 1980], whichever occurs later."

SHORT TITLE

For short title of part B of title I of Pub. L. 96-481 as the Small Business Export Expansion Act of 1980, see Short Title of 1980 Amendment note set out under section 631 of this title.

IMPLEMENTATION

Pub. L. 111–240, title I, §1203(e), Sept. 27, 2010, 124 Stat. 2522, provided that: "Not later than 90 days after the date of enactment of this Act [Sept. 27, 2010], the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section."

STUDY AND REPORT ON FILLING GAPS IN HIGH-AND-LOW-EXPORT VOLUME AREAS

Pub. L. 111–240, title I, §1205(b), Sept. 27, 2010, 124 Stat. 2529, provided that:

"(1) STUDY AND REPORT.—Not later than 6 months after the date of enactment of this Act [Sept. 27, 2010], and every 2 years thereafter, the Administrator shall—

"(A) conduct a study of—

"(i) the volume of exports for each State;

"(ii) the availability of export finance specialists in each State;

"(iii) the number of exporters in each State that are small business concerns;

"(iv) the percentage of exporters in each State that are small business concerns;

"(v) the change, if any, in the number of exporters that are small business concerns in each

State—

"(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act [Sept. 27, 2010]; and

"(II) for each subsequent study, during the 10-year period ending on the date the study is commenced;

"(vi) the total value of the exports in each State by small business concerns;

"(vii) the percentage of the total volume of exports in each State that is attributable to small business concerns; and

"(viii) the change, if any, in the percentage of the total volume of exports in each State that is attributable to small business concerns—

"(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act [Sept. 27, 2010]; and

"(II) for each subsequent study, during the 10-year period ending on the date the study is commenced; and

"(B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

"(i) the results of the study under subparagraph (A);

"(ii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the greatest volume of exports, based upon the most recent data available from the Department of Commerce;

"(iii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the lowest volume of exports, based upon the most recent data available from the Department of Commerce; and

"(iv) such additional information as the Administrator determines is appropriate.

"(2) DEFINITION.—In this subsection, the term 'export finance specialist' has the meaning given that term in section 22(l) of the Small Business Act [now section 22(m), 15 U.S.C. 649(m)], as added by this title."

[For definitions of "Administrator" and "small business concern" as used in section 1205(b) of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

CONGRESSIONAL DECLARATION OF POLICY

Pub. L. 96–481, title I, §111, Oct. 21, 1980, 94 Stat. 2323, provided that:

"(a) The Congress finds and declares that—

"(1) a strong export policy is essential to the health and well-being of the United States economy;

"(2) exports of goods and services account for one out of every six jobs in the manufacturing sector and 10 per centum of the gross national product.

"(3) every billion dollars in new exports is estimated to provide forty thousand jobs;

"(4) there is increased and fierce competition in international markets to United States goods and services;

"(5) small businesses account for no more than 10 per centum of all United States export sales;

"(6) Federal Government programs are not sufficiently responsive to the needs of small business for export education and development of overseas marketing opportunities necessary to insure that small businesses realize their potential; and

"(7) it is in the national interest to systematically and consistently promote and encourage small business participation in international markets.

"(b) It is therefore the purpose of this part [enacting this section, amending section 636 of this title, and enacting provisions set out as notes under sections 631 and 649 of this title] to encourage and promote small business exporting by—

"(1) providing educational and marketing assistance to small businesses;

"(2) insuring better access to export information and assistance for small businesses by upgrading and expanding the export development programs and services of the Department of Commerce and the Small Business Administration; and

"(3) promoting the competitive viability of such firms in export trade and encouraging increased tourism in the United States by creating a program to provide limited financial, technical, and management assistance as may be necessary."

¹ So in original. Probably should be a reference to subsection (j).

§649a. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96–481, title III, §301(a)–(d), Oct. 21, 1980, 94 Stat. 2330, which related to establishment, staffing, functions, evaluation, and reporting requirements of export promotion centers, terminated Oct. 1, 1983.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE AND TERMINATION DATES

Pub. L. 96–481, title III, §301(e), Oct. 21, 1980, 94 Stat. 2331, provided that: "This section shall take effect on October 1, 1980, or on the date of the enactment of this section [Oct. 21, 1980] whichever occurs later and shall expire on October 1, 1983."

§649b. Grants, contracts and cooperative agreements for international marketing programs

(a) Limitations and restrictions

The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to make grants (including contracts and cooperative agreements) to a qualified applicant to encourage the development and implementation of a small business international marketing program (hereinafter referred to as "the program"). Each qualified applicant under sections 649a to 649d of this title may receive a Federal grant not to exceed \$150,000 annually for each of three years: *Provided*, That not more than one-third of these Federal funds may be used for the purpose of hiring personnel. Nothing in this section shall be construed as authorizing the Secretary to enter into contracts or incur obligations except to such extent and in such amounts as are provided in appropriation Acts.

(b) Eligibility

(1) To be eligible for a grant under this section, an applicant proposing to carry out a small business international marketing program must submit to the Secretary an application demonstrating, at a minimum:

(A) the geographical area to be served;

(B) the number of firms to be assisted;

(C) the staff required to administer the program;

(D) the means to counsel small businesses interested in pursuing export sales, including

providing information concerning available financing, credit insurance, tax treatment, potential markets and marketing assistance, export pricing, shipping, documentation, and foreign financing and business customs;

(E) the ability to provide market analysis of the export potential of small business concerns; and

(F) the capability for developing contacts with potential foreign customers and distributors for small business and their products, including arrangements and sponsorship of foreign trade missions for small business concerns to meet with identified potential customers, distributors, sales representatives, and organizations interested in licensing or joint ventures: *Provided, however,* That no portion of any Federal funds may be used to directly underwrite any small business participation in foreign trade missions abroad.

(2) Program services shall be provided to small business concerns through outreach services at the most local level practicable.

(3) Each small business international marketing program shall have a full-time staff director to manage program activities, and access to export specialists to counsel and to assist small business clients in international marketing.

(c) Advisory board establishment

(1) Each small business international marketing program shall establish an advisory board of nine members to be appointed by the staff director of the program, not less than five members of whom shall be small business persons or representatives of small business associations.

(2) Each advisory board shall elect a chairman and shall advise, counsel, and confer with the staff director of the program on all policy matters pertaining to the operation of the program (including who may be eligible to receive assistance, ways to promote the sale of United States products and services in foreign markets or to encourage tourism in the United States, and how to maximize local and regional private consultant participation in the program).

(d) Grant requirements

The Secretary shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section, that a sum equal to the amount of such grant be provided from sources other than the Federal Government: *Provided,* That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount.

(e) Program evaluation; reports

The Secretary shall develop a plan to evaluate programs approved under this section which shall only—

(1) determine the impact of small business international marketing programs on those small businesses assisted;

(2) determine the amount of export sales generated by small businesses assisted through such programs; and

(3) make recommendations concerning continuation and/or expansion of the program and possible improvements in the program structure. Such evaluation shall be submitted to the Congress by October 1, 1982.

(f) Recipients' duty to furnish information

For the purpose of the evaluation under subsection (e), the Secretary is authorized to require any small business international marketing program, or party receiving assistance under this section, to furnish such information as is deemed appropriate to complete the required evaluation.

(g) "Applicant" defined

As used in this section, the term "applicant" means any State government or agency or instrumentality thereof, any Small Business Administration—designated small business development center, any for profit small business, any nonprofit corporation, any regional commission, or any

combination of such entities, which will carry out a small business international marketing program.

(h) Contract authority

The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriation Acts.

(Pub. L. 96-481, title III, §302, Oct. 21, 1980, 94 Stat. 2331.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

STATE TRADE AND EXPORT PROMOTION GRANT PROGRAM

Pub. L. 111-240, title I, §1207, Sept. 27, 2010, 124 Stat. 2532, as amended by Pub. L. 112-239, div. A, title XVI, §1699a, Jan. 2, 2013, 126 Stat. 2092, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'eligible small business concern' means a small business concern that—

"(A) has been in business for not less than the 1-year period ending on the date on which assistance is provided using a grant under this section;

"(B) is operating profitably, based on operations in the United States;

"(C) has demonstrated understanding of the costs associated with exporting and doing business with foreign purchasers, including the costs of freight forwarding, customs brokers, packing and shipping, as determined by the Associate Administrator; and

"(D) has in effect a strategic plan for exporting;

"(2) the term 'program' means the State Trade and Export Promotion Grant Program established under subsection (b);

"(3) the term 'small business concern owned and controlled by women' has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632);

"(4) the term 'socially and economically disadvantaged small business concern' has the meaning given that term in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 6537(a)(4)(A) [637(a)(4)(A)]); and

"(5) the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

"(b) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall establish a 3-year trade and export promotion pilot program to be known as the State Trade and Export Promotion Grant Program, to make grants to States to carry out export programs that assist eligible small business concerns in—

"(1) participation in a foreign trade mission;

"(2) a foreign market sales trip;

"(3) a subscription to services provided by the Department of Commerce;

"(4) the payment of website translation fees;

"(5) the design of international marketing media;

"(6) a trade show exhibition;

"(7) participation in training workshops; or

"(8) any other export initiative determined appropriate by the Associate Administrator.

"(c) GRANTS.—

"(1) JOINT REVIEW.—In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State that export or to increase the value of the exports by eligible small business concerns in the State.

"(2) CONSIDERATIONS.—In making grants under this section, the Associate Administrator may give priority to an application by a State that proposes a program that—

"(A) focuses on eligible small business concerns as part of an export promotion program;

"(B) demonstrates success in promoting exports by—

"(i) socially and economically disadvantaged small business concerns;

"(ii) small business concerns owned or controlled by women; and

"(iii) rural small business concerns;

"(C) promotes exports from a State that is not 1 of the 10 States with the highest percentage of exporters that are small business concerns, based upon the latest data available from the Department of Commerce; and

"(D) promotes new-to-market export opportunities to the People's Republic of China for eligible small business concerns in the United States.

"(3) LIMITATIONS.—

"(A) SINGLE APPLICATION.—A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

"(B) PROPORTION OF AMOUNTS.—The total value of grants under the program made during a fiscal year to the 10 States with the highest number of exporters that are small business concerns, based upon the latest data available from the Department of Commerce, shall be not more than 40 percent of the amounts appropriated for the program for that fiscal year.

"(4) APPLICATION.—A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

"(d) COMPETITIVE BASIS.—The Associate Administrator shall award grants under the program on a competitive basis.

"(e) FEDERAL SHARE.—The Federal share of the cost of an export program carried out using a grant under the program shall be—

"(1) for a State that has a high export volume, as determined by the Associate Administrator, not more than 65 percent; and

"(2) for a State that does not have a high export volume, as determined by the Associate Administrator, not more than 75 percent.

"(f) NON-FEDERAL SHARE.—The non-Federal share of the cost of an export program carried [out] using a grant under the program shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

"(g) REPORTS.—

"(1) INITIAL REPORT.—Not later than 120 days after the date of enactment of this Act [Sept. 27, 2010], the Associate Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

"(A) a description of the structure of and procedures for the program;

"(B) a management plan for the program; and

"(C) a description of the merit-based review process to be used in the program.

"(2) ANNUAL REPORTS.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the program, which shall include—

"(A) the number and amount of grants made under the program during the preceding year;

"(B) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with grant; and

"(C) the effect of each grant on exports by eligible small business concerns in the State receiving the grant.

"(h) REVIEWS BY INSPECTOR GENERAL.—

"(1) IN GENERAL.—The Inspector General of the Administration shall conduct a review of—

"(A) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

"(B) the overall management and effectiveness of the program.

"(2) REPORT.—Not later than September 30, 2012, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under paragraph (1).

"(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program \$30,000,000 for each of fiscal years 2011, 2012, and 2013.

"(j) TERMINATION.—The authority to carry out the program shall terminate 3 years after the date on which the Associate Administrator establishes the program."

[For definitions of "Associate Administrator" and "rural small business concern" as used in section 1207 of Pub. L. 111–240, set out above, see section 1202(a) of Pub. L. 111–240, set out as a note below.]

[For definitions of "Administration" and "small business concern" as used in section 1207 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

DEFINITIONS

Pub. L. 111–240, title I, §1202(a), Sept. 27, 2010, 124 Stat. 2520, provided that: "In this subtitle [subtitle B (§§1201–1209) of title I of Pub. L. 111–240, see Short Title of 2010 Amendment note set out under section 631 of this title]—

"(1) the term 'Associate Administrator' means the Associate Administrator for International Trade appointed under section 22(a)(2) of the Small Business Act [15 U.S.C. 649(a)(2)], as amended by this subtitle;

"(2) the term 'Export Assistance Center' means a one-stop shop referred to in section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)); and

"(3) the term 'rural small business concern' means a small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 1393(a)(2)]."

[For definition of "small business concern" as used in section 1202(a) of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

§649c. Authorization of appropriations

At least one small business international program shall be established within each region of the Department of Commerce. There are authorized to be appropriated to the Secretary \$1,500,000 for each fiscal year 1981, 1982, and 1983, to carry out the program established in section 649b of this title.

(Pub. L. 96–481, title III, §303, Oct. 21, 1980, 94 Stat. 2332.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§649d. Central information clearinghouse

The Secretary through the International Trade Administration, shall, only to such extent and in such amounts as are provided in appropriation Acts on and after October 1, 1980, maintain a central clearinghouse to provide for the collection, dissemination, and exchange of information between programs established pursuant to sections 649a and 649b of this title, the Office of International Trade of the Small Business Administration, and other interested concerns.

(Pub. L. 96–481, title III, §304, Oct. 21, 1980, 94 Stat. 2333.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§650. Supervisory and enforcement authority for small business lending companies

(a) In general

The Administrator is authorized—

(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this chapter; and

(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 636(a) of this title in accordance with the purposes of this chapter.

(b) Capital directive

(1) In general

If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

(2) Delegation

The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

(3) Regulations

The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

(c) Civil action

If a small business lending company violates this chapter, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this chapter.

(d) Revocation or suspension of loan authority

(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 636(a) of this title—

(A) for false statements knowingly made in any written submission required under this chapter;

(B) for omission of a material fact from any written submission required under this chapter;

(C) for willful or repeated violation of this chapter;

(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this chapter; or

(E) for violation of any cease and desist order of the Administrator under this section.

(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5 the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

(e) Cease and desist order

(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this chapter or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this chapter.

(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

(f) Procedure for revocation or suspension of loan authority and for cease and desist order

(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

(g) Removal or suspension of management official

(1) Definition

In this section, the term "management official" means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company's or lender's

activities under section 636(a) of this title.

(2) Removal of management official

(A) Notice

The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

(i) willfully and knowingly commits a substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter;

(III) a final cease-and-desist order under this chapter; or

(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this chapter; or

(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(B) Contents of notice

A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, will be held thereon.

(C) Hearing

(i) Timing

A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(I) the management official, and for good cause shown; or

(II) the Attorney General.

(ii) Consent

Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

(D) Order of removal

(i) In general

In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(ii) Effectiveness

An order under clause (i) shall—

(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(3) Authority to suspend or prohibit participation

(A) In general

In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 636(a) of this title.

(B) Effectiveness

A suspension or prohibition under subparagraph (A)—

- (i) shall take effect upon service of notice under paragraph (2); and
- (ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(C) Judicial review of suspension prior to hearing

Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

(4) Authority to suspend on criminal charges

(A) In general

If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

(B) Effectiveness

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

(C) Authority upon conviction

If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

(D) Authority upon dismissal or other disposition

A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

(5) Notification to small business lending company or a non-Federally regulated lender

Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

(6) Final agency action and judicial review

(A) Issuance of orders

After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5.

(B) Judicial review

An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

(h) Appointment of receiver

(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C),¹ the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

(i) Possession of assets

(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

(j) Penalties and forfeitures

(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than \$5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85-536, §2[23], as added Pub. L. 98-473, title I, §111A(a), Oct. 12, 1984, 98 Stat. 1965; Pub. L. 108-447, div. K, title I, §161, Dec. 8, 2004, 118 Stat. 3458.)

PRIOR PROVISIONS

A prior section 650, acts July 30, 1953, ch. 282, title II, §221, 67 Stat. 240; June 30, 1955, ch. 251, §4, 69 Stat. 225; Aug. 9, 1955, ch. 628, §13, 69 Stat. 551; Pub. L. 85-120, §2, Aug. 3, 1957, 71 Stat. 341, provided for a termination date of the Small Business Act of 1953, and was omitted from the general revision by Pub. L. 85-536. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Pub. L. 108-447 amended section catchline and text generally. Prior to amendment, text related to disaster loan assistance to small business concerns in the fishing industry due to El Nino-related ocean conditions.

¹ So in original. There is no subsec. (f)(4) or (g)(6)(C) in this section.

§651. National small business tree planting program

(a) Authorization of grants and contracts with States

The Administrator is authorized to make grants to or to enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant (or amendment or modification thereof) under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from sources other than the Federal Government. Such non-Federal money may include inkind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: *Provided*, That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum, and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made.

(b) Establishment by Administrator

In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

(c) Utilization of small business concerns in implementing program

To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, grantees are directed to utilize small business contractors or concerns in connection with the program established by this section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

(d) Cooperation of Federal agencies; technical services

For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out the objectives of this section, \$15,000,000 for fiscal year 1991 and \$30,000,000 for each of the fiscal years 1995 through 1997, and all of such sums may remain available until expended.

(f) Rules and regulations

Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after November 5, 1990, and shall publish final rules and regulations within one hundred and twenty days of November 5, 1990.

(g) Definitions

As used in this section:

(1) the term "local government" includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities;

(2) the term "planting" includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and

(3) the term "State" includes any agency thereof.

(h) Annual report to President and Congress

The Administrator shall submit annually to the President and the Congress a report on activities within the scope of this section.

(Pub. L. 85-536, §2[24], as added Pub. L. 101-515, title V, §4, Nov. 5, 1990, 104 Stat. 2140; amended Pub. L. 103-211, title I, §201, Feb. 12, 1994, 108 Stat. 5; Pub. L. 103-317, title IV, Aug. 26, 1994, 108 Stat. 1755.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 651, act July 30, 1953, ch. 282, §225, as added Aug. 9, 1955, ch. 628, §14, 69 Stat. 551, prohibited duplication of activities, and was omitted as superseded by section 647 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-211 inserted at end ", and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made".

Subsec. (e). Pub. L. 103-317 substituted "fiscal years 1995 through 1997" for "fiscal years 1992 through 1994".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103-7.

§652. Central European Enterprise Development Commission

(a) Establishment

There is hereby established a Central European Small Business Enterprise Development Commission (hereinafter in this section referred to as the "Commission"). The Commission shall be comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities, and the Association of Small Business Development Centers.

(b) Management and technical assistance to designated Central European countries

The Commission shall develop in Czechoslovakia, Poland and Hungary (hereinafter referred to as "designated Central European countries") a self-sustaining system to provide management and technical assistance to small business owners.

(1) Not later than 90 days after November 5, 1990, the Commission, in consultation with the Agency for International Development, shall enter ¹ a contract with one or more entities to—

(A) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

(B) evaluate appropriate Small Business Development Center-programs which might be replicated in order to meet the needs of each of such countries; and

(C) identify and assess the capability of educational institutions in each such country to develop a Small Business Development Center type program.

(2) Not later than 18 months after November 5, 1990, the Commission shall review the recommendations submitted to it and shall formulate and contract for the establishment of a three-year management and technical assistance demonstration program.

(c) Eligibility

In order to be eligible to participate, the educational institution in each designated Central European country shall—

(1) obtain the prior approval of the government to conduct the program;

(2) agree to provide partial financial support for the program, either directly or indirectly, during the second and third years of the demonstration program; and

(3) agree to obtain private sector involvement in the delivery of assistance under the program.

(d) Initial meeting and organization

The Commission shall meet and organize not later than 30 days after November 5, 1990.

(e) Reimbursement for necessary expenses

Members of the Commission shall serve without pay, except they shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their functions in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5.

(f) Meetings; quorum

Two Commissioners shall constitute a quorum for the transaction of business. Meetings shall be at the call of the Chairperson who shall be elected by the Members of the Commission.

(g) Authority; personnel

The Commission shall not have any authority to appoint staff, but upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist in carrying out the Commission's functions under this section without regard to section 3341 of title 5. The Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may request.

(h) Initial and annual reports to Congress

The Commission shall report to Congress not later than December 1, 1991, and annually thereafter, on the progress in carrying out the provisions of this section.

(i) Authorization of appropriations

There are hereby authorized to be appropriated to the Small Business Administration the sum of \$3,000,000 for fiscal year 1991, \$5,000,000 for fiscal year 1992, \$2,000,000 for each of fiscal years 1993 and 1994, and \$1,000,000 for fiscal year 1995 to carry out the provisions of this section. Such

sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.

(Pub. L. 85-536, §2[25], as added Pub. L. 101-515, title V, §7, Nov. 5, 1990, 104 Stat. 2142; amended Pub. L. 103-81, §9(b), Aug. 13, 1993, 107 Stat. 783; Pub. L. 103-403, title IV, §405, Oct. 22, 1994, 108 Stat. 4192.)

EDITORIAL NOTES

AMENDMENTS

1994—Pub. L. 103-403 substituted ", \$2,000,000 for each of fiscal years 1993 and 1994, and \$1,000,000 for fiscal year 1995" for "and \$2,000,000 for each of fiscal years 1993 and 1994".

1993—Subsec. (i). Pub. L. 103-81 substituted "\$2,000,000 for each of fiscal years 1993 and 1994" for "\$8,000,000 for fiscal year 1993".

¹ So in original. Probably should be "enter into".

§653. Office of Rural Affairs

(a) Establishment

There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the "Office").

(b) Appointment of director

The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after November 15, 1990.

(c) Functions

The Office shall—

(1) strive to achieve an equitable distribution of the financial assistance available from the Administration for small business concerns located in rural areas;

(2) to the extent practicable, compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups;

(3) provide information to industries, organizations, and State and local governments concerning the assistance available to rural small business concerns through the Administration and through other Federal departments and agencies;

(4) provide information to industries, organizations, educational institutions, and State and local governments concerning programs administered by private organizations, educational institutions, and Federal, State, and local governments which improve the economic opportunities of rural citizens; and

(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.

(Pub. L. 85-536, §2[26], as added Pub. L. 101-574, title III, §302, Nov. 15, 1990, 104 Stat. 2827.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CATALOG OF PROGRAMS TO ASSIST RURAL SMALL BUSINESS CONCERNS

Pub. L. 101-574, title III, §304, Nov. 15, 1990, 104 Stat. 2829, required the Small Business Administration to compile a catalog of programs administered by Federal and State departments and agencies which offer assistance to small business concerns in rural areas by no later than 180 days after Nov. 15, 1990, and to issue updates of the catalog by Feb. 1, 1993, and Feb. 1, 1995.

RURAL SMALL BUSINESS CONFERENCES

Pub. L. 101-574, title III, §306, Nov. 15, 1990, 104 Stat. 2829, provided that:

"(a) IN GENERAL.—The Chief Counsel for Advocacy of the Small Business Administration shall, as soon as practicable after the catalog (described in section 305 [probably means section 304, set out above] and hereinafter referred to as the 'catalog') is issued, but not later than 90 days after the date such catalog is issued, convene regional rural conferences in 5 cities or towns in the United States.

"(b) PREPARATIONS.—Prior to the conferences, the Office of Advocacy shall—

"(1) select the sites for the conferences in order to encourage the maximum participation of all interested parties including private citizens and representatives of business, government, educational and nonprofit institutions; and

"(2) distribute the catalog of programs and such other background materials prepared by the Office of Advocacy as the Chief Counsel deems appropriate.

"(c) PURPOSES OF THE CONFERENCES.—The conference shall—

"(1) review the effectiveness of current Federal programs to promote rural small business and its needs, with particular reference to the catalog of such programs;

"(2) review how current Federal programs could be made more accessible to small businesses located in rural areas;

"(3) make recommendations on how current programs can be approved to better address small business needs in rural areas;

"(4) review the availability and cost of capital, transportation, and telecommunications in rural areas;

"(5) review the availability of technical assistance and training programs for small business needs in rural areas, including marketing, computer training, accounting, financing, and international trade; and

"(6) determine any additional needs of small businesses in rural areas.

"(d) REPORT.—The Chief Counsel for Advocacy shall prepare a summary of the findings and recommendations of each regional conference. Not later than 60 days after the last of the 5 regional conferences have been held, the Chief Counsel for Advocacy shall transmit such summaries to the Congress and the President, along with conclusions and recommendations, including specific legislative proposals and recommendations for administrative or other actions. The transmittal of the required information shall be deemed a report of the Chief Counsel for Advocacy under the terms and conditions of section 206 of Public Law 94-305 [15 U.S.C. 634f]. To the extent practicable, the report shall estimate the cost of implementing each recommendation of a regional conference as well as those of the Chief Counsel."

RURAL TOURISM TRAINING PROGRAM

Pub. L. 101-574, title III, §311, Nov. 15, 1990, 104 Stat. 2832, provided that: "The Chief Counsel for Advocacy of the Small Business Administration shall conduct training sessions on the types of Federal assistance available for the development of rural small businesses engaged in tourism and tourism-related activities. Such training sessions shall be conducted in conjunction with the Office of Rural Affairs (established pursuant to section 26 of the Small Business Act [15 U.S.C. 653]) and appropriate personnel designated by each district office of the Administration."

§654. Paul D. Coverdell drug-free workplace program

(a) Definitions

In this section:

(1) Drug-free workplace program

The term "drug-free workplace program" means a program that includes—

(A) a written policy, including a clear statement of expectations for workplace behavior, prohibitions against reporting to work or working under the influence of illegal drugs or alcohol, prohibitions against the use or possession of illegal drugs in the workplace, and the consequences of violating those expectations and prohibitions;

(B) drug and alcohol abuse prevention training for a total of not less than 2 hours for each employee, and additional voluntary drug and alcohol abuse prevention training for employees who are parents;

(C) employee illegal drug testing, with analysis conducted by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by

the College of American Pathologists for forensic drug testing, and a review of each positive test result by a medical review officer;

(D) employee access to an employee assistance program, including confidential assessment, referral, and short-term problem resolution; and

(E) continuing alcohol and drug abuse prevention education.

(2) Eligible intermediary

The term "eligible intermediary" means an organization—

(A) that has not less than 2 years of experience in carrying out drug-free workplace programs;

(B) that has a drug-free workplace policy in effect;

(C) that is located in a State, the District of Columbia, or a territory of the United States; and

(D)(i) the purpose of which is—

(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

(II) to provide other forms of assistance and services to small business concerns; or

(ii) that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).

(3) Employee

The term "employee" includes any—

(A) applicant for employment;

(B) employee;

(C) supervisor;

(D) manager;

(E) officer of a small business concern who is active in management of the concern; and

(F) owner of a small business concern who is active in management of the concern.

(4) Medical review officer

The term "medical review officer"—

(A) means a licensed physician with knowledge of substance abuse disorders; and

(B) does not include any—

(i) employee of the small business concern; or

(ii) employee or agent of, or any person having a financial interest in, the laboratory for which the illegal drug test results are being reviewed.

(b) Establishment

(1) In general

There is established a drug-free workplace demonstration program, under which the Administrator may make grants to, or enter into cooperative agreements or contracts with, eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to establish a drug-free workplace program.

(2) Additional grants for technical assistance

In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.

(3) 2-year grants

Each grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.

(c) Promotion of effective practices of eligible intermediaries

(1) Technical assistance and information

The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

(2) Evaluation of program

(A) Data collection and analysis

Each eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

(B) Method of evaluation

The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1). Such assistance shall include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern's employees and the identification of methods suitable for analyzing such information.

(d) Evaluation and coordination

Not later than 18 months after October 21, 1998, the Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall—

(1) evaluate the drug-free workplace programs established with assistance made available under this section; and

(2) submit to Congress a report describing the results of the evaluation under paragraph (1).

(e) Contract authority

In carrying out this section, the Administrator may—

(1) contract with public and private entities to provide assistance related to carrying out the program under this section; and

(2) compensate those entities for provision of that assistance.

(f) Construction

Nothing in this section may be construed to require an employer who attends a program offered by an intermediary to contract for any service offered by the intermediary.

(g) Authorization

(1) In general

There is authorized to be appropriated to carry out this section (other than subsection (b)(2)), \$5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(2) Small business development centers

Of the total amount made available under paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or \$500,000 may be used to carry out section 648(c)(3)(T) of this title.

(3) Additional authorization for technical assistance grants

There are authorized to be appropriated to carry out subsection (b)(2), \$1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(4) Limitation on administrative costs

Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).

(Pub. L. 85-536, §2[27], as added Pub. L. 101-574, title III, §310, Nov. 15, 1990, 104 Stat. 2831; amended Pub. L. 105-277, div. C, title IX, §904, Oct. 21, 1998, 112 Stat. 2681-708; Pub. L. 106-554, §1(a)(9) [title V, §503(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-695; Pub. L. 108-447, div. K, title I, §§123-126, Dec. 8, 2004, 118 Stat. 3449-3451.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Narcotics Leadership Act of 1988, referred to in subsec. (a)(2)(D)(ii), is subtitle A of title I of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4181. Chapter 2 of the Act is classified generally to subchapter II (§1521 et seq.) of chapter 20 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under former section 1501 of Title 21 and Tables.

AMENDMENTS

2004—Subsec. (a)(2)(D). Pub. L. 108-447, §125, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "the purpose of which is—

"(i) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

"(ii) to provide other forms of assistance and services to small business concerns."

Subsec. (b). Pub. L. 108-447, §124, designated existing provisions as par. (1), inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 108-447, §126, amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "Each drug-free workplace program established with assistance made available under this section shall—

"(1) include, as reasonably necessary and appropriate, practices and procedures to ensure the confidentiality of illegal drug test results and of any participation by an employee in a rehabilitation program;

"(2) prohibit the mandatory disclosure of medical information by an employee prior to a confirmed positive illegal drug test; and

"(3) require that a medical review officer reviewing illegal drug test results shall report only the final results, limited to those drugs for which the employee tests positive, in writing and in a manner designed to ensure the confidentiality of the results."

Subsec. (g)(1). Pub. L. 108-447, §123(a), substituted "(other than subsection (b)(2)), \$5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph" for "\$5,000,000 for each of fiscal years 2001 through 2003. Amounts made available under this subsection".

Subsec. (g)(2). Pub. L. 108-447, §123(b), substituted "paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or \$500,000" for "this subsection, not more than the greater of 10 percent or \$1,000,000".

Subsec. (g)(3), (4). Pub. L. 108-447, §123(c), (d), added pars. (3) and (4).

2000—Pub. L. 106-554, §1(a)(9) [title V, §503(a)(1)], substituted "Paul D. Coverdell drug-free workplace program" for "Drug-free workplace demonstration program" in section catchline.

Subsec. (g)(1). Pub. L. 106-554, §1(a)(9) [title V, §503(a)(2)], substituted "\$5,000,000 for each of fiscal years 2001 through 2003" for "\$10,000,000 for fiscal years 1999 and 2000".

1998—Pub. L. 105-277 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) authorizing Administration to make grants to conduct tourism demonstration programs, establishing purpose of program, placing a condition on grant recipients, authorizing appropriations, and requiring report to President and Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FINDINGS AND PURPOSES OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, §902, Oct. 21, 1998, 112 Stat. 2681–707, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) 74 percent of adults who use illegal drugs are employed;

"(2) small business concerns employ over 50 percent of the Nation's workforce;

"(3) in more than 88 percent of families with children under the age of 18, at least 1 parent is employed; and

"(4) employees who use and abuse addictive illegal drugs and alcohol increase costs for businesses and risk the health and safety of all employees because—

"(A) absenteeism is 66 percent higher among drug users than individuals who do not use drugs;

"(B) health benefit utilization is 300 percent higher among drug users than individuals who do not use drugs;

"(C) 47 percent of workplace accidents are drug-related;

"(D) disciplinary actions are 90 percent higher among drug users than among individuals who do not use drugs; and

"(E) employee turnover is significantly higher among drug users than among individuals who do not use drugs.

"(b) PURPOSES.—The purposes of this title [see Short Title of 1998 Amendment note set out under section 631 of this title] are to—

"(1) educate small business concerns about the advantages of a drug-free workplace;

"(2) provide grants and technical assistance in addition to financial incentives to enable small business concerns to create a drug-free workplace;

"(3) assist working parents in keeping their children drug-free; and

"(4) encourage small business employers and employees alike to participate in drug-free workplace programs."

SENSE OF CONGRESS FOR 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, §903, Oct. 21, 1998, 112 Stat. 2681–708, provided that: "It is the sense of Congress that—

"(1) businesses should adopt drug-free workplace programs;

"(2) States should consider incentives to encourage businesses to adopt drug-free workplace programs; and

"(3) such incentives may include—

"(A) financial incentives, including—

"(i) a reduction in workers' compensation premiums;

"(ii) a reduction in unemployment insurance premiums; and

"(iii) tax deductions in an amount equal to the amount of expenditures for employee assistance programs, treatment, or illegal drug testing; and

"(B) other incentives, such as the adoption of liability limitations, as recommended by the President's Commission on Model State Drug Laws."

§655. Pilot Technology Access Program

(a) Establishment

The Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program, for making awards under this section to Small Business Development Centers (hereinafter in this section referred to as "Centers").

(b) Criteria for selection of Centers

The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of Centers to receive awards on the basis of—

(1) the ability of the applicant to carry out the purposes described in subsection (d) in a manner

relevant to the needs of industries in the area served by the Center;

(2) the ability of the applicant to integrate the implementation of this program with existing Federal and State technical and business assistance resources; and

(3) the ability of the applicant to continue providing technology access after the termination of this pilot program.

(c) Matching requirement

To be eligible to receive an award under this section, an applicant shall provide a matching contribution at least equal to that received under such award, not more than 50 percent of which may be waived overhead or in-kind contributions.

(d) Purpose of awards

Awards made under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

(1) defraying the cost of access by small businesses to the data base services;

(2) training small businesses in the use of the data base services; and

(3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

(e) Renewal of awards

Awards previously made under section 648a ¹ of this title may be renewed under this section.

(f) Interim report

Two years after the date on which the first award was issued under section 648a ¹ of this title, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate, an interim report on the implementation of the program under such section and this section, including the judgments of the participating Centers as to its effect on small business productivity and innovation.

(g) Final report

Three years after such date, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science and Transportation of the Senate, a final report evaluating the effectiveness of the Program under section 648a ¹ of this title and this section in improving small business productivity and innovation.

(h) Authorization of appropriations

There are authorized to be appropriated to the Small Business Administration \$5 million for each of fiscal years 1992 through 1995 to carry out this section, and such amounts may remain available until expended.

(i) Funding from other sources; employment of Centers by Federal agencies

Centers are encouraged to seek funding from Federal and non-Federal sources other than those provided for in this section to assist small businesses in the identification of appropriate technologies to fill their needs, the transfer of technologies from Federal laboratories, public and private universities, and other public and private institutions, the analysis of commercial opportunities represented by such technologies, and such other functions as the development, business planning, market research, and financial packaging required for commercialization. Insofar as such Centers pursue these activities, Federal agencies are encouraged to employ these Centers to interface with small businesses for such purposes as facilitating small business participation in Federal procurement and fostering commercialization of Federally-funded research and development.

(Pub. L. 85-536, §2[28], as added Pub. L. 102-140, title VI, §609(d), Oct. 28, 1991, 105 Stat. 825.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 648a of this title, referred to in subsecs. (e) to (g), was repealed by Pub. L. 102-140, title VI, §609(e), Oct. 28, 1991, 105 Stat. 826, effective Oct. 1, 1992.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108-271, set out as a note under section 702 of Title 31, Money and Finance.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

¹ [See References in Text note below.](#)

§656. Women's Business Center program

(a) Definitions

In this section—

(1) the term "Assistant Administrator" means the Assistant Administrator of the Office of Women's Business Ownership established under subsection (g);

(2) the term "private nonprofit organization" means an entity that is described in section 501(c) of title 26 and exempt from taxation under section 501(a) of such title;

(3) the term "small business concern owned and controlled by women", either startup or existing, includes any small business concern—

(A) that is not less than 51 percent owned by 1 or more women; and

(B) the management and daily business operations of which are controlled by 1 or more women; and

(4) the term "women's business center site" means the location of—

(A) a women's business center; or

(B) 1 or more women's business centers, established in conjunction with another women's business center in another location within a State or region—

(i) that reach a distinct population that would otherwise not be served;

(ii) whose services are targeted to women; and

(iii) whose scope, function, and activities are similar to those of the primary women's business center or centers in conjunction with which it was established.

(b) Authority

The Administration may provide financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans,

developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(c) Conditions of participation

(1) Non-Federal contributions

As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

- (A) in the first and second years, 1 non-Federal dollar for each 2 Federal dollars; and
- (B) in the third, fourth, and fifth years, 1 non-Federal dollar for each Federal dollar.

(2) Form of non-Federal contributions

Not more than one-half of the non-Federal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(3) Form of Federal contributions

The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal sector matching funds are obtained.

(4) Failure to obtain non-Federal funding

If any recipient of assistance fails to obtain the required non-Federal contribution during any project, it shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded by the Administration, and prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(d) Contract authority

A women's business center may enter into a contract with a Federal department or agency to provide specific assistance to women and other underserved small business concerns. Performance of such contract should not hinder the women's business centers in carrying out the terms of the grant received by the women's business centers from the Administration.

(e) Submission of 5-year plan

Each applicant organization initially shall submit a 5-year plan to the Administration on proposed fundraising and training activities, and a recipient organization may receive financial assistance under this program for a maximum of 5 years per women's business center site.

(f) Criteria

The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

- (1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;
- (2) the present ability of the applicant to commence a project within a minimum amount of time;
- (3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and
- (4) the location for the women's business center site proposed by the applicant.

(g) Office of Women's Business Ownership

(1) Establishment

There is established within the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises (as defined in section 7108 of this title). The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

(2) Assistant Administrator of the Office of Women's Business Ownership

(A) Qualification

The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5. The Assistant Administrator shall serve as a noncareer appointee (as defined in section 3132(a)(7) of that title).

(B) Responsibilities and duties

(i) Responsibilities

The responsibilities of the Assistant Administrator shall be to administer the programs and services of the Office of Women's Business Ownership established to assist women entrepreneurs in the areas of—

- (I) starting and operating a small business;
- (II) development of management and technical skills;
- (III) seeking Federal procurement opportunities; and
- (IV) increasing the opportunity for access to capital.

(ii) Duties

The Assistant Administrator shall—

- (I) administer and manage the Women's Business Center program;
- (II) recommend the annual administrative and program budgets for the Office of Women's Business Ownership (including the budget for the Women's Business Center program);
- (III) establish appropriate funding levels therefore ¹;
- (IV) review the annual budgets submitted by each applicant for the Women's Business Center program;
- (V) select applicants to participate in the program under this section;
- (VI) implement this section;
- (VII) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;
- (VIII) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;
- (IX) serve as liaison for the National Women's Business Council; and
- (X) advise the Administrator on appointments to the Women's Business Council.

(C) Consultation requirements

In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

(h) Program examination

(1) In general

The Administration shall—

- (A) develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section, pursuant to which each such center shall provide to the Administration—

(i) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) and, with respect to any in-kind contributions described in subsection (c)(2) that were used to satisfy the requirements of subsection (c), verification of the existence and valuation of those contributions; and

(B) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

(2) Conditions for continued funding

In determining whether to award a contract (as a sustainability grant) under subsection (l) or to renew a contract (either as a grant or cooperative agreement) under this section with a women's business center, the Administration—

(A) shall consider the results of the most recent examination of the center under paragraph (1); and

(B) may withhold such award or renewal, if the Administration determines that—

(i) the center has failed to provide any information required to be provided under clause (i) or (ii) of paragraph (1)(A), or the information provided by the center is inadequate; or

(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subsection (j), or the information provided by the center is inadequate.

(i) Contract authority

The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the Administrator has entered into a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administrator provides the applicant with written notification setting forth the reasons therefore ¹ and affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5.

(j) Management report

(1) In general

The Administration shall prepare and submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of all projects conducted under this section.

(2) Contents

Each report submitted under paragraph (1) shall include information concerning, with respect to each women's business center established pursuant to this section—

(A) the number of individuals receiving assistance;

(B) the number of startup business concerns formed;

(C) the gross receipts of assisted concerns;

(D) the employment increases or decreases of assisted concerns;

(E) to the maximum extent practicable, increases or decreases in profits of assisted concerns; and

(F) the most recent analysis, as required under subsection (h)(1)(B), and the subsequent determination made by the Administration under that subsection.

(k) Authorization of appropriations

(1) In general

There is authorized to be appropriated, to remain available until the expiration of the pilot program under subsection (l)—

- (A) \$12,000,000 for fiscal year 2000;
- (B) \$12,800,000 for fiscal year 2001;
- (C) \$13,700,000 for fiscal year 2002; and
- (D) \$14,500,000 for fiscal year 2003.

(2) Use of amounts

(A) In general

Except as provided in subparagraph (B), amounts made available under this subsection for fiscal year 1999, and each fiscal year thereafter, may only be used for grant awards and may not be used for costs incurred by the Administration in connection with the management and administration of the program under this section.

(B) Exceptions

Of the amount made available under this subsection for a fiscal year, the following amounts shall be available for selection panel costs, post-award conference costs, and costs related to monitoring and oversight:

- (i) For fiscal year 2000, 2 percent.
- (ii) For fiscal year 2001, 1.9 percent.
- (iii) For fiscal year 2002, 1.9 percent.
- (iv) For fiscal year 2003, 1.6 percent.

(3) Expedited acquisition

Notwithstanding any other provision of law, the Administrator, acting through the Assistant Administrator, may use such expedited acquisition methods as the Administrator determines to be appropriate to carry out this section, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

(4) Reservation of funds for sustainability pilot program

(A) In general

Subject to subparagraph (B), of the total amount made available under this subsection for a fiscal year, the following amounts shall be reserved for sustainability grants under subsection (l):

- (i) For fiscal year 2000, 17 percent.
- (ii) For fiscal year 2001, 18.8 percent.
- (iii) For fiscal year 2002, 30.2 percent.
- (iv) For fiscal year 2003, 30.2 percent.

(B) Use of unawarded funds for sustainability pilot program grants

If the amount reserved under subparagraph (A) for any fiscal year is not fully awarded to private nonprofit organizations described in subsection (l)(1)(B), the Administration is authorized to use the unawarded amount to fund additional women's business center sites or to increase funding of existing women's business center sites under subsection (b).

(l) Repealed. Pub. L. 110–28, title VIII, §8305(b), May 25, 2007, 121 Stat. 210

(m) Continued funding for centers

(1) In general

A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

(2) Applicability

A nonprofit organization described in this paragraph is a nonprofit organization that has received funding under subsection (b) or (l).

(3) Application and approval criteria

(A) Criteria

Subject to subparagraph (B), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

(B) Contents

Except as otherwise provided in this subsection, the conditions for participation in the grant program under this subsection shall be the same as the conditions for participation in the program under subsection (1), as in effect on May 25, 2007.

(C) Notification

Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for each such application.

(4) Award of grants

(A) In general

Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this subsection.

(B) Amount

A grant under this subsection shall be for not more than \$150,000, for each year of that grant.

(C) Federal share

The Federal share under this subsection shall be not more than 50 percent.

(D) Priority

In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection or subsection (1) priority over first-time applications under subsection (b).

(5) Renewal

(A) In general

The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

(B) Unlimited renewals

There shall be no limitation on the number of times a grant may be renewed under subparagraph (A).

(n) Privacy requirements

(1) In general

A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this subparagraph shall be limited to the information necessary for such audit.

(2) Administration use of information

This subsection shall not—

- (A) restrict Administration access to program activity data; or
- (B) prevent the Administration from using client information (other than the information described in subparagraph (A)) to conduct client surveys.

(3) Regulations

The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under paragraph (1)(B).

(o) Study and report on representation of women

(1) Study

The Administrator shall periodically conduct a study to identify industries, as defined under the North American Industry Classification System, underrepresented by small business concerns owned and controlled by women.

(2) Report

Not later than 3 years after January 2, 2013, and every 5 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of each study under paragraph (1) conducted during the 5-year period ending on the date of the report.

(Pub. L. 85–536, §2[29], formerly §2[28], as added Pub. L. 102–191, §2, Dec. 5, 1991, 105 Stat. 1589; renumbered §2[29] and amended Pub. L. 103–403, title IV, §§411, 412, Oct. 22, 1994, 108 Stat. 4192, 4193; Pub. L. 105–135, title III, §308(a), Dec. 2, 1997, 111 Stat. 2611; Pub. L. 106–17, §§2(a), 3, Apr. 6, 1999, 113 Stat. 27; Pub. L. 106–165, §§2–4(b), Dec. 9, 1999, 113 Stat. 1795–1798; Pub. L. 110–28, title VIII, §8305(a), (b), May 25, 2007, 121 Stat. 209, 210; Pub. L. 111–240, title I, §1401(b), (c)(2), Sept. 27, 2010, 124 Stat. 2549, 2550; Pub. L. 112–239, div. A, title XVI, §1697(b), Jan. 2, 2013, 126 Stat. 2091; Pub. L. 113–291, div. A, title VIII, §825(c), Dec. 19, 2014, 128 Stat. 3438.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsec. (l), referred to in subsecs. (h)(2), (k)(1), (4), and (m)(2), (3)(B), (4)(D), was repealed by Pub. L. 110–28, title VIII, §8305(b), May 25, 2007, 121 Stat. 210, effective Oct. 1 of the first full fiscal year after May 25, 2007.

CODIFICATION

May 25, 2007, referred to in subsec. (m)(3)(B), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 110–28, which enacted subsec. (m), to reflect the probable intent of Congress.

AMENDMENTS

2014—Subsec. (o)(2). Pub. L. 113–291 substituted "3 years after January 2, 2013" for "5 years after January 2, 2013".

2013—Subsec. (o). Pub. L. 112–239 added subsec. (o).

2010—Subsec. (c)(1). Pub. L. 111–240, §1401(c)(2)(A), substituted "As a condition" for "Subject to paragraph (5), as a condition" in introductory provisions.

Pub. L. 111–240, §1401(b)(1), substituted "Subject to paragraph (5), as a condition" for "As a condition" in introductory provisions.

Subsec. (c)(5). Pub. L. 111–240, §1401(c)(2)(B), struck out par. (5) which related to waiver of non-Federal share relating to technical assistance and counseling.

Pub. L. 111–240, §1401(b)(2), added par. (5).

2007—Subsec. (l). Pub. L. 110–28, §8305(b), struck out subsec. (l) which related to establishment of a sustainability pilot program.

Subsecs. (m), (n). Pub. L. 110–28, §8305(a), added subsecs. (m) and (n).

1999—Subsec. (a)(2) to (4). Pub. L. 106–165, §2(1), added par. (2) and redesignated former pars. (2) and (3) as pars. (3) and (4), respectively.

Subsec. (b). Pub. L. 106–165, §2(2), inserted "nonprofit" after "private" in introductory provisions.

Subsec. (c)(1). Pub. L. 106–17, §2(a), inserted "and" after the semicolon in subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

"(B) in the third and fourth years, 1 non-Federal dollar for each Federal dollar; and

"(C) in the fifth year, 2 non-Federal dollars for each Federal dollar."

Subsec. (h). Pub. L. 106–165, §3(1), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows:

"(1) IN GENERAL.—Not later than 180 days after December 2, 1997, the Administrator shall develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section.

"(2) EXTENSION OF CONTRACTS.—In extending or renewing a contract with a women's business center, the Administrator shall consider the results of the examination conducted under paragraph (1)."

Subsec. (j). Pub. L. 106–165, §3(2), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: "The Administrator shall prepare and submit an annual report to the Committees on Small Business of the House of Representatives and the Senate on the effectiveness of all projects conducted under the authority of this section. Such report shall provide information concerning—

"(1) the number of individuals receiving assistance;

"(2) the number of startup business concerns formed;

"(3) the gross receipts of assisted concerns;

"(4) increases or decreases in profits of assisted concerns; and

"(5) the employment increases or decreases of assisted concerns."

Subsec. (k)(1). Pub. L. 106–165, §4(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "There is authorized to be appropriated \$11,000,000 for each fiscal year to carry out the projects authorized under this section, of which, for fiscal year 1998, not more than 5 percent may be used for administrative expenses related to the program under this section."

Pub. L. 106–17, §3, substituted "\$11,000,000" for "\$8,000,000".

Subsec. (k)(2). Pub. L. 106–165, §4(b)(2), designated existing provisions as subpar. (A), inserted heading, substituted "Except as provided in subparagraph (B), amounts made" for "Amounts made", and added subpar. (B).

Subsec. (k)(4). Pub. L. 106–165, §4(b)(3), added par. (4).

Subsec. (l). Pub. L. 106–165, §4(a), added subsec. (l).

1997—Pub. L. 105–135 amended section generally, substituting provisions relating to women's business center program for provisions relating to women's demonstration projects.

1994—Subsec. (g). Pub. L. 103–403, §411(2), substituted "1997" for "1995".

Subsec. (h). Pub. L. 103–403, §412, added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title I, §1401(c), Sept. 27, 2010, 124 Stat. 2549, provided that the amendment made by section 1401(c)(2) is effective Oct. 1, 2012.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8305(b), May 25, 2007, 121 Stat. 210, provided that the amendment made by section 8305(b) is effective Oct. 1 of the first full fiscal year after May 25, 2007.

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–165, §6, Dec. 9, 1999, 113 Stat. 1801, provided that: "This Act [amending this section and enacting provisions set out as notes under this section and section 631 of this title] and the amendments made by this Act shall take effect on October 1, 1999."

Pub. L. 106–17, §2(b), Apr. 6, 1999, 113 Stat. 27, provided that: "The amendments made by this section [amending this section] shall apply beginning October 1, 1998."

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.

REGULATIONS

Pub. L. 106–165, §4(c), Dec. 9, 1999, 113 Stat. 1799, provided that: "Not later than 30 days after the date of enactment of this Act [Dec. 9, 1999], the Administrator of the Small Business Administration shall issue guidelines to implement the amendments made by this section [amending this section]."

TRANSITIONAL RULE

Pub. L. 110–28, title VIII, §8305(c), May 25, 2007, 121 Stat. 210, provided that: "Notwithstanding any other provision of law, a grant or cooperative agreement that was awarded under subsection (l) of section 29 of the Small Business Act (15 U.S.C. 656), on or before the day before the date described in subsection (b) of this section [set out as an Effective Date of 2007 Amendment note above], shall remain in full force and effect under the terms, and for the duration, of such grant or agreement."

APPLICABILITY

Pub. L. 105–135, title III, §308(b), Dec. 2, 1997, 111 Stat. 2615, provided that:

"(1) IN GENERAL.—Subject to paragraph (2), any organization conducting a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656) (as in effect on the day before the effective date of this Act [Dec. 2, 1997]) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, the organization shall receive financial assistance in accordance with section 29(c) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656) (as amended by this section).

"(2) TERMS OF ASSISTANCE FOR CERTAIN ORGANIZATIONS.—Any organization operating in the third year of a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656) (as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, during the fourth and fifth years of the project, the organization shall receive financial assistance in accordance with section 29(c)(1)(C) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656) (as amended by this section)."

¹ So in original. Probably should be "therefor".

§657. Oversight of regulatory enforcement

(a) Definitions

For purposes of this section, the term—

(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

(b) SBA Enforcement Ombudsman

(1) Not later than 180 days after March 29, 1996, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided

with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 407 of title 5;

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) Regional Small Business Regulatory Fairness Boards

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(d) Powers of Boards

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

(e) Centralized website

Not later than 6 months after October 10, 2022, the Ombudsman shall maintain a publicly available website that includes—

(1) hyperlinks to small entity compliance guides described under section 212(a)(1) of the Small Business Regulatory Enforcement Fairness Act of 1996; and

(2) with respect to each such small entity compliance guide, the contact information for an individual who can offer assistance to small entities with respect to the rules that are the subject of such guide.

(f) Report on agency compliance

The Ombudsman shall include in the annual report required under subsection (b)(2)(C) an assessment of agency compliance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 for the year covered by such annual report.

(Pub. L. 85–536, §2[30], as added Pub. L. 104–121, title II, §222(2), Mar. 29, 1996, 110 Stat. 860; amended Pub. L. 117–188, §2, Oct. 10, 2022, 136 Stat. 2203; Pub. L. 117–286, §4(b)(37), Dec. 27, 2022, 136 Stat. 4347.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, referred to in subsecs. (e)(1) and (f), is section 212 of title II of Pub. L. 104–121, which is set out in a note under section 601 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 2[30] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2022—Subsec. (b)(2)(B). Pub. L. 117–286 substituted "section 407 of title 5;" for "section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);".

Subsecs. (e), (f). Pub. L. 117–188 added subsecs. (e) and (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Section effective on expiration of 90 days after Mar. 29, 1996, see section 224 of Pub. L. 104–121 set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

§657a. HUBZone program

(a) In general

There is established within the Administration a program (to be known as the HUBZone program) to be carried out by the Administrator to provide for Federal contracting assistance, including promoting economic development in economically distressed areas (as defined in section 636(m)(11)),¹ to qualified HUBZone small business concerns in accordance with this section.

(b) Definitions relating to HUBZones

In this section:

(1) Historically underutilized business zone

The terms "historically underutilized business zone" or "HUBZone" mean 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;
- (E) base closure areas;
- (F) qualified disaster areas; or
- (G) a Governor-designated covered area.

(2) 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—

(i) that is wholly owned by one or more Native Hawaiian Organizations (as defined in section 637(a)(15) of this title), or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

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

(E) 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

(F) 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.

(3) Qualified areas

(A) Qualified census tract

(i) In general

The term "qualified census tract" means a census tract that is covered by the definition of "qualified census tract" in section 42(d)(5)(B)(ii) of title 26 and that is reflected in an online tool prepared by the Administrator described under subsection (d)(7).

(ii) Exception

For any metropolitan statistical area in the Commonwealth of Puerto Rico, the term "qualified census tract" has the meaning given that term in section 42(d)(5)(B)(ii) of title 26 as applied without regard to subclause (II) of such section and that is reflected in the online tool described under clause (i), except that this clause shall only apply—

(I) 10 years after the date that the Administrator implements this clause, or

(II) the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist,

whichever event occurs first.

(B) Qualified nonmetropolitan county

The term "qualified nonmetropolitan county" means any county that is reflected in the online tool described under subparagraph (A)(i) and—

(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)(B)(ii) of title 26; and

(ii) in which—

(I) the median household income is less than 80 percent of the State median household income, based on a 5-year average of the available data 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 a 5-year average of the available data 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)(B)(iii) 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) for a period of 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) Base closure area

(i) In general

Subject to clause (ii), the term "base closure area" means—

(I) lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(aa) 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);

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

(cc) section 2687 of title 10; or

(dd) 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;

(II) the census tract or nonmetropolitan county in which the lands described in subclause (I) are wholly contained;

(III) a census tract or nonmetropolitan county the boundaries of which intersect the area described in subclause (I); and

(IV) a census tract or nonmetropolitan county the boundaries of which are contiguous to the area described in subclause (II) or subclause (III).

(ii) Limitation

A census tract or nonmetropolitan county described in clause (i) shall be considered to be a base closure area for a period beginning on the date on which the Administrator designates such census tract or nonmetropolitan county as a base closure area and ending on the date on which the base closure area ceases to be a qualified census tract under subparagraph (A) or a qualified nonmetropolitan county under subparagraph (B) in accordance with the online tool prepared by the Administrator described under subsection (d)(7), except that such period may not be less than 8 years.

(iii) Definitions

In this subparagraph:

(I) Census tract

The term "census tract" means a census tract delineated by the United States Bureau of the Census in the most recent decennial census that is not located in a nonmetropolitan county and does not otherwise qualify as a qualified census tract.

(II) Nonmetropolitan county

The term "nonmetropolitan county" means a county 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 and does not otherwise qualify as a qualified nonmetropolitan county.

(E) Qualified disaster area

(i) In general

Subject to clause (ii), the term "qualified disaster area" means any census tract or nonmetropolitan county located in an area where a major disaster has occurred or an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be qualified under subparagraph (A) or (B), as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(ii) Duration

A census tract or nonmetropolitan county shall be considered to be a qualified disaster area under clause (i) only for the period of time ending on the date the area ceases to be a qualified census tract under subparagraph (A) or a qualified nonmetropolitan county under subparagraph (B), in accordance with the online tool prepared by the Administrator described under subsection (d)(7) and beginning—

(I) in the case of a major disaster, on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; or

(II) in the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

(iii) Definitions

In this subparagraph:

(I) Major disaster

The term "major disaster" means a major disaster declared by the President under section 5170 of title 42.

(II) Other definitions

The terms "census tract" and "nonmetropolitan county" have the meanings given such terms in subparagraph (D)(iii).

(F) Governor-designated covered area

(i) In general

A "Governor-designated covered area" means a covered area that the Administrator has designated by approving a petition described under clause (ii).

(ii) Petition

For a covered area to receive a designation as a Governor-designated covered area, the Governor of the State in which the covered area is wholly contained shall include such covered 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—

(I) the potential for job creation and investment in the covered area;

(II) the demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area;

(III) how State and local government officials have incorporated the covered area into an economic development strategy; and

(IV) 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.

(iii) Limitations

Each calendar year, a Governor may submit not more than 1 petition described under clause (ii). 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.

(iv) Certification

If the Administrator grants a petition described under clause (ii), 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 clause (v)(I).

(v) Definitions

In this subparagraph:

(I) Covered area

The term "covered area" means an area in a State—

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

(bb) with a population of not more than 50,000; and

(cc) 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.

(II) Governor

The term "Governor" means the chief executive of a State.

(III) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(4) Qualified HUBZone small business concern

The term "qualified HUBZone small business concern" means a HUBZone small business concern that has been certified by the Administrator in accordance with the procedures described in this section.

(5) 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).

(6) Agricultural commodity

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

(c) Eligible contracts

(1) Definitions

In this subsection—

(A) the term "contracting officer" has the meaning given that term in section 2101(1) of title 41; and

(B) the term "full and open competition" has the meaning given that term in section 107 of title 41.

(2) Authority of contracting officer

(A) Sole source contracts

A contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting

officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) \$7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) \$3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(B) Restricted competition

A contract opportunity may be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price.

(C) Appeals

Not later than 5 days from the date the Administration is notified of a procurement officer's decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

(3) Price evaluation preference in full and open competitions

(A) In general

Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B) Procurement of commodities

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

(C) Procurement of commodities for international food aid export operations

The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.

(D) Treatment of preference

A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(4) Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or chapter 85 of title 41.

(d) Eligibility requirements; enforcement

(1) Certification

In order to be eligible for certification by the Administrator as a qualified HUBZone small business concern, a HUBZone small business concern shall submit documentation to the Administrator stating that—

(A) at the time of certification and at each examination conducted pursuant to paragraph (4), the principal office of the concern is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone;

(B) the concern will attempt to maintain the applicable employment percentage under subparagraph (A) during the performance of any contract awarded to such concern on the basis of a preference provided under subsection (c); and

(C) the concern will ensure that the requirements of section 657s of this title are satisfied with respect to any subcontract entered into by such concern pursuant to a contract awarded under this section.

(2) Verification

In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a HUBZone small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of documentation provided to the Administration by such a concern under paragraph (1)); and

(B) verification by the Administrator of the accuracy of any documentation provided by a HUBZone small business concern under paragraph (1).

(3) Timing

The Administrator shall verify the eligibility of a HUBZone small business concern using the procedures described in paragraph (2) within a reasonable time and not later than 60 days after the date on which the Administrator receives sufficient and complete documentation from a HUBZone small business concern under paragraph (1).

(4) Recertification

Not later than 3 years after the date that such HUBZone small business concern was certified as a qualified HUBZone small business concern, and every 3 years thereafter, the Administrator shall verify the accuracy of any documentation provided by a HUBZone small business concern under paragraph (1) to determine if such HUBZone small business concern remains a qualified HUBZone small business concern.

(5) Examinations

The Administrator shall conduct program examinations of qualified HUBZone small business concerns, using a risk-based analysis to select which concerns are examined, to ensure that any concern examined meets the requirements of paragraph (1).

(6) Loss of certification

A HUBZone small business concern that, based on the results of an examination conducted pursuant to paragraph (5) no longer meets the requirements of paragraph (1), shall have 30 days to submit documentation to the Administrator to be eligible to be certified as a qualified HUBZone small business concern. During the 30-day period, such concern may not compete for or be awarded a contract under this section. If such concern fails to meet the requirements of paragraph (1) by the last day of the 30-day period, the Administrator shall not certify such concern as a qualified HUBZone small business concern.

(7) HUBZone online tool

(A) In general

The Administrator shall develop a publicly accessible online tool that depicts HUBZones. Such online tool shall be updated—

- (i) with respect to HUBZones described under subparagraphs (A) and (B) of subsection (b)(3), beginning on January 1, 2020, and every 5 years thereafter;
- (ii) with respect to a HUBZone described under subsection (b)(3)(C), immediately after the area becomes, or ceases to be, a redesignated area; and
- (iii) with respect to HUBZones described under subparagraphs (D), (E), and (F) of subsection (b)(3), immediately after an area is designated as a base closure area, qualified disaster area, or Governor-designated covered area, respectively.

(B) Data

The online tool required under subparagraph (A) shall clearly and conspicuously provide access to the data used by the Administrator to determine whether or not an area is a HUBZone in the year in which the online tool was prepared.

(C) Notification of update

The Administrator shall include in the online tool a notification of the date on which the online tool, and the data used to create the online tool, will be updated.

(8) List of qualified HUBZone small business concerns

The Administrator shall establish and publicly maintain on the internet a list of qualified HUBZone small business concerns that shall—

- (A) to the extent practicable, include the name, address, and type of business with respect to such concern;
- (B) be updated by the Administrator not less than annually; and
- (C) be provided upon request to any Federal agency or other entity.

(9) Provision of data

Upon the request of the Administrator, the Secretary of Labor, the Administrator of the Federal Emergency Management Agency, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(10) Penalties

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a "qualified HUBZone small business concern" for purposes of this section shall be subject to liability for fraud, including section 1001 of title 18 and sections 3729 through 3733 of title 31.

(e) Performance metrics

(1) In general

Not later than 1 year after December 12, 2017, the Administrator shall publish performance metrics designed to measure the success of the HUBZone program established under this section in meeting the program's objective of promoting economic development in economically distressed areas (as defined in section 636(m)(11) of this title).

(2) Collecting and managing HUBZone data

The Administrator shall develop processes to incentivize each regional office of the Administration to collect and manage data on HUBZones within the geographic area served by such regional office.

(3) Report

Not later than 90 days after the last day of each fiscal year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report analyzing the data from the performance metrics established under this subsection and including—

(A) the number of HUBZone small business concerns that lost certification as a qualified HUBZone small business concern because of the results of an examination performed under subsection (d)(5); and

(B) the number of those concerns that did not submit documentation to be recertified under subsection (d)(6).

(f) Authorization of appropriations

There is authorized to be appropriated to carry out the program established by this section \$10,000,000 for each of fiscal years 2020 through 2025.

(Pub. L. 85–536, §2[31], as added Pub. L. 105–135, title VI, §602(b)(1)(B), Dec. 2, 1997, 111 Stat. 2629; amended Pub. L. 106–554, §1(a)(9) [title V, §503(b), title VI, §612(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, 2763A–699; Pub. L. 108–447, div. K, title I, §§153, 154, Dec. 8, 2004, 118 Stat. 3458; Pub. L. 111–240, title I, §1347(b)(1), (c), Sept. 27, 2010, 124 Stat. 2547; Pub. L. 114–92, div. A, title VIII, §866(c), Nov. 25, 2015, 129 Stat. 932; Pub. L. 115–91, div. A, title XVII, §1701(a)(1), (2), (b)–(e), (g), (h), Dec. 12, 2017, 131 Stat. 1795–1798, 1800; Pub. L. 116–283, div. A, title VIII, §864(2), Jan. 1, 2021, 134 Stat. 3784.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 636(m)(11) of this title, referred to in subsec. (a), no longer defines the term "economically distressed areas". See 1994 Amendment note for subsec. (m)(11)(D) under section 636 of this title.

The Community Economic Development Act of 1981, referred to in subsec. (b)(2)(E)(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.

The Puerto Rico Oversight, Management, and Economic Stability Act, referred to in subsec. (b)(3)(A)(ii)(II), is Pub. L. 114–187, June 30, 2016, 130 Stat. 549, which is classified principally to chapter 20 (§2101 et seq.) of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of Title 48 and Tables.

CODIFICATION

The text of section 632(p) of this title, which was transferred to this section and redesignated as subsec. (b) by Pub. L. 115–91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795, was based on Pub. L. 85–536, §2[3], July 18, 1958, 72 Stat. 384; Pub. L. 105–135, title VI, §602(a), Dec. 2, 1997, 111 Stat. 2627; Pub. L. 106–554, §1(a)(9) [title VI, §§602–604, 611, 612(b)–615(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–697 to 2763A–701; Pub. L. 108–447, div. K, title I, §§151(a), 152(a)(1), (3)–(c)(1), Dec. 8, 2004, 118 Stat. 3456, 3457; Pub. L. 109–59, title X, §10203, Aug. 10, 2005, 119 Stat. 1933; Pub. L. 112–239, div. A, title XVI, §1696(b)(1), Jan. 2, 2013, 126 Stat. 2090; Pub. L. 114–92, div. A, title VIII, §866(a), Nov. 25, 2015, 129 Stat. 929; Pub. L. 114–187, title IV, §412(a)(1), June 30, 2016, 130 Stat. 595.

In subsec. (c)(1)(A), "section 2101(1) of title 41" substituted for "section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c)(1)(B), "section 107 of title 41" substituted for "section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c)(4), "chapter 85 of title 41" substituted for "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 2[31] of Pub. L. 85-536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2021—Subsec. (c)(2)(A)(ii)(I). Pub. L. 116-283 substituted "\$7,000,000" for "\$5,000,000".

2017—Subsec. (a). Pub. L. 115-91, §1701(h)(2)(A), inserted "(to be known as the HUBZone program)" after "program" and ", including promoting economic development in economically distressed areas (as defined in section 636(m)(11)) of this title," after "assistance".

Subsec. (b). Pub. L. 115-91, §1701(a)(2)(A), substituted "In this section:" for "In this chapter:" in introductory provisions.

Pub. L. 115-91, §1701(a)(2), transferred subsec. (p) of section 632 of this title and redesignated it as subsec. (b) of this section. See Codification note above. Former subsec. (b) redesignated (c).

Subsec. (b)(1). Pub. L. 115-91, §1701(a)(2)(B), substituted "terms" for "term" and "or 'HUBZone' mean" for "means" in introductory provisions.

Subsec. (b)(1)(G). Pub. L. 115-91, §1701(e)(1), added subpar. (G).

Subsec. (b)(2). Pub. L. 115-91, §1701(a)(2)(C), redesignated par. (3) as (2) and struck out former par. (2) which defined the term "HUBZone".

Subsec. (b)(3). Pub. L. 115-91, §1701(a)(2)(C), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A)(i). Pub. L. 115-91, §1701(b)(1)(A)(i), amended cl. (i) generally. Prior to amendment, text read as follows: "The term 'qualified census tract' has the meaning given that term in section 42(d)(5)(B)(ii) of title 26."

Subsec. (b)(3)(A)(ii). Pub. L. 115-91, §1701(b)(1)(A)(ii), inserted "and that is reflected in the online tool described under clause (i)" after "such section" in introductory provisions.

Subsec. (b)(3)(B). Pub. L. 115-91, §1701(b)(1)(B)(i), inserted "that is reflected in the online tool described under subparagraph (A)(i) and" after "any county" in introductory provisions.

Subsec. (b)(3)(B)(i). Pub. L. 115-91, §1701(b)(2)(A), substituted "section 42(d)(5)(B)(ii) of title 26" for "section 42(d)(5)(C)(ii) of title 26".

Subsec. (b)(3)(B)(ii)(I). Pub. L. 115-91, §1701(b)(1)(B)(ii), struck out "nonmetropolitan" before "State" and substituted "a 5-year average of the available data" for "the most recent data available".

Subsec. (b)(3)(B)(ii)(II). Pub. L. 115-91, §1701(b)(1)(B)(ii)(II), substituted "a 5-year average of the available data" for "the most recent data available".

Subsec. (b)(3)(B)(ii)(III). Pub. L. 115-91, §1701(b)(2)(B), substituted "section 42(d)(5)(B)(iii) of title 26" for "section 42(d)(5)(C)(iii) of title 26".

Subsec. (b)(3)(C). Pub. L. 115-91, §1701(d), amended subpar. (C) generally. Prior to amendment, text defined the term "redesignated area".

Subsec. (b)(3)(D)(ii). Pub. L. 115-91, §1701(c)(1), amended cl. (ii) generally. Prior to amendment, text read as follows: "A base closure area shall be treated as a HUBZone—

"(I) with respect to a census tract or nonmetropolitan county described in clause (i), for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the date the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B) in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area; and

"(II) if such area was treated as a HUBZone at any time after 2010, until such time as the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B), after the 2020 decennial census."

Subsec. (b)(3)(E). Pub. L. 115-91, §1701(c)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) consisted of cls. (i) and (ii) defining "qualified disaster area" generally and limiting the period of time a qualified disaster is treated as a HUBZone, respectively.

Subsec. (b)(3)(F). Pub. L. 115-91, §1701(e)(2), added subpar. (F).

Subsec. (b)(4). Pub. L. 115-91, §1701(g), amended par. (4) generally. Prior to amendment, par. (4) consisted of subpars. (A) and (B) defining qualified HUBZone small business concern and requiring the Administrator shall establish and maintain a list of qualified HUBZone small business concerns, respectively.

Pub. L. 115-91, §1701(a)(2)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (b)(5) to (7). Pub. L. 115-91, §1701(a)(2)(C), redesignated pars. (6) and (7) as (5) and (6), respectively.

Subsec. (c). Pub. L. 115-91, §1701(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 115–91, §1701(h)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to enforcement procedures for verifying eligibility under this section and penalties for misrepresenting the status of a concern as a "HUBZone small business concern" for purposes of this section.

Pub. L. 115–91, §1701(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 115–91, §1701(h)(2)(C), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 115–91, §1701(a)(1), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 115–91, §1701(h)(2)(B), (3), redesignated subsec. (e) as (f) and substituted "fiscal years 2020 through 2025" for "fiscal years 2004 through 2006".

2015—Subsec. (c)(3). Pub. L. 114–92 inserted "the Administrator of the Federal Emergency Management Agency," after "the Secretary of Labor,".

2010—Subsec. (b)(2). Pub. L. 111–240, §1347(c)(1), struck out introductory provisions which read as follows: "Notwithstanding any other provision of law—".

Subsec. (b)(2)(A). Pub. L. 111–240, §1347(c)(2)(A), inserted heading and substituted "A contracting" for "a contracting" in introductory provisions.

Subsec. (b)(2)(A)(iii). Pub. L. 111–240, §1347(c)(2)(B), substituted period for semicolon at end.

Subsec. (b)(2)(B). Pub. L. 111–240, §1347(c)(3), which directed amendment of subpar. (B) by inserting heading and substituting "A contract opportunity may" for "a contract opportunity shall", and period for "; and", was executed by inserting heading and substituting "A contract opportunity may" for "a contract opportunity may" and period for "; and", to reflect the probable intent of Congress and the intervening amendment by Pub. L. 111–240, §1347(b)(1). See below.

Pub. L. 111–240, §1347(b)(1), substituted "may" for "shall".

Subsec. (b)(2)(C). Pub. L. 111–240, §1347(c)(4), inserted heading and substituted "Not later" for "not later".

2004—Subsec. (b)(3)(C), (D). Pub. L. 108–447, §153, which directed amendment of par. (3) by redesignating subpar. (C) as (D) and adding a new subpar. (C) at the end, was executed by making the redesignation as directed but by adding the new subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108–447, §154, substituted "2004 through 2006" for "2001 through 2003".

2000—Subsec. (b)(3). Pub. L. 106–554, §1(a)(9) [title VI, §612(a)], designated existing provisions as subpar. (A), inserted heading, substituted "Subject to subparagraph (B), in any" for "In any", and added subpars. (B) and (C).

Subsec. (d). Pub. L. 106–554, §1(a)(9) [title V, §503(b)], added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title XVII, §1701(j), Dec. 12, 2017, 131 Stat. 1803, provided that: "The provisions of this section shall take effect—

"(1) with respect to subsection (i) [enacting provisions set out as a note under this section], on the date of the enactment of this section [Dec. 12, 2017]; and

"(2) with respect to subsections (a) through (h) [amending this section, sections 632 and 637 of this title, section 2323 of Title 10, Armed Forces, section 3718 of Title 31, Money and Finance, sections 1122 and 1713 of Title 41, Public Contracts, and sections 47107 and 47113 of Title 49, Transportation, amending provisions set out as notes under section 2302 of Title 10 and section 637 of this title, and repealing provisions set out as a note under section 632 of this title], on January 1, 2020."

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as an Effective Date of 1997 Amendment note under section 631 of this title.

INITIAL LIMITED APPLICABILITY

Pub. L. 105–135, title VI, §602(b)(2), Dec. 2, 1997, 111 Stat. 2631, as amended by Pub. L. 106–113, div. B, §1000(a)(5) [title II, §212], Nov. 29, 1999, 113 Stat. 1536, 1501A–295, limited the applicability of 15 U.S.C. 657a to certain procurements beginning on Dec. 2, 1997, and ending on Sept. 30, 2000.

CONSTRUCTION OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title XVII, §1701(i), Dec. 12, 2017, 131 Stat. 1803, provided that: "A HUBZone small business concern that was qualified pursuant to section 3(p)(5) of the Small Business Act [formerly 15

U.S.C. 632(p)(5), now 15 U.S.C. 657a(b)(4)] on or before December 31, 2019, shall continue to be considered as a qualified HUBZone small business concern during the period beginning on January 1, 2020, and ending on the date that the Administrator of the Small Business Administration prepares the online tool depicting qualified areas described under section 31(d)(7) [15 U.S.C. 657a(d)(7)] (as added by subsection (h) of this section)."

REPORT

Pub. L. 105–135, title VI, §606, Dec. 2, 1997, 111 Stat. 2635, required the Administrator to submit to Congress, by Mar. 1, 2002, a report on the HUBZone program and the degree to which the program resulted in increased employment opportunities and an increased level of investment in HUBZones.

¹ See References in Text note below.

§657b. Veterans programs

(a) Office of Veterans Business Development

There is established in the Administration an Office of Veterans Business Development, which shall be administered by the Associate Administrator for Veterans Business Development (in this section referred to as the "Associate Administrator") appointed under section 633(b)(1) of this title.

(b) Associate Administrator for Veterans Business Development

The Associate Administrator—

- (1) shall be an appointee in the Senior Executive Service;
- (2) shall be responsible for the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. The Associate Administrator shall act as an ombudsman for full consideration of veterans in all programs of the Administration; and
- (3) shall report to and be responsible directly to the Administrator.

(c) Interagency task force

(1) Establishment

Not later than 90 days after February 14, 2008, the President shall establish an interagency task force to coordinate the efforts of Federal agencies necessary to improve capital and business development opportunities for, and ensure achievement of the pre-established Federal contracting goals for, small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans (in this section referred to as the "task force").

(2) Membership

The members of the task force shall include—

- (A) the Administrator, who shall serve as chairperson of the task force; and
- (B) a senior level representative from—
 - (i) the Department of Veterans Affairs;
 - (ii) the Department of Defense;
 - (iii) the Administration (in addition to the Administrator);
 - (iv) the Department of Labor;
 - (v) the Department of the Treasury;
 - (vi) the General Services Administration;
 - (vii) the Office of Management and Budget; and
 - (viii) 4 representatives from a veterans service organization or military organization or association, selected by the President.

(3) Duties

The task force shall—

(A) consult regularly with veterans service organizations and military organizations in performing the duties of the task force; and

(B) coordinate administrative and regulatory activities and develop proposals relating to—

(i) improving capital access and capacity of small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through loans, surety bonding, and franchising;

(ii) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;

(iii) increasing the integrity of certifications of status as a small business concern owned and controlled by service-disabled veterans or a small business concern owned and controlled by veterans;

(iv) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(v) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(vi) making other improvements relating to the support for veterans business development by the Federal Government.

(d) Participation in TAP Workshops

(1) In general

The Associate Administrator shall increase veteran outreach by ensuring that Veteran Business Outreach Centers regularly participate, on a nationwide basis, in the workshops of the Transition Assistance Program of the Department of Labor.

(2) Presentations

In carrying out paragraph (1), a Veteran Business Outreach Center may provide grants to entities located in Transition Assistance Program locations to make presentations on the opportunities available from the Administration for recently separating or separated veterans. Each presentation under this paragraph shall include, at a minimum, a description of the entrepreneurial and business training resources available from the Administration.

(3) Written materials

The Associate Administrator shall—

(A) create written materials that provide comprehensive information on self-employment and veterans entrepreneurship, including information on resources available from the Administration on such topics; and

(B) make the materials created under subparagraph (A) available to the Secretary of Labor for inclusion in the Transition Assistance Program manual.

(4) Reports

The Associate Administrator shall submit to Congress progress reports on the implementation of this subsection.

(e) Women veterans business training

The Associate Administrator shall—

(1) compile information on existing resources available to women veterans for business training, including resources for—

(A) vocational and technical education;

(B) general business skills, such as marketing and accounting; and

(C) business assistance programs targeted to women veterans; and

(2) disseminate the information compiled under paragraph (1) through Veteran Business

Outreach Centers and women's business centers.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$1,500,000 for fiscal year 2005; and
- (2) \$2,000,000 for fiscal year 2006.

(g) Access to surplus property for veteran-owned small businesses

(1) Definitions

In this subsection—

(A) the term "foreign excess property" has the meaning given the term in section 102 of title 40; and

(B) the term "state agency" has the meaning given the term, including the roles and responsibilities assigned, in section 549 of title 40.

(2) Requirement

The Administrator, in coordination with the Administrator of General Services, shall provide access to and manage the distribution of surplus property, and foreign excess property returned to a State for handling as surplus property, owned by the United States under chapter 7 of title 40, to small business concerns owned and controlled by veterans (as verified by the Secretary of Veterans Affairs under section 8127 of title 38) pursuant to a memorandum of agreement between the Administrator, the Administrator of General Services, and the head of the applicable state agency for surplus properties and in accordance with section 549 of title 40.

(Pub. L. 85–536, §2[32], as added Pub. L. 106–50, title II, §201(b)(2), Aug. 17, 1999, 113 Stat. 235; amended Pub. L. 108–447, div. K, title I, §145, Dec. 8, 2004, 118 Stat. 3455; Pub. L. 110–186, title I, §§102, 104, Feb. 14, 2008, 122 Stat. 624, 625; Pub. L. 115–416, §2, Jan. 3, 2019, 132 Stat. 5436.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2[32] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2019—Subsec. (g). Pub. L. 115–416 added subsec. (g).

2008—Subsec. (c). Pub. L. 110–186, §102(2), added subsec. (c). Former subsec. (c) redesignated (f).

Subsecs. (d), (e). Pub. L. 110–186, §104, added subsecs. (d) and (e).

Subsec. (f). Pub. L. 110–186, §102(1), redesignated subsec. (c) as (f).

2004—Subsec. (c). Pub. L. 108–447 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL FINDINGS

Pub. L. 106–50, title I, §101, Aug. 17, 1999, 113 Stat. 234, provided that: "Congress finds the following:

"(1) Veterans of the United States Armed Forces have been and continue to be vital to the small business enterprises of the United States.

"(2) In serving the United States, veterans often faced great risks to preserve the American dream of freedom and prosperity.

"(3) The United States has done too little to assist veterans, particularly service-disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises.

"(4) Medical advances and new medical technologies have made it possible for service-disabled veterans to play a much more active role in the formation and expansion of small business enterprises in the United States.

"(5) The United States must provide additional assistance and support to veterans to better equip them

to form and expand small business enterprises, thereby enabling them to realize the American dream that they fought to protect."

CONGRESSIONAL PURPOSE

Pub. L. 106–50, title I, §102, Aug. 17, 1999, 113 Stat. 234, provided that: "The purpose of this Act [see Short Title of 1999 Amendments note set out under section 631 of this title] is to expand existing and establish new assistance programs for veterans who own or operate small businesses. This Act accomplishes this purpose by—

- "(1) expanding the eligibility for certain small business assistance programs to include veterans;
- "(2) directing certain departments and agencies of the United States to take actions that enhance small business assistance to veterans; and
- "(3) establishing new institutions to provide small business assistance to veterans or to support the institutions that provide such assistance."

ADVISORY COMMITTEE ON VETERANS BUSINESS AFFAIRS

Pub. L. 106–50, title II, §203, Aug. 17, 1999, 113 Stat. 239, as amended by Pub. L. 108–447, div. K, title I, §143(b), Dec. 8, 2004, 118 Stat. 3455; Pub. L. 110–186, title I, §103(b), Feb. 14, 2008, 122 Stat. 625; Pub. L. 112–239, div. A, title XVI, §1699(c)(3), Jan. 2, 2013, 126 Stat. 2092, provided that:

"(a) IN GENERAL.—There is established an advisory committee to be known as the 'Advisory Committee on Veterans Business Affairs' (in this section referred to as the 'Committee'), which shall serve as an independent source of advice and policy recommendations to—

- "(1) the Administrator of the Small Business Administration (in this section referred to as the 'Administrator');
- "(2) the Associate Administrator for Veterans Business Development of the Small Business Administration;
- "(3) the Congress;
- "(4) the President; and
- "(5) other United States policymakers.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The Committee shall be composed of 15 members, of whom—

"(A) eight shall be veterans who are owners of small business concerns (within the meaning of the term under section 3 of the Small Business Act (15 U.S.C. 632)); and

"(B) seven shall be representatives of veterans organizations.

"(2) APPOINTMENT.—

"(A) IN GENERAL.—The members of the Committee shall be appointed by the Administrator in accordance with this section.

"(B) INITIAL APPOINTMENTS.—Not later than 90 days after the date of the enactment of this Act [Aug. 17, 1999], the Administrator shall appoint the initial members of the Committee.

"(3) POLITICAL AFFILIATION.—Not more than eight members of the Committee shall be of the same political party as the President.

"(4) PROHIBITION ON FEDERAL EMPLOYMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no member of the Committee may serve as an officer or employee of the United States.

"(B) EXCEPTION.—A member of the Committee who accepts a position as an officer or employee of the United States after the date of the member's appointment to the Committee may continue to serve on the Committee for not more than 30 days after such acceptance.

"(5) TERM OF SERVICE.—

"(A) IN GENERAL.—Subject to subparagraph (B), the term of service of each member of the Committee shall be 3 years.

"(B) TERMS OF INITIAL APPOINTEES.—As designated by the Administrator at the time of appointment, of the members first appointed—

"(i) six shall be appointed for a term of 4 years; and

"(ii) five shall be appointed for a term of 5 years.

"(6) VACANCIES.—The Administrator shall fill any vacancies on the membership of the Committee not later than 30 days after the date on which such vacancy occurs.

"(7) CHAIRPERSON.—

"(A) IN GENERAL.—The members of the Committee shall elect one of the members to be Chairperson of the Committee.

"(B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in the office of the

Chairperson of the Committee shall be filled by the Committee at the first meeting of the Committee following the date on which the vacancy occurs.

"(c) DUTIES.—The duties of the Committee shall be the following:

"(1) Review, coordinate, and monitor plans and programs developed in the public and private sectors, that affect the ability of small business concerns owned and controlled by veterans to obtain capital and credit and to access markets.

"(2) Promote the collection of business information and survey data as they relate to veterans and small business concerns owned and controlled by veterans.

"(3) Monitor and promote plans, programs, and operations of the departments and agencies of the United States that may contribute to the formation and growth of small business concerns owned and controlled by veterans.

"(4) Develop and promote initiatives, policies, programs, and plans designed to foster small business concerns owned and controlled by veterans.

"(5) Develop a comprehensive plan, to be updated annually, for joint public-private sector efforts to facilitate growth and development of small business concerns owned and controlled by veterans.

"(d) POWERS.—

"(1) HEARINGS.—Subject to subsection (e), the Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out its duties.

"(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the Chairperson of the Committee, the head of any department or agency of the United States shall furnish such information to the Committee as the Committee considers to be necessary to carry out its duties.

"(3) USE OF MAILS.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(4) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.

"(e) MEETINGS.—

"(1) IN GENERAL.—The Committee shall meet, not less than three times per year, at the call of the Chairperson or at the request of the Administrator.

"(2) LOCATION.—Each meeting of the full Committee shall be held at the headquarters of the Small Business Administration located in Washington, District of Columbia. The Administrator shall provide suitable meeting facilities and such administrative support as may be necessary for each full meeting of the Committee.

"(3) TASK GROUPS.—The Committee may, from time-to-time, establish temporary task groups as may be necessary in order to carry out its duties.

"(f) COMPENSATION AND EXPENSES.—

"(1) NO COMPENSATION.—Members of the Committee shall serve without compensation for their service to the Committee.

"(2) EXPENSES.—The members of the Committee shall be reimbursed for travel and subsistence expenses in accordance with section 5703 of title 5, United States Code.

"(g) REPORT.—Not later than 30 days after the end of each fiscal year beginning after the date of the enactment of this section [Aug. 17, 1999], the Committee shall transmit to the Congress and the President a report describing the activities of the Committee and any recommendations developed by the Committee for the promotion of small business concerns owned and controlled by veterans."

SCORE PROGRAM

Pub. L. 106–50, title III, §301, Aug. 17, 1999, 113 Stat. 242, provided that:

"(a) IN GENERAL.—The Administrator of the Small Business Administration shall enter into a memorandum of understanding with the Service Core [probably should be "Corps"] of Retired Executives (described in section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) and in this section referred to as 'SCORE') to provide for the following:

"(1) The appointment by SCORE in its national office of an individual to act as National Veterans Business Coordinator, whose duties shall relate exclusively to veterans business matters, and who shall be responsible for the establishment and administration of a program to coordinate counseling and training regarding entrepreneurship to veterans through the chapters of SCORE throughout the United States.

"(2) The assistance of SCORE in the [sic] establishing and maintaining a toll-free telephone number and an Internet website to provide access for veterans to information about the counseling and training regarding entrepreneurship available to veterans through SCORE.

"(3) The collection of statistics concerning services provided by SCORE to veterans, including service-disabled veterans, for inclusion in each annual report published by the Administrator under section 4(b)(2)(B) of the Small Business Act (15 U.S.C. 633(b)(2)(B)).

"(b) RESOURCES.—The Administrator shall provide to SCORE such resources as the Administrator determines necessary for SCORE to carry out the requirements of the memorandum of understanding specified in paragraph (1)."

ENTREPRENEURIAL ASSISTANCE

Pub. L. 106–50, title III, §302, Aug. 17, 1999, 113 Stat. 242, provided that: "Not later than 180 days after the date of the enactment of this Act [Aug. 17, 1999], the Secretary of Veterans Affairs, the Administrator of the Small Business Administration, and the head of the association formed pursuant to section 21(a)(3)(A) of the Small Business Act (15 U.S.C. 648(a)(3)(A)) shall enter into a memorandum of understanding with respect to entrepreneurial assistance to veterans, including service-disabled veterans, through Small Business Development Centers (described in section 21 of the Small Business Act (15 U.S.C. 648)) and facilities of the Department of Veterans Affairs. Such assistance shall include the following:

"(1) Conducting of studies and research, and the distribution of information generated by such studies and research, on the formation, management, financing, marketing, and operation of small business concerns by veterans.

"(2) Provision of training and counseling to veterans concerning the formation, management, financing, marketing, and operation of small business concerns.

"(3) Provision of management and technical assistance to the owners and operators of small business concerns regarding international markets, the promotion of exports, and the transfer of technology.

"(4) Provision of assistance and information to veterans regarding procurement opportunities with Federal, State, and local agencies, especially such agencies funded in whole or in part with Federal funds.

"(5) Establishment of an information clearinghouse to collect and distribute information, including by electronic means, on the assistance programs of Federal, State, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mail and electronic addresses, and contracting and subcontracting opportunities.

"(6) Provision of Internet or other distance learning academic instruction for veterans in business subjects, including accounting, marketing, and business fundamentals.

"(7) Compilation of a list of small business concerns owned and controlled by service-disabled veterans that provide products or services that could be procured by the United States and delivery of such list to each department and agency of the United States. Such list shall be delivered in hard copy and electronic form and shall include the name and address of each such small business concern and the products or services that it provides."

ANNUAL REPORT OF ADMINISTRATOR

Pub. L. 106–50, title VI, §603, Aug. 17, 1999, 113 Stat. 248, provided that: "The Administrator of the Small Business Administration shall transmit annually to the Committees on Small Business and Veterans Affairs of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a report on the needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans, which shall include information on—

"(1) the availability of Small Business Administration programs for such small business concerns and the degree of utilization of such programs by such small business concerns during the preceding 12-month period, including statistical information on such utilization as compared to the small business community as a whole;

"(2) the percentage and dollar value of Federal contracts awarded to such small business concerns during the preceding 12-month period, based on the data collected pursuant to section 604(d) [set out below]; and

"(3) proposals to improve the access of such small business concerns to the assistance made available by the United States."

DATA AND INFORMATION COLLECTION

Pub. L. 106–50, title VI, §604, Aug. 17, 1999, 113 Stat. 249, provided that:

"(a) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Administrator of the Small Business Administration shall, for each fiscal year—

"(1) collect information concerning the procurement practices and procedures of each department and agency of the United States having procurement authority;

"(2) publish and disseminate such information to procurement officers in all Federal agencies; and

"(3) make such information available to any small business concern requesting such information.

"(b) IDENTIFICATION OF SMALL BUSINESS CONCERNS OWNED BY ELIGIBLE VETERANS

—Each fiscal year, the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training and the Administrator of the Small Business Administration, identify small business concerns owned and controlled by veterans in the United States. The Secretary shall inform each small business concern identified under this paragraph that information on Federal procurement is available from the Administrator.

"(c) SELF-EMPLOYMENT OPPORTUNITIES.—The Secretary of Labor, the Secretary of Veterans Affairs, and the Administrator of the Small Business Administration shall enter into a memorandum of understanding to provide for coordination of vocational rehabilitation services, technical and managerial assistance, and financial assistance to veterans, including service-disabled veterans, seeking to employ themselves by forming or expanding small business concerns. The memorandum of understanding shall include recommendations for expanding existing programs or establishing new programs to provide such services or assistance to such veterans.

"(d) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(d)(4)(A)) [now 41 U.S.C. 1122(a)(4)(A)] shall be modified to collect data regarding the percentage and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans."

DEFINITIONS

Pub. L. 106–50, title I, §103(b), Aug. 17, 1999, 113 Stat. 235, provided that: "In this Act [see Short Title of 1999 Amendments note set out under section 631 of this title], the definitions contained in section 3(q) of the Small Business Act [15 U.S.C. 632(q)], as added by this section, apply."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13540. INTERAGENCY TASK FORCE ON VETERANS SMALL BUSINESS DEVELOPMENT

Ex. Ord. No. 13540, Apr. 26, 2010, 75 F.R. 22497, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 102 of title I of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186) (the "Act"), and in order to establish an interagency task force to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans, it is hereby ordered as follows:

SECTION 1. *Establishment.* The Administrator of the Small Business Administration (Administrator) shall establish within the Small Business Administration an Interagency Task Force on Veterans Small Business Development (Task Force).

SEC. 2. *Membership.* The Administrator shall serve as Chair of the Task Force and shall direct its work. Other members shall consist of:

(a) a senior level representative, designated by the head of the respective department or agency, from each of the following:

- (i) the Department of the Treasury;
- (ii) the Department of Defense;
- (iii) the Department of Labor;
- (iv) the Department of Veterans Affairs;
- (v) the Office of Management and Budget;
- (vi) the Small Business Administration (in addition to the Administrator); and
- (vii) the General Services Administration; and

(b) four representatives from a veterans' service or military organization or association, who shall be appointed by the Administrator.

SEC. 3. *Functions.* Consistent with the Act and other applicable law, the Task Force shall:

(a) consult regularly with veterans service and military organizations in performing the duties of the Task Force;

(b) coordinate administrative and regulatory activities and develop proposals relating to:

- (i) improving capital access and capacity of small business concerns owned and controlled by veterans and

service-disabled veterans through loans, surety bonding, and franchising;

(ii) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;

(iii) increasing the integrity of certifications of status as a small business concern owned and controlled by a veteran or service-disabled veteran;

(iv) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(v) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(vi) making other improvements relating to the support for veterans business development by the Federal Government; and

(c) not later than 1 year after its first meeting and annually thereafter, forward to the President a report on the performance of its functions, including any proposals developed pursuant to subsection (b) of this section.

SEC. 4. *General Provisions.* (a) The Small Business Administration shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations.

(b) Nothing in this order shall be construed to impair or otherwise effect [sic]:

(i) authority granted by law to an executive department, agency, or the head thereof; and

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Insofar as the Federal Advisory Committee Act, as amended ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.] (FACA), may apply to the Task Force, any functions of the President under the FACA, except for those in section 6 of the FACA, shall be performed by the Administrator in accordance with guidelines issued by the Administrator of General Services.

(d) This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EXTENSION OF TERM OF INTERAGENCY TASK FORCE ON VETERANS SMALL BUSINESS DEVELOPMENT

Term of Interagency Task Force on Veterans Small Business Development extended until Sept. 30, 2025, by Ex. Ord. No. 14109, Sept. 29, 2023, 88 F.R. 68447, set out as a note under section 1013 of Title 5, Government Organization and Employees.

Previous extensions of term of Interagency Task Force on Veterans Small Business Development were contained in the following prior Executive Orders:

Ex. Ord. No. 14048, Sept. 30, 2021, 86 F.R. 55465, extended term until Sept. 30, 2023.

Ex. Ord. No. 13889, Sept. 27, 2019, 84 F.R. 52743, extended term until Sept. 30, 2021.

Ex. Ord. No. 13811, Sept. 29, 2017, 82 F.R. 46363, extended term until Sept. 30, 2019.

Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, extended term until Sept. 30, 2017.

Ex. Ord. No. 13652, Sept. 30, 2013, 78 F.R. 61817, extended term until Sept. 30, 2015.

Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, extended term until Sept. 30, 2013.

§657c. Repealed. Pub. L. 112–239, div. A, title XVI, §1699(a), Jan. 2, 2013, 126 Stat. 2092

Section, Pub. L. 85–536, §2[33], as added Pub. L. 106–50, title II, §202(a), Aug. 17, 1999, 113 Stat. 236; amended Pub. L. 106–554, §1(a)(9) [title VIII, §808], Dec. 21, 2000, 114 Stat. 2763, 2763A–706; Pub. L. 108–447, div. B, title VI, §636, div. K, title I, §§143(a), 146, Dec. 8, 2004, 118 Stat. 2922, 3455; Pub. L. 110–186, title I, §103(a), Feb. 14, 2008, 122 Stat. 625, established the National Veterans Business Development Corporation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPRESENTATION OF AUTHORIZATION

Pub. L. 112–239, div. A, title XVI, §1699(b), Jan. 2, 2013, 126 Stat. 2092, provided that: "On and after the

date of enactment of this Act [Jan. 2, 2013], the National Veterans Business Development Corporation and any successor thereto may not represent that the corporation is federally chartered or in any other manner authorized by the Federal Government."

§657d. Federal and State Technology Partnership Program

(a) Definitions

In this section and section 657e of this title, the following definitions apply:

(1) Applicant

The term "applicant" means an entity, organization, or individual that submits a proposal for an award or a cooperative agreement under this section.

(2) Business advice and counseling

The term "business advice and counseling" means providing advice and assistance on matters described in section 657e(c)(2)(B) of this title to small business concerns to guide them through the SBIR and STTR program process, from application to award and successful completion of each phase of the program.

(3) Catastrophic incident

The term "catastrophic incident" means a major disaster that is comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto.

(4) FAST program

The term "FAST program" means the Federal and State Technology Partnership Program established under this section.

(5) Mentor

The term "mentor" means an individual described in section 657e(c)(2) of this title.

(6) Mentoring Network

The term "Mentoring Network" means an association, organization, coalition, or other entity (including an individual) that meets the requirements of section 657e(c) of this title.

(7) Recipient

The term "recipient" means a person that receives an award or becomes party to a cooperative agreement under this section.

(8) SBIR program

The term "SBIR program" has the same meaning as in section 638(e)(4) of this title.

(9) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(10) STTR program

The term "STTR program" has the same meaning as in section 638(e)(6) of this title.

(b) Establishment of Program

The Administrator shall establish a program to be known as the Federal and State Technology Partnership Program, the purpose of which shall be to strengthen the technological competitiveness of small business concerns in the States.

(c) Grants and cooperative agreements

(1) Joint review

In carrying out the FAST program under this section, the Administrator and the SBIR program managers at the National Science Foundation and the Department of Defense shall jointly review proposals submitted by applicants and may make awards or enter into cooperative agreements under this section based on the factors for consideration set forth in paragraph (2), in order to enhance or develop in a State—

- (A) technology research and development by small business concerns;
- (B) technology transfer from university research to technology-based small business concerns;
- (C) technology deployment and diffusion benefiting small business concerns;
- (D) the technological capabilities of small business concerns through the establishment or operation of consortia comprised of entities, organizations, or individuals, including—
 - (i) State and local development agencies and entities;
 - (ii) representatives of technology-based small business concerns;
 - (iii) industries and emerging companies;
 - (iv) universities; and
 - (v) small business development centers; and

(E) outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program, including initiatives—

- (i) to make grants or loans to companies to pay a portion or all of the cost of developing SBIR proposals;
- (ii) to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the Administration, or other entities that are knowledgeable about the SBIR and STTR programs as good candidates for the SBIR and STTR programs, and that would benefit from mentoring, in accordance with section 657e of this title;
- (iii) to create or participate in a training program for individuals providing SBIR outreach and assistance at the State and local levels; and
- (iv) to encourage the commercialization of technology developed through SBIR program funding.

(2) Selection considerations

In making awards or entering into cooperative agreements under this section, the Administrator and the SBIR program managers referred to in paragraph (1)—

- (A) may only consider proposals by applicants that intend to use a portion of the Federal assistance provided under this section to provide outreach, financial support, or technical assistance to technology-based small business concerns participating in or interested in participating in the SBIR program;
- (B) shall consider, at a minimum—
 - (i) whether the applicant has demonstrated that the assistance to be provided would address unmet needs of small business concerns in the community, and whether it is important to use Federal funding for the proposed activities;
 - (ii) whether the applicant has demonstrated that a need exists to increase the number or success of small high-technology businesses in the State, as measured by the number of first phase and second phase SBIR awards that have historically been received by small business concerns in the State;
 - (iii) whether the projected costs of the proposed activities are reasonable;
 - (iv) whether the proposal integrates and coordinates the proposed activities with other State and local programs assisting small high-technology firms in the State;
 - (v) the manner in which the applicant will measure the results of the activities to be conducted; and
 - (vi) whether the proposal addresses the needs of small business concerns—

- (I) owned and controlled by women;
- (II) owned and controlled by minorities; and
- (III) located in areas that have historically not participated in the SBIR and STTR programs; and

(C) shall give special consideration to an applicant that is located in an area affected by a catastrophic incident.

(3) Proposal limit

Not more than one proposal may be submitted for inclusion in the FAST program under this section to provide services in any one State in any 1 fiscal year.

(4) Process

Proposals and applications for assistance under this section shall be in such form and subject to such procedures as the Administrator shall establish. The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B).

(5) Additional assistance for catastrophic incidents

Upon application by an applicant that receives an award or has in effect a cooperative agreement under this section and that is located in an area affected by a catastrophic incident, the Administrator may—

- (A) provide additional assistance to the applicant; and
- (B) waive the matching requirements under subsection (e)(2).

(d) Cooperation and coordination

In carrying out the FAST program under this section, the Administrator shall cooperate and coordinate with—

- (1) Federal agencies required by section 638 of this title to have an SBIR program; and
- (2) entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns, including—
 - (A) State and local development agencies and entities;
 - (B) State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation (as established under section 1862g of title 42);
 - (C) State science and technology councils; and
 - (D) representatives of technology-based small business concerns.

(e) Administrative requirements

(1) Competitive basis

Awards and cooperative agreements under this section shall be made or entered into, as applicable, on a competitive basis.

(2) Matching requirements

(A) In general

The non-Federal share of the cost of an activity (other than a planning activity) carried out using an award or under a cooperative agreement under this section shall be—

- (i) 50 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 18 States receiving the fewest SBIR first phase awards (as described in section 638(e)(4)(A) of this title);
- (ii) except as provided in subparagraph (B), 1 dollar for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 16 States receiving the greatest number of such SBIR first phase awards; and
- (iii) except as provided in subparagraph (B), 75 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in a State that is not described in clause (i) or (ii) that is receiving such SBIR first phase awards.

(B) Low-income areas

The non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this section shall be 50 cents for each Federal dollar that will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, as that term is defined in section 42(d)(5)(C)(ii) ¹ of title 26. Federal dollars not so allocated by that recipient shall be subject to the matching requirements of subparagraph (A).

(C) Types of funding

The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(D) Rankings

For purposes of subparagraph (A), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, beginning with fiscal year 2001, based on the most recent statistics compiled by the Administrator.

(3) Duration

Awards may be made or cooperative agreements entered into under this section for multiple years, not to exceed 5 years in total.

(f) Reports

(1) Initial report

Not later than 120 days after December 21, 2000, the Administrator shall prepare and submit to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives a report, which shall include, with respect to the FAST program, including Mentoring Networks—

- (A) a description of the structure and procedures of the program;
- (B) a management plan for the program; and
- (C) a description of the merit-based review process to be used in the program.

(2) Annual reports

The Administrator shall submit an annual report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives regarding—

- (A) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the preceding year;
- (B) a list of recipients under this section, including their location and the activities being performed with the awards made or under the cooperative agreements entered into; and
- (C) the Mentoring Networks and the mentoring database, as provided for under section 657e of this title, including—
 - (i) the status of the inclusion of mentoring information in the database required by section 638(k) of this title; and
 - (ii) the status of the implementation and description of the usage of the Mentoring Networks.

(g) Reviews by Inspector General

(1) In general

The Inspector General of the Administration shall conduct a review of—

- (A) the extent to which recipients under the FAST program are measuring the performance of the activities being conducted and the results of such measurements; and
- (B) the overall management and effectiveness of the FAST program.

(2) Report

During the first quarter of fiscal year 2004, the Inspector General of the Administration shall submit a report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives on the review conducted under paragraph (1).

(h) Program levels

(1) In general

There is authorized to be appropriated to carry out the FAST program, including Mentoring Networks, under this section and section 657e of this title, \$10,000,000 for each of fiscal years 2001 through 2005.

(2) Mentoring database

Of the total amount made available under paragraph (1) for fiscal years 2001 through 2005, a reasonable amount, not to exceed a total of \$500,000, may be used by the Administration to carry out section 657e(d) of this title.

(i) Termination

The authority to carry out the FAST program under this section shall terminate on September 30, 2005.

(Pub. L. 85–536, §2[34], as added Pub. L. 106–554, §1(a)(9) [title I, §111(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674; amended Pub. L. 107–50, §8, Oct. 15, 2001, 115 Stat. 265; Pub. L. 114–88, div. B, title I, §2104, Nov. 25, 2015, 129 Stat. 691; Pub. L. 116–283, div. A, title VIII, §867(2), Jan. 1, 2021, 134 Stat. 3787.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subpar. (C) of section 42(d)(5) of title 26, referred to in subsec. (e)(2)(B), was redesignated (B) by Pub. L. 110–289, div. C, title I, §3003(g)(3), July 30, 2008, 122 Stat. 2882.

PRIOR PROVISIONS

A prior section 2[34] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2021—Subsec. (a)(9). Pub. L. 116–283 substituted "American Samoa, and the Commonwealth of the Northern Mariana Islands" for "and American Samoa".

2015—Subsec. (a)(3) to (10). Pub. L. 114–88, §2104(a), added par. (3) and redesignated former pars. (3) to (9) as (4) to (10), respectively.

Subsec. (c)(2)(C). Pub. L. 114–88, §2104(b), added subpar. (C).

Subsec. (c)(5). Pub. L. 114–88, §2104(c), added par. (5).

2001—Subsec. (c)(2)(B)(vi). Pub. L. 107–50, §8(a), added cl. (vi).

Subsec. (c)(4). Pub. L. 107–50, §8(b), inserted at end "The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and

Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

FINDINGS

Pub. L. 106–554, §1(a)(9) [title I, §111(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674, provided that: "Congress finds that—

"(1) programs to foster economic development among small high-technology firms vary widely among the States;

"(2) States that do not aggressively support the development of small high-technology firms, including participation by small business concerns in the SBIR program, are at a competitive disadvantage in establishing a business climate that is conducive to technology development; and

"(3) building stronger national, State, and local support for science and technology research in these disadvantaged States will expand economic opportunities in the United States, create jobs, and increase the competitiveness of the United States in the world market."

¹ See References in Text note below.

§657e. Mentoring Networks

(a) Findings

Congress finds that—

(1) the SBIR and STTR programs create jobs, increase capacity for technological innovation, and boost international competitiveness;

(2) increasing the quantity of applications from all States to the SBIR and STTR programs would enhance competition for such awards and the quality of the completed projects; and

(3) mentoring is a natural complement to the FAST program of reaching out to new companies regarding the SBIR and STTR programs as an effective and low-cost way to improve the likelihood that such companies will succeed in such programs in developing and commercializing their research.

(b) Authorization for Mentoring Networks

The recipient of an award or participant in a cooperative agreement under section 657d of this title may use a reasonable amount of such assistance for the establishment of a Mentoring Network under this section.

(c) Criteria for Mentoring Networks

A Mentoring Network established using assistance under section 657d of this title shall—

(1) provide business advice and counseling to high technology small business concerns located in the State or region served by the Mentoring Network and identified under section 657d(c)(1)(E)(ii) of this title as potential candidates for the SBIR or STTR programs;

(2) identify volunteer mentors who—

(A) are persons associated with a small business concern that has successfully completed one or more SBIR or STTR funding agreements; and

(B) have agreed to guide small business concerns through all stages of the SBIR or STTR program process, including providing assistance relating to—

(i) proposal writing;

(ii) marketing;

(iii) Government accounting;

(iv) Government audits;

(v) project facilities and equipment;

(vi) human resources;

(vii) third phase partners;

(viii) commercialization;

(ix) venture capital networking; and

(x) other matters relevant to the SBIR and STTR programs;

(3) have experience working with small business concerns participating in the SBIR and STTR programs;

(4) contribute information to the national database referred to in subsection (d); and

(5) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor under this section.

(d) Mentoring database

The Administrator shall—

(1) include in the database required by section 638(k)(1) of this title, in cooperation with the SBIR, STTR, and FAST programs, information on Mentoring Networks and mentors participating under this section, including a description of their areas of expertise;

(2) work cooperatively with Mentoring Networks to maintain and update the database;

(3) take such action as may be necessary to aggressively promote Mentoring Networks under this section; and

(4) fulfill the requirements of this subsection either directly or by contract.

(Pub. L. 85-536, §2[35], as added Pub. L. 106-554, §1(a)(9) [title I, §112], Dec. 21, 2000, 114 Stat. 2763, 2763A-680.)

§657f. Procurement program for small business concerns owned and controlled by service-disabled veterans

(a) Contracting officer defined

For purposes of this section, the term "contracting officer" has the meaning given such term in section 2101 of title 41.

(b) Certification of small business concerns owned and controlled by service-disabled veterans

With respect to a procurement program or preference established under this chapter that applies to prime contractors, the Administrator shall—

(1) certify the status of a concern as a small business concern owned and controlled by service-disabled veterans; and

(2) require the periodic recertification of such status.

(c) Sole source contracts

In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

(2) the anticipated award price of the contract (including options) will not exceed—

(A) \$7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(B) \$3,000,000, in the case of any other contract opportunity; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(d) Restricted competition

In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans certified under subsection (b) if the contracting officer has a reasonable expectation that not less than

2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

(e) Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or chapter 85 of title 41.

(f) Database of veteran-owned businesses

(1) Subject to paragraphs (2) through (6), the Administrator shall maintain a database of small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, and the veteran owners of such business concerns.

(2)(A) To be eligible for inclusion in the database, such a veteran shall submit to the Administrator such information as the Administrator may require with respect to the small business concern or the veteran. Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Administrator to obtain from the Secretary of Veterans Affairs such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.

(B) For purposes of this subsection—

(i) the Secretary of Veterans Affairs shall—

(I) verify an individual's status as a veteran or a service-disabled veteran; and

(II) establish a system to permit the Administrator to access, but not alter, the verification of such status; and

(ii) the Administrator shall verify—

(I) the status of a business concern as a small business concern; and

(II) the ownership and control of such business concern.

(C) The Administrator may not certify a concern under subsection (b) or section 657f-1 of this title if the Secretary of Veterans Affairs cannot provide the verification described under subparagraph (B)(i)(I).

(3) Information maintained in the database shall be submitted on a voluntary basis by a veteran described in paragraph (1).

(4) The Administrator shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(5) If the Administrator determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Administrator shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(6)(A) If a small business concern is not included in the database because the Administrator does not certify the status of the concern as a small business concern owned and controlled by veterans (under section 657f-1 of this title) or a small business concern owned and controlled by service-disabled veterans (under subsection (g) of this section), the concern may appeal the denial of certification to the Office of Hearings and Appeals of the Administration (as established under section 634(i) of this title). The decision of the Office of Hearings and Appeals shall be considered a final agency action.

(B)(i) If an interested party challenges the inclusion in the database of a small business concern owned and controlled by veterans or a small business concern owned and controlled by service-disabled veterans based on the status of the concern as a small business concern or the ownership or control of the concern, the challenge shall be heard by the Office of Hearings and Appeals as described in subparagraph (A). The decision of the Office of Hearings and Appeals shall be considered final agency action.

(ii) In this subparagraph, the term "interested party" means—

(I) the Secretary of Veterans Affairs or the Administrator; or

(II) in the case of a small business concern that is awarded a contract, the applicable contracting

officer or another small business concern that submitted an offer for the contract that was awarded to the small business concern that is the subject of a challenge made under clause (i).

(g) Certification requirement

Notwithstanding subsection (c), a contracting officer may only award a sole source contract to a small business concern owned and controlled by service-disabled veterans or a contract on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if such a concern is certified by the Administrator as a small business concern owned and controlled by service-disabled veterans.

(h) Enforcement; penalties

(1) Verification of eligibility

In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under subsection (b)); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under subsection (b).

(2) Examinations

The procedures established under paragraph (1) shall provide for a program of examinations by the Administrator of any small business concern making a certification or providing information to the Administrator under subsection (b), to determine the veracity of any statements or information provided as part of such certification or otherwise provided under subsection (b).

(3) Enforcement; penalties

Rules similar to the rules of paragraphs (5) and (6) of section 637(m) of this title shall apply for purposes of this section and section 657f–1 of this title.

(i) Provision of data

Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out subsection (b) or to be able to certify the status of the concern as a small business concern owned and controlled by veterans under section 657f–1 of this title.

(Pub. L. 85–536, §2[36], as added Pub. L. 108–183, title III, §308, Dec. 16, 2003, 117 Stat. 2662; amended Pub. L. 116–283, div. A, title VIII, §§862(b)(2), (d)(1), 864(3), Jan. 1, 2021, 134 Stat. 3778, 3779, 3785.)

EDITORIAL NOTES

CODIFICATION

In subsec. (e), "chapter 85 of title 41" substituted for "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

The text of subsec. (f) of section 8127 of Title 38, Veterans' Benefits, which was transferred to subsec. (f) of this section by Pub. L. 116–283, div. A, title VIII, §862(b)(2), Jan. 1, 2021, 134 Stat. 3778, was based on Pub. L. 109–461, title V, §502(a)(1), Dec. 22, 2006, 120 Stat. 3431; Pub. L. 111–275, title I, §104(b)(1), Oct. 13, 2010, 124 Stat. 2867; Pub. L. 114–328, div. A, title XVIII, §1832(b)(2)(D), (d), (f)(1), Dec. 23, 2016, 130 Stat. 2660; Pub. L. 116–283, div. A, title VIII, §862(b)(1)(B), Jan. 1, 2021, 134 Stat. 3776.

PRIOR PROVISIONS

A prior section 2[36] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283, §862(d)(1)(D), added subsecs. (a) and (b). Former subsecs. (a) and (b) redesignated (c) and (d), respectively.

Subsec. (c). Pub. L. 116–283, §862(d)(1)(C), redesignated subsec. (a) as (c). Former subsec. (c) redesignated (e).

Subsec. (c)(2)(A). Pub. L. 116–283, §864(3), substituted "\$7,000,000" for "\$5,000,000".

Subsec. (d). Pub. L. 116–283, §862(d)(1)(C), (E), redesignated subsec. (b) as (d) and inserted "certified under subsection (b)" before "if the contracting officer".

Pub. L. 116–283, §862(d)(1)(A), redesignated subsec. (d) as par. (3) of subsec. (h).

Subsec. (e). Pub. L. 116–283, §862(d)(1)(B), (C), redesignated subsec. (c) as (e) and struck out former subsec. (e). Prior to amendment, text of subsec. (e) read as follows: "For purposes of this section, the term 'contracting officer' has the meaning given such term in section 2101(1) of title 41."

Subsec. (f). Pub. L. 116–283, §862(b)(2), transferred subsec. (f) of section 8127 of Title 38, Veterans' Benefits, to subsec. (f) of this section. See Codification note above.

Subsec. (g). Pub. L. 116–283, §862(d)(1)(F), added subsec. (g).

Subsec. (h). Pub. L. 116–283, §862(d)(1)(F), added subsec. (h).

Subsec. (h)(3). Pub. L. 116–283, §862(d)(1)(G), inserted "and section 657f–1 of this title" before period at end.

Pub. L. 116–283, §862(d)(1)(A), redesignated subsec. (d) as par. (3) of subsec. (h).

Subsec. (i). Pub. L. 116–283, §862(d)(1)(F), added subsec. (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title VIII, §862(b)(2), Jan. 1, 2021, 134 Stat. 3778, provided that the amendment made by section 862(b)(2) is effective on the transfer date (2 years after Jan. 1, 2021, see section 862(a) of Pub. L. 116–283, set out below).

TRANSFER OF VERIFICATION OF SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY VETERANS OR SERVICE-DISABLED VETERANS TO THE SMALL BUSINESS ADMINISTRATION

Pub. L. 116–283, div. A, title VIII, §862(a), (c), (f), (g), Jan. 1, 2021, 134 Stat. 3776, 3779, 3781, 3782, provided that:

"(a) **TRANSFER DATE**.—For purposes of this section [enacting section 657f–1 of this title, amending this section, sections 632 and 645 of this title, and sections 8127 and 8128 of Title 38, Veterans' Benefits, and enacting provisions set out as notes under this section, section 632 of this title, and section 8127 of Title 38], the term 'transfer date' means the date that is 2 years after the date of enactment of this Act [Jan. 1, 2021].

"(c) **ADDITIONAL REQUIREMENTS FOR DATABASE**.—

"(1) **ADMINISTRATOR ACCESS TO DATABASE BEFORE THE TRANSFER DATE**.—During the period between the date of the enactment of this Act [Jan. 1, 2021] and the transfer date, the Secretary of Veterans Affairs shall provide the Administrator of the Small Business Administration with access to the contents of the database described under section 8127(f) of title 38, United States Code.

"(2) **RULE OF CONSTRUCTION**.—Nothing in this section or the amendments made by this section may be construed—

"(A) as prohibiting the Administrator of the Small Business Administration from combining the contents of the database described under section 8127(f) of title 38, United States Code, with other databases maintained by the Administration; or

"(B) as requiring the Administrator to use any system or technology related to the database described under section 8127(f) of title 38, United States Code, on or after the transfer date to comply with the requirement to maintain a database under subsection (f) of section 36 of the Small Business Act [15 U.S.C. 657f(f)] (as transferred pursuant to subsection (b)(2) of this section).

"(3) **RECOGNITION OF THE ISSUANCE OF JOINT REGULATIONS**.—The date specified under section 1832(e) of the National Defense Authorization Act for Fiscal Year 2017 [Pub. L. 114–328] (15 U.S.C. 632 note) shall be deemed to be October 1, 2018.

"(f) **STATUS OF SELF-CERTIFIED SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS**.—

"(1) **IN GENERAL**.—Notwithstanding any other provision of law, any small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)) that self-certified as a small business

concern owned and controlled by service-disabled veterans (as defined in section 36 of such Act (15 U.S.C. 657f)) shall—

"(A) if the concern files a certification application with the Administrator of the Small Business Administration before the end of the 1-year period beginning on the transfer date, maintain such self-certification until the Administrator makes a determination with respect to such certification; and

"(B) if the concern does not file such a certification application before the end of the 1-year period beginning on the transfer date, lose, at the end of such 1-year period, any self-certification of the concern as a small business concern owned and controlled by service-disabled veterans.

"(2) NON-APPLICABILITY TO DEPARTMENT OF VETERANS AFFAIRS.—Paragraph (1) shall not apply to participation in contracts (including subcontracts) with the Department of Veterans Affairs.

"(3) NOTICE.—The Administrator shall notify any small business concern that self-certified as a small business concern owned and controlled by service-disabled veterans about the requirements of this section and the amendments made by this section, including the transfer date, and make such notice publicly available, on the date of the enactment of this Act [Jan. 1, 2021].

"(g) TRANSFER OF THE CENTER FOR VERIFICATION AND EVALUATION OF THE DEPARTMENT OF VETERANS AFFAIRS TO THE SMALL BUSINESS ADMINISTRATION.—

"(1) DEFINITION.—In this subsection, the term 'function'—

"(A) means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

"(B) does not include employees.

"(2) ABOLISHMENT.—The Center for Verification and Evaluation of the Department of Veterans Affairs, as defined under section 74.1 of title 38, Code of Federal Regulations, is abolished effective on the transfer date.

"(3) TRANSFER OF FUNCTIONS.—Effective on the transfer date, all functions that, immediately before the transfer date, were functions of the Center for Verification and Evaluation shall be functions of the Small Business Administration.

"(4) TRANSFER OF ASSETS.—So much of the property (including contracts for the procurement of property or services) and records used, held, available, or to be made available in connection with a function transferred under this subsection shall be available to the Small Business Administration at such time or times as the President directs for use in connection with the functions transferred.

"(5) SAVINGS PROVISIONS.—

"(A) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

"(i) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this subsection; and

"(ii) which are in effect on the transfer date, or were final before the transfer date and are to become effective on or after the transfer date,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Administrator of the Small Business Administration or other authorized official, a court of competent jurisdiction, or by operation of law.

"(B) PROCEEDINGS NOT AFFECTED.—The provisions of this subsection shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Department of Veterans Affairs on the transfer date, with respect to functions transferred by this subsection but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subsection had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subsection had not been enacted.

"(C) SUITS NOT AFFECTED.—The provisions of this subsection shall not affect suits commenced before the transfer date, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subsection had not been enacted.

"(D) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by

or against the Department of Veterans Affairs, or by or against any individual in the official capacity of such individual as an officer of the Department of Veterans Affairs, shall abate by reason of the enactment of this subsection.

"(E) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Department of Veterans Affairs relating to a function transferred under this subsection may be continued by the Administrator of the Small Business Administration with the same effect as if this subsection had not been enacted.

"(F) EFFECT ON PERSONNEL.—The Secretary of Veterans Affairs shall appoint any employee represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, that is affected by the transfer of functions under this subsection to a position of a continuing nature for which the employee is qualified, at a grade and compensation not lower than the current grade and compensation of the employee.

"(6) REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a function of the Center for Verification and Evaluation that is transferred under this subsection is deemed, after the transfer date, to refer to the Small Business Administration."

§657f–1. Certification of small business concerns owned and controlled by veterans

(a) In general

With respect to the program established under section 8127 of title 38, the Administrator shall—

(1) certify the status of a concern as a small business concern owned and controlled by veterans; and

(2) require the periodic recertification of such status.

(b) Enforcement; penalties

(1) Verification of eligibility

In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under section 657f of this title (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under subsection (a)); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under subsection (a).

(2) Examination of applicants

The procedures established under paragraph (1) shall provide for a program of examinations by the Administrator of any small business concern making a certification or providing information to the Administrator under subsection (a), to determine the veracity of any statements or information provided as part of such certification or otherwise provided under subsection (a).

(Pub. L. 85–536, §2[36A], as added Pub. L. 116–283, div. A, title VIII, §862(e), Jan. 1, 2021, 134 Stat. 3781.)

§657g. Participation in federally funded projects

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 637(a) of this title, shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government.

(Pub. L. 108–447, div. K, title I, §155, Dec. 8, 2004, 118 Stat. 3458.)

EDITORIAL NOTES

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.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS

Pub. L. 109–59, title X, §10201, Aug. 10, 2005, 119 Stat. 1932, provided that: "The Secretary [of Transportation] shall notify each State or political subdivision of a State to which the Secretary awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g [657g])."

§657h. Small business energy efficiency

(a) Definitions

In this section—

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

(2) the term "association" means the association of small business development centers established under section 648(a)(3)(A) of this title;

(3) the term "disability" has the meaning given that term in section 12102 of title 42;

(4) the term "Efficiency Program" means the Small Business Energy Efficiency Program established under subsection (c)(1);

(5) the term "electric utility" has the meaning given that term in section 2602 of title 16;

(6) the term "high performance green building" has the meaning given that term in section 17061 of title 42;

(7) the term "on-bill financing" means a low interest or no interest financing agreement between a small business concern and an electric utility for the purchase or installation of equipment, under which the regularly scheduled payment of that small business concern to that electric utility is not reduced by the amount of the reduction in cost attributable to the new equipment and that amount is credited to the electric utility, until the cost of the purchase or installation is repaid;

(8) the term "small business concern" has the same meaning as in section 632 of this title;

(9) the term "small business development center" means a small business development center described in section 648 of this title;

(10) the term "telecommuting" means the use of telecommunications to perform work functions under circumstances which reduce or eliminate the need to commute;

(11) the term "Telecommuting Pilot Program" means the pilot program established under subsection (d)(1)(A); and

(12) the term "veteran" has the meaning given that term in section 101 of title 38.

(b) Implementation of small business energy efficiency program

(1) In general

Not later than 90 days after December 19, 2007, the Administrator shall promulgate final rules establishing the Government-wide program authorized under subsection (d) of section 6307 of title 42 that ensure compliance with that subsection by not later than 6 months after December 19, 2007.

(2) Program required

The Administrator shall develop and coordinate a Government-wide program, building on the Energy Star for Small Business program, to assist small business concerns in—

- (A) becoming more energy efficient;
- (B) understanding the cost savings from improved energy efficiency; and
- (C) identifying financing options for energy efficiency upgrades.

(3) Consultation and cooperation

The program required by paragraph (2) shall be developed and coordinated—

- (A) in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency; and
- (B) in cooperation with any entities the Administrator considers appropriate, such as industry trade associations, industry members, and energy efficiency organizations.

(4) Availability of information

The Administrator shall make available the information and materials developed under the program required by paragraph (2) to—

- (A) small business concerns, including smaller design, engineering, and construction firms; and
- (B) other Federal programs for energy efficiency, such as the Energy Star for Small Business program.

(5) Strategy and report

(A) Strategy required

The Administrator shall develop a strategy to educate, encourage, and assist small business concerns in adopting energy efficient building fixtures and equipment.

(B) Report

Not later than December 31, 2008, the Administrator shall submit to Congress a report containing a plan to implement the strategy developed under subparagraph (A).

(c) Small business sustainability initiative

(1) Authority

The Administrator shall establish a Small Business Energy Efficiency Program to provide energy efficiency assistance to small business concerns through small business development centers.

(2) Small business development centers

(A) In general

In carrying out the Efficiency Program, the Administrator shall enter into agreements with small business development centers under which such centers shall—

- (i) provide access to information and resources on energy efficiency practices, including on-bill financing options;
- (ii) conduct training and educational activities;
- (iii) offer confidential, free, one-on-one, in-depth energy audits to the owners and operators of small business concerns regarding energy efficiency practices;
- (iv) give referrals to certified professionals and other providers of energy efficiency assistance who meet such standards for educational, technical, and professional competency as the Administrator shall establish;
- (v) to the extent not inconsistent with controlling State public utility regulations, act as a facilitator between small business concerns, electric utilities, lenders, and the Administration to facilitate on-bill financing arrangements;
- (vi) provide necessary support to small business concerns to—
 - (I) evaluate energy efficiency opportunities and opportunities to design or construct high

performance green buildings;

(II) evaluate renewable energy sources, such as the use of solar and small wind to supplement power consumption;

(III) secure financing to achieve energy efficiency or to design or construct high performance green buildings; and

(IV) implement energy efficiency projects;

(vii) assist owners of small business concerns with the development and commercialization of clean technology products, goods, services, and processes that use renewable energy sources, dramatically reduce the use of natural resources, and cut or eliminate greenhouse gas emissions through—

(I) technology assessment;

(II) intellectual property;

(III) Small Business Innovation Research submissions under section 638 of this title;

(IV) strategic alliances;

(V) business model development; and

(VI) preparation for investors; and

(viii) help small business concerns improve environmental performance by shifting to less hazardous materials and reducing waste and emissions, including by providing assistance for small business concerns to adapt the materials they use, the processes they operate, and the products and services they produce.

(B) Reports

Each small business development center participating in the Efficiency Program shall submit to the Administrator and the Administrator of the Environmental Protection Agency an annual report that includes—

(i) a summary of the energy efficiency assistance provided by that center under the Efficiency Program;

(ii) the number of small business concerns assisted by that center under the Efficiency Program;

(iii) statistics on the total amount of energy saved as a result of assistance provided by that center under the Efficiency Program; and

(iv) any additional information determined necessary by the Administrator, in consultation with the association.

(C) Reports to Congress

Not later than 60 days after the date on which all reports under subparagraph (B) relating to a year are submitted, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report summarizing the information regarding the Efficiency Program submitted by small business development centers participating in that program.

(3) Eligibility

A small business development center shall be eligible to participate in the Efficiency Program only if that center is certified under section 648(k)(2) of this title.

(4) Selection of participating State programs

From among small business development centers submitting applications to participate in the Efficiency Program, the Administrator—

(A) shall, to the maximum extent practicable, select small business development centers in such a manner so as to promote a nationwide distribution of centers participating in the Efficiency Program; and

(B) may not select more than 1 small business development center in a State to participate in the Efficiency Program.

(5) Matching requirement

Subparagraphs (A) and (B) of section 648(a)(4) of this title shall apply to assistance made available under the Efficiency Program.

(6) Grant amounts

Each small business development center selected to participate in the Efficiency Program under paragraph (4) shall be eligible to receive a grant in an amount equal to—

- (A) not less than \$100,000 in each fiscal year; and
- (B) not more than \$300,000 in each fiscal year.

(7) Evaluation and report

The Comptroller General of the United States shall—

(A) not later than 30 months after the date of disbursement of the first grant under the Efficiency Program, initiate an evaluation of that program; and

(B) not later than 6 months after the date of the initiation of the evaluation under subparagraph (A), submit to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, a report containing—

- (i) the results of the evaluation; and
- (ii) any recommendations regarding whether the Efficiency Program, with or without modification, should be extended to include the participation of all small business development centers.

(8) Guarantee

To the extent not inconsistent with State law, the Administrator may guarantee the timely payment of a loan made to a small business concern through an on-bill financing agreement on such terms and conditions as the Administrator shall establish through a formal rulemaking, after providing notice and an opportunity for comment.

(9) Implementation

Subject to amounts approved in advance in appropriations Acts and separate from amounts approved to carry out section 648(a)(1) of this title, the Administrator may make grants or enter into cooperative agreements to carry out this subsection.

(10) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to make grants and enter into cooperative agreements to carry out this subsection.

(11) Termination

The authority under this subsection shall terminate 4 years after the date of disbursement of the first grant under the Efficiency Program.

(d) Small business telecommuting

(1) Pilot program

(A) In general

The Administrator shall conduct, in not more than 5 of the regions of the Administration, a pilot program to provide information regarding telecommuting to employers that are small business concerns and to encourage such employers to offer telecommuting options to employees.

(B) Special outreach to individuals with disabilities

In carrying out the Telecommuting Pilot Program, the Administrator shall make a concerted effort to provide information to—

- (i) small business concerns owned by or employing individuals with disabilities, particularly veterans who are individuals with disabilities;

- (ii) Federal, State, and local agencies having knowledge and expertise in assisting individuals with disabilities, including veterans who are individuals with disabilities; and
- (iii) any group or organization, the primary purpose of which is to aid individuals with disabilities or veterans who are individuals with disabilities.

(C) Permissible activities

In carrying out the Telecommuting Pilot Program, the Administrator may—

- (i) produce educational materials and conduct presentations designed to raise awareness in the small business community of the benefits and the ease of telecommuting;
- (ii) conduct outreach—
 - (I) to small business concerns that are considering offering telecommuting options; and
 - (II) as provided in subparagraph (B); and

(iii) acquire telecommuting technologies and equipment to be used for demonstration purposes.

(D) Selection of regions

In determining which regions will participate in the Telecommuting Pilot Program, the Administrator shall give priority consideration to regions in which Federal agencies and private-sector employers have demonstrated a strong regional commitment to telecommuting.

(2) Report to Congress

Not later than 2 years after the date on which funds are first appropriated to carry out this subsection, the Administrator shall transmit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing the results of an evaluation of the Telecommuting Pilot Program and any recommendations regarding whether the pilot program, with or without modification, should be extended to include the participation of all regions of the Administration.

(3) Termination

The Telecommuting Pilot Program shall terminate 4 years after the date on which funds are first appropriated to carry out this subsection.

(4) Authorization of appropriations

There is authorized to be appropriated to the Administration \$5,000,000 to carry out this subsection.

(Pub. L. 110–140, title XII, §1203, Dec. 19, 2007, 121 Stat. 1766.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 1203 of Pub. L. 110–140. Subsec. (e) of section 1203 of Pub. L. 110–140 amended section 638 of this title.

Section was enacted as part of the Energy Independence and Security Act of 2007, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§657i. Coordination of disaster assistance programs with FEMA

(a) Coordination required

The Administrator shall ensure that the disaster assistance programs of the Administration are coordinated, to the maximum extent practicable, with the disaster assistance programs of the Federal Emergency Management Agency.

(b) Regulations required

The Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall establish regulations to ensure that each application for disaster assistance is submitted as quickly as practicable to the Administration or directed to the appropriate agency under the circumstances.

(c) Completion; revision

The initial regulations shall be completed not later than 270 days after the date of the enactment of the Small Business Disaster Response and Loan Improvements Act of 2008. Thereafter, the regulations shall be revised on an annual basis.

(d) Report

The Administrator shall include a report on the regulations whenever the Administration submits the report required by section 657o of this title.

(Pub. L. 85–536, §2[37], as added Pub. L. 110–234, title XII, §12062(2), May 22, 2008, 122 Stat. 1407, and Pub. L. 110–246, §4(a), title XII, §12062(2), June 18, 2008, 122 Stat. 1664, 2169.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of the enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, referred to in subsec. (c), is the date of enactment of subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 2[37] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

§657j. Information tracking and follow-up system for disaster assistance

(a) System required

The Administrator shall develop, implement, or maintain a centralized information system to track communications between personnel of the Administration and applicants for disaster assistance. The system shall ensure that whenever an applicant for disaster assistance communicates with such personnel on a matter relating to the application, the following information is recorded:

- (1) The method of communication.
- (2) The date of communication.
- (3) The identity of the personnel.

(4) A summary of the subject matter of the communication.

(b) Follow-up required

The Administrator shall ensure that an applicant for disaster assistance receives, by telephone, mail, or electronic mail, follow-up communications from the Administration at all critical stages of the application process, including the following:

- (1) When the Administration determines that additional information or documentation is required to process the application.
- (2) When the Administration determines whether to approve or deny the loan.
- (3) When the primary contact person managing the loan application has changed.

(c) Report on web portal for disaster loan application status

(1) In general

Not later than 90 days after November 25, 2015, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report relating to the creation of a web portal to the ¹ track the status of applications for disaster assistance under section 636(b) of this title.

(2) Contents

The report under paragraph (1) shall include—

(A) information on the progress of the Administration in implementing the information system under subsection (a);

(B) recommendations from the Administration relating to the creation of a web portal for applicants to check the status of an application for disaster assistance under section 636(b) of this title, including a review of best practices and web portal models from the private sector;

(C) information on any related costs or staffing needed to implement such a web portal;

(D) information on whether such a web portal can maintain high standards for data privacy and data security;

(E) information on whether such a web portal will minimize redundancy among Administration disaster programs, improve management of the number of inquiries made by disaster applicants to employees located in the area affected by the disaster and to call centers, and reduce paperwork burdens on disaster victims; and

(F) such additional information as is determined necessary by the Administrator.

(Pub. L. 85–536, §2[38], as added Pub. L. 110–234, title XII, §12067, May 22, 2008, 122 Stat. 1410, and Pub. L. 110–246, §4(a), title XII, §12067, June 18, 2008, 122 Stat. 1664, 2172; Pub. L. 114–88, div. B, title III, §2303, Nov. 25, 2015, 129 Stat. 696.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2015—Subsec. (c). Pub. L. 114–88 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

¹ *So in original. The word "the" probably should not appear.*

§657k. Disaster processing redundancy

(a) In general

The Administrator shall ensure that the Administration has in place a facility for disaster loan processing that, whenever the Administration's primary facility for disaster loan processing becomes unavailable, is able to take over all disaster loan processing from that primary facility within 2 days.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section. (Pub. L. 85–536, §2[39], as added Pub. L. 110–234, title XII, §12069, May 22, 2008, 122 Stat. 1411, and Pub. L. 110–246, §4(a), title XII, §12069, June 18, 2008, 122 Stat. 1664, 2173.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

§657l. Comprehensive disaster response plan

(a) Plan required

The Administrator shall develop, implement, or maintain a comprehensive written disaster response plan. The plan shall include the following:

- (1) For each region of the Administration, a description of the disasters most likely to occur in that region.
- (2) For each disaster described under paragraph (1)—
 - (A) an assessment of the disaster;
 - (B) an assessment of the demand for Administration assistance most likely to occur in response to the disaster;
 - (C) an assessment of the needs of the Administration, with respect to such resources as information technology, telecommunications, human resources, and office space, to meet the demand referred to in subparagraph (B); and
 - (D) guidelines pursuant to which the Administration will coordinate with other Federal agencies and with State and local authorities to best respond to the demand referred to in subparagraph (B) and to best use the resources referred to in that subparagraph.

(b) Completion; revision

The first plan required by subsection (a) shall be completed not later than 180 days after the date of the enactment of this section. Thereafter, the Administrator shall update the plan on an annual basis and following any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 636(b)(9) of this title.

(c) Knowledge required

The Administrator shall carry out subsections (a) and (b) through an individual with substantial knowledge in the field of disaster readiness and emergency response.

(d) Report

The Administrator shall include a report on the plan whenever the Administration submits the report required by section 657o of this title.

(Pub. L. 85-536, §2[40], as added Pub. L. 110-234, title XII, §12075, May 22, 2008, 122 Stat. 1414, and Pub. L. 110-246, §4(a), title XII, §12075, June 18, 2008, 122 Stat. 1664, 2176.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

DISASTER PLAN IMPROVEMENTS

Pub. L. 114-88, div. A, title I, §1105, Nov. 25, 2015, 129 Stat. 688, provided that: "The Administrator of the Small Business Administration shall revise the comprehensive written disaster response plan required in section 40 of the Small Business Act (15 U.S.C. 657l), or any successor thereto, to incorporate the Administration's response to a situation in which an extreme volume of applications are received during the period of time immediately after a disaster, which shall include a plan to ensure that sufficient human and technological resources are made available and a plan to prevent delays in loan processing."

§657m. Plans to secure sufficient office space

(a) Plans required

The Administrator shall develop long-term plans to secure sufficient office space to accommodate an expanded workforce in times of disaster.

(b) Report

The Administrator shall include a report on the plans developed under subsection (a) each time the Administration submits a report required under section 657o of this title.

(Pub. L. 85-536, §2[41], as added Pub. L. 110-234, title XII, §12076, May 22, 2008, 122 Stat. 1415, and Pub. L. 110-246, §4(a), title XII, §12076, June 18, 2008, 122 Stat. 1664, 2177.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

§657n. Immediate Disaster Assistance program

(a) Program required

The Administrator shall carry out a program, to be known as the Immediate Disaster Assistance program, under which the Administration participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if such balance is less than or equal to \$25,000 for businesses affected by a disaster.

(b) Eligibility requirement

To receive a loan guaranteed under subsection (a), the applicant shall also apply for, and meet basic eligibility standards for, a loan under subsection (b) or (c) of section 636 of this title.

(c) Use of proceeds

A person who receives a loan under subsection (b) or (c) of section 636 of this title shall use the proceeds of that loan to repay all loans guaranteed under subsection (a), if any, before using the proceeds for any other purpose.

(d) Loan terms

(1) No prepayment penalty

There shall be no prepayment penalty on a loan guaranteed under subsection (a).

(2) Repayment

A person who receives a loan guaranteed under subsection (a) and who is disapproved for a loan under subsection (b) or (c) of section 636 of this title, as the case may be, shall repay the loan guaranteed under subsection (a) not later than the date established by the Administrator, which may not be earlier than 10 years after the date on which the loan guaranteed under subsection ¹ is disbursed.

(e) Approval or disapproval

The Administrator shall ensure that each applicant for a loan under the program receives a decision approving or disapproving of the application within 36 hours after the Administration receives the application.

(Pub. L. 85–536, §2[42], as added Pub. L. 110–234, title XII, §12084, May 22, 2008, 122 Stat. 1420, and Pub. L. 110–246, §4(a), title XII, §12084, June 18, 2008, 122 Stat. 1664, 2182.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

¹ *So in original. Probably should be "subsection (a)".*

§657o. Annual reports on disaster assistance

Not later than 45 days after the end of a fiscal year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administration for that fiscal year. The report shall—

- (1) specify the number of Administration personnel involved in such operations;
- (2) describe any material changes to those operations, such as changes to technologies used or to personnel responsibilities;
- (3) describe and assess the effectiveness of the Administration in responding to disasters during that fiscal year, including a description of the number and amounts of loans made for damage and for economic injury; and
- (4) describe the plans of the Administration for preparing to respond to disasters during the next fiscal year.

(Pub. L. 85–536, §2[43], as added Pub. L. 110–234, title XII, §12091(g), May 22, 2008, 122 Stat. 1426, and Pub. L. 110–246, §4(a), title XII, §12091(g), June 18, 2008, 122 Stat. 1664, 2188.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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 a note under section 8701 of Title 7, Agriculture.

§657p. Outreach regarding health insurance options available to children

(a) Definitions

In this section—

- (1) the terms "Administration" and "Administrator" means the Small Business Administration and the Administrator thereof, respectively;
- (2) the term "certified development company" means a development company participating in the program under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);
- (3) the term "Medicaid program" means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);
- (4) the term "Service Corps of Retired Executives" means the Service Corps of Retired Executives authorized by section 637(b)(1) of this title;
- (5) the term "small business concern" has the meaning given that term in section 632 of this title;
- (6) the term "small business development center" means a small business development center described in section 648 of this title;
- (7) the term "State" has the meaning given that term for purposes of title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);
- (8) the term "State Children's Health Insurance Program" means the State Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);
- (9) the term "task force" means the task force established under subsection (b)(1); and

(10) the term "women's business center" means a women's business center described in section 656 of this title.

(b) Establishment of task force

(1) Establishment

There is established a task force to conduct a nationwide campaign of education and outreach for small business concerns regarding the availability of coverage for children through private insurance options, the Medicaid program, and the State Children's Health Insurance Program.

(2) Membership

The task force shall consist of the Administrator, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury.

(3) Responsibilities

The campaign conducted under this subsection shall include—

(A) efforts to educate the owners of small business concerns about the value of health coverage for children;

(B) information regarding options available to the owners and employees of small business concerns to make insurance more affordable, including Federal and State tax deductions and credits for health care-related expenses and health insurance expenses and Federal tax exclusion for health insurance options available under employer-sponsored cafeteria plans under section 125 of title 26;

(C) efforts to educate the owners of small business concerns about assistance available through public programs; and

(D) efforts to educate the owners and employees of small business concerns regarding the availability of the hotline operated as part of the Insure Kids Now program of the Department of Health and Human Services.

(4) Implementation

In carrying out this subsection, the task force may—

(A) use any business partner of the Administration, including—

- (i) a small business development center;
- (ii) a certified development company;
- (iii) a women's business center; and
- (iv) the Service Corps of Retired Executives;

(B) enter into—

- (i) a memorandum of understanding with a chamber of commerce; and
 - (ii) a partnership with any appropriate small business concern or health advocacy group;
- and

(C) designate outreach programs at regional offices of the Department of Health and Human Services to work with district offices of the Administration.

(5) Website

The Administrator shall ensure that links to information on the eligibility and enrollment requirements for the Medicaid program and State Children's Health Insurance Program of each State are prominently displayed on the website of the Administration.

(6) Report

(A) In general

Not later than 2 years after February 4, 2009, and every 2 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the status of the nationwide campaign conducted under paragraph (1).

(B) Contents

Each report submitted under subparagraph (A) shall include a status update on all efforts made to educate owners and employees of small business concerns on options for providing health insurance for children through public and private alternatives.

(Pub. L. 111–3, title VI, §621, Feb. 4, 2009, 123 Stat. 104.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(2), 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 Social Security Act, referred to in subsec. (a)(3), (7), (8), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Children's Health Insurance Program Reauthorization Act of 2009, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as a note under section 1396 of Title 42, The Public Health and Welfare.

§657q. Consolidation of contract requirements

(a) Definitions

In this section—

(1) the term "Chief Acquisition Officer" means the employee of a Federal agency appointed or designated as the Chief Acquisition Officer for the Federal agency under section 1702(a) of title 41;

(2) the term "consolidation of contract requirements", with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract or a multiple award contract—

(A) to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; or

(B) to satisfy requirements of the Federal agency for construction projects to be performed at 2 or more discrete sites; and

(3) the term "senior procurement executive" means an official designated under section 1702(c) of title 41 as the senior procurement executive for a Federal agency.

(b) Policy

The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

(c) Limitation on use of acquisition strategies involving consolidation

(1) In general

The head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than \$2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

- (A) conducts market research;
- (B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;
- (C) makes a written determination that the consolidation of contract requirements is necessary and justified;
- (D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and
- (E) ensures that steps will be taken to include small business concerns in the acquisition strategy.

(2) Determination that consolidation is necessary and justified

(A) In general

A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

(B) Savings in administrative or personnel costs

For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

(C) Notice

Not later than 7 days after making a determination that an acquisition strategy involving a consolidation of contract requirements is necessary and justified under subparagraph (A), the senior procurement executive or Chief Acquisition Officer shall publish a notice on a public website that such determination has been made. Any solicitation for a procurement related to the acquisition strategy may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the senior procurement executive or Chief Acquisition Officer shall publish a justification for the determination, which shall include the information in subparagraphs (A) through (E) of paragraph (1).

(3) Benefits to be considered

The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

- (A) quality;
- (B) acquisition cycle;
- (C) terms and conditions; and
- (D) any other benefit.

(Pub. L. 85–536, §2[44], as added Pub. L. 111–240, title I, §1313(a)(2), Sept. 27, 2010, 124 Stat. 2538; amended Pub. L. 112–239, div. A, title XVI, §1671(a), (b), (c)(2), Jan. 2, 2013, 126 Stat. 2084, 2085; Pub. L. 113–291, div. A, title VIII, §822(b), Dec. 19, 2014, 128 Stat. 3436; Pub. L. 114–92, div. A, title VIII, §863(b), (c), Nov. 25, 2015, 129 Stat. 926, 927.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2[44] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2015—Subsec. (c)(1). Pub. L. 114–92, §863(c), substituted "The head" for "Subject to paragraph (4), the head" in introductory provisions.

Subsec. (c)(2)(C). Pub. L. 114–92, §863(b), added subpar. (C).

2014—Subsec. (a)(1). Pub. L. 113–291, §822(b)(1), inserted "appointed or" before "designated" and substituted "section 1702(a) of title 41" for "section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a))".

Subsec. (a)(3). Pub. L. 113–291, §822(b)(2), substituted "section 1702(c) of title 41" for "section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))".

2013—Subsec. (a)(2). Pub. L. 112–239, §1671(a), substituted "or a multiple award contract—" and subpars. (A) and (B) for "or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; and".

Subsec. (c)(1)(E). Pub. L. 112–239, §1671(b), substituted "ensures" for "certifies to the head of the Federal agency".

Subsec. (c)(4). Pub. L. 112–239, §1671(c)(2), struck out par. (4). Prior to amendment, text read as follows:
"(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

"(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a military department shall be conducted in accordance with section 2382 of title 10.

"(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 644 of this title."

§657r. Mentor-protege programs

(a) Administration program

(1) Authority

The Administrator is authorized to establish a mentor-protege program for all small business concerns.

(2) Model for program

The mentor-protege program established under paragraph (1) shall be identical to the mentor-protege program of the Administration for small business concerns that participate in the program under section 637(a) of this title (as in effect on January 2, 2013), except that the Administrator may modify the program to the extent necessary given the types of small business concerns included as proteges.

(3) Puerto Rico businesses

During the period beginning on August 13, 2018, and ending on the date on which the Oversight Board established under section 2121 of title 48 terminates, the Administrator shall identify potential incentives to a covered mentor that awards a subcontract to its covered protege, including—

(A) positive consideration in any past performance evaluation of the covered mentor; and

(B) the application of costs incurred for providing training to such covered protege to the subcontracting plan (as required under paragraph (4) or (5) of section 637(d) of this title) of the covered mentor.

(4) Covered territory businesses

During the period beginning on January 1, 2021, and ending on the date that is 4 years after

such date, the Administrator shall identify potential incentives to a covered territory mentor that awards a subcontract to its covered territory protege, including—

- (A) positive consideration in any past performance evaluation of the covered territory mentor; and
- (B) the application of costs incurred for providing training to such covered territory protege to the subcontracting plan (as required under paragraph (4) or (5) of section 637(d) of this title) of the covered territory mentor.

(b) Programs of other agencies

(1) Approval required

Except as provided in paragraph (4), a Federal department or agency may not carry out a mentor-protege program for small business concerns unless—

- (A) the head of the department or agency submits a plan to the Administrator for the program; and
- (B) the Administrator approves such plan.

(2) Basis for approval

The Administrator shall approve or disapprove a plan submitted under paragraph (1) based on whether the program proposed—

- (A) will assist proteges to compete for Federal prime contracts and subcontracts; and
- (B) complies with the regulations issued under paragraph (3).

(3) Regulations

Not later than 270 days after January 2, 2013, the Administrator shall issue, subject to notice and comment, regulations with respect to mentor-protege programs, which shall ensure that such programs improve the ability of proteges to compete for Federal prime contracts and subcontracts and which shall address, at a minimum, the following:

(A) Eligibility criteria for program participants, including any restrictions on the number of mentor-protege relationships permitted for each participant, except that such restrictions shall not apply to up to 2 mentor-protege relationships if such relationships—

- (i) are between a covered protege and a covered mentor; or
- (ii) are between a covered territory protege and a covered territory mentor.

(B) The types of developmental assistance to be provided by mentors, including how the assistance provided shall improve the competitive viability of the proteges.

(C) Whether any developmental assistance provided by a mentor may affect the status of a program participant as a small business concern due to affiliation.

(D) The length of mentor-protege relationships.

(E) The effect of mentor-protege relationships on contracting.

(F) Benefits that may accrue to a mentor as a result of program participation.

(G) Reporting requirements during program participation.

(H) Postparticipation reporting requirements.

(I) The need for a mentor-protege pair, if accepted to participate as a pair in a mentor-protege program of any Federal department or agency, to be accepted to participate as a pair in all Federal mentor-protege programs.

(J) Actions to be taken to ensure benefits for proteges and to protect a protege against actions by a mentor that—

- (i) may adversely affect the protege's status as a small business concern; or
- (ii) provide disproportionate economic benefits to the mentor relative to those provided the protege.

(K) The types of assistance provided by a mentor to assist with compliance with the requirements of contracting with the Federal Government after award of a contract or subcontract under this section.

(4) Limitation on applicability

Paragraph (1) does not apply to the following:

- (A) Any mentor-protege program of the Department of Defense.
- (B) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program.
- (C) Until the date that is 1 year after the date on which the Administrator issues regulations under paragraph (3), any Federal department or agency operating a mentor-protege program in effect on January 2, 2013.

(c) Reporting

(1) In general

Not later than 2 years after January 2, 2013, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

- (A) identifies each Federal mentor-protege program;
- (B) specifies the number of participants in each such program, including the number of participants that are—
 - (i) small business concerns;
 - (ii) small business concerns owned and controlled by service-disabled veterans;
 - (iii) qualified HUBZone small business concerns;
 - (iv) small business concerns owned and controlled by socially and economically disadvantaged individuals; or
 - (v) small business concerns owned and controlled by women;
- (C) describes the type of assistance provided to proteges under each such program;
- (D) describes the benefits provided to mentors under each such program; and
- (E) describes the progress of proteges under each such program with respect to competing for Federal prime contracts and subcontracts.

(2) Provision of information

The head of each Federal department or agency carrying out a mentor-protege program shall provide to the Administrator, on an annual basis, the information necessary for the Administrator to submit a report required under paragraph (1).

(d) Definitions

In this section, the following definitions apply:

(1) Mentor

The term "mentor" means a for-profit business concern, of any size, that—

- (A) has the ability to assist and commits to assisting a protege to compete for Federal prime contracts and subcontracts; and
- (B) satisfies any other requirements imposed by the Administrator.

(2) Mentor-protege program

The term "mentor-protege program" means a program that pairs a mentor with a protege for the purpose of assisting the protege to compete for Federal prime contracts and subcontracts.

(3) Protege

The term "protege" means a small business concern that—

- (A) is eligible to enter into Federal prime contracts and subcontracts; and
- (B) satisfies any other requirements imposed by the Administrator.

(4) Covered mentor

The term "covered mentor" means a mentor that enters into an agreement under this chapter, or under any mentor-protege program approved under subsection (b)(1), with a covered protege.

(5) Covered protege

The term "covered protege" means a protege of a covered mentor that is a Puerto Rico business.

(6) Covered territory mentor

The term "covered territory mentor" means a mentor that enters into an agreement under this chapter, or under any mentor-protege program approved under subsection (b)(1), with a covered territory protege.

(7) Covered territory protege

The term "covered territory protege" means a protege of a covered territory mentor that is a covered territory business.

(e) Current mentor protege agreements

Mentors and proteges with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship according to the terms specified in their agreement until the expiration date specified in the agreement.

(f) Submission of agency plans

Agencies operating mentor protege programs pursuant to subsection (b)(4)(C) shall submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan within 180 days after receipt.

(Pub. L. 85–536, §2[45], as added Pub. L. 112–239, div. A, title XVI, §1641(2), Jan. 2, 2013, 126 Stat. 2077; amended Pub. L. 114–328, div. A, title XVIII, §1813(e), Dec. 23, 2016, 130 Stat. 2653; Pub. L. 115–232, div. A, title VIII, §861(d), (e), Aug. 13, 2018, 132 Stat. 1896, 1897; Pub. L. 116–283, div. A, title VIII, §866(c), Jan. 1, 2021, 134 Stat. 3786.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2[45] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2021—Subsec. (a)(4). Pub. L. 116–283, §866(c)(1), added par. (4).

Subsec. (b)(3)(A). Pub. L. 116–283, §866(c)(2), substituted "relationships—" and cls. (i) and (ii) for "relationships are between a covered protege and covered mentor."

Subsec. (d)(6), (7). Pub. L. 116–283, §866(c)(3), added pars. (6) and (7).

2018—Subsec. (a)(3). Pub. L. 115–232, §861(d)(1), added par. (3).

Subsec. (b)(3)(A). Pub. L. 115–232, §861(e), inserted ", except that such restrictions shall not apply to up to 2 mentor-protege relationships if such relationships are between a covered protege and covered mentor" after "each participant".

Subsec. (d)(4), (5). Pub. L. 115–232, §861(d)(2), added pars. (4) and (5).

2016—Subsec. (b)(3)(K). Pub. L. 114–328 added subpar. (K).

§657s. Limitations on subcontracting

(a) In general

If awarded a contract under section 637(a), 637(m), 644(a), 657a, or 657f of this title, a covered small business concern—

(1) in the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract;

(2) in the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, paid to the concern under the contract;

(3) in the case of a contract described in paragraphs (1) and (2)—

(A) shall determine for which category, services (as described in paragraph (1)) or supplies (as described in paragraph (2)), the greatest percentage of the contract is awarded;

(B) shall determine the amount awarded under the contract for that category of services or supplies; and

(C) may not expend on subcontractors, with respect to the amount determined under subparagraph (B), more than 50 percent of that amount; and

(4) in the case of a contract which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction, shall supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(A) by the Administrator, after reviewing a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required by the contract; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(b) Similarly situated entities

Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) Modifications of percentages

The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (a) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(d) Other contracts

(1) In general

With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, by rule (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

(2) Uniformity

A requirement established under paragraph (1) shall apply to all covered small business concerns.

(3) Construction projects

The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) Definitions

In this section, the following definitions apply:

(1) Covered small business concern

The term "covered small business concern" means a business concern that—

(A) with respect to a contract awarded under section 637(a) of this title, is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 637(m) of this title—

(i) is a small business concern owned and controlled by women (as defined in that section);

or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 644(a) of this title, is a small business concern;

(D) with respect to a contract awarded under section 657a of this title, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 657f of this title, is a small business concern owned and controlled by service-disabled veterans.

(2) Similarly situated entity

The term "similarly situated entity" means a subcontractor that—

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 637(a) of this title, is such a concern;

(C) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern;

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

(Pub. L. 85–536, §2[46], as added Pub. L. 112–239, div. A, title XVI, §1651, Jan. 2, 2013, 126 Stat. 2079; amended Pub. L. 114–92, div. A, title VIII, §864(b), Nov. 25, 2015, 129 Stat. 927.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a)(4). Pub. L. 114–92 substituted "which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction" for "for supplies from a regular dealer in such supplies" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

INAPPLICABILITY OF REQUIREMENT TO REVIEW AND JUSTIFY CERTAIN CONTRACTS

Pub. L. 113–66, div. A, title XVI, §1615, Dec. 26, 2013, 127 Stat. 950, provided that: "In the case of a contract to which the provisions of section 46 of the Small Business Act (15 U.S.C. 657s) apply, the requirements under section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1824; 10 U.S.C. 2304 note [now 10 U.S.C. note prec.]) do not apply."

§657t. Office of Credit Risk Management

(a) Establishment

There is established within the Administration the Office of Credit Risk Management (in this

section referred to as the "Office").

(b) Duties

The Office shall be responsible for supervising—

- (1) any lender making loans under section 7(a) [15 U.S.C. 636(a)] (in this section referred to as a "7(a) lender");
- (2) any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration; and
- (3) any small business lending company or a non-Federally regulated lender without regard to the requirements of section 650 of this title.

(c) Director

(1) In general

The Office shall be headed by the Director of the Office of Credit Risk Management (in this section referred to as the "Director"), who shall be a career appointee in the Senior Executive Service (as defined in section 3132 of title 5).

(2) Duties

The Director shall be responsible for oversight of the lenders and participants described in subsection (b), including by conducting periodic reviews of the compliance and performance of such lenders and participants.

(d) Supervision duties for 7(a) lenders

(1) Reviews

With respect to 7(a) lenders, an employee of the Office shall—

- (A) be present for and supervise any such review that is conducted by a contractor of the Office on the premise ¹ of the 7(a) lender; and
- (B) supervise any such review that is not conducted on the premise ¹ of the 7(a) lender.

(2) Review report timeline

(A) In general

Notwithstanding any other requirements of the Office or the Administrator, the Administrator shall develop and implement a review report timeline which shall—

(i) require the Administrator to—

- (I) deliver a written report of the review to the 7(a) lender not later than 60 business days after the date on which the review is concluded; or
- (II) if the Administrator expects to submit the report after the end of the 60-day period described in clause (i), notify the 7(a) lender of the expected date of submission of the report and the reason for the delay; and

(ii) if a response by the 7(a) lender is requested in a report submitted under subparagraph (A), require the 7(a) lender to submit responses to the Administrator not later than 45 business days after the date on which the 7(a) lender receives the report.

(B) Extension

The Administrator may extend the time frame described in subparagraph (A)(i)(II) with respect to a 7(a) lender as the Administrator determines necessary.

(e) Enforcement authority against 7(a) lenders

(1) Informal enforcement authority

The Director may take an informal enforcement action against a 7(a) lender if the Director finds that the 7(a) lender has violated a statutory or regulatory requirement under section 7(a) [15 U.S.C. 636(a)] or any requirement in a Standard Operating Procedures Manual or Policy Notice related to a program or function of the Office of Capital Access.

(2) Formal enforcement authority

(A) In general

With the approval of the Lender Oversight Committee established under section 657u of this title, the Director may take a formal enforcement action against any 7(a) lender if the Director finds that the 7(a) lender has violated—

- (i) a statutory or regulatory requirement under section 7(a), including a requirement relating to credit elsewhere; or
- (ii) any requirement described in a Standard Operating Procedures Manual or Policy Notice, related to a program or function of the Office of Capital Access.

(B) Enforcement actions

An enforcement action imposed on a 7(a) lender by the Director under subparagraph (A) shall be based on the severity or frequency of the violation and may include assessing a civil monetary penalty against the 7(a) lender in an amount that is not greater than \$250,000.

(3) Appeal by lender

A 7(a) lender may appeal an enforcement action imposed by the Director described in this subsection to the Office of Hearings and Appeals established under section 634(i) of this title or to an appropriate district court of the United States.

(f) Regulations

Not later than 1 year after June 21, 2018, the Administrator shall issue regulations, after opportunity for notice and comment, to carry out subsection (e).

(g) Servicing and liquidation responsibilities

During any period during which a 7(a) lender is suspended or otherwise prohibited from making loans under section 7(a) [15 U.S.C. 636(a)], the 7(a) lender shall remain obligated to maintain all servicing and liquidation activities delegated to the lender by the Administrator, unless otherwise specified by the Director.

(h) Portfolio risk analysis of 7(a) loans

(1) In general

The Director shall annually conduct a risk analysis of the portfolio of the Administration with respect to all loans guaranteed under section 7(a).

(2) Report to Congress

On December 1, 2018, and every December 1 thereafter, the Director shall submit to Congress a report containing the results of each portfolio risk analysis conducted under paragraph (1) during the fiscal year preceding the submission of the report, which shall include—

- (A) an analysis of the overall program risk of loans guaranteed under section 7(a);
- (B) an analysis of the program risk, set forth separately by industry concentration;
- (C) without identifying individual 7(a) lenders by name, a consolidated analysis of the risk created by the individual 7(a) lenders responsible for not less than 1 percent of the gross loan approvals set forth separately for the year covered by the report by—
 - (i) the dollar value of the loans made by such 7(a) lenders; and
 - (ii) the number of loans made by such 7(a) lenders;
- (D) steps taken by the Administrator to mitigate the risks identified in subparagraphs (A), (B), and (C);
- (E) the number of 7(a) lenders, the number of loans made, and the gross and net dollar amount of loans made;
- (F) the number and dollar amount of total losses, the number and dollar amount of total purchases, and the percentage and dollar amount of recoveries at the Administration;
- (G) the number and type of enforcement actions recommended by the Director;
- (H) the number and type of enforcement actions approved by the Lender Oversight

Committee established under section 657u of this title;

(I) the number and type of enforcement actions disapproved by the Lender Oversight Committee; and

(J) the number and dollar amount of civil monetary penalties assessed.

(i) Budget submission and justification

The Director shall annually provide, in writing, a fiscal year budget submission for the Office and a justification for such submission to the Administrator. Such submission and justification shall—

(1) include salaries and expenses of the Office and the charge for the lender oversight fees;

(2) be submitted at or about the time of the budget submission by the President under section 1105(a) of title 31; and

(3) be maintained in an indexed form and made available for public review for a period of not less than 5 years beginning on the date of submission and justification.

(Pub. L. 85–536, §2[47], as added and amended Pub. L. 115–189, §3(a)(2), (b), June 21, 2018, 132 Stat. 1492, 1495.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2[47] of Pub. L. 85–536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–189, §3(b), amended subsec. (d) generally. Prior to amendment, text read as follows: "With respect to 7(a) lenders, an employee of the Office shall—

"(1) be present for and supervise any such review that is conducted by a contractor of the Office on the premise of the 7(a) lender; and

"(2) supervise any such review that is not conducted on the premise of the 7(a) lender."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Pub. L. 115–189, §3(d)(1), June 21, 2018, 132 Stat. 1496, provided that: "Any reference in a law, regulation, guidance, document, paper, or other record of the United States to the Office of Credit Risk Management of the Small Business Administration shall be deemed a reference to the Office of Credit Risk Management, established under section 47 of the Small Business Act [15 U.S.C. 657t], as added by subsection (a)."

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–189, §3(b), June 21, 2018, 132 Stat. 1495, provided that the amendment made by section 3(b) is effective Jan. 1, 2019.

TRANSFER OF FUNCTIONS

Pub. L. 115–189, §3(c)(1), June 21, 2018, 132 Stat. 1496, provided that: "All functions of the Office of Credit Risk Management of the Small Business Administration, including the personnel, assets, and obligation of the Office of Credit Risk Management, as in existence on the day before the date of the enactment of this Act [June 21, 2018], shall be transferred to the Office of Credit Risk Management established under section 47 of the Small Business Act [15 U.S.C. 657t], as added by subsection (a)."

ESTABLISHING A PROCESS FOR WAIVERS

Pub. L. 115–189, §6, June 21, 2018, 132 Stat. 1498, provided that:

"(a) **IN GENERAL.**—If the Administrator [of the Small Business Administration] exercises statutory or regulatory authority to waive a regulation or a requirement in the Standard Operating Procedures Manual or Policy Notice related to a program or function of the Office of Capital Access of the [Small Business] Administration, the waiver shall be in writing and be maintained in an indexed form.

"(b) **NO NEW WAIVER AUTHORITY.**—Nothing in subsection (a) shall be construed as creating new

authority for the Administrator to waive regulations of the Administration."

DEFINITIONS OF TERMS USED IN PUB. L. 115–189

Pub. L. 115–189, §2, June 21, 2018, 132 Stat. 1492, provided that: "In this Act [see Short Title of 2018 Amendment note set out under section 631 of this title], the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively."

¹ So in original. Probably should be "premises".

§657u. Lender Oversight Committee

(a) Establishment

There is established within the Administration the Lender Oversight Committee (in this section referred to as the "Committee").

(b) Membership

The Committee shall consist of at least 8 members selected by the Administrator, of which—

- (1) 3 members shall be voting members, 2 of whom shall be career appointees in the Senior Executive Service (as defined in section 3132 of title 5); and
- (2) the remaining members shall be nonvoting members who shall serve in an advisory capacity on the Committee.

(c) Duties

The Committee shall—

- (1) review reports on lender oversight activities;
- (2) review formal enforcement action recommendations of the Director of the Office of Credit Risk Management with respect to any lender making loans under section 636(a) of this title and any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration;
- (3) in carrying out paragraph (2) with respect to formal enforcement actions taken under subsection (d) or (e) of section 650 of this title, vote to recommend or not recommend action to the Administrator or a designee of the Administrator;
- (4) in carrying out paragraph (2) with respect to any formal enforcement action not specified under subsection (d) or (e) of section 650 of this title, vote to approve, disapprove, or modify the action;
- (5) review, in an advisory capacity, any lender oversight, portfolio risk management, or program integrity matters brought by the Director; and
- (6) take such other actions and perform such other functions as may be delegated to the Committee by the Administrator.

(d) Meetings

(1) In general

The Committee shall meet as necessary, but not less frequently than on a quarterly basis.

(2) Reports

The Committee shall submit to the Administrator a report detailing each meeting of the Committee, including if the Committee does or does not vote to approve a formal enforcement action of the Director of the Office of Credit Risk Management with respect to a lender.

(Pub. L. 85–536, §2[48], as added Pub. L. 115–189, §3(a)(2), June 21, 2018, 132 Stat. 1494.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Pub. L. 115–189, §3(d)(2), June 21, 2018, 132 Stat. 1496, provided that: "Any reference in a law, regulation, guidance, document, paper, or other record of the United States to the Lender Oversight Committee of the Small Business Administration shall be deemed a reference to the Lender Oversight Committee, established under section 48 of the Small Business Act [15 U.S.C. 657u], as added by subsection (a)."

TRANSFER OF FUNCTIONS

Pub. L. 115–189, §3(c)(2), June 21, 2018, 132 Stat. 1496, provided that: "All functions of the Lender Oversight Committee of the Small Business Administration, including the personnel, assets, and obligations of the Lender Oversight Committee, as in existence on the day before the date of the enactment of this Act [June 21, 2018], shall be transferred to the Lender Oversight Committee established under section 48 of the Small Business Act [15 U.S.C. 657u], as added by subsection (a)."

CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM

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SUBCHAPTER I—GENERAL PROVISIONS

§661. Congressional declaration of policy

It is declared to be the policy of the Congress and the purpose of this chapter to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided, however,* That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this chapter shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country. It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.

(Pub. L. 85–699, title I, §102, Aug. 21, 1958, 72 Stat. 689; Pub. L. 102–366, title IV, §416, Sept. 4, 1992, 106 Stat. 1019.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 85–699, which enacted this chapter, amended sections 77c, 77ddd, 80a–18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealed section 352a of Title 12, Banks and Banking, and enacted notes set out under this section and section 352a of Title 12. Sections 212 and 213 of Title 18, as renumbered by Pub. L. 87–849, were subsequently repealed. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Pub. L. 102–366 inserted at end "It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies."

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–371, §1, Dec. 21, 2018, 132 Stat. 5106, provided that: This Act [amending section 696 of this title] may be cited as the "Small Business Access to Capital and Efficiency Act" or the "Small Business ACE Act".

Pub. L. 115–333, §1, Dec. 19, 2018, 132 Stat. 4488, provided that: "This Act [amending sections 662, 681,

and 687 of this title] may be cited as the 'Spurring Business in Communities Act of 2017'."

Pub. L. 115–187, §1, June 21, 2018, 132 Stat. 1489, provided that: "This Act [amending section 683 of this title] may be cited as the 'Small Business Investment Opportunity Act of 2017'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–232, §1, May 28, 2004, 118 Stat. 649, provided that: "This Act [amending section 697e of this title] may be cited as the 'Premier Certified Lenders Program Improvement Act of 2004'."

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–100, §1, Dec. 21, 2001, 115 Stat. 966, provided that: "This Act [amending sections 636, 683, 687d, 687e, and 697 of this title, section 1833a of Title 12, Banks and Banking, and section 1014 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 636, 683, and 697 of this title] may be cited as the 'Small Business Investment Company Amendments Act of 2001'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(8) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–653, provided that: "This section [enacting part B of subchapter III of this chapter, amending section 683 of this title, section 109 of Title 11, Bankruptcy, and section 1464 of Title 12, Banks and Banking, and amending provisions set out as a note under section 631 of this title] may be cited as the 'New Markets Venture Capital Program Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title III, §301], Dec. 21, 2000, 114 Stat. 2763, 2763A–684, provided that: "This title [enacting section 697g of this title, amending sections 695 to 697 and 697e of this title, enacting provisions set out as a note under section 697g of this title, and repealing provisions set out as a note under section 697e of this title] may be cited as the 'Certified Development Company Program Improvements Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A–690, provided that: "This title [amending sections 662, 682, 683, and 687b of this title] may be cited as the 'Small Business Investment Corrections Act of 2000'."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–9, §1, Apr. 5, 1999, 113 Stat. 17, provided that: "This Act [amending sections 662, 683, 687, and 687m of this title and provisions set out as notes under this section and section 631 of this title] may be cited as the 'Small Business Investment Improvement Act of 1999'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–403, title V, §501, Oct. 22, 1994, 108 Stat. 4198, provided that: "This title [enacting section 697f of this title and provisions set out as a note under section 697f of this title] may be cited as the 'Small Business Prepayment Penalty Relief Act of 1994'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–366, title IV, §401, Sept. 4, 1992, 106 Stat. 1007, provided that: "This Act [probably means "This title", amending this section and sections 662, 682, 683, 685 to 687, 687b, and 687l of this title, enacting provisions set out as notes under this section and sections 681 and 687b of this title, and amending provisions set out as a note under section 631 of this title] may be cited as the 'Small Business Equity Enhancement Act of 1992'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–590, title II, §201, Nov. 3, 1988, 102 Stat. 3007, provided that: "This title [amending sections 694b and 694c of this title and enacting provisions set out as notes under section 694b of this title] may be cited as the 'Preferred Surety Bond Guarantee Program Act of 1988'."

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–595, §1, Oct. 27, 1972, 86 Stat. 1314, provided: "That this Act [enacting sections 687i and 687j of this title and amending sections 80a–18, 633, 636, 662, 681, 683, 684, and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1972'."

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–104, title II, §201, Oct. 11, 1967, 81 Stat. 269, provided that: "This title [amending sections 681, 682, 683, 684, 686, 687, 687b, and 692 of this title] may be cited as the 'Small Business Investment Act Amendments of 1967'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-779, §1, Nov. 6, 1966, 80 Stat. 1359, provided: "That this Act [enacting sections 687e, 687f, 687g, and 687h of this title and amending sections 633, 671, 687, 687a, 687b, and 687c of this title, and sections 5315 and 5316 of Title 5, Government Organization and Employees] may be cited as the 'Small Business Investment Act Amendments of 1966'."

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88-273, §1, Feb. 28, 1964, 78 Stat. 146, provided: "That this Act [enacting section 687d and amending sections 682, 686, and 687 of this title] may be cited as the 'Small Business Investment Act Amendments of 1963'."

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87-341, §1, Oct. 3, 1961, 75 Stat. 752, provided: "That this Act [enacting sections 687a, 687b, and 687c of this title, amending sections 633, 662, 681, 683 to 687, and 696 of this title, and enacting provisions set out as notes under sections 631 and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1961'."

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86-502, §1, June 11, 1960, 74 Stat. 196, provided: "That this Act [amending sections 662, 681, 682, and 684 of this title, and section 26-610 of the District of Columbia Code, 1973 edition] may be cited as the 'Small Business Investment Act Amendments of 1960'."

SHORT TITLE

Pub. L. 85-699, title I, §101, Aug. 21, 1958, 72 Stat. 689, as amended by Pub. L. 106-9, §2(d)(3), Apr. 5, 1999, 113 Stat. 18, provided that: "This Act [enacting this chapter, amending sections 77c, 77ddd, 80a-18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealing section 352a of Title 12, Banks and Banking, and enacting notes set out under this section and former section 352a of title 12] may be cited as the 'Small Business Investment Act of 1958'."

REGULATIONS

Pub. L. 102-366, title IV, §415, Sept. 4, 1992, 106 Stat. 1018, provided that: "Notwithstanding any law, rule, regulation or administrative moratorium, except as otherwise expressly provided in this Act [probably means "this title", see Short Title of 1992 Amendment note above], the Small Business Administration shall—

- "(1) within 90 days after the date of enactment of this Act [Sept. 4, 1992], publish in the Federal Register proposed rules and regulations implementing this Act and the amendments made by this Act; and
- "(2) within 180 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act, and enter such contracts as are necessary to implement this Act and the amendments made by this Act."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Pub. L. 102-366, title IV, §418, Sept. 4, 1992, 106 Stat. 1019, provided that: "Nothing in this Act [probably means "this title", see Short Title of 1992 Amendment note above] (and no amendment made by this Act) shall be construed to affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or the authority at any time conferred under the securities laws."

§662. Definitions

As used in this chapter—

- (1) the term "Administration" means the Small Business Administration;
- (2) the term "Administrator" means the Administrator of the Small Business Administration;
- (3) the terms "small business investment company", "company", and "licensee" mean a company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681 of this title;
- (4) the term "State" includes the several States, the territories and possessions of the United

States, the Commonwealth of Puerto Rico, and the District of Columbia;

(5) the term "small-business concern" shall have the same meaning as in the Small Business Act [15 U.S.C. 631 et seq.], except that, for purposes of this chapter—

(A) an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

(i) shall not cause a business concern to be deemed not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;

(ii) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)]; and

(iii) shall be disregarded in determining whether a small business concern is a smaller enterprise; and

(B) in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)], if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(i) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(ii) the net income (so determined) less any deduction for State (and local) income taxes calculated under clause (i), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation;

(6) the term "development companies" means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations;

(7) the term "license" means a license issued by the Administration as provided in section 681 of this title;

(8) the term "articles" means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities;

(9) the term "private capital"—

(A) means the sum of—

(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: *Provided*, That such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

(B) does not include any—

(i) funds borrowed by a licensee from any source;

(ii) funds obtained through the issuance of leverage; or

(iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for—

(I) funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established prior to October 1, 1987;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);

(10) the term "leverage" includes—

(A) debentures purchased or guaranteed by the Administration;

(B) participating securities purchased or guaranteed by the Administration; and

(C) preferred securities outstanding as of October 1, 1995;

(11) the term "third party debt" means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

(12) the term "smaller enterprise" means any small business concern that, together with its affiliates—

(A) has—

(i) a net financial worth of not more than \$6,000,000, as of the date on which assistance is provided under this chapter to that business concern; and

(ii) an average net income for the 2-year period preceding the date on which assistance is provided under this chapter to that business concern, of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses) except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation; or

(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

(13) the term "qualified nonprivate funds" means any—

(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term "private capital";

(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term "private capital"; and

(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee;

(14) the terms "employee welfare benefit plan" and "pension plan" have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002], and are

intended to include—

(A) public and private pension or retirement plans subject to such Act [29 U.S.C. 1001 et seq.]; and

(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

(15) the term "member" means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company;

(16) the term "limited liability company" means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration;

(17) the term "long term", when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year;

(18) the term "Energy Saving debenture" means a deferred interest debenture that—

(A) is issued at a discount;

(B) has a 5-year maturity or a 10-year maturity;

(C) requires no interest payment or annual charge for the first 5 years;

(D) is restricted to Energy Saving qualified investments; and

(E) is issued at no cost (as defined in section 661a ¹ of title 2) with respect to purchasing and guaranteeing the debenture;

(19) the term "Energy Saving qualified investment" means investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of non-renewable energy resources; and

(20) the term "underlicensed State" means a State in which the number of licensees per capita is less than the median number of licensees per capita for all States, as calculated by the Administrator.

(Pub. L. 85–699, title I, §103, Aug. 21, 1958, 72 Stat. 690; Pub. L. 86–502, §3, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §2, Oct. 3, 1961, 75 Stat. 752; Pub. L. 92–595, §2(a), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §106(a), June 4, 1976, 90 Stat. 666; Pub. L. 102–366, title IV, §410, Sept. 4, 1992, 106 Stat. 1017; Pub. L. 104–208, div. D, title II, §208(a), Sept. 30, 1996, 110 Stat. 3009–739; Pub. L. 105–135, title II, §213, Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–9, §2(c), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–554, §1(a)(9) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A–690; Pub. L. 110–140, title XII, §1205(b), Dec. 19, 2007, 121 Stat. 1773; Pub. L. 115–333, §2(1), Dec. 19, 2018, 132 Stat. 4488.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in par. (5), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified to chapter 14A (§631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables. The term "small-business concern" is defined in section 632 of this title.

The Employee Retirement Income Security Act of 1974, referred to in par. (14), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 661a of title 2, referred to in par. (18)(E), was in the original "section 502 of the Credit Reform Act of 1990", which was translated as reading "section 502 of the Federal Credit Reform Act of 1990", to reflect

the probable intent of Congress.

AMENDMENTS

2018—Par. (20). Pub. L. 115–333 added par. (20).

2007—Pars. (18), (19). Pub. L. 110–140 added pars. (18) and (19).

2000—Par. (5)(A)(i). Pub. L. 106–554, §1(a)(9) [title IV, §402(a)], inserted before semicolon at end "regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment".

Par. (17). Pub. L. 106–554, §1(a)(9) [title IV, §402(b)], added par. (17).

1999—Par. (5). Pub. L. 106–9, §2(c)(1), designated existing provisions after "for purposes of this chapter" as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Par. (12)(A)(ii). Pub. L. 106–9, §2(c)(2), inserted before "; or": "except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

"(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

"(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation".

1997—Par. (9)(B)(iii). Pub. L. 105–135 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1996—Par. (5). Pub. L. 104–208, §208(a)(1), inserted before semicolon at end ", except that, for purposes of this chapter, an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

"(A) shall not cause a business concern to be deemed not independently owned and operated;

"(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

"(C) shall be disregarded in determining whether a small business concern is a smaller enterprise".

Par. (9). Pub. L. 104–208, §208(a)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "notwithstanding any other provision of law, the term 'private capital' means the private paid-in capital and paid-in surplus of a corporate licensee, or the private partnership capital of an unincorporate licensee, inclusive of (A) any funds invested in the licensee by a public or private pension fund, (B) any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital and otherwise meets criteria established by the Administration, and (C) unfunded commitments from institutional investors that meet criteria established by the Administration, but it excludes any funds which are borrowed by the licensee from any source or which are obtained or derived, directly or indirectly, from any Federal source, including the Administration: *Provided*, That no unfunded commitment from an institutional investor may be used for the purpose of meeting the minimum amount of private capital required by this chapter or as the basis for the Administration to issue obligations to provide financing; and".

Pars. (10) to (16). Pub. L. 104–208, §208(a)(3), added pars. (10) to (16) and struck out former par. (10) which read as follows: "the term 'leverage' includes debentures purchased or guaranteed by the Administration, participating securities purchased or guaranteed by the Administration, or preferred securities issued by companies licensed under section 681(d) of this title and which have been purchased by the Administration."

1992—Pars. (9), (10). Pub. L. 102–366 added pars. (9) and (10).

1976—Par. (8). Pub. L. 94–305 added par. (8).

1972—Par. (3). Pub. L. 92–595 substituted "section 681" for "section 681(c)".

Par. (7). Pub. L. 92–595 substituted "section 681" for "section 681(c)".

1961—Par. (3). Pub. L. 87–341, §2(1), inserted "licensee" and substituted "company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681(c) of this title" for "small business investment company organized as provided in subchapter III of this chapter, including (except for purposes of sections 681 and 687(f) of this title) a State-chartered investment

company which has obtained the approval of the Administrator to operate under the provisions of this chapter as provided in section 688 of this title and a company converted into a small business investment company under section 691 of this title".

Par. (7). Pub. L. 87-341, §2(2), added par. (7).

1960—Par. (4). Pub. L. 86-502 substituted definition of "State" for definition of "United States".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

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.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

¹ See References in Text note below.

SUBCHAPTER II—SMALL BUSINESS INVESTMENT DIVISION OF SMALL BUSINESS ADMINISTRATION

§671. Establishment; Associate Administrator; appointment and compensation

There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

(Pub. L. 85-699, title II, §201, Aug. 21, 1958, 72 Stat. 690; Pub. L. 89-117, title III, §316(b), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89-779, §2, Nov. 6, 1966, 80 Stat. 1359.)

EDITORIAL NOTES

AMENDMENTS

1966—Pub. L. 89-779 substituted "Associated Administrator" for "Deputy Administrator" as the head of the Small Business Investment Division of the Small Business Administration, substituted the rate provided by law for other Associate Administrators of the Small Business Administration for the rate provided by law for the other Deputy Administrators of the Small Business Administration as the standard of compensation for the head of the Small Business Investment Division, and struck out provisions spelling out the proper exercise of the powers conferred on the Administration and on the Administrator through the Small Business Investment Division and the Division head. See section 687(f) of this title.

1965—Pub. L. 89-117 provided that the powers conferred by subchapters IV-A and V of this chapter shall be exercised through such divisions, sections, or other personnel as the Administrator in his discretion determines.

§672. Repealed. Pub. L. 87-341, §11(h)(1), Oct. 3, 1961, 75 Stat. 757

Section, Pub. L. 85-699, title II, §202(b), Aug. 21, 1958, 72 Stat. 691, authorized appropriations for business expenses.

SUBCHAPTER III—INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

§681. Organization

(a) Incorporation and charter under State law, period of succession; area of operations

A small business investment company shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this subchapter, which, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years, and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

(b) Articles of incorporation; approval

The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this chapter that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

(c) Issuance of license

(1) Submission of application

Each applicant for a license to operate as a small business investment company under this chapter shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

(2) Procedures

(A) Status

Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

(B) Approval or disapproval

Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

- (i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or
- (ii) disapprove the application and notify the applicant in writing of the disapproval.

(3) Matters considered

In reviewing and processing any application under this subsection, the Administrator—

(A) shall determine whether—

(i) the applicant meets the requirements of subsections (a) and (c) of section 682 of this title; and

(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;

(B) shall take into consideration—

(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

(ii) the general business reputation of the owners and management of the applicant; and

(iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness;

(C) shall not take into consideration any projected shortage or unavailability of leverage; and

(D) shall give first priority to an applicant that is located in an underlicensed State with below median financing, as determined by the Administrator.

(4) Exception

(A) In general

Notwithstanding any other provision of this chapter, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

(i) has private capital of not less than \$3,000,000;

(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 682(a) of this title; and

(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 682(a) of this title.

(B) Leverage

An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title, unless the applicant—

(i) is located in a State that—

(I) is not served by a licensee; or

(II) is an underlicensed State; and

(ii) agrees to be limited to 1 tier of leverage available under section 682(b) of this title, until the applicant meets the requirements of section 682(a) of this title.

(d) Repealed. Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742

(e) Fees

(1) In general

The Administration may prescribe fees to be paid by each applicant for a license to operate as a small business investment company under this chapter.

(2) Use of amounts

Fees collected under this subsection—

(A) shall be deposited in the account for salaries and expenses of the Administration; and

(B) are authorized to be appropriated solely to cover the costs of licensing examinations.

(Pub. L. 85–699, title III, §301, Aug. 21, 1958, 72 Stat. 691; Pub. L. 86–502, §4, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §11(a), (b), Oct. 3, 1961, 75 Stat. 756; Pub. L. 90–104, title II, §202, Oct.

11, 1967, 81 Stat. 269; Pub. L. 92-595, §2(b), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94-305, title I, §106(b)-(d), June 4, 1976, 90 Stat. 666; Pub. L. 95-507, title I, §104, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 100-590, title I, §105, Nov. 3, 1988, 102 Stat. 2993; Pub. L. 104-208, div. D, title II, §208(b)(1)-(3)(A), Sept. 30, 1996, 110 Stat. 3009-741, 3009-742; Pub. L. 105-135, title II, §§212, 214, Dec. 2, 1997, 111 Stat. 2601; Pub. L. 115-333, §2(2), Dec. 19, 2018, 132 Stat. 4488.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b), (c), and (e), see References in Text note set out under section 661 of this title.

AMENDMENTS

2018—Subsec. (c)(3)(D). Pub. L. 115-333, §2(2)(A), added subpar. (D).

Subsec. (c)(4)(B)(i). Pub. L. 115-333, §2(2)(B)(ii), (iii), redesignated cl. (ii) as (i) and amended it generally. Prior to amendment, cl. read as follows: "is located in a State that is not served by a licensee; and".

Pub. L. 115-333, §2(2)(B)(i), struck out cl. (i) which read as follows: "files an application for a license not later than 180 days after December 2, 1997;".

Subsec. (c)(4)(B)(ii), (iii). Pub. L. 115-333, §2(2)(B)(ii), redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

1997—Subsec. (c)(4)(B). Pub. L. 105-135, §212, amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title."

Subsec. (e). Pub. L. 105-135, §214, added subsec. (e).

1996—Subsec. (a). Pub. L. 104-208, §208(b)(1), substituted "body, a limited liability company, or" for "body or" in first sentence.

Subsec. (c). Pub. L. 104-208, §208(b)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles and permit it to operate under the provisions of this chapter, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles, the Administration may in its discretion approve the company to operate under the provisions of this chapter and issue the company a license for such operation."

Subsec. (d). Pub. L. 104-208, §208(b)(3)(A), struck out subsec. (d) which read as follows: "Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership, and may be licensed by the Administration to operate under the provisions of this chapter."

1988—Subsec. (a). Pub. L. 100-590 substituted ", if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years," for "has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners".

1978—Subsec. (d). Pub. L. 95-507 authorized small business investment companies to form as limited partnerships.

1976—Subsec. (a). Pub. L. 94-305, §106(b), inserted reference to limited partnership and reference to partners, struck out "of incorporation" after "by the articles", and inserted "or otherwise existing" after "chartered".

Subsec. (b). Pub. L. 94-305, §106(c), struck out "of incorporation" after "The articles".

Subsec. (c). Pub. L. 94-305, §106(d), struck out "of incorporation" after "articles" wherever appearing.

1972—Subsec. (d). Pub. L. 92-595 added subsec. (d).

1967—Subsec. (c). Pub. L. 90-104 provided for consideration of availability of financing, the geographic

area, the business reputation, ownership factor, and probability of successful operations of company including adequate profitability and financial soundness and eliminated from consideration the number of such companies previously organized in the United States and the volume of their operations.

1961—Subsec. (a). Pub. L. 87–341, §11(a), provided that small business investment companies shall be incorporated, organized and chartered under State law, with a minimum succession period of thirty years unless sooner dissolved by its activities and functions, its area of operation shall be subject to the Administration's approval, and deleted provisions setting the minimum number of incorporators at 10, no company shall be chartered by the Administration unless it determined that none could be chartered under the laws of the State and operate in accordance with this chapter, and that no such company shall be chartered by the Administration under this section after June 30, 1961.

Subsec. (c). Pub. L. 87–341, §11(b)(1), (2), substituted "such a company's articles of incorporation and permit it to operate under the provisions of this chapter" for "the establishment of such a company and its proposed articles of incorporation", and provided that if the Administration approves the company to operate under the provisions of this chapter, it may issue the company a license for such operation.

Subsec. (d). Pub. L. 87–341, §11(b)(3), repealed subsec. (d) which specified the general powers of a company formed under this section.

Subsec. (e). Pub. L. 87–341, §11(b)(3), repealed subsec. (e) which provided for a board of directors for a company formed under this section.

1960—Subsec. (d)(9) to (11). Pub. L. 86–502 repealed par. (9) which empowered companies to act as depositories or fiscal agents of the United States, and redesignated pars. (10) and (11) as (9) and (10), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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 1967 AMENDMENT

Pub. L. 90–104, title II, §211, Oct. 11, 1967, 81 Stat. 272, provided that: "The effective date of this title [amending this section and sections 682 to 684, 686, 687, 687b, and 692 of this title] shall be ninety days after enactment [Oct. 11, 1967], except that, with respect to section 207 [amending section 686 of this title], it shall be January 1, 1968."

SAVINGS PROVISION

Pub. L. 104–208, div. D, title II, §208(b)(3)(B), Sept. 30, 1996, 110 Stat. 3009–742, provided that: "The repeal under subparagraph (A) [repealing subsec. (d) of this section] shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 [subsec. (d) of this section] before the date of enactment of this Act [Sept. 30, 1996]."

REGULATORY REVIEW

Pub. L. 102–366, title IV, §408(d), Sept. 4, 1992, 106 Stat. 1017, directed Small Business Administration, not later than 90 days after Sept. 4, 1992, to complete a review of regulations intended to provide for safety and soundness of small business investment companies which obtain financing from the Administration under provisions of the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., and to exempt from such regulations, or to separately regulate, companies which do not obtain financing from the Administration.

REPORTS TO CONGRESS

Pub. L. 102–366, title IV, §408(e), Sept. 4, 1992, 106 Stat. 1017, directed Administration, within 180 days after Sept. 4, 1992, to report on actions taken pursuant to section 408(d) of Pub. L. 102–366, formerly set out above, to the Committees on Small Business of the Senate and the House of Representatives, including the rationale for its actions.

Pub. L. 102–366, title IV, §417(b), Sept. 4, 1992, 106 Stat. 1019, provided that not later than 4 years after Sept. 4, 1992, the Comptroller General was to transmit to Congress a report that reviewed the Small Business Investment Company program established under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for the 3-year period following Sept. 4, 1992, with respect to each item listed in section 687(g)(3) of this title.

§682. Capital requirements

(a) Amount

(1) In general

Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) \$5,000,000; or

(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this chapter.

(2) Exception

The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) Adequacy

In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able ¹ both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.

(4) Exemption from capital requirements

The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 681 of this title before September 30, 1996, that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after September 30, 1996, will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) Financial institution investments

(1) Certain banks

Notwithstanding the provisions of section 1845(a)(1) ² of title 12, any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

(2) Certain savings associations

Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.

(c) Diversification of ownership

The Administrator shall ensure that the management of each licensee licensed after September 30, 1996, is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

(Pub. L. 85–699, title III, §302, Aug. 21, 1958, 72 Stat. 692; Pub. L. 86–502, §5, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §3, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88–273, §2, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §§203(a), 204, Oct. 11, 1967, 81 Stat. 269, 270; Pub. L. 94–305, title I, §§106(e), 107, June 4, 1976, 90 Stat. 666; Pub. L. 95–89, title II, §210, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–507, title I, §105, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 102–366, title IV, §§406(a), 409, Sept. 4, 1992, 106 Stat. 1015, 1017; Pub. L. 104–208, div. D, title II, §208(c), Sept. 30, 1996, 110 Stat. 3009–742; Pub. L. 105–135, title II, §215(a), Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–554, §1(a)(9) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A–690.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a)(1)(B), see References in Text note set out under section 661 of this title.

Subsection (d) of section 681 of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

Section 1845(a)(1) of title 12, referred to in subsec. (b)(1), was repealed by Pub. L. 89–485, §9, July 1, 1966, 80 Stat. 240. See section 371c of Title 12, Banks and Banking.

CODIFICATION

September 30, 1996, referred to in subsecs. (a)(4) and (c), was in the original "the date of enactment of the Small Business Program Improvement Act of 1996", which was translated as meaning the date of enactment of the Small Business Programs Improvement Act of 1996, to reflect the probable intent of Congress.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Subsec. (b). Pub. L. 105–135 substituted "any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank." for "shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus."

1996—Subsec. (a). Pub. L. 104–208, §208(c)(1), inserted heading and substituted pars. (1) to (3)(A) and "determine that the licensee will be able" in par. (3)(B) for "The combined private paid-in capital and paid-in surplus of any company licensed pursuant to section 681(c) and (d) of this title shall not be less than \$150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1992 pursuant to section 681(c) of this title shall be not less than \$2,500,000 and pursuant to section 681(d) of this title shall be not less than \$1,500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. The Administration shall also determine the ability of the company,".

Subsec. (a)(4). Pub. L. 104–208, §208(c)(2), added par. (4).

Subsec. (c). Pub. L. 104–208, §208(c)(3), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration."

1992—Subsec. (a). Pub. L. 102–366 substituted "1992 pursuant to section 681(c) of this title shall be not less than \$2,500,000 and pursuant to section 681(d) of this title shall be not less than \$1,500,000" for "1979 pursuant to section 681(c) and (d) of this title shall be not less than \$500,000" and inserted at end "The Administration shall also determine the ability of the company, both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources."

1978—Subsec. (a). Pub. L. 95–507 provided that the combined private paid-in capital and paid-in surplus of any company licensed on or after Oct. 1, 1979 pursuant to section 681(c) and (d) of this title would not be less than \$500,000.

1977—Subsec. (b). Pub. L. 95–89 inserted "and" between "capital" and "surplus".

1976—Subsec. (a). Pub. L. 94–305, §106(e), struck out "of incorporation" after "its articles".

Subsec. (b). Pub. L. 94–305, §107, struck out provisions prohibiting the bank from acquiring shares in a small business investment company if the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights.

1967—Subsec. (a). Pub. L. 90–104, §203(a), substituted small business investment company minimum capital requirement, a combined private paid-in capital and paid-in surplus, of \$150,000 and adequate to assure reasonable prospect of sound and profitable company operations and active and prudent management in accordance with the articles of incorporation for former requirement of a paid-in capital and surplus equal to at least \$300,000, and eliminated provisions for purchase of debentures of such companies in an amount not to exceed the lesser of \$700,000 or the amount of paid-in capital and surplus of the company from other sources and for subordination of debentures (both incorporated in section 686(b) of this title), for such purchases by the Administration only during certain prescribed period, and deeming the debentures part of the capital and surplus for certain purposes.

Subsec. (b). Pub. L. 90–104, §204, substituted prohibition against bank acquisition of small business investment company stock if, upon such acquisition, the aggregate amount of shares in such companies then held by the bank would exceed 5 percent of the capital and surplus, or the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights for former prohibition against holding of shares in an amount aggregating more than 2 percent of its capital and surplus.

1964—Subsec. (a). Pub. L. 88–273 increased the limitation on Administration purchase of debentures from \$400,000 to \$700,000 and extended the period for such purchase from three years after date of issuance of license or date of enactment of Pub. L. 87–341, the Small Business Investment Act Amendments of 1961 (Oct. 3, 1961), whichever is later, to five years after date of issuance of license or date of enactment of Pub. L. 88–273, the Small Business Investment Act Amendments of 1963 (Feb. 28, 1964), whichever is later.

1961—Subsec. (a). Pub. L. 87–341, §3(a), inserted "and growth", limited the purchase of debentures to the extent that necessary funds are not available to the company involved from private sources on reasonable terms, increased the amount of purchasable debentures to not more than the lesser of \$400,000 or the paid-in capital and surplus of the company from other sources, and restricted such purchases to such period as may be fixed by the Administration, but not ending more than three years after the date of issuance of the company's license under section 681c of this title, or Oct. 3, 1961, whichever is later, and deleted provisions limiting purchase of debentures to \$150,000.

Subsec. (b). Pub. L. 87–341, §3(b), increased the maximum amount of shares a bank may hold in small business investment companies to 2 percent of the capital and surplus.

1960—Subsec. (b). Pub. L. 86–502 substituted "Notwithstanding the provisions of section 1845(a)(1) of title 12, shares" for "Shares".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

¹ *So in original. Probably should be followed by a comma.*

² *See References in Text note below.*

§683. Borrowing operations

(a) Authority to issue obligations

Each small business investment company shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

(b) Debentures and participating securities

To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 percent, plus, for debentures obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which amount may not exceed 1.38 percent per year, and which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 681(c) of this title shall not exceed 300 per centum of the private capital of such company: *Provided*, That nothing in this paragraph shall require any such company that on March 31, 1993, has outstanding debentures in excess of 300 per centum of its private capital to prepay such excess: *And provided further*, That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any one company licensed under section 681(c) of this title may not exceed the lesser of—

- (i) 300 percent of such company's private capital; or
- (ii) \$175,000,000.

(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more companies licensed under section 681(c) of this title that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed \$350,000,000.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—(i) In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 689 of this title), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(ii) The maximum amount of outstanding leverage made available to—

(I) any 1 company described in clause (iii) may not exceed the lesser of 300 percent of private capital of the company, or \$175,000,000; and

(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed \$250,000,000.

(iii) A company described in this clause is a company licensed under section 681(c) of this title in the first fiscal year after February 17, 2009, or any fiscal year thereafter that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 689 of this title).

(D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after December 19, 2007, or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of that company.

(II) MAXIMUM INVESTMENT.—A company shall not make an Energy Saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of that company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 661a of title 2) with respect to purchasing or guaranteeing any debenture involved.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 681(c) of this title may issue and have outstanding both guaranteed debentures and participating securities: *Provided*, That the total amount of participating securities outstanding shall not exceed 200 per centum of private capital.

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

(c) Third party debt

The Administrator—

(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.

(d) Investments in smaller enterprises

The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.

(e) Capital impairment

Before approving any application for leverage submitted by a licensee under this chapter, the Administrator—

(1) shall determine that the private capital of the licensee meets the requirements of section 682(a) of this title; and

(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(f) Redemption or repurchase of preferred stock

Notwithstanding any other provision of law—

(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

- (A) the market value of the stock;
- (B) the value of benefits provided and anticipated to accrue to the issuer;
- (C) the amount of dividends paid, accrued, and anticipated; and
- (D) the estimate of the Administrator of any anticipated redemption; and

(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g) Guarantee of payment of and authority to purchase participating securities

In order to encourage small business investment companies to provide equity capital to small businesses, the Administration is authorized to guarantee the payment of the redemption price and prioritized payments on participating securities issued by such companies which are licensed pursuant to section 681(c) of this title, and a trust or a pool acting on behalf of the Administration is authorized to purchase such securities. Such guarantees and purchases shall be made on such terms and conditions as the Administration shall establish by regulation. For purposes of this section, (A) the term "participating securities" includes preferred stock, a preferred limited partnership interest or a similar instrument, including debentures under the terms of which interest is payable only to the extent of earnings and (B) the term "prioritized payments" includes dividends on stock, interest on qualifying debentures, or priority returns on preferred limited partnership interests which are paid only to the extent of earnings. Participating securities guaranteed under this subsection shall be subject to the following restrictions and limitations, in addition to such other restrictions and limitations as the Administration may determine:

(1) Participating securities shall be redeemed not later than 15 years after their date of issuance for an amount equal to 100 per centum of the original issue price plus the amount of any accrued prioritized payment: *Provided*, That if, at the time the securities are redeemed, whether as scheduled or in advance, the issuing company (A) has not paid all accrued prioritized payments in full as provided in paragraph (2) below and (B) has not sold or otherwise disposed of all investments subject to profit distributions pursuant to paragraph (11), the company's obligation to pay accrued and unpaid prioritized payments shall continue and payment shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payments shall be extinguished:

Provided further, That in the interim, the company shall not make any in-kind distributions of such investments unless it pays to the Administration such sums, up to the amount of the unrealized appreciation on such investments, as may be necessary to pay in full the accrued prioritized payments.

(2) Prioritized payments on participating securities shall be preferred and cumulative and payable out of the retained earnings available for distribution, as defined by the Administration, of the issuing company at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the nearest one-eighth of 1 percent, plus, for participating securities obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administration.

(3) In the event of liquidation of the company, participating securities shall be senior in priority for all purposes to all other equity interests in the issuing company, whenever created.

(4) Any company issuing a participating security under this chapter shall commit to invest or shall invest an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, "equity capital" means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments from appropriate sources, as determined by the Administration.

(5) The only debt (other than leverage obtained in accordance with this subchapter) which any company issuing a participating security under this subsection may have outstanding shall be temporary debt in amounts limited to not more than 50 per centum of private capital.

(6) The Administration may permit the proceeds of a participating security to be used to pay the principal amount due on outstanding debentures guaranteed by the Administration, if (A) the company has outstanding equity capital invested in an amount equal to the amount of the debentures being refinanced and (B) the Administration receives profit participation on such terms and conditions as it may determine, but not to exceed the per centums specified in paragraph (11).

(7) For purposes of computing profit participation under paragraph (11), except as otherwise determined by the Administration, the management expenses of any company which issues participating securities shall not be greater than 2.5 per centum per annum of the combined capital of the company, plus \$125,000 if the company's combined capital is less than \$20,000,000. For purposes of this paragraph, (A) the term "combined capital" means the aggregate amount of private capital and outstanding leverage and (B) the term "management expenses" includes salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but does not include the cost of services provided by specialized outside consultants, outside lawyers and outside auditors, who perform services not generally expected of a venture capital company nor does such term include the cost of services provided by any affiliate of the company which are not part of the normal process of making and monitoring venture capital investments.

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members in amounts not greater than each partner's, shareholder's, or member's maximum tax liability. For purposes of this paragraph, the term "maximum tax liability" means the amount of income allocated to each partner, shareholder, or member (including an allocation to the Administration as if it were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the company with respect to the fiscal year of the company immediately preceding such distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income

tax" means the income tax of the State where the company's principal place of business is located. A company may also elect to make a distribution under this paragraph at any time during any calendar quarter based on an estimate of the maximum tax liability. If a company makes 1 or more interim distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

(9) After making any distributions as provided in paragraph (8), a company with participating securities outstanding may distribute the balance of income to its investors, specifically including the Administration, in the per centums specified in paragraph (11), if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full, subject to the following conditions:

(A) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 per centum of the amount of private capital, any amounts distributed shall be made to private investors and to the Administration in the ratio of leverage to private capital.

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the amount of private capital, 50 per centum of any amounts distributed shall be made to the Administration and 50 per centum shall be made to the private investors.

(C) If the amount of leverage outstanding is 100 per centum, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(D) Any amounts received by the Administration under subparagraph (A) or (B) shall be applied first as profit participation as provided in paragraph (11) and any remainder shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(10) After making any distributions pursuant to paragraph (8), a company with participating securities outstanding may return capital to its investors, specifically including the Administration, if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full. Any distributions under this paragraph shall be made to private investors and to the Administration in the ratio of private capital to leverage as of the date of the proposed distribution: *Provided*, That if the amount of leverage outstanding is less than 50 per centum of the amount of private capital or \$10,000,000, whichever is less, no distribution shall be required to be made to the Administration unless the Administration determines, on a case by case basis, to require distributions to the Administration to reduce the amount of outstanding leverage to an amount less than \$10,000,000.

(11)(A) A company which issues participating securities shall agree to allocate to the Administration a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administration in accordance with the following:

(i) If the total amount of participating securities is 100 per centum of private capital or less, the company shall allocate to the Administration a per centum share computed as follows: the amount of participating securities divided by private capital times 9 per centum.

(ii) If the total amount of participating securities is more than 100 per centum but not greater than 200 per centum of private capital, the company shall allocate to the Administration a per centum share computed as follows:

(I) 9 per centum, plus

(II) 3 per centum of the amount of participating securities minus private capital divided by private capital.

(B) Notwithstanding any other provision of this paragraph—

(i) in no event shall the total per centum required by this paragraph exceed 12 per centum, unless required pursuant to the provisions of (ii) below,

(ii) if, on the date the participating securities are marketed, the interest rate on Treasury bonds

with a maturity of 10 years is a rate other than 8 per centum, the Administration shall adjust the rate specified in paragraph (A) above, either higher or lower, by the same per centum by which the Treasury bond rate is higher or lower than 8 per centum, and

(iii) this paragraph shall not be construed to create any ownership interest of the Administration in the company.

(12) A company may elect to make an in-kind distribution of securities only if such securities are publicly traded and marketable. The company shall deposit the Administration's share of such securities for disposition with a trustee designated by the Administration or, at its option and with the agreement of the company, the Administration may direct the company to retain the Administration's share. If the company retains the Administration's share, it shall sell the Administration's share and promptly remit the proceeds to the Administration. As used in this paragraph, the term "trustee" means a person who is knowledgeable about and proficient in the marketing of thinly traded securities.

(h) Computation of amounts due under participating securities

The computation of amounts due the Administration under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) shall be computed annually and the Administration shall receive distributions of its profit participation at the same time as other investors in the company.

(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administration.

(3) After distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced.

(4) If the company prepaes or repays the participating securities, the Administration shall receive the requisite participation upon the distribution of profits due to any investments held by the company on the date of the repayment or prepayment.

(5) If a company is licensed on or before March 31, 1993, it may elect to exclude from profit participation all investments held on that date and in such case the Administration shall determine the amount of the future expenses attributable to such prior investment: *Provided*, That if the company issues participating securities to refinance debentures as authorized in subsection (g)(6), it may not elect to exclude profits on existing investments under this paragraph.

(i) Leverage fee

With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

(j) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures and participating securities under this chapter.

(k) Energy saving debentures

In addition to any other authority under this chapter, a small business investment company licensed in the first fiscal year after December 19, 2007, or any fiscal year thereafter may issue Energy Saving debentures.

(Pub. L. 85-699, title III, §303, Aug. 21, 1958, 72 Stat. 692; Pub. L. 87-341, §4, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88-273, §3, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, §205, Oct. 11, 1967, 81 Stat. 270; Pub. L. 92-213, §10, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92-595, §2(c), (d), Oct.

27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §104, June 4, 1976, 90 Stat. 665; Pub. L. 95–507, title I, §101, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 101–162, title V, (4), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101–574, title II, §215(a)(1), (b), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 102–366, title IV, §§402, 403, 412, 413, Sept. 4, 1992, 106 Stat. 1008, 1009, 1018; Pub. L. 103–403, title II, §215, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–208, div. D, title II, §208(d)(1)–(4)(A), (5), (6), (h)(1)(A), Sept. 30, 1996, 110 Stat. 3009–743, 3009–744, 3009–746; Pub. L. 105–135, title II, §215(b)–(d), Dec. 2, 1997, 111 Stat. 2602, 2603; Pub. L. 106–9, §2(d)(1), Apr. 5, 1999, 113 Stat. 18; Pub. L. 106–554, §1(a)(8) [§1(d)], §1(a)(9) [title IV, §§404, 405], Dec. 21, 2000, 114 Stat. 2763, 2763A–664, 2763A–690, 2763A–691; Pub. L. 107–100, §2(a), Dec. 21, 2001, 115 Stat. 966; Pub. L. 108–84, §117, Sept. 30, 2003, 117 Stat. 1044; Pub. L. 108–172, §1(b), Dec. 6, 2003, 117 Stat. 2065; Pub. L. 108–447, div. K, title II, §201, Dec. 8, 2004, 118 Stat. 3465; Pub. L. 110–140, title XII, §§1205(a), 1206, Dec. 19, 2007, 121 Stat. 1773; Pub. L. 111–5, div. A, title V, §505(a), (c), Feb. 17, 2009, 123 Stat. 156, 157; Pub. L. 114–113, div. E, title V, §521(b), Dec. 18, 2015, 129 Stat. 2464; Pub. L. 115–187, §2, June 21, 2018, 132 Stat. 1489.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b), (e), (g)(2), (4), (j), and (k), see References in Text note set out under section 661 of this title.

AMENDMENTS

2018—Subsec. (b)(2)(A)(ii). Pub. L. 115–187 substituted "\$175,000,000" for "\$150,000,000".

2015—Subsec. (b)(2)(B). Pub. L. 114–113 substituted "\$350,000,000" for "\$225,000,000".

2009—Subsec. (b)(2)(A), (B). Pub. L. 111–5, §505(a)(1), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which set forth the maximum amount of outstanding leverage for a company with private capital of not more than \$15,000,000, for a company with from \$15,000,000 to \$30,000,000 in private capital, and for a company with private capital of more than \$30,000,000, and set forth provisions relating to initial and annual adjustments of amounts.

Subsec. (b)(2)(C). Pub. L. 111–5, §505(a)(2), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(4). Pub. L. 111–5, §505(a)(3), struck out par. (4) which related to maximum aggregate amount of leverage.

Subsec. (d). Pub. L. 111–5, §505(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to written certification that not less than 20 percent of the licensee's aggregate dollar amount of financings would be provided to smaller enterprises, required additional written certification by those licensees with leverage over \$90,000,000, and set forth provisions relating to multiple licensees.

2007—Subsec. (b)(2)(D). Pub. L. 110–140, §1206(a), added subpar. (D).

Subsec. (b)(4)(E). Pub. L. 110–140, §1206(b), added subpar. (E).

Subsec. (k). Pub. L. 110–140, §1205(a), added subsec. (k).

2004—Subsec. (g)(4). Pub. L. 108–447 substituted "chapter" for "subsection" in first sentence and "from appropriate sources, as determined by the Administration" for "contingent upon and limited to the extent of earnings" in second sentence.

2003—Subsec. (g)(2). Pub. L. 108–84 and Pub. L. 108–172 amended par. (2) identically, substituting "1.46 percent" for "1.38 percent".

2001—Subsec. (b). Pub. L. 107–100, §2(a)(1), in introductory provisions, substituted "September 30, 2001" for "September 30, 2000", struck out "of not more than 1 percent per year" after "annually by the Administration,", and inserted "which amount may not exceed 1.38 percent per year, and" before "which shall be paid".

Subsec. (g)(2). Pub. L. 107–100, §2(a)(2), substituted "September 30, 2001" for "September 30, 2000", struck out "of not more than 1 percent per year" after "annually by the Administration,", and inserted "which amount may not exceed 1.38 percent per year, and" before "which shall be paid".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(9) [title IV, §404(a)], in introductory provisions, substituted "plus, for debentures obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this

chapter, which shall be paid to and retained by the Administration" for "plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration".

Subsec. (b)(2). Pub. L. 106-554, §1(a)(8) [§1(d)(1)], amended par. (2) generally, revising structure of par. from one consisting of introductory provisions and subpars. (A) to (D) to one consisting of subpars. (A) and (B), and adding subpar. (C).

Subsec. (b)(4)(D). Pub. L. 106-554, §1(a)(8) [§1(d)(2)], added subpar. (D).

Subsec. (g)(2). Pub. L. 106-554, §1(a)(9) [title IV, §404(b)], substituted "plus, for participating securities obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which shall be paid to and retained by the Administration" for "plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration".

Subsec. (g)(8). Pub. L. 106-554, §1(a)(9) [title IV, §405], substituted "subchapter S corporation" for "subchapter s corporation", "any time during any calendar quarter based on an" for "the end of any calendar quarter based on a quarterly", and "interim distributions for a calendar year," for "quarterly distributions for a calendar year,".

1999—Subsec. (g)(13). Pub. L. 106-9 struck out heading and text of par. (13). Text read as follows:

"(A) IN GENERAL.—Subject to the provisions of subparagraph (B), of the amount of the annual program level of participating securities approved in appropriations Acts, 50 percent shall be reserved for funding small business investment companies with private capital of not more than \$20,000,000.

"(B) EXCEPTION.—During the last quarter of each fiscal year, if the Administrator determines that there is a lack of qualified applicants with private capital of not more than \$20,000,000, the Administrator may utilize all or any part of the program level for securities reserved under subparagraph (A) for qualified applicants with private capital of more than \$20,000,000."

1997—Subsec. (b)(2)(D). Pub. L. 105-135, §215(b)(1)(A), added subpar. (D).

Subsec. (b)(4). Pub. L. 105-135, §215(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: "In no event shall the aggregate amount of outstanding leverage of any such company or companies which are commonly controlled as determined by the Administration exceed \$90,000,000, unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

Subsec. (d). Pub. L. 105-135, §215(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises."

Subsec. (g)(8). Pub. L. 105-135, §215(c), inserted at end "A company may also elect to make a distribution under this paragraph at the end of any calendar quarter based on a quarterly estimate of the maximum tax liability. If a company makes 1 or more quarterly distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed."

Subsec. (i). Pub. L. 105-135, §215(d), substituted "in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee" for ", payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee" before period at end.

1996—Subsec. (a). Pub. L. 104-208, §208(h)(1)(A)(i), substituted "securities," for "debenture bonds,".

Subsec. (b). Pub. L. 104-208, §208(d)(1), (6)(A), in first sentence struck out "(but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms)" after "is authorized" and in fifth sentence substituted "1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" for "1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes".

Subsec. (c). Pub. L. 104-208, §208(d)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text consisted of 7 pars. which authorized the Administration to purchase securities and to purchase or guarantee payments on debentures issued by small business investment companies operating under section 681(d) of this title.

Subsec. (d). Pub. L. 104-208, §208(d)(3), inserted heading and amended text of subsec. (d) generally. Prior

to amendment, text read as follows: "If the Administration guarantees debentures issued by a small business investment company operating under authority of section 681(d) of this title, it shall make, on behalf of the company payments in such amounts as will reduce the effective rate of interest to be paid by the company during the first five years of the term of such debentures to a rate of interest 3 points below the market rate of interest determined pursuant to section 6871 of this title. Such payments shall be made by the Administration to the holder of the debenture, its agents or assigns, or to the appropriate central registration agent, if any. The authority to reduce interest rates as provided in this subsection shall be limited to amounts provided in advance in appropriations Acts, and the total amount shall be reserved within the business loan and investment fund to pay an amount equal to the amount of the reduction as it becomes due."

Subsec. (e). Pub. L. 104-208, §208(d)(4)(A), inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows: "In determining the private capital of a small business investment company licensed under section 681(d) of this title and notwithstanding section 662(9) of this title, Federal, State, or local government funds received from sources other than the Administration shall be included solely for regulatory purposes, and not for the purpose of obtaining financial assistance from or licensing by the Administration, providing such funds were invested to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title."

Subsec. (f). Pub. L. 104-208, §208(h)(1)(A)(ii), added subsec. (f) and struck out former subsec. (f) which read as follows: "Notwithstanding the provisions of any other law, rule, or regulation, the Administration is authorized to allow the issuer of any preferred stock heretofore sold to the Administration to redeem or repurchase such stock upon the payment to the Administration of an amount less than the par value of such stock. The Administration, in its sole discretion, shall determine the repurchase price after considering factors including, but not limited to, the market value of the stock, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and the Administration's estimate of any anticipated redemption. The Administration may guarantee debentures as provided in paragraph (5) of subsection (c) of this section and allow the issuer to use the proceeds to make the payments authorized herein. Any monies received by the Administration from the repurchase of preferred stock shall be deposited in the business loan and investment fund and shall be available solely to provide assistance to companies operating under the authority of section 681(d) of this title, to the extent and in the amounts provided in advance in appropriations Acts."

Subsec. (g)(2). Pub. L. 104-208, §208(d)(6)(B), substituted "1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" for "1 per centum, plus, at the time the guarantee is issued, such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes, but not to exceed 2 per centum".

Subsec. (g)(4). Pub. L. 104-208, §208(d)(5), struck out "and maintain" after "shall invest".

Subsec. (g)(8). Pub. L. 104-208, §208(h)(1)(A)(iii), substituted "partners, shareholders, or members" for "partners or shareholders", "partner's, shareholder's, or member's" for "partner's or shareholder's", and "partner, shareholder, or member" for "partner or shareholder".

Subsecs. (i), (j). Pub. L. 104-208, §208(d)(6)(C), added subsecs. (i) and (j).

1994—Subsec. (g)(13). Pub. L. 103-403 added par. (13).

1992—Subsec. (b). Pub. L. 102-366, §402(1), inserted "or participating securities" after "debentures" in first and sixth sentences.

Subsec. (b)(1) to (4). Pub. L. 102-366, §402(2), added pars. (1) to (4) and struck out former pars. (1) to (3) which read as follows:

"(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private paid-in capital and paid-in surplus of such company. In no event shall the debentures guaranteed and outstanding under this subchapter of any such company or companies which are commonly controlled as determined by the Administration exceed \$35,000,000.

"(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 681(d) of this title, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of \$500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph

exceed \$35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

"(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection."

Subsec. (c). Pub. L. 102-366, §412(1), (2), struck out "preferred" before "securities" in first sentence and inserted at end "As used in this subsection, the term 'securities' means shares of nonvoting stock or other corporate securities or limited partnership interests which have similar characteristics."

Subsec. (c)(1). Pub. L. 102-366, §412(3), in introductory provisions substituted "such securities" for "shares of nonvoting stock (or other corporate securities having similar characteristics)".

Subsec. (c)(6). Pub. L. 102-366, §402(3), inserted before period at end ", except as provided in paragraph (7)".

Subsec. (c)(7). Pub. L. 102-366, §402(4), added par. (7).

Subsec. (e). Pub. L. 102-366, §413, inserted "licensed under section 681(d) of this title and notwithstanding section 662(9) of this title" after "company" and substituted "to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title." for "prior to November 21, 1989."

Subsecs. (g), (h). Pub. L. 102-366, §403, added subsecs. (g) and (h).

1990—Subsec. (b)(1). Pub. L. 101-574, §215(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed \$35,000,000."

Subsec. (c)(6). Pub. L. 101-574, §215(b)(1), inserted "under the provisions of this subchapter," after "debentures or securities".

Subsec. (d). Pub. L. 101-574, §215(b)(2), struck out after second sentence "The aggregate amount of debentures with interest rate reductions as provided in this subsection or as provided in section 687i of this title which may be outstanding at any time from any such company shall not exceed 200 per centum of the private paid-in capital and paid-in surplus of such company."

1989—Subsec. (c). Pub. L. 101-162 added subsec. (c) and struck out former subsec. (c) which contained provisions substantially similar to introductory provisions and pars. (1) to (4).

Subsecs. (d) to (f). Pub. L. 101-162 added subsecs. (d) to (f).

1978—Subsec. (c)(1). Pub. L. 95-507 increased the amount of preferred stock small business investment companies were authorized to sell to the Administration so long as such preferred stock leverage did not exceed 200 per centum of the qualified paid-in capital and so long as the amount of such stock purchased by the Administration was not greater in amount than the investment companies' outstanding equity investments and inserted definition of "equity securities".

1976—Subsec. (b)(1). Pub. L. 94-305, §104(a), substituted "300" for "200" and "\$35,000,000" for "\$15,000,000".

Subsec. (b)(2). Pub. L. 94-305, §104(b), substituted "400" for "300" and "\$35,000,000" for "\$20,000,000".

Subsec. (c)(2)(iii). Pub. L. 94-305, §104(c), substituted "400" for "300" and "300" for "200".

Subsec. (c)(4). Pub. L. 94-305, §104(c)(2), substituted "300" for "200".

1972—Subsec. (b)(1). Pub. L. 92-595, §2(c)(1), (2), substituted "combined private paid-in capital" for "combined paid-in capital" and "\$15,000,000" for "\$7,500,000".

Subsec. (b)(2). Pub. L. 92-595, §2(c)(3), substituted provisions relating to the purchase of debentures from companies not complying with section 681(d) of this title having investments or legal commitments of 65 per cent or more and whose combined private paid-in capital and paid-in surplus is \$500,000 or more for provisions relating to such purchase from companies having investments or legal commitments of 65 per cent or more and whose combined paid-in capital and paid-in surplus is \$1,000,000 or more, and increased the maximum amount of outstanding debentures from \$10,000,000 to \$20,000,000.

Subsec. (c). Pub. L. 92-595, §2(d), added subsec. (c).

1971—Subsec. (b). Pub. L. 92-213 inserted provision for a guaranty authority for the Administration and inserted requirement that such guaranty authority of the Administration be exercised only when authorized in appropriation Acts, authorized the purchase or guaranty on such terms as the Administration deems

appropriate pursuant to regulations issued by the Administration, pledged the full faith and credit of the United States to the payment of amounts required to be paid in full under such guaranty, and struck out provision authorizing Administration cooperation with banks or other lending institutions in the purchase of debentures.

1967—Subsec. (b). Pub. L. 90–104 substituted purchase of debenture provisions of former section 682(a) of this title for former provision for loans (eliminating participation on deferred (standby) basis), incorporated subordination provision of such former section 682(a) (inserting provision for Administration exercise of reasonable investment prudence and for consideration of financial soundness of the company), provided for maximum term of fifteen years, substituted rate of interest taking into consideration current average market yield on outstanding marketable Treasury obligations with remaining periods to maturity comparable to average maturities on such debentures, as adjusted plus charge toward cost of programs, for rate of interest not lower than average investment yield on marketable Treasury obligations outstanding at time of loan involved, and added pars. (1) to (3) and definition of venture capital, former par. (1) limiting Administration purchases of company obligations to 50 per centum of paid-in capital and surplus or \$4,000,000, whichever is less, and par. (2) requiring loans to be of such sound value as reasonably to assure repayment.

1964—Subsec. (b). Pub. L. 88–273 provided for participation loans by Administration with lending institutions on an immediate or deferred basis and for a minimum interest rate measured by the average investment yield on marketable obligations of the United States outstanding at the time of the loan involved, and designated existing provisions as clauses (1) and (2).

1961—Subsec. (b). Pub. L. 87–341 limited the Administration's authorization to lend funds to the extent that the funds are not available to the company involved from private sources on reasonable terms, and the total amount of obligations, including commitments to purchase such obligations, which can be purchased in any one company to not more than 50 percent of the paid-in capital and surplus or \$4,000,000, whichever is less, and inserted "All loans made by the Administration under this subsection shall be of such sound value as reasonably to assure repayment."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–100, §2(b), Dec. 21, 2001, 115 Stat. 966, provided that: "The amendments made by this section [amending this section] shall become effective on October 1, 2001."

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 1990 AMENDMENT

Pub. L. 101–574, title II, §215(a)(2), Nov. 15, 1990, 104 Stat. 2822, as amended by Pub. L. 102–140, title VI, §609(c), Oct. 28, 1991, 105 Stat. 825, provided that: "The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1992."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

REGULATIONS

Pub. L. 104–208, div. D, title II, §208(d)(4)(B), Sept. 30, 1996, 110 Stat. 3009–744, provided that:

"(i) **UNIFORM APPLICABILITY.**—Any regulation issued by the Administration to implement section 303(e) of the Small Business Investment Act of 1958 [15 U.S.C. 683(e)] that applies to any licensee with outstanding leverage obtained before the effective date of that regulation, shall apply uniformly to all licensees with outstanding leverage obtained before that effective date.

"(ii) **DEFINITIONS.**—For purposes of this subparagraph, the terms 'Administration', 'leverage' and 'licensee' have the same meanings as in section 103 of the Small Business Investment Act of 1958 [15 U.S.C. 662]."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§684. Equity capital for small-business concerns

(a) Function of investment companies

It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Conditions

Before any capital is provided to a small-business concern under this section—

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c) Repealed. Pub. L. 90-104, title II, §206, Oct. 11, 1967, 81 Stat. 271

(d) Direct or cooperative provision of capital

Equity capital provided to incorporated small business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

(Pub. L. 85-699, title III, §304, Aug. 21, 1958, 72 Stat. 693; Pub. L. 86-502, §6, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, §5, Oct. 3, 1961, 75 Stat. 752; Pub. L. 90-104, title II, §206, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92-595, §2(e), Oct. 27, 1972, 86 Stat. 1316.)

EDITORIAL NOTES

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-595 extended the function of small business investment companies to provide a source of equity capital to unincorporated business concerns.

1967—Subsec. (c). Pub. L. 90-104 repealed subsec. (c) which authorized purchase of stock of investment companies by small-business concerns in an amount equal to 5 per centum of capital provided.

1961—Subsec. (d). Pub. L. 87-341 added subsec. (d).

1960—Subsec. (a). Pub. L. 86-502 struck out "primary" before "function", and substituted "a source of equity capital for incorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration" for "a source of needed equity capital for small-business concerns in the manner and subject to the conditions described in this section".

Subsec. (b). Pub. L. 86-502 redesignated subsec. (c) as (b), and repealed former subsec. (b) which required capital to be secured only through the purchase of debenture bonds.

Subsecs. (c), (d). Pub. L. 86-502 redesignated subsec. (d) as (c), and substituted "such concern shall have the right, exercisable in whole or in such part as such concern may elect, to become a stockholder-proprietor by investing in the capital stock of the company 5 per centum" for "such concern shall be required to become a stockholder-proprietor of the company by investing in the capital stock of the company, in an amount equal to not less than 2 percent nor more than 5 percent". Former subsec. (c) redesignated (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

§685. Long-term loans to small-business concerns

(a) Authorization

Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

(b) Direct loans; loans on participation basis

Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.

(c) Maximum rate of interest

The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration: *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration.

(d) Maturity

Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Soundness of loan; security

Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Extension or renewal

Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the company finds that such extension or renewal will aid in the orderly liquidation of such loan.

(Pub. L. 85-699, title III, §305, Aug. 21, 1958, 72 Stat. 693; Pub. L. 87-341, §6, Oct. 3, 1961, 75 Stat. 753; Pub. L. 94-305, title I, §105, June 4, 1976, 90 Stat. 666; Pub. L. 102-366, title IV, §411, Sept. 4, 1992, 106 Stat. 1018.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 661 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-366 inserted before period at end "*Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration".

1976—Subsec. (b). Pub. L. 94-305 struck out provision that in agreements to participate in loans on a deferred basis, the participation by the company shall not be in excess of 90 percentum of the balance of the loan outstanding at the time of disbursement.

1961—Subsec. (b). Pub. L. 87-341 substituted "other lenders, incorporated or unincorporated" for "other lending institutions".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§686. Aggregate limitations on amount of assistance to any single enterprise

(a) Percentage limitation on private capital

If any small business investment company has obtained financing from the Administrator and such financing remains outstanding, the aggregate amount of securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not, without the approval of the Administrator, exceed 10 percent of the sum of—

(1) the private capital of such company; and

(2) the total amount of leverage projected by the company in the company's business plan that was approved by the Administrator at the time of the grant of the company's license.

(b) Repealed. Pub. L. 92-595, §2(f), Oct. 27, 1972, 86 Stat. 1316

(c) Application of provisions to commitments incurred prior to effective date of section

With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.

(Pub. L. 85-699, title III, §306, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87-341, §7(a), Oct. 3, 1961, 75 Stat. 753; Pub. L. 88-273, §4, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, §207, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92-595, §2(f), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 102-366, title IV, §408(a), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 111-5, div. A, title V, §505(b), Feb. 17, 2009, 123 Stat. 156.)

EDITORIAL NOTES

REFERENCES IN TEXT

For effective date of the Small Business Investment Act Amendments of 1967, referred to in subsec. (c), see Effective Date of 1967 Amendment note set out under section 681 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-5 amended subsec. (a) generally. Prior to amendment, text read as follows: "If any small business investment company has obtained financing from the Administration and such financing remains outstanding, the aggregate amount of obligations and securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration."

1992—Subsec. (a). Pub. L. 102-366 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this chapter for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company."

1972—Subsec. (a). Pub. L. 92-595, §2(f)(1), substituted "combined private paid-in capital" for "combined paid-in capital".

Subsec. (b). Pub. L. 92-595, §2(f)(2), repealed subsec. (b) which enumerated the items making up the combined paid-in capital and paid-in surplus of companies licensed prior to January 1, 1968.

1967—Subsec. (a). Pub. L. 90-104 substituted "paid-in capital and paid-in surplus of such company" for

"capital and surplus of such small business investment company authorized by this chapter".

Subsecs. (b), (c). Pub. L. 90–104 added subsecs. (b) and (c).

1964—Pub. L. 88–273 struck out the \$500,000 limitation on amount of assistance to any single enterprise.

1961—Pub. L. 87–341 inserted "or (2) \$500,000, whichever is the lesser".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective Jan. 1, 1968, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–341, §7(b), Oct. 3, 1961, 75 Stat. 753, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to obligations and securities acquired by a small business investment company on or after the date of the enactment of this Act [Oct. 3, 1961]; except that such amendment shall not apply with respect to any obligations or securities so acquired pursuant to a commitment issued before such date."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§687. Operation and regulation of companies

(a) Cooperation with banks and other financial institutions

Wherever practicable the operations of a small business investment company, including the generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this chapter may be handled through such banks or other investors or lenders on a fee basis. Any small business investment company may receive fees for services rendered to such banks and other investors and lenders.

(b) Use of advisory services; depository or fiscal agents; investment of funds

Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under provisions of this chapter. Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than 1 year after the date of the investment; or

(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).

(c) Rules and regulations

The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this chapter, in accordance with the purposes of this chapter.

(d) Forfeiture of rights, privileges, and franchises; jurisdiction

Should any small business investment company violate or fail to comply with any of the provisions of this chapter or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this chapter shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

(e) Liability of United States

Except as expressly provided otherwise in this chapter, nothing in this chapter or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligation entered into, or stocks issued, or commitments made, by any company operating under the provisions of this chapter.

(f) Performance of functions, powers, and duties by Administration and Administrator

In the performance of, and with respect to the functions, powers, and duties vested by this chapter, the Administrator and the Administration shall (in addition to any authority otherwise vested by this chapter) have the functions, powers, and duties set forth in the Small Business Act [15 U.S.C. 631 et seq.], and the provisions of sections 13 and 16 of that Act [15 U.S.C. 642, 645], insofar as applicable, are extended to the functions of the Administrator and the Administration under this chapter.

(g) Annual report on Small Business Investment activities

(1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], a full and detailed account of its operations under this chapter. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

(2) In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing and licensing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to improve the number of licensees in underlicensed States.

(D) The Administration's plans to support States that seek to increase the number of licensees in the State.

(E) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

(F) An accounting by the Office of Management and Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(G) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of

such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(H) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(I) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

(J) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

(K) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(L) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of title 26.

(3) In its annual report for the year ending on December 31, 1993, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include a full and detailed description or account relating to—

(A) the number of small business investment companies the Administration licensed, the number of licensees that have been placed in liquidation, and the number of licensees that have surrendered their licenses in the previous year, identifying the amount of government leverage each has received and the type of leverage instruments each has used;

(B) the amount of government leverage that each licensee received in the previous year and the types of leverage instruments each licensee used;

(C) for each type of financing instrument, the sizes, geographic locations, and other characteristics of the small business investment companies using them, including the extent to which the investment companies have used the leverage from each instrument to make small business loans, equity investments, or both;

(D) the frequency with which each type of investment instrument has been used in the current year and a comparison of the current year with previous years; and

(E) the geographic dispersion of licensees in each State compared to the population of the State, identifying underlicensed States.

(h) Certifications of eligibility

(1) Certification by small business concern

Prior to receiving financial assistance from a company licensed pursuant to section 681 of this title, a small business concern shall certify in writing that it meets the eligibility requirements of the Small Business Investment Company Program or the Specialized Small Business Investment Company Program, as applicable.

(2) Certification by company

Prior to providing financial assistance to a small business concern under this chapter, a company licensed pursuant to section 681 of this title shall certify in writing that it has reviewed the application for assistance of the small business concern and that all documentation and other information supports the eligibility of the applicant.

(3) Retention of certifications

Certificates made pursuant to paragraphs (1) and (2) shall be retained by the company licensed pursuant to section 681 of this title for the duration of the financial assistance.

(i) Interest rates

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation). In this paragraph, the term "interest" includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

(4)(A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

(Pub. L. 85-699, title III, §308, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87-341, §§8, 11(c)(d), Oct. 3, 1961, 75 Stat. 753, 756; Pub. L. 88-273, §5, Feb. 28, 1964, 78 Stat. 147; Pub. L. 89-779, §3, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 90-104, title II, §210, Oct. 11, 1967, 81 Stat. 271; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93-501, title II, §204, Oct. 29, 1974, 88 Stat. 1559; Pub. L. 95-507, title I, §102, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 96-104, title I, §104, Nov. 5, 1979, 93 Stat. 790; Pub. L. 96-161, title II, §204, Dec. 28, 1979, 93 Stat. 1236; Pub. L. 96-221, title V, §§524, 529, Mar. 31, 1980, 94 Stat. 166, 168; Pub. L. 99-226, §1, Dec. 28, 1985, 99 Stat. 1744; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-366, title IV, §§408(c), 417(a), Sept. 4, 1992, 106 Stat. 1016, 1019; Pub. L. 103-403, title II, §214, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104-208, div. D, title II, §208(e), (h)(1)(B), Sept. 30, 1996, 110 Stat. 3009-745, 3009-747; Pub. L. 106-9, §2(a), Apr. 5, 1999, 113 Stat. 17; Pub. L. 108-447, div. K, title II, §202, Dec. 8, 2004, 118 Stat. 3465; Pub. L. 115-333, §2(3), Dec. 19, 2018, 132 Stat. 4488.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) to (h), see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in subsec. (f), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (g)(2)(L), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

CODIFICATION

Section 204 of Pub. L. 96-161, cited as a credit to this section, was repealed by section 529 of Pub. L. 96-221 effective at the close of Mar. 31, 1980. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when the amendment was in effect in such State.

Section 104 of Pub. L. 96-104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Saving Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out under section 85 of Title 12, Banks and Banking.

Section 204 of Pub. L. 93-501, cited as a credit to this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96-104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96-104, set out under section 85 of Title 12, Banks and Banking.

AMENDMENTS

2018—Subsec. (g)(2)(B). Pub. L. 115-333, §2(3)(A)(i), inserted "and licensing" after "financing".

Subsec. (g)(2)(C) to (L). Pub. L. 115-333, §2(3)(A)(ii), (iii), added subpars. (C) and (D) and redesignated former subpars. (C) to (J) as (E) to (L), respectively.

Subsec. (g)(3)(E). Pub. L. 115-333, §2(3)(B), added subpar. (E).

2004—Subsec. (b). Pub. L. 108-447, which directed the amendment of section 308(b) of the Small Business Investment Act by substituting "Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—" and pars. (1) to (3) for last sentence, was executed to this section, which is section 308 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress. Prior to amendment, last sentence read as follows: "Such companies with outstanding financings are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions."

1999—Subsec. (i)(2). Pub. L. 106-9 inserted at end: "In this paragraph, the term 'interest' includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan."

1996—Subsec. (e). Pub. L. 104-208, §208(e), substituted "Except as expressly provided otherwise in this chapter, nothing" for "Nothing".

Subsec. (h). Pub. L. 104-208, §208(h)(1)(B), substituted "section 681 of this title" for "subsection (c) or (d) of section 681 of this title" in pars. (1) to (3).

1994—Subsec. (h). Pub. L. 103-403 added subsec. (h).

1992—Subsec. (b). Pub. L. 102-366, §408(c), inserted "with outstanding financings" after "Such companies" in third sentence.

Subsec. (g)(3). Pub. L. 102-366, §417(a), added par. (3).

1986—Subsec. (g)(2)(J). 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.

1985—Subsec. (i)(2). Pub. L. 99-226, §1(a), substituted "the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation)." for "the lowest of the rates described in subparagraphs (A), (B), and (C)" and struck out subpars. (A), (B), and (C) which described the rates.

Subsec. (i)(3). Pub. L. 99-226, §1(b), substituted "paragraph (2)" for "paragraph (2)(B)".

1980—Subsec. (h). Pub. L. 96–221, §529, repealed Pub. L. 96–104 and title II of Pub. L. 96–161, resulting in the striking out of subsec. (h) which related to the limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments. See subsec. (i) of this section for successor provisions. See also Codification and 1979 Amendment notes under this section.

Subsec. (i). Pub. L. 96–221, §524, added subsec. (i).

1979—Subsec. (h). Pub. L. 96–161 reenacted subsec. (h) [as added by Pub. L. 96–104] with three substitutions of dates: in par. (3)(A) "in the case of a State statute, July 1, 1980" was substituted for "July 1, 1981", in par. (3)(B) "December 28, 1979" was substituted for "November 5, 1979", and in par. (3)(C) "December 28, 1979" was substituted for "November 5, 1979".

Pub. L. 96–104 added subsec. (h). A prior subsec. (h), also relating to limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments, was repealed by section 1 of Pub. L. 96–104.

1978—Subsec. (b). Pub. L. 95–507 inserted provisions authorizing small business investment companies to invest funds not reasonably needed for their operations in certificates of deposit maturing within one year or less issued by particular insured institutions and savings accounts of institutions insured by the Federal Deposit Insurance Corporation.

1974—Subsec. (h). Pub. L. 93–501 added subsec. (h).

1967—Subsec. (g). Pub. L. 90–104 designated existing provisions as par. (1) and added par. (2).

1966—Subsec. (c). Pub. L. 89–779, §3(1), struck out provisions subjecting each small business investment company to examinations by examiners approved by the Administration and requiring the submission of reports by the companies. See section 687b(b) of this title.

Subsecs. (f), (g). Pub. L. 89–799, §3(2), added subsecs. (f) and (g).

1964—Subsec. (b). Pub. L. 88–273 authorized investment of funds in insured savings accounts (up to the amount of insurance) in institutions insured by the Federal Savings and Loan Insurance Corporation.

1961—Subsec. (a). Pub. L. 87–341, §8, substituted "investors or lenders" for "financial institutions" wherever appearing, and provided that these investors or lenders can be either incorporated or unincorporated.

Subsec. (b). Pub. L. 87–341, §11(c), substituted "operating under the provisions of this chapter" for "organized under this chapter".

Subsec. (e). Pub. L. 87–341, §11(d), redesignated subsec. (g) as (e), substituted "operating under the provisions of this chapter" for "organized under this chapter", and repealed former subsec. (e) which related to obtaining restraining orders against violators of this chapter.

Subsec. (f). Pub. L. 87–341, §11(d), repealed subsec. (f) which permitted small business investment companies to extend their corporate existence for a term of not more than 30 years. See subsec. (a) of section 681 of this title.

Subsec. (g). Pub. L. 87–341, §11(d), redesignated subsec. (g) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–226, §2, Dec. 28, 1985, 99 Stat. 1744, provided that: "This Act [amending this section] shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE DATE OF 1979 AMENDMENTS

Pub. L. 96–161, title II, §207, Dec. 28, 1979, 93 Stat. 1238, which provided that amendment by Pub. L. 96–161 was applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96–161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96–161, was repealed by Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168.

Pub. L. 96–104, title I, §107, Nov. 5, 1979, 93 Stat. 792, which provided that amendment by Pub. L. 96–104 was applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in

substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which prohibits the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96-161, title II, §212, Dec. 28, 1979, 93 Stat. 1239.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-501, title II, §206, Oct. 29, 1974, 88 Stat. 1560, which provided that amendment by Pub. L. 93-501 was applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

SAVINGS PROVISION

Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided in part that, notwithstanding the repeal of Pub. L. 96-104 and title II of Pub. L. 96-161, the provisions of subsec. (h) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96-221, section 1735f-7a of Title 12, Banks and Banking, or any other provisions of law, including section 85 of Title 12, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96-221, set out as a note under section 1735f-7a of Title 12.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Pub. L. 96-161, title II, §213, Dec. 28, 1979, 93 Stat. 1240, provided that the provisions of title II of Pub. L. 96-161, which amended this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

DEFINITION OF "STATE"

For purposes of subsec. (i) of this section, the term "State" to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96-221, set out as a note under section 1735f-7a of Title 12, Banks and Banking.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Bureau of the Budget designated as Office of Management and Budget and Offices of Director, Deputy Director, and Assistant Directors of Bureau of the Budget designated Director, Deputy Director, and Assistant Directors of Office of Management and Budget, respectively. Records, property, personnel, and funds of Bureau of the Budget transferred to Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

§687a. Revocation and suspension of licenses; cease and desist orders

(a) Grounds for suspension or revocation

A license may be revoked or suspended by the Administration—

- (1) for false statements knowingly made in any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administration;
- (2) if any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;
- (3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this chapter;
- (4) for willful or repeated violation of, or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this chapter; or
- (5) for violation of, or failure to observe, any cease and desist order issued by the Administration under this section.

(b) Grounds for cease and desist order

Where a licensee or any other person has not complied with any provision of this chapter, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such chapter or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with this chapter and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Order to show cause; contents; hearing; issuance and service

Before revoking or suspending a license pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) Subpena of person, and books, papers and documents; fees and mileage; enforcement

The Administration may require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

(e) Petition to modify or set aside order; filing, time and place, Administration to submit record; action of court; review

An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued, appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the

expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(f) Enforcement of order

If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) for applications to set aside or modify orders.

(Pub. L. 85-699, title III, §309, as added Pub. L. 87-341, §9, Oct. 3, 1961, 75 Stat. 753; amended Pub. L. 89-779, §4, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 98-620, title IV, §402(15)(A), (B), Nov. 8, 1984, 98 Stat. 3358.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a)(3), (4) and (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620, §402(15)(A), struck out provision that the proceedings in such cases in the court of appeals had to be made a preferred cause and had to be expedited in every way.

Subsec. (f). Pub. L. 98-620, §402(15)(B), struck out provision that the proceedings in such cases had to be made a preferred cause and expedited in every way.

1966—Subsec. (a). Pub. L. 89-779, §4(b), inserted reference to revocation in introductory text preceding par. (1), and, in pars. (1) and (2), deleted restriction which limited the grounds for suspension or revocation for false or misleading statements to the situation in which such statements were made for the purpose of obtaining a license.

Subsec. (b). Pub. L. 89-779, §4(c), expanded the Administration's authority to issue cease and desist orders by authorizing their issuance against individuals who have not complied with provisions of this chapter and against both licensees and individuals who have violated or are about to violate this chapter or regulations issued pursuant thereto.

Subsec. (c). Pub. L. 89-779, §4(d), inserted references to persons involved other than the licensee and to the revocation of licenses so as to conform the subsec. to the expansion of the Administration's authority to

revoke licenses and to issue cease and desist orders to persons other than licensees under subsecs. (a) and (b).

Subsec. (e). Pub. L. 89-779, §4(e), authorized the appeal from an order issued by the Administration under this section by other persons, besides the licensee, against whom an order is issued.

Subsec. (f). Pub. L. 89-779, §4(f), provided that individuals as well as licensees are to be affected by subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§687b. Investigations and examinations; power to subpoena and take oaths and affirmations; aid of courts; examiners; reports

(a) Investigation of violations

The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(b) Examinations and reports

Each small business investment company shall be subject to examinations made by direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] to the extent necessary to avoid duplication in reporting requirements.

(c) Examinations of small business investment companies

Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not—

- (1) it has engaged solely in lawful activities and those contemplated by this subchapter;
- (2) it has engaged in prohibited conflicts of interest;
- (3) it has acquired or exercised illegal control of an assisted small business;
- (4) it has made investments in small businesses for not less than 1 year;
- (5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable;
- (6) it has engaged in relending, foreign investments, or passive investments; or
- (7) it has charged an interest rate in excess of the maximum permitted by law:

Provided, That the Administration may waive the examination (A) for up to one additional year if, in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior operating experience of the company, the contents and results of the last examination and the management expertise of the company, or (B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

(d) Valuations

(1) Frequency of valuations

(A) In general

Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

(B) Material adverse changes

Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) Independent certification

(i) In general

Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) Audit requirements

Each audit conducted under clause (i) shall include—

- (I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and
- (II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) Valuation criteria

Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

- (A) be established or approved by the Administrator; and
- (B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.

(Pub. L. 85–699, title III, §310, as added Pub. L. 87–341, §9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89–779, §5, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 90–104, title II, §208, Oct. 11, 1967, 81 Stat. 271; Pub. L. 100–590, title I, §104, Nov. 3, 1988, 102 Stat. 2992; Pub. L. 102–366, title IV, §§406(b), 407(a), 408(b), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 104–208, div. D, title II, §208(f),

(h)(1)(C), Sept. 30, 1996, 110 Stat. 3009–745, 3009–747; Pub. L. 105–135, title II, §216, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, §1(a)(9) [title IV, §406], Dec. 21, 2000, 114 Stat. 2763, 2763A–691.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106–554 substituted "1 year" for "five years".

1997—Subsec. (b). Pub. L. 105–135 inserted after first sentence "Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities."

1996—Subsec. (b). Pub. L. 104–208, §208(f)(1), inserted "which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations," after "Investment Division of the Administration," in first sentence.

Subsec. (c)(4). Pub. L. 104–208, §208(h)(1)(C), struck out "not less than four years in the case of section 301(d) licensees and in all other cases," after "small businesses for".

Subsec. (d). Pub. L. 104–208, §208(f)(2), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: *Provided*, That any company which does not have outstanding financial assistance under the provisions of this subchapter shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise."

1992—Subsec. (b). Pub. L. 102–366, §407(a), substituted "Investment Division of" for "Administration by examiners selected or approved by".

Subsec. (c)(5). Pub. L. 102–366, §408(b), inserted before semicolon at end ", if such restriction is applicable".

Subsec. (d). Pub. L. 102–366, §406(b), added subsec. (d).

1988—Subsec. (b). Pub. L. 100–590 struck out second sentence, which read as follows: "Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership."

Subsec. (c). Pub. L. 100–590 added subsec. (c).

1967—Subsec. (b). Pub. L. 90–104 required at least annual examination of small business investment companies but provided for waiver of examination of a company whose operations have been suspended because the company is involved in litigation or is in receivership.

1966—Pub. L. 89–779 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

TRANSFER OF RESOURCES

Pub. L. 102-366, title IV, §407(b), Sept. 4, 1992, 106 Stat. 1016, provided that: "Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 [15 U.S.C. 687b] shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration."

§687c. Injunctions and other orders

(a) Grounds; jurisdiction of court

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Equity jurisdiction of licensee and assets thereof

In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Trusteeship or receivership over licensee

The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85-699, title III, §311, as added Pub. L. 87-341, §9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89-779, §6, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 98-620, title IV, §402(15)(C), Nov. 8, 1984, 98 Stat. 3358.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision that the proceedings in such a case had to be made a preferred cause and had to be expedited in every way.

1966—Subsec. (c). Pub. L. 89-779 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§687d. Conflicts of interest

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders, partners, or members of either, or to the purposes of this chapter, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, partner, or member of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure necessary to the purposes of this section.

(Pub. L. 85–699, title III, §312, as added Pub. L. 88–273, §6(a), Feb. 28, 1964, 78 Stat. 147; amended Pub. L. 94–305, title I, §106(f), June 4, 1976, 90 Stat. 666; Pub. L. 104–208, div. D, title II, §208(h)(1)(D), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 107–100, §3, Dec. 21, 2001, 115 Stat. 966.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107–100 struck out "(including disclosure in the locality most directly affected by the transaction)" after "public disclosure".

1996—Pub. L. 104–208, §208(h)(1)(D), substituted "shareholders, partners, or members" for "shareholders or partners" and substituted "shareholder, partner, or member" for "shareholder, or partner" in two places.

1976—Pub. L. 94–305, §106(f)(2), which directed the substitution of "shareholder, or partner" for "or shareholders" wherever appearing, was executed by making the substitution for "or shareholder" in two places to reflect the probable intent of Congress.

Pub. L. 94–305, §106(f)(1), inserted "or partners" after "to the shareholders".

§687e. Removal or suspension of management officials

(a) Definition of "management official"

In this section, the term "management official" means an officer, director, general partner, manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee.

(b) Removal of management officials

(1) Notice of removal

The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator—

(A) such management official—

(i) has willfully and knowingly committed any substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter; or

(III) a cease-and-desist order which has become final; or

(ii) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of a fiduciary duty of that person as a management official; and

(B) the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(2) Contents of notice

A notice of intention to remove a management official, as provided in paragraph (1), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon.

(3) Hearings

(A) Timing

A hearing described in paragraph (2) shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

- (i) the management official, and for good cause shown; or
- (ii) the Attorney General of the United States.

(B) Consent

Unless the management official shall appear at a hearing described in this paragraph in person or by a duly authorized representative, that management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

(4) Issuance of order of removal

(A) In general

In the event of consent under paragraph (3)(B), or if upon the record made at a hearing described in this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(B) Effectiveness

An order under subparagraph (A) shall—

- (i) become effective at the expiration of 30 days after the date of service upon the subject licensee and the management official concerned (except in the case of an order issued upon consent as described in paragraph (3)(B), which shall become effective at the time specified in such order); and
- (ii) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(c) Authority to suspend or prohibit participation

(1) In general

The Administrator may, if the Administrator deems it necessary for the protection of the licensee or the interests of the Administration, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of the licensee, or both, any management official referred to in subsection (b)(1), by written notice to such effect served upon the management official.

(2) Effectiveness

A suspension or prohibition under paragraph (1)—

- (A) shall become effective upon service of notice under paragraph (1); and

(B) unless stayed by a court in proceedings authorized by paragraph (3), shall remain in effect—

- (i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b); and
- (ii) until such time as the Administrator shall dismiss the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(3) Judicial review

Not later than 10 days after any management official has been suspended from office or prohibited from participation in the management or conduct of the affairs of a licensee, or both, under paragraph (1), that management official may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under subsection (b), and such court shall have jurisdiction to stay such action.

(d) Authority to suspend on criminal charges

(1) In general

Whenever a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon that management official, suspend that management official from office or prohibit that management official from further participation in any manner in the management or conduct of the affairs of the licensee, or both.

(2) Effectiveness

A suspension or prohibition under paragraph (1) shall remain in effect until the subject information, indictment, or complaint is finally disposed of, or until terminated by the Administrator.

(3) Authority upon conviction

If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, then at such time as the judgment is not subject to further appellate review, the Administrator may issue and serve upon the management official an order removing that management official, which removal shall become effective upon service of a copy of the order upon the licensee.

(4) Authority upon dismissal or other disposition

A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from thereafter instituting proceedings to suspend or remove the management official from office, or to prohibit the management official from participation in the management or conduct of the affairs of the licensee, or both, pursuant to subsection (b) or (c).

(e) Notification to licensees

Copies of each notice required to be served on a management official under this section shall also be served upon the interested licensee.

(f) Procedural provisions; judicial review

(1) Hearing venue

Any hearing provided for in this section shall be—

- (A) held in the Federal judicial district or in the territory in which the principal office of the licensee is located, unless the party afforded the hearing consents to another place; and
- (B) conducted in accordance with the provisions of chapter 5 of title 5.

(2) Issuance of orders

After a hearing provided for in this section, and not later than 90 days after the Administrator has notified the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section.

(3) Authority to modify orders

The Administrator may modify, terminate, or set aside any order issued under this section—

(A) at any time, upon such notice, and in such manner as the Administrator deems proper, unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4)(B), and thereafter until the record in the proceeding has been filed in accordance with paragraph (4)(C); and

(B) upon such filing of the record, with permission of the court.

(4) Judicial review

(A) In general

Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

(B) Petition for review

Any party to a hearing provided for in this section may obtain a review of any order issued pursuant to paragraph (2) (other than an order issued with the consent of the management official concerned, or an order issued under subsection (d)), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service of such order, a written petition praying that the order of the Administrator be modified, terminated, or set aside.

(C) Notification to administration

A copy of a petition filed under subparagraph (B) shall be forthwith transmitted by the clerk of the court to the Administrator, and thereupon the Administrator shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(D) Court jurisdiction

Upon the filing of a petition under subparagraph (A)—

(i) the court shall have jurisdiction, which, upon the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator, except as provided in the last sentence of paragraph (3)(B);

(ii) review of such proceedings shall be had as provided in chapter 7 of title 5; and

(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28.

(E) Judicial review not a stay

The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

(Pub. L. 85–699, title III, §313, as added Pub. L. 89–779, §7, Nov. 6, 1966, 80 Stat. 1360; amended Pub. L. 107–100, §5, Dec. 21, 2001, 115 Stat. 967.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b)(1)(A)(i)(I), (II), see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107–100 amended section catchline and text generally. Prior to amendment, text related to removal and suspension of directors and officers of licensees, with regard to written notice of intention to remove and grounds for removal; suspension pending completion of administrative proceedings; a hearing upon notice of intention to remove a director or officer and issuance of an order of removal; a stay of suspension and/or prohibition by a United States district court; suspension of directors and officers charged with felonies involving dishonesty or breach of trust; and procedural aspects of hearings provided for in this section.

§687f. Unlawful acts and omissions by officers, directors, employees, or agents

(a) Violation by licensee deemed violation by persons participating

Wherever a licensee violates any provision of this chapter or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) Breach of fiduciary duty

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Disqualification of officers and employees for dishonesty, fraud, or breach of trust

Except with the written consent of the Administration, it shall be unlawful—

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if—

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, §314, as added Pub. L. 89–779, §7, Nov. 6, 1966, 80 Stat. 1363.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§687g. Penalties and forfeitures

(a) Report violations

Except as provided in subsection (b) of this section, a licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 687b(b) of this title, shall forfeit and pay to the United States a civil penalty of not more than \$100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

(b) Exemption from reporting requirements

The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85-699, title III, §315, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1364.)

§687h. Jurisdiction and service of process

Any suit or action brought under section 687, 687a, 687c, 687e, or 687g of this title by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this chapter, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

(Pub. L. 85-699, title III, §316, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1364.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 661 of this title.

§§687i, 687j. Repealed. Pub. L. 104-208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009-747

Section 687i, Pub. L. 85-699, title III, §317, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316; amended Pub. L. 95-507, title I, §103, Oct. 24, 1978, 92 Stat. 1758, established effective rate of interest of debentures purchased by Administration from small business investment company under authority of section 683(c) of this title.

Section 687j, Pub. L. 85-699, title III, §318, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316, authorized Administration to extend benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which was owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by Administration.

§687k. Guaranteed obligations not eligible for purchase by Federal Financing

Bank

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

- (1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this subchapter,
- (2) any obligation which is an interest in any obligation described in paragraph (1), or
- (3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title III, §318, formerly §320, as added Pub. L. 99–272, title XVIII, §18004(a), Apr. 7, 1986, 100 Stat. 364; renumbered §318, Pub. L. 104–208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 318 of Pub. L. 85–699 was classified to section 687j of this title, prior to repeal by Pub. L. 104–208.

§687l. Issuance and guarantee of trust certificates

(a) Issuance; debentures or participating securities composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies and guaranteed by the Administration under this chapter, or participating securities which are issued by such companies and purchased and guaranteed pursuant to section 683(g) of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures or guaranteed participating securities.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures or redemption, whether voluntary or involuntary, of all participating securities residing in the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect a fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the

Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures or participating securities

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers

(1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.

(2) The Administrator shall contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) Prior to any sale, the Administrator shall require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument.

(4) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

(5) Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85–699, title III, §319, formerly §321, as added Pub. L. 99–272, title XVIII, §18005(a), Apr. 7, 1986, 100 Stat. 364; amended Pub. L. 101–162, title V, (5), Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102–366, title IV, §404, Sept. 4, 1992, 106 Stat. 1013; renumbered §319 and amended Pub. L. 104–208, div. D, title II, §§205(b), 208(h)(1)(E), (F), Sept. 30, 1996, 110 Stat. 3009–738, 3009–747.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (f)(2), see References in Text note set out under section 661 of this title.

PRIOR PROVISIONS

A prior section 319 of Pub. L. 85–699, which amended section 80a–18 of this title, was renumbered section 317.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, §208(h)(1)(F)(i), struck out ", including companies operating under the authority of section 681(d) of this title," after "investment companies".

Subsec. (f)(1). Pub. L. 104–208, §205(b)(1), struck out at end "Such central registration shall include with respect to each sale—

- "(A) identification of each small business investment company;
- "(B) the interest rate or prioritized payment rate paid by the small business investment company;
- "(C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;
- "(D) identification of each purchaser of the trust certificate;
- "(E) the price paid by the purchaser for the trust certificate;
- "(F) the interest rate on the trust certificate;
- "(G) the fee of any agent for carrying out the functions described in paragraph (2); and
- "(H) such other information as the Administration deems appropriate."

Subsec. (f)(2). Pub. L. 104–208, §208(h)(1)(F)(ii), inserted "or investments in obligations of the United States" after "accounts".

Subsec. (f)(5). Pub. L. 104–208, §205(b)(2), added par. (5).

1992—Pub. L. 102–366 amended section generally, in subsec. (a) authorizing issuance of trust certificates representing ownership of participating securities, in subsec. (b) inserting provisions authorizing Administration to guarantee payment of redemption price of and priority payments on participating securities, in subsec. (e)(2) including participating securities within prohibition against preclusion or limitation of Administration's ownership rights, and in subsec. (f) in par. (1) substituting provisions relating to small business investment company for provisions relating to development company and requiring prioritized payment rate to be included in central registration requirements, and in par. (2) inserting provisions relating to participating securities, contracts to carry out pooling, and maintenance of commercial bank accounts.

1989—Subsec. (a). Pub. L. 101–162 inserted ", including companies operating under the authority of section 681(d) of this title," after "investment companies".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 205 of Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Amendment by section 208 of Pub. L. 104–208 effective Sept. 30, 1996, see section 208(j) of Pub. L. 104–208, set out as a note under section 634 of this title.

REGULATIONS

Pub. L. 99–272, title XVIII, §18005(b), Apr. 7, 1986, 100 Stat. 365, provided that:

"(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 321(f)(1) of the Small Business Investment Act [15 U.S.C. 6871(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in sections 321(f)(2) and 321(f)(3) of such Act.

"(2) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 [section 321; 15 U.S.C. 6871] of the Small Business Investment Act."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§687m. Periodic issuance of guarantees and trust certificates

The Administration shall issue guarantees under section 683 of this title and trust certificates under section 687l of this title at periodic intervals of not less than every 12 months and shall do so at such shorter intervals as its ¹deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

(Pub. L. 85–699, title III, §320, formerly §322, as added Pub. L. 100–590, title I, §106(a), Nov. 3, 1988, 102 Stat. 2993; renumbered §320 and amended Pub. L. 104–208, div. D, title II, §208(h)(1)(E), (G), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 105–135, title II, §215(e), Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–9, §2(d)(2), Apr. 5, 1999, 113 Stat. 18.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 320 of Pub. L. 85–699 was renumbered section 318 and is classified to section 687k of this title.

AMENDMENTS

1999—Pub. L. 106–9 substituted "12 months" for "6 months".

1997—Pub. L. 105–135 substituted "6 months" for "three months".

1996—Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 687l of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

¹ So in original. Probably should be "it".

§688. Repealed. Pub. L. 87–341, §11(e), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85–699, title III, §309, Aug. 21, 1958, 72 Stat. 696, related to approval of State chartered investment companies. See subsec. (a) of section 681 of this title.

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

§689. Definitions

In this part, the following definitions apply:

(1) Developmental venture capital

The term "developmental venture capital" means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term "equity capital" has the same meaning given such term in section 683(g)(4) of this title.

(2) Low-income individual

The term "low-income individual" means an individual whose income (adjusted for family size) does not exceed—

- (A) for metropolitan areas, 80 percent of the area median income; and
- (B) for nonmetropolitan areas, the greater of—
 - (i) 80 percent of the area median income; or
 - (ii) 80 percent of the statewide nonmetropolitan area median income.

(3) Low-income geographic area

the ¹ term "low-income geographic area" means—

(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

- (i) the poverty rate for that census tract is not less than 20 percent;
- (ii) in the case of a tract—

(I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

(II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

(B) any area located within—

(i) a HUBZone (as defined in section 632(p) ² of this title and the implementing regulations issued under that section);

(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

(4) New Markets Venture Capital company

The term "New Markets Venture Capital company" means a company that—

(A) has been granted final approval by the Administrator under section 689c(e) of this title; and

(B) has entered into a participation agreement with the Administrator.

(5) Operational assistance

The term "operational assistance" means management, marketing, and other technical assistance that assists a small business concern with business development.

(6) Participation agreement

The term "participation agreement" means an agreement, between the Administrator and a company granted final approval under section 689c(e) of this title, that—

(A) details the company's operating plan and investment criteria; and

(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

(7) Specialized small business investment company

The term "specialized small business investment company" means any small business investment company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and

(C) was licensed under section 681(d) of this title, as in effect before September 30, 1996.

(8) State

The term "State" means such ³ of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 85–699, title III, §351, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–653.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 632(p) of this title, referred to in par. (3)(B)(i), was redesignated section 657a(b) of this title by Pub. L. 115–91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795.

¹ So in original. Probably should be capitalized.

² See References in Text note below.

³ So in original. Probably should be "each".

§689a. Purposes

The purposes of the New Markets Venture Capital Program established under this part are—

(1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

(A) to enter into participation agreements with New Markets Venture Capital companies;

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas; and

(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, §352, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§689b. Establishment

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 689c(e) of this title for the purposes set forth in section 689a of this title;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 689d of this title; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 689g of this title.

(Pub. L. 85–699, title III, §353, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§689c. Selection of New Markets Venture Capital companies

(a) Eligibility

A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

(1) the company is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) the company has a management team with experience in community development financing or relevant venture capital financing; and

(3) the company has a primary objective of economic development of low-income geographic

areas.

(b) Application

To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) shall submit an application to the Administrator that includes—

- (1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;
- (2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;
- (3) a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;
- (4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;
- (5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;
- (6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;
- (7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and
- (8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b), the Administrator shall, in accordance with this subsection, conditionally approval ¹ companies to participate in the New Markets Venture Capital Program.

(2) Selection criteria

In selecting companies under paragraph (1), the Administrator shall consider the following:

- (A) The likelihood that the company will meet the goal of its business plan.
- (B) The experience and background of the company's management team.
- (C) The need for developmental venture capital investments in the geographic areas in which the company intends to invest.
- (D) The extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest.
- (E) The likelihood that the company will be able to satisfy the conditions under subsection (d).
- (F) The extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest.
- (G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.
- (H) Any other factors deemed appropriate by the Administrator.

(3) Nationwide distribution

The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

(d) Requirements to be met for final approval

The Administrator shall grant each conditionally approved company a period of time, not to

exceed 2 years, to satisfy the following requirements:

(1) Capital requirement

Each conditionally approved company shall raise not less than \$5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(2) Nonadministration resources for operational assistance

(A) In general

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); and

(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

(ii) shall have purchased an annuity—

(I) from an insurance company acceptable to the Administrator;

(II) using funds (other than the funds raised under paragraph (1)), from any source other than the Administrator; and

(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

(C) Limitation

In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c), either—

(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85–699, title III, §354, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

¹ So in original. Probably should be "approve".

§689d. Debentures

(a) In general

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee

(1) In general

Under this section, the Administrator may guarantee the debentures issued by a New Markets Venture Capital company only to be ¹ extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

(e) Investment limitations

(1) Definition

In this subsection, the term "covered New Markets Venture Capital company" means a New Markets Venture Capital company—

(A) granted final approval by the Administrator under section 689c(e) of this title on or after March 1, 2002; and

(B) that has obtained a financing from the Administrator.

(2) Limitation

Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this subchapter for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

(A) the regulatory capital of the covered New Markets Venture Capital company; and

(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.

(Pub. L. 85–699, title III, §355, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–658; amended Pub. L. 111–240, title I, §1115, Sept. 27, 2010, 124 Stat. 2508.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–240 added subsec. (e).

¹ So in original. Probably should be "the".

§689e. Issuance and guarantee of trust certificates

(a) Issuance

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee

(1) In general

The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) Subrogation and ownership rights

(1) Subrogation

In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration

(1) Registration

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions

(A) In general

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85–699, title III, §356, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–658.)

§689f. Fees

Except as provided in section 689e(d) of this title, the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

(Pub. L. 85–699, title III, §357, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–660.)

§689g. Operational assistance grants

(a) In general

(1) Authority

In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grants to specialized small business investment companies

(A) Authority

In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) Use of funds

The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

(C) Submission of plans

A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) Grant amount

(A) New Markets Venture Capital companies

The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under section 689c(d)(2) of this title.

(B) Other entities

The amount of a grant made under this subsection to any entity other than a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Market Venture Capital companies set forth in section 689c(d)(2) of this title.

(5) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a ¹ cash or in kind), other than ² those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

(Pub. L. 85–699, title III, §358, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–660.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of the New Markets Venture Capital Program Act of 2000, referred to in subsec. (a)(3)(A), (B), probably means the date of enactment of section 1 of H.R. 5663, as enacted by Pub. L. 106–554, §1(a)(8), which was approved Dec. 21, 2000.

¹ *So in original. The article probably should not appear.*

² *So in original. Probably should be "than".*

§689h. Bank participation

(a) In general

Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) Limitation

No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85–699, title III, §359, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§689i. Federal Financing Bank

Section 687k of this title shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

(Pub. L. 85–699, title III, §360, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§689j. Reporting requirement

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

(Pub. L. 85–699, title III, §361, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§689k. Examinations

(a) In general

Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the

Small Business Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) ¹ Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(d) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

(Pub. L. 85-699, title III, §362, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-662.)

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

§689. Injunctions and other orders

(a) In general

Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Jurisdiction

In any proceeding under subsection (a), the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Market Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Administrator as trustee or receiver

(1) Authority

The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

(2) Appointment

Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85–699, title III, §363, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–662.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§689m. Additional penalties for noncompliance

(a) In general

With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this chapter, of any regulation issued under this chapter, or of any participation agreement entered into under this chapter, the Administrator may in accordance with this section—

- (1) void the participation agreement between the Administrator and the company; and
- (2) cause the company to forfeit all of the rights and privileges derived by the company from this chapter.

(b) Adjudication of noncompliance

(1) In general

Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a), a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

(2) Parties authorized to file causes of action

Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

(Pub. L. 85–699, title III, §364, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§689n. Unlawful acts and omissions; breach of fiduciary duty

(a) Parties deemed to commit a violation

Whenever any New Markets Venture Capital company violates any provision of this chapter, of a regulation issued under this chapter, or of a participation agreement entered into under this chapter, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) Fiduciary duties

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) Unlawful acts

Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person ¹ continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, §365, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

¹ *So in original. Probably should be followed by "to".*

§689o. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

(Pub. L. 85–699, title III, §366, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§689p. Regulations

The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, §367, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§689q. Authorization of appropriations

(a) In general

There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

- (1) Such subsidy budget authority as may be necessary to guarantee \$150,000,000 of debentures under this part.
- (2) \$30,000,000 to make grants under this part.

(b) Funds collected for examinations

Funds deposited under section 689k(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 689k of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, §368, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

PART C—RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM

§690. Definitions

In this part:

(1) Operational assistance

The term "operational assistance" means management, marketing, and other technical assistance that assists a small business concern with business development.

(2) Participation agreement

The term "participation agreement" means an agreement, between the Administrator and a company granted final approval under section 690c(e) of this title, that—

- (A) details the operating plan and investment criteria of the company; and
- (B) requires the company to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(3) Renewable energy

The term "renewable energy" means energy derived from resources that are regenerative or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels.

(4) Renewable Fuel Capital Investment company

The term "Renewable Fuel Capital Investment company" means a company—

- (A) that—
 - (i) has been granted final approval by the Administrator under section 690c(e) of this title; and
 - (ii) has entered into a participation agreement with the Administrator; or
- (B) that has received conditional approval under section 690c(c) of this title.

(5) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(6) Venture capital

The term "venture capital" means capital in the form of equity capital investments, as that term

is defined in section 683(g)(4) of this title.

(Pub. L. 85–699, title III, §381, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1774.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Part effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§690a. Purposes

The purposes of the Renewable Fuel Capital Investment Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged ¹ such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with Renewable Fuel Capital Investment companies;

(B) to guarantee debentures of Renewable Fuel Capital Investment companies to enable each such company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

(C) to make grants to Renewable Fuel Investment Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, §382, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1775.)

¹ *So in original. Probably should be followed by "in".*

§690b. Establishment

The Administrator shall establish a Renewable Fuel Capital Investment Program, under which the Administrator may—

(1) enter into participation agreements for the purposes described in section 690a of this title; and

(2) guarantee the debentures issued by Renewable Fuel Capital Investment companies as provided in section 690d of this title.

(Pub. L. 85–699, title III, §383, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1776.)

§690c. Selection of Renewable Fuel Capital Investment companies

(a) Eligibility

A company is eligible to apply to be designated as a Renewable Fuel Capital Investment company

if the company—

- (1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;
- (2) has a management team with experience in alternative energy financing or relevant venture capital financing; and
- (3) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(b) Application

A company desiring to be designated as a Renewable Fuel Capital Investment company shall submit an application to the Administrator that includes—

- (1) a business plan describing how the company intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;
- (2) information regarding the relevant venture capital qualifications and general reputation of the management of the company;
- (3) a description of how the company intends to seek to address the unmet capital needs of the smaller enterprises served;
- (4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;
- (5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;
- (6) a description of whether and to what extent the company meets the criteria under subsection (c)(2) and the objectives of the program established under this part;
- (7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the business plan of the company; and
- (8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b), the Administrator shall conditionally approve companies to operate as Renewable Fuel Capital Investment companies.

(2) Selection criteria

In conditionally approving companies under paragraph (1), the Administrator shall consider—

- (A) the likelihood that the company will meet the goal of its business plan;
- (B) the experience and background of the management team of the company;
- (C) the need for venture capital investments in the geographic areas in which the company intends to invest;
- (D) the extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest;
- (E) the likelihood that the company will be able to satisfy the conditions under subsection (d);
- (F) the extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest;
- (G) the strength of the proposal by the company to provide operational assistance under this part as the proposal relates to the ability of the company to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or contractors; and
- (H) any other factor determined appropriate by the Administrator.

(3) Nationwide distribution

From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least one company from each geographic region of the Administration.

(d) Requirements to be met for final approval

(1) In general

The Administrator shall grant each conditionally approved company 2 years to satisfy the requirements of this subsection.

(2) Capital requirement

Each conditionally approved company shall raise not less than \$3,000,000 of private capital or binding capital commitments from 1 or more investors (which shall not be departments or agencies of the Federal Government) who meet criteria established by the Administrator.

(3) Nonadministration resources for operational assistance

(A) In general

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company shall have binding commitments (for contribution in cash or in-kind)—

- (i) from sources other than the Administration that meet criteria established by the Administrator; and
- (ii) payable or available over a multiyear period determined appropriate by the Administrator (not to exceed 10 years).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

- (i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and
- (ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph ¹ (A).

(C) Limitation

The total amount of a ² in-kind contributions by a company shall be not more than 50 percent of the total contributions by a company.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

- (1) grant final approval to the applicant to operate as a Renewable Fuel Capital Investment company under this part and designate the applicant as such a company, if the applicant—
 - (A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and
 - (B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in paragraph (1) of that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85–699, title III, §384, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1776.)

¹ *So in original. Probably should be "subparagraph".*

² *So in original. The article probably should not appear.*

§690d. Debentures

(a) In general

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any Renewable Fuel Capital Investment company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it determines appropriate, except that—

- (1) the term of any debenture guaranteed under this section shall not exceed 15 years; and
- (2) a debenture guaranteed under this section—
 - (A) shall carry no front-end or annual fees;
 - (B) shall be issued at a discount;
 - (C) shall require no interest payments during the 5-year period beginning on the date the debenture is issued;
 - (D) shall be prepayable without penalty after the end of the 1-year period beginning on the date the debenture is issued; and
 - (E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee

(1) In general

Under this section, the Administrator may guarantee the debentures issued by a Renewable Fuel Capital Investment company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than a department or agency of the Federal Government.

(Pub. L. 85–699, title III, §385, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1778.)

§690e. Issuance and guarantee of trust certificates

(a) Issuance

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a Renewable Fuel Capital Investment company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee

(1) In general

The Administrator may, under such terms and conditions as it determines appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

If a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) Subrogation and ownership rights

(1) Subrogation

If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration

(1) Registration

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions

(A) In general

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section, including, notwithstanding any other provision of law—

- (i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and
- (ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this

section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85–699, title III, §386, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1779.)

§690f. Fees

(a) In general

Except as provided in section 690e(d) of this title, the Administrator may charge such fees as it determines appropriate with respect to any guarantee or grant issued under this part, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this part, which amounts shall be paid to and retained by the Administration.

(b) Offset

The Administrator may, as provided by section 690g of this title, offset fees charged and collected under subsection (a).

(Pub. L. 85–699, title III, §387, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1780.)

§690g. Fee contribution

(a) In general

To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the Renewable Fuel Capital Investment companies under section 690f of this title.

(b) Annual adjustment

Each fee contribution under subsection (a) shall be effective for 1 fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under subsection (a) are fully used. The fee contribution for a fiscal year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during that fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator determines appropriate.

(Pub. L. 85–699, title III, §388, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1780.)

§690h. Operational assistance grants

(a) In general

(1) Authority

The Administrator may make grants to Renewable Fuel Capital Investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grant amount

The amount of a grant made under this subsection to a Renewable Fuel Capital Investment company shall be equal to the lesser of—

- (A) 10 percent of the resources (in cash or in-kind) raised by the company under section 690c(d)(2) of this title; or
- (B) \$1,000,000.

(4) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(5) Grants to conditionally approved companies

(A) In general

Subject to subparagraphs (B) and (C), upon the request of a company conditionally approved under section 690c(c) of this title, the Administrator shall make a grant to the company under this subsection.

(B) Repayment by companies not approved

If a company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) Deduction of grant to approved company

If a company receives a grant under this paragraph and receives final approval under section 690c(e) of this title, the Administrator shall deduct the amount of the grant from the total grant amount the company receives for operational assistance.

(D) Amount of grant

No company may receive a grant of more than \$100,000 under this paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to Renewable Fuel Capital Investment companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a ¹ cash or in kind), other than ² those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a Renewable Fuel Capital Investment company.

(Pub. L. 85–699, title III, §389, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1781.)

¹ *So in original. The article probably should not appear.*

² *So in original. Probably should be "than".*

§690i. Bank participation

(a) In general

Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any Renewable Fuel Capital Investment company, or in any entity established to invest solely in Renewable Fuel Capital Investment companies.

(b) Limitation

No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85–699, title III, §390, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§690j. Federal Financing Bank

Notwithstanding section 687k of this title, the Federal Financing Bank may acquire a debenture issued by a Renewable Fuel Capital Investment company under this part.

(Pub. L. 85–699, title III, §391, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§690k. Reporting requirement

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company makes, under this part, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market or ¹renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

(Pub. L. 85–699, title III, §392, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

¹ So in original. Probably should be "of".

§690l. Examinations

(a) In general

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(2) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Administration.

(Pub. L. 85–699, title III, §393, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§690m. Miscellaneous

To the extent such procedures are not inconsistent with the requirements of this part, the Administrator may take such action as set forth in sections 687a, 687c, 687d, and 687f of this title and an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a Renewable Fuel Capital Investment company shall be subject to the requirements of such sections.

(Pub. L. 85–699, title III, §394, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690n. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any Renewable Fuel Capital Investment company.

(Pub. L. 85–699, title III, §395, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690o. Regulations

The Administrator may issue such regulations as the Administrator determines necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, §396, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690p. Authorizations of appropriations

(a) In general

Subject to the availability of appropriations, the Administrator is authorized to make \$15,000,000 in operational assistance grants under section 690h of this title for each of fiscal years 2008 and 2009.

(b) Funds collected for examinations

Funds deposited under section 690l(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 690l of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, §397, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690q. Termination

The program under this part shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the program under this part.

(Pub. L. 85–699, title III, §398, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

SUBCHAPTER IV—STATE CHARTERED INVESTMENT COMPANIES AND STATE DEVELOPMENT COMPANIES

§691. Repealed. Pub. L. 87–341, §11(f), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85–699, title IV, §401, Aug. 21, 1958, 72 Stat. 696, related to conversion of any investment company, or any State development company, into a small business investment company.

SUBCHAPTER IV—A—GUARANTEES

PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES

§692. Authority of Administration to guarantee payment of rentals by small business concerns under leases of commercial and industrial property

(a) Nonavailability of guarantees from other sources; participation with qualified sureties

The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) Uniform annual fee; processing fees

The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The

amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) Escrow; default; additional discretionary provisions

In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part, as the Administrator may in his discretion require.

(Pub. L. 85–699, title IV, §401, as added Pub. L. 89–117, title III, §316(a), Aug. 10, 1965, 79 Stat. 482; amended Pub. L. 90–104, title II, §209, Oct. 11, 1967, 81 Stat. 271; Pub. L. 91–609, title IX, §911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

EDITORIAL NOTES

AMENDMENTS

1970—Subsecs. (b), (c)(4). Pub. L. 91–609 substituted "part" for "title".

1967—Subsec. (a). Pub. L. 90–104 struck out from introductory text "that are (1) eligible for loans under section 636(b)(3) of this title, or (2) eligible for loans under subchapter IV of chapter 34 of Title 42," after "small business concerns".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

§693. Powers of Administration respecting loans; liquidation of obligations through creation of new leases, execution of subleases, and assignments of leases

Without limiting the authority conferred upon the Administrator and the Administration by section 671 of this title, the Administrator and the Administration shall have, in the performance of and with

respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 634(b) of this title with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

(Pub. L. 85–699, title IV, §402, as added Pub. L. 89–117, title III, §316(a), Aug. 10, 1965, 79 Stat. 483; amended Pub. L. 91–609, title IX, §911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

EDITORIAL NOTES

AMENDMENTS

1970—Pub. L. 91–609 substituted "part" for "title".

§694. Repealed. Pub. L. 100–590, title I, §111(b), Nov. 3, 1988, 102 Stat. 2995

Section, Pub. L. 85–699, title IV, §403, as added Pub. L. 89–117, title III, §316(a), Aug. 10, 1965, 79 Stat. 484; amended Pub. L. 91–609, title IX, §911(a)(3), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93–386, §6(a)(2), Aug. 23, 1974, 88 Stat. 747; Pub. L. 94–305, title I, §103, June 4, 1976, 90 Stat. 665; Pub. L. 95–89, title I, §103, Aug. 4, 1977, 91 Stat. 556, provided for revolving fund for commercial or industrial lease guarantees.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF REMAINING LEASE GUARANTEE FUND MONEYS

Pub. L. 100–590, title I, §111(b), Nov. 3, 1988, 102 Stat. 2995, provided in part that: "Any moneys remaining in the Lease Guarantee Fund on the date of enactment of this Act [Nov. 3, 1988] shall be transferred to the Small Business Administration's business loan and investment fund."

§694–1. Planning design or installation of pollution control facilities

(a) Definitions

For purposes of this section, the term—

(1) "pollution control facilities" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

(2) "person" includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

(3) "qualified contract" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

(b) Financing disadvantage; guarantee of payment by Administration; restrictions and limitations

The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such

company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property shall be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax, and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.

(2) Any such guarantee shall be for the full amount of the payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

(c) Uniform annual fees; processing fees; time and condition for payment; periodic review

The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount be less than 1 per centum or more than $3\frac{1}{2}$ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(d) Requirements of Administration; escrow; default; discretionary provisions

In connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Assignment of guarantee

Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

(f) Application of section 693 of this title

Section 693 of this title shall apply to the administration of this section.

(Pub. L. 85-699, title IV, §404, as added Pub. L. 94-305, title I, §102, June 4, 1976, 90 Stat. 663; amended Pub. L. 98-473, title I, §115, Oct. 12, 1984, 98 Stat. 1967.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-473, §115(1), (2), substituted "shall be issued" for "may be issued" and inserted ", and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired".

Subsec. (c). Pub. L. 98-473, §115(3), substituted "be less than 1 per centum or more than 3½ per centum" for "exceed 3½ per centum".

§694-2. Revolving fund for qualified contract guarantees; investment of idle funds

There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 694-1 of this title. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 694-1 of this title shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 694-1 of this title shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

(Pub. L. 85-699, title IV, §405, as added Pub. L. 94-305, title I, §102, June 4, 1976, 90 Stat. 665; amended Pub. L. 95-89, title I, §104, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96-302, title I, §112, July 2, 1980, 94 Stat. 837.)

EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96-302 inserted investment of idle funds provision.

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a \$15,000,000 appropriation of capital for the fund; payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year; and investment of noncapital moneys, when not needed for payment of current operating expenses or claims arising under section 694-2 of this title, in Federal bonds or obligations or bonds or obligations guaranteed by the United States as to principal and interest.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as a note under section 633 of this title.

PART B—SURETY BOND GUARANTEES

§694a. Definitions

As used in this part—

(1) The term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) The term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) The term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) The term "surety" means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(5) The term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) The term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

(7) The term "prime contractor" means the person with whom the obligee has contracted to perform the contract.

(8) The term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

(9) Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purpose of sections 694a, 694b, and 694c of this title the term "small business concern" means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.

(Pub. L. 85–699, title IV, §410, as added Pub. L. 91–609, title IX, §911(a)(4), Dec. 31, 1970, 84 Stat. 1812; amended Pub. L. 95–507, title I, §110, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 111–5, div. A, title V, §508(c), Feb. 17, 2009, 123 Stat. 158; Pub. L. 112–239, div. A, title XVI, §1695(c), Jan. 2, 2013, 126 Stat. 2090.)

EDITORIAL NOTES

AMENDMENTS

2013—Par. (9). Pub. L. 112–239 added par. (9).

2009—Par. (9). Pub. L. 111–5, §508(c), (f), temporarily added par. (9) which read as follows: "Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 694a, 694b, and 694c of this title the term "small business concern" means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System." See Termination Date of 2009 Amendment note below.

1978—Par. (4)(D). Pub. L. 95–507 added cl. (D).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. A, title V, §508(f), Feb. 17, 2009, 123 Stat. 159, provided that: "The amendments made by this section [amending this section and section 694b of this title] shall remain in effect until September 30, 2010."

TECHNICAL ASSISTANCE IN CONNECTION WITH CONSTRUCTION CONTRACTS; AUTHORIZATION OF APPROPRIATIONS

Section 911(b) of Pub. L. 91–609 authorized the Secretary of Housing and Urban Development to take such steps and carry out such activities as he determined to be necessary or desirable to provide, either directly or by contract or other arrangement, technical assistance to any contractor or subcontractor for whom a bid, payment, or performance bond is guaranteed under part B of title IV of the Small Business Investment Act of 1958 [this part] in connection with any construction contract, in order to assist such contractor or subcontractor in obtaining or carrying out such contract, and authorized to be appropriated for each of the first three fiscal years ending after the date of the enactment of this Act [Dec. 31, 1970] such sums, not to exceed \$1,500,000, as were necessary to enable the Secretary to carry out his functions under paragraph (1).

§694b. Surety bond guarantees

(a) Authority of Administration to guarantee surety against loss from principal's breach of bond

(1)(A) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$6,500,000, as adjusted for inflation in accordance with section 1908 of title 41.

(B) The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed \$10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety.

(3) The Administration may authorize any surety, without further administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Indemnification of surety against loss from avoiding breach

Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): *Provided, however—*

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3); and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).

(c) Limitation of liability

Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 90 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3);

(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) or any other subsection;

(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the administration's ¹ specific approval for the issuance of a bond, if—

(A) the total amount of the contract at the time of execution of the bond or bonds is \$100,000 or less, or

(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 637(d) of this title, or to a qualified HUBZone small business concern (as defined in section 632(p) ² of this title); or

(4) determined pursuant to subsection (b), if applicable.

(d) Regulations

The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

(e) Reimbursement of surety; conditions

Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

(2) the total contract amount at the time of execution of the bond or bonds exceeds \$6,500,000,

(3) the surety has breached a material term or condition of such guarantee agreement, or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

(f) Procedure for reimbursement

The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) Audit

(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once every three years by examiners selected and approved by the Administration.

(h) Administrative provisions

The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) Powers of Administration respecting loans

The provisions of section 693 of this title shall apply in the administration of this section.

(j) Administration not to deny liability based on information provided as part of application

For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guarantee application.

(Pub. L. 85–699, title IV, §411, as added Pub. L. 91–609, title IX, §911(a)(4), Dec. 31, 1970, 84 Stat. 1813; amended Pub. L. 93–386, §§6(a)(3), 11, Aug. 23, 1974, 88 Stat. 747, 749; Pub. L. 95–507, title I, §111, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 96–302, title I, §115, July 2, 1980, 94 Stat. 839; Pub. L. 99–272, title XVIII, §18014, Apr. 7, 1986, 100 Stat. 370; Pub. L. 100–590, title II, §§202–204, Nov. 3, 1988, 102 Stat. 3007–3009; Pub. L. 104–208, div. D, title II, §206(a), Sept. 30, 1996, 110 Stat. 3009–738; Pub. L. 105–135, title VI, §604(d), Dec. 2, 1997, 111 Stat. 2633; Pub. L. 106–554, §1(a)(9) [title VIII, §805(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–705; Pub. L. 108–447, div. K, title II, §203(a), (b), Dec. 8, 2004, 118 Stat. 3465, 3466; Pub. L. 111–5, div. A, title V, §508(a), (b), Feb. 17, 2009, 123 Stat. 158; Pub. L. 112–239, div. A, title XVI, §1695(a), (b), Jan. 2, 2013, 126 Stat. 2089, 2090; Pub. L. 114–92, div. A, title VIII, §874(b), Nov. 25, 2015, 129 Stat. 941.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 632(p) of this title, referred to in subsec. (c)(3)(B), was redesignated section 657a(b) of this title by Pub. L. 115–91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795.

AMENDMENTS

2015—Subsec. (c)(1). Pub. L. 114–92 substituted "90" for "70".

2013—Subsec. (a)(1). Pub. L. 112–239, §1695(a), designated existing provisions as subpar. (A), substituted "does not exceed \$6,500,000, as adjusted for inflation in accordance with section 1908 of title 41." for "does not exceed \$2,000,000.", and added subpar. (B).

Subsec. (e). Pub. L. 112–239, §1695(b)(1), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

"(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

"(2) the total contract amount at the time of execution of the bond or bonds exceeds \$2,000,000,

"(3) the surety has breached a material term or condition of such guarantee agreement, or

"(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d) of this section."

Subsec. (j). Pub. L. 112–239, §1695(b)(2), added subsec. (j).

2009—Subsec. (a)(1). Pub. L. 111–5, §508(a), (f), temporarily amended par. (1) by designating existing provisions as subpar. (A), substituting "\$5,000,000" for "\$2,000,000", and adding subpar. (B) which read as follows: "The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed \$10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary." See Termination Date of 2009 Amendment note below.

Subsec. (e). Pub. L. 111–5, §508(b)(1), (f), temporarily added subsec. (e), the text of which read as follows: "Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

"(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

"(2) the total contract amount at the time of execution of the bond or bonds exceeds \$5,000,000,

"(3) the surety has breached a material term or condition of such guarantee agreement, or

"(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d)."

See Termination Date of 2009 Amendment note below.

Subsec. (k). Pub. L. 111–5, §508(b)(2), (f), temporarily added subsec. (k) which read as follows: "For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guaranty application." See Termination Date of 2009 Amendment note below.

2004—Subsec. (a)(1). Pub. L. 108–447, §203(a), substituted "total work order or contract amount at the time of bond execution that does not exceed" for "contract up to".

Subsec. (g)(3). Pub. L. 108–447, §203(b), substituted "every three years" for "each year".

2000—Subsecs. (a)(1), (e)(2). Pub. L. 106–554 substituted "\$2,000,000" for "\$1,250,000".

1997—Subsec. (c)(3)(B). Pub. L. 105–135 inserted ", or to a qualified HUBZone small business concern (as defined in section 632(p) of this title)" before semicolon.

1996—Subsec. (a)(5). Pub. L. 104–208 added par. (5).

1988—Subsec. (a). Pub. L. 100–590, §202, amended subsec. (a) generally, substituting pars. (1) to (4) for former pars. (1) to (6).

Subsec. (b). Pub. L. 100–590, §203(c), added par. (2), redesignated former par. (2) as (3), struck out former par. (3) which prohibited the making subsequent to two years after Oct. 24, 1978, of new agreements to indemnify, and inserted concluding provision: "In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a)."

Subsec. (c). Pub. L. 100–590, §203(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 percent of the loss incurred and paid by the surety as the result of the breach; or (2) in a case in which subsection (b) of this section applies, the amount determined under subsection (b) of this section."

Subsec. (e)(3), (4). Pub. L. 100–590, §203(c), added pars. (3) and (4).

Subsec. (g). Pub. L. 100–590, §204, amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section."

1986—Subsecs. (a), (e)(2). Pub. L. 99–272 substituted "\$1,250,000" for "\$1,000,000".

1980—Subsec. (c). Pub. L. 96–302 struck out "to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract" after "paid by the surety" in cl. (1).

1978—Subsec. (a). Pub. L. 95–507 amended subsec. (a) generally, striking out requirement that the Administration consult with the Secretary of Housing and Urban Development, and inserting authority to vary the terms and conditions of guarantees on the basis of experience with a particular surety and authority to guarantee bonds ancillary and conterminous with the other named bonds.

Subsec. (b). Pub. L. 95–507 substituted provisions relating to indemnification of a surety against loss sustained in attempting to avoid or avoiding breach for provisions relating to the extent of liability of the Administration for loss incurred by a surety.

Subsec. (c). Pub. L. 95–507 substituted provisions relating to the limitation of the Administration's guarantee liability for provisions relating to the administration of the program and a study and report to Congress regarding the economic soundness of the program.

Subsec. (d). Pub. L. 95–507 substituted provisions relating to regulations for participating sureties for

provisions relating to the application of section 693 of this title in the administration of this section.

Subsecs. (e) to (i). Pub. L. 95-507 added subsecs. (e) to (i).

1974—Subsec. (a). Pub. L. 93-386, §6(a)(3), substituted "\$1,000,000" for "\$500,000".

Subsec. (c). Pub. L. 93-386, §11, inserted provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-92, div. A, title VIII, §874(c), Nov. 25, 2015, 129 Stat. 941, provided that: "The amendments made by this section [enacting section 9310 of Title 31, Money and Finance, and amending this section] shall take effect 1 year after the date of the enactment of this Act [Nov. 25, 2015]."

TERMINATION DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 to remain in effect until Sept. 30, 2010, see section 508(f) of Pub. L. 111-5, set out as a note under section 694a of this title.

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 II, §206(b), Sept. 30, 1996, 110 Stat. 3009-739, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995."

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Pub. L. 100-590, title II, §207, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101-574, title II, §216(a), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 103-403, title III, §302, Oct. 22, 1994, 108 Stat. 4188; Pub. L. 104-36, §7, Oct. 12, 1995, 109 Stat. 297; Pub. L. 105-135, title V, §503, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106-554, §1(a)(9) [title VIII, §805(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-706, which provided that the provisions contained in section 694b(a)(3) of this title would cease to be effective after Sept. 30, 2003, was repealed by Pub. L. 108-447, div. K, title II, §203(c), Dec. 8, 2004, 118 Stat. 3466.

Pub. L. 100-590, title II, §209, Nov. 3, 1988, 102 Stat. 3010, provided that: "Except as otherwise provided in this title, the provisions of this title [amending this section and section 694c of this title and enacting provisions set out as notes under this section], shall become effective upon expiration of one hundred and eighty days after the date of its enactment [Nov. 3, 1988]."

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. 100-590, title II, §205, Nov. 3, 1988, 102 Stat. 3009, provided that: "The Administration shall promulgate final regulations to implement the amendments made by this title [amending this section and section 694c of this title] not later than one hundred and eighty days after the date of the enactment of this Act [Nov. 3, 1988]."

SMALL BUSINESS ACCESS TO SURETY BONDING SURVEY

Pub. L. 102-366, title III, subtitle A, Sept. 4, 1992, 106 Stat. 1002-1005, known as the Small Business Access to Surety Bonding Survey Act of 1992, directed Comptroller General to conduct a comprehensive survey of business firms, from a statistically valid sample of business firms developed from the most recent list of construction firms maintained by Dun and Bradstreet Company and using a questionnaire with specifically designated questions, to obtain data on the experiences of such firms, and especially the experiences of small business concerns, in obtaining surety bonds from corporate surety firms and to submit a report to Congress, not later than 18 months after Sept. 4, 1992, which report was to contain a summary of

responses of business firms to the survey and a description of any trends found by Comptroller General in such responses, which specific information on responses and trends of small business concerns, small business concerns owned and controlled by women, and small business concerns owned and controlled by socially and economically disadvantaged individuals.

EVALUATION OF PREFERRED SURETY BOND GUARANTEE PROGRAM; REPORT

Pub. L. 100-590, title II, §206, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101-574, title II, §216(b), Nov. 15, 1990, 104 Stat. 2823, directed Comptroller General, not later than 3 years after Nov. 3, 1988, to transmit a report to Congress evaluating the preferred surety bond guarantee program, with such report to be transmitted not later than Mar. 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.

¹ *So in original. Probably should be capitalized.*

² *See References in Text note below.*

§694c. Revolving fund for surety bond guarantees

(a) There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

(Pub. L. 85-699, title IV, §412, as added Pub. L. 93-386, §6(a)(4), Aug. 23, 1974, 88 Stat. 747; amended Pub. L. 94-305, title I, §113, June 4, 1976, 90 Stat. 667; Pub. L. 95-14, §4, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95-89, title I, §105, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96-302, title I, §111, July 2, 1980, 94 Stat. 837; Pub. L. 100-590, title II, §208, Nov. 3, 1988, 102 Stat. 3009.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-590 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96-302 repealed investment of idle funds provision, which is covered in section 694-2 of this title.

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a \$110,000,000 appropriation of capital for the fund; and payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year.

Pub. L. 95-14 substituted "\$110,000,000" for "\$56,500,000".

1976—Pub. L. 94-305 substituted "\$56,500,000" for "\$35,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-590 effective on expiration of 180 days after Nov. 3, 1988, see section 209 of Pub. L. 100-590, set out as an Effective and Termination Dates of 1988 Amendment note under section 694b 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.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

SUBCHAPTER V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

§695. State development companies

(a) Congressional finding and declaration of purpose

The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this subchapter.

(b) Loans; obligations of development companies

The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this chapter. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(c) Maximum loans to development companies

The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d) Eligibility for assistance

In order to qualify for assistance under this subchapter, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

- (1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;
- (2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or
- (3) the achievement of one or more of the following public policy goals:
 - (A) business district revitalization,
 - (B) expansion of exports,
 - (C) expansion of minority business development or women-owned business development,
 - (D) rural development,
 - (E) expansion of small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, especially service-disabled veterans, as defined in such section 632(q) of this title,
 - (F) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,
 - (G) changes necessitated by Federal budget cutbacks, including defense related industries,
 - (H) business restructuring arising from Federally mandated standards or policies affecting the

environment or the safety and health of employees,

(I) reduction of energy consumption by at least 10 percent,

(J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact,

(K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers, or

(L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e) Creation or retention of jobs

(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every \$65,000 guaranteed by the Administration, except that the amount is \$100,000 in the case of a project of a small manufacturer.

(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every \$65,000 guaranteed by the Administration.

(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than \$75,000 per job created or retained.

(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

(6) As used in this subsection, the term "small manufacturer" means a small business concern—

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(B) all of the production facilities of which are located in the United States.

(Pub. L. 85–699, title V, §501, Aug. 21, 1958, 72 Stat. 696; Pub. L. 100–590, title I, §115(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997; Pub. L. 101–574, title II, §214(a), (b), Nov. 15, 1990, 104 Stat. 2821; Pub. L. 106–50, title IV, §405, Aug. 17, 1999, 113 Stat. 246; Pub. L. 106–554, §1(a)(9) [title III, §302], Dec. 21, 2000, 114 Stat. 2763, 2763A–684; Pub. L. 108–447, div. K, title I, §105, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, §1204(a), Dec. 19, 2007, 121 Stat. 1772; Pub. L. 111–5, div. A, title V, §504(b), Feb. 17, 2009, 123 Stat. 156; Pub. L. 111–240, title I, §1132, Sept. 27, 2010, 124 Stat. 2514.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section

661 of this title.

AMENDMENTS

2010—Subsec. (d)(3)(L). Pub. L. 111–240 added subpar. (L).

2009—Subsec. (e)(1), (2). Pub. L. 111–5, which directed amendment of section 501(e)(1), (2) of the Small Business Investment Act by substituting "\$65,000" for "\$50,000", was executed by making the substitution in subsec. (e)(1), (2) of this section, which is section 501 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress.

2007—Subsec. (d)(3). Pub. L. 110–140, §1204(a)(4), inserted the following concluding provisions: "In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator."

Subsec. (d)(3)(I) to (K). Pub. L. 110–140, §1204(a)(1)–(3), added subpars. (I) to (K).

2004—Subsec. (e). Pub. L. 108–447 added subsec. (e).

2000—Subsec. (d)(3)(C). Pub. L. 106–554 inserted "or women-owned business development" before comma at end.

1999—Subsec. (d)(3)(E)–(H). Pub. L. 106–50 added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

1990—Subsec. (a). Pub. L. 101–574, §214(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development in both urban and rural areas by providing long term financing for small business concerns through the development company program authorized by this subchapter. In order to carry out this objective, the Administration is hereby directed to place greater emphasis on the needs of rural areas and the promotion of the development company program in such areas, and is further directed to develop a plan for greater outreach of procurement and export trade seminars in such areas. As used in this subchapter, the term 'rural areas' means those localities with populations of less than 20,000."

Subsec. (d). Pub. L. 101–574, §214(b), added subsec. (d).

1988—Pub. L. 100–590 inserted "State development companies" as section catchline, added subsec. (a), and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Assistance made available under any financings made under this subchapter during 2-year period beginning Oct. 1, 2002, to be treated as a separate program of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) only, see section 6(c) of Pub. L. 107–100, set out as a note under section 636 of this title.

LOAN LIQUIDATION PILOT PROGRAM

Pub. L. 104–208, div. D, title II, §204, Sept. 30, 1996, 110 Stat. 3009–736, provided that:

"(a) IN GENERAL.—The Administrator shall carry out a loan liquidation pilot program (in this section referred to as the 'pilot program') in accordance with the requirements of this section.

"(b) SELECTION OF DEVELOPMENT COMPANIES.—

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], the Administrator shall establish a pilot program under which certain development companies authorized to make loans and issue debentures under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] are selected by the Administrator in accordance with this subsection to carry out loan liquidations.

"(2) CONFLICTS OF INTEREST.—The development companies selected under paragraph (1) shall agree not to take any action that would create a potential conflict of interest involving the development company, the third party lender, or an associate of the third party lender.

"(3) QUALIFICATIONS.—In order to qualify to participate in the pilot program under this section, each development company shall—

"(A) have not less than 6 years of experience in the program established by title V of the Small Business Investment Act of 1958;

"(B) have made, during the 6 most recent fiscal years, an average of not less than 10 loans per year through the program established by such title V of the Small Business Investment Act of 1958;

"(C) have not less than 2 years of experience in liquidating loans under the authority of a Federal, State, or other lending program; and

"(D) meet such other requirements as the Administration may establish.

"(c) **AUTHORITY OF DEVELOPMENT COMPANIES.**—The development companies selected under subsection (b) shall, for loans in their portfolio of loans made through debentures guaranteed under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] that are in default after the date of enactment of this Act [Sept. 30, 1996], be authorized to—

"(1) perform all liquidation and foreclosure functions, including the acceleration or purchase of community injection funds, subject to such company obtaining prior written approval from the Administrator before committing the agency to purchase any other indebtedness secured by the property: *Provided*, That the Administrator shall approve or deny a request for such purchase within a period of 10 business days; and

"(2) liquidate such loans in a reasonable and sound manner and according to commercially accepted practices pursuant to a liquidation plan approved by the administrator in advance of its implementation. If the administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

"(d) **AUTHORITY OF THE ADMINISTRATOR.**—In carrying out the pilot program, the Administrator shall—

"(1) have full authority to rescind the authority granted any development company under this section upon a 10-day written notice stating the reasons for the rescission; and

"(2) not later than 90 days after the admission of the development companies specified in subsection (b), implement the pilot program.

"(e) **REPORT.**—

"(1) **IN GENERAL.**—The Administrator shall issue a report on the results of the pilot program to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]. The report shall include information relating to—

"(A) the total dollar amount of each loan and project liquidated;

"(B) the total dollar amount guaranteed by the Administration;

"(C) total dollar losses;

"(D) total recoveries both as percentage of the amount guaranteed and the total cost of the project;

and

"(E) a comparison of the pilot program information with the same information for liquidation conducted outside the pilot program over the period of time.

"(2) **REPORTING PERIOD.**—The report shall be based on data from, and issued not later than 90 days after the close of, the first eight 8 [sic] fiscal quarters of the pilot program's operation after the date of implementation."

[Section 204 of title II of div. D of Pub. L. 104–208, set out above, to cease to have effect beginning on the date on which final regulations are issued to carry out section 697g of this title, see section 1(a)(9) [title III, §307(b)] of Pub. L. 106–554, set out as a Regulations note under section 697g of this title.]

§696. Loans for plant acquisition, construction, conversion and expansion

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however*, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) **USE OF PROCEEDS.**—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

(2) **MAXIMUM AMOUNT.**—

(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

- (i) \$5,000,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in clause (ii), (iii), (iv), or (v);
- (ii) \$5,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 695(d)(3) of this title;
- (iii) \$5,500,000 for each project of a small manufacturer;
- (iv) \$5,500,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and
- (v) \$5,500,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

(B) DEFINITION.—As used in this paragraph, the term "small manufacturer" means a small business concern—

- (i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and
- (ii) all of the production facilities of which are located in the United States.

(3) CRITERIA FOR ASSISTANCE.—

(A) IN GENERAL.—Any development company assisted under this section or section 697 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(B) COMMUNITY INJECTION FUNDS.—

(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

- (I) State or local governments;
- (II) banks or other financial institutions;
- (III) foundations or other not-for-profit institutions; or
- (IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter.

(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses ¹(i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter shall provide—

- (i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;
- (ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;
- (iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or
- (iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

(D) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) COLLATERALIZATION.—

(i) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this subchapter, and is

only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(ii) APPRAISALS.—

(I) In general.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(aa) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than the Federal banking regulator appraisal threshold; or

(bb) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is equal to or less than the Federal banking regulator appraisal threshold, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(II) Federal banking regulator appraisal threshold defined.—For purposes of this clause, the term "Federal banking regulator appraisal threshold" means the lesser of the threshold amounts set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation for when a federally related transaction that is a commercial real estate transaction requires an appraisal prepared by a State licensed or certified appraiser.

(4) If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5) LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this subchapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(7) PERMISSIBLE DEBT REFINANCING.—

(A) IN GENERAL.—Any financing approved under this subchapter may include a limited amount of debt refinancing.

(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 100 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

(ii) the existing indebtedness is collateralized by fixed assets;

(iii) the existing indebtedness was incurred for the benefit of the small business concern;

(iv) the financing under this subchapter will be used only for refinancing existing indebtedness or costs relating to the project financed under this subchapter;

(v) the financing under this subchapter will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

(vii) the financing under section 697a of this title will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

(C) REFINANCING NOT INVOLVING EXPANSIONS.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term "borrower" means a small business concern that submits an application to a development company for financing under this subparagraph;

(II) the term "eligible fixed asset" means tangible property relating to which the Administrator may provide financing under this section; and

(III) the term "qualified debt" means indebtedness—

(aa) that was incurred not less than 6 months before the date of the application for assistance under this subparagraph;

(bb) that is a commercial loan;

(cc) the proceeds of which were used to acquire an eligible fixed asset;

(dd) that was incurred for the benefit of the small business concern; and

(ee) that is collateralized by eligible fixed assets.

(ii) AUTHORITY.—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

(II) the borrower has been in operation for all of the 2-year period ending on the date the loan application is submitted; and

(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

(iii) FINANCING FOR BUSINESS EXPENSES.—

(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

(aa) a specific description of the expenses for which the additional financing is requested; and

(bb) an itemization of the amount of each expense.

(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for non-business purposes.

(iv) LOANS BASED ON JOBS.—

(I) JOB CREATION AND RETENTION GOALS.—

(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 695 of this title.

(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$75,000.

(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

(aa) the number of full-time employees of the borrower on the date on which the

borrower applies for a loan under this subparagraph; and

(bb) the product obtained by multiplying—

(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph, by

(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

(v) **TOTAL AMOUNT OF LOANS.**—The Administrator may provide not more than a total of \$7,500,000,000 of financing under this subparagraph for each fiscal year.

(Pub. L. 85–699, title V, §502, Aug. 21, 1958, 72 Stat. 697; Pub. L. 87–27, §26, May 1, 1961, 75 Stat. 63; Pub. L. 87–341, §10, Oct. 3, 1961, 75 Stat. 756; Pub. L. 94–305, title I, §§108(a), 110, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95–507, title I, §112, Oct. 24, 1978, 92 Stat. 1760; Pub. L. 97–35, title XIX, §1909, Aug. 13, 1981, 95 Stat. 778; Pub. L. 100–418, title VIII, §8007(b), Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–590, title I, §116(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997, 2998; Pub. L. 101–574, title II, §214(c), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 104–208, div. D, title II, §202(a), Sept. 30, 1996, 110 Stat. 3009–734; Pub. L. 105–135, title II, §221, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, §1(a)(9) [title II, §208(b), title III, §303, title VIII, §802(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–683, 2763A–684, 2763A–702; Pub. L. 108–447, div. K, title I, §104, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, §1204(b), Dec. 19, 2007, 121 Stat. 1772; Pub. L. 111–5, div. A, title V, §504(a), Feb. 17, 2009, 123 Stat. 155; Pub. L. 111–240, title I, §§1112, 1122, Sept. 27, 2010, 124 Stat. 2508, 2510; Pub. L. 115–371, §2, Dec. 21, 2018, 132 Stat. 5106; Pub. L. 116–260, div. N, title III, §328(a)(2), Dec. 27, 2020, 134 Stat. 2038.)

EDITORIAL NOTES

AMENDMENTS

2020—Par. (7)(B). Pub. L. 116–260, §328(a)(2)(A), substituted "100 percent" for "50 percent" in introductory provisions.

Par. (7)(C). Pub. L. 116–260, §328(a)(2)(B), added subpar. (C).

2018—Par. (3)(E)(ii). Pub. L. 115–371 redesignated introductory provisions of cl. (ii) as subcl. (I) of cl. (ii) and inserted heading, redesignated former subcls. (I) and (II) as items (aa) and (bb), respectively, of subcl. (I) and realigned margins, in item (aa), substituted "is more than the Federal banking regulator appraisal threshold" for "is more than \$250,000", in item (bb), substituted "is equal to or less than the Federal banking regulator appraisal threshold" for "is \$250,000 or less", and added subcl. (II).

2010—Par. (2)(A)(i). Pub. L. 111–240, §1122(c), substituted "clause (ii), (iii), (iv), or (v)" for "subparagraph (B) or (C)".

Pub. L. 111–240, §1112(1), substituted "\$5,000,000" for "\$1,500,000".

Par. (2)(A)(ii). Pub. L. 111–240, §1112(2), substituted "\$5,000,000" for "\$2,000,000".

Par. (2)(A)(iii) to (v). Pub. L. 111–240, §1112(3)–(5), substituted "\$5,500,000" for "\$4,000,000".

Par. (7)(C). Pub. L. 111–240, §1122(b), struck out subpar. (C) relating to refinancing not involving expansions.

Pub. L. 111–240, §1122(a), added subpar. (C).

2009—Par. (7). Pub. L. 111–5 added par. (7).

2007—Par. (2)(A)(iv), (v). Pub. L. 110–140 added cls. (iv) and (v).

2004—Par. (2). Pub. L. 108–447 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Loans made by the Administration under this section shall be limited to \$1,000,000 for each such identifiable small business concern, except loans meeting the criteria specified in section 695(d)(3) of this title, which shall be limited to \$1,300,000 for each such identifiable small business concern."

2000—Par. (2). Pub. L. 106–554, §1(a)(9) [title III, §303], amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Loans made by the Administration under this section shall be limited to \$750,000 for each such identifiable small-business concern, except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to \$1,000,000 for each such identifiable small business concern."

Par. (3)(E). Pub. L. 106–554, §1(a)(9) [title II, §208(b)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (6). Pub. L. 106–554, §1(a)(9) [title VIII, §802(b)], added par. (6).

1997—Par. (1). Pub. L. 105–135, §221(1), added par. (1) and struck out former par. (1) which read as

follows: "The proceeds of any such loan shall be used solely by such borrower to assist in identifiable small-business concern and for a sound business purpose approved by the Administration."

Par. (3)(D), (E). Pub. L. 105-135, §221(2), added subpars. (D) and (E).

Par. (5). Pub. L. 105-135, §221(3), added par. (5).

1996—Par. (3). Pub. L. 104-208 inserted heading and amended text of par. (3) generally. Prior to amendment, text read as follows: "Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

"(A) State or local governments;

"(B) banks or other financial institutions;

"(C) foundations or other not-for-profit institutions; or

"(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this subchapter."

1990—Par. (2). Pub. L. 101-574 struck out period at end and inserted ", except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to \$1,000,000 for each such identifiable small business concern."

1988—Pub. L. 100-590, §116(b)(1), inserted "Loans for plant acquisition, construction, conversion, and expansion" as section catchline.

Par. (2). Pub. L. 100-418 substituted "\$750,000" for "\$500,000".

Par. (4). Pub. L. 100-590, §116(a), added par. (4).

1981—Pars. (1) to (4). Pub. L. 97-35 redesignated pars. (2) to (4) as (1) to (3), respectively. Former par. (1), which provided that all loans made shall be so secured as reasonably to assure repayment and that in agreements to participate in loans on a deferred basis, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement, was struck out.

Par. (5). Pub. L. 97-35 struck out par. (5) which provided that loans, including extensions and renewals, may be made for a period not exceeding twenty-five years and that an extension may be granted up to ten years, if such extension will aid in the orderly liquidation of the loan, and that the Administration may fix the rate of interest.

1978—Par. (4). Pub. L. 95-507 inserted provisions relating to derivation of community injection funds.

1976—Pub. L. 94-305, §108(a), inserted "acquisition," after "plant" in introductory text.

Par. (3). Pub. L. 94-305, §110, substituted "\$500,000" for "\$350,000".

1961—Par. (3). Pub. L. 87-341, §10(1), substituted "\$350,000" for "\$250,000".

Par. (5). Pub. L. 87-341, §10(2), substituted "twenty-five" for "ten" before "years plus such additional period".

Par. (6). Pub. L. 87-27 struck out par. (6) which provided for termination of authority of the Administration to make loans to local development companies after June 30, 1961.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title I, §1122(b), Sept. 27, 2010, 124 Stat. 2512, provided that the amendment made by section 1122(b) is effective 2 years after Sept. 27, 2010.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

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

Amendment by Pub. L. 104-208 effective Oct. 1, 1996, see section 3 of Pub. L. 104-208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 1918 of Pub. L. 97-35, set out as a note

under section 631 of this title.

REFINANCING SENIOR PROJECT DEBT

Pub. L. 116–260, div. N, title III, §328(c), Dec. 27, 2020, 134 Stat. 2040, provided that: "During the 1-year period beginning on the date of enactment of this Act [Dec. 27, 2020], a development company described in title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is authorized to allow the refinancing of a senior loan on an existing project in an amount that, when combined with the outstanding balance on the development company loan, is not more than 90 percent of the total loan to value. Proceeds of such refinancing can be used to support business operating expenses."

REFINANCING NOT INVOLVING EXPANSIONS UNDER FORMER PAR. (7)(C)

Pub. L. 114–113, div. E, title V, §521(a), Dec. 18, 2015, 129 Stat. 2463, which provided that former par. (7)(C) of this section as in effect on Sept. 25, 2012, would be in effect in any fiscal year during which the cost to the Federal Government of making guarantees under such par. and section 697 of this title would be zero, with certain exceptions, was repealed by Pub. L. 116–260, div. N, title III, §328(a)(1), Dec. 27, 2020, 134 Stat. 2038.

¹ So in original. Probably should be "clause".

§697. Development company debentures

(a) Guarantees; Administration authority; regulatory terms and conditions; full faith and credit; subordination of debentures

(1) Except as provided in subsection (b), the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

(2) Such guarantees may be made on such terms and conditions as the Administration may be regulation determine to be appropriate: *Provided*, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.

(3) The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this subsection.

(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection, may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.

(b) Statutory terms and conditions

No guarantee may be made with respect to any debenture under subsection (a) unless—

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 696 of this title;

(2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;

(3) the interest rate on such debenture is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 683(b) of this title;

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);

(5) the amount of any loan to be made from such proceeds does not exceed an amount equal to

50 percent of the cost of the project with respect to which such loan is made;

(6) the Administration approves each loan to be made from such proceeds; and

(7) with respect to each loan made from the proceeds of such debenture, the Administration—

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed—

(i) the lesser of—

(I) 0.9375 percent per year of the outstanding balance of the loan; and

(II) the minimum amount necessary to reduce the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to zero; and

(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of the loan; and

(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a).

(c) Commercial loan interest rate

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

(2) Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator of the Small Business Administration under the authority of this section.

(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section.

(d) Charges for Administration expenses

(1) Level of charges

The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a).

(2) Participation fee

The Administration shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 696(3)(B)(i) of this title. Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a).

(3) Development company fee

The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a).

(e) "Qualified State or local development company" defined; exception for rural company; authority

(1) For purposes of this section, the term "qualified State or local development company" means any State or local development company which, as determined by the Administration, has—

- (A) a full-time professional staff;
- (B) professional management ability (including adequate accounting, legal, and business-servicing abilities); and
- (C) a board of directors, or membership, which meets on a regular basis to make management decisions for such company, including decisions relating to the making and servicing of loans by such company.

(2) A company in a rural area shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

(3) Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under section 636(a) of this title, to service such loans and to charge a reasonable fee for servicing such loans.

(f) Effective date

The fees authorized by subsections (b) and (d) shall apply to financings approved by the Administration on or after October 1, 1996.

(g) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter.

(h) Required actions upon default

(1) Initial actions

Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

- (A) take all necessary steps to bring such a loan current; or
- (B) implement a formal written deferral agreement.

(2) Purchase or acceleration of debenture

Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the administration ¹ shall take all necessary steps to purchase or accelerate the debenture.

(3) Prepayment penalties

With respect to the portion of any project derived from funds set forth in section 696(3) of this title, the Administration—

- (A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;
- (B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and
- (C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

(i) Two-year waiver of fees

The Administration may not assess or collect any up front guarantee fee with respect to loans made under this subchapter during the 2-year period beginning on October 1, 2002.

(Pub. L. 85–699, title V, §503, as added Pub. L. 96–302, title I, §113(a), July 2, 1980, 94 Stat. 837; amended Pub. L. 100–590, title I, §§112(c), 114, 117(a), Nov. 3, 1988, 102 Stat. 2996–2998; Pub. L. 101–515, title V, §8, Nov. 5, 1990, 104 Stat. 2144; Pub. L. 103–403, title II, §213(1), Oct. 22, 1994,

108 Stat. 4184; Pub. L. 104-36, §6, Oct. 12, 1995, 109 Stat. 297; Pub. L. 104-208, div. D, title II, §§202(b)–(e), 203, Sept. 30, 1996, 110 Stat. 3009–735, 3009–736; Pub. L. 105-135, title II, §222, Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106-554, §1(a)(9) [title III, §304], Dec. 21, 2000, 114 Stat. 2763, 2763A–684; Pub. L. 107-100, §6(b), Dec. 21, 2001, 115 Stat. 971; Pub. L. 108-199, div. B, title VI, §631, Jan. 23, 2004, 118 Stat. 100; Pub. L. 108-205, §2, Mar. 15, 2004, 118 Stat. 553; Pub. L. 108-217, §2, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108-306, §2, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108-447, div. B, title V, div. K, title II, §204, Dec. 8, 2004, 118 Stat. 2911, 3466.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b)(7)(A)(ii) and (g), see References in Text note set out under section 661 of this title.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108-447, §204, struck out ", but shall not apply to financings approved by the Administration on or after October 1, 2005" before period at end.

Pub. L. 108-447, title V, substituted "October 1, 2005" for "October 1, 2004".

Pub. L. 108-217 substituted "October 1, 2004" for "May 21, 2004".

Pub. L. 108-205, as amended by Pub. L. 108-306, substituted "May 21, 2004" for "March 15, 2004".

Pub. L. 108-199 substituted "March 15, 2004" for "October 1, 2003" before period at end.

2001—Subsec. (b)(7)(A). Pub. L. 107-100, §6(b)(1), designated existing provisions following "not exceed" as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), realigned margins, and added cl. (ii).

Subsec. (i). Pub. L. 107-100, §6(b)(2), added subsec. (i).

2000—Subsec. (f). Pub. L. 106-554 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The fees authorized by subsections (b) and (c) of this section shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 2000."

1997—Subsec. (b)(7)(A). Pub. L. 105-135, §222(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "assesses and collects a fee, which shall be payable by the borrower, in an amount equal to the lesser of—

"(i) 0.9375 percent per year of the outstanding balance of the loan; or

"(ii) such percentage per year of the outstanding balance of the loan as the Administrator may determine to be necessary to reduce the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to an amount that, taking into consideration any available appropriated funds, would permit the Administration to purchase or guarantee \$2,000,000,000 of debentures in fiscal year 1997; and".

Subsec. (f). Pub. L. 105-135, §222(2), substituted "2000" for "1997".

1996—Subsec. (b)(7)(A). Pub. L. 104-208, §202(b), substituted "equal to the lesser of—" for "equal to 0.125 percent per year of the outstanding balance of the loan" and added cls. (i) and (ii).

Subsec. (d). Pub. L. 104-208, §202(c), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a) of this section."

Subsec. (f). Pub. L. 104-208, §202(d), added subsec. (f).

Subsec. (g). Pub. L. 104-208, §202(e), added subsec. (g).

Subsec. (h). Pub. L. 104-208, §203, added subsec. (h).

1995—Subsec. (b)(7). Pub. L. 104-36 added par. (7).

1994—Subsec. (c) to (e). Pub. L. 103-403 made technical amendment to Pub. L. 100-590, §112(c). See 1988 Amendment note below.

1990—Subsec. (e)(3). Pub. L. 101-515 added par. (3).

1988—Subsec. (a)(2). Pub. L. 100-590, §114, inserted two provisos that Administration not decline to issue such guarantee when ownership interests of small business concern and of property to be financed with loan are not identical, and that Administrator has determined on case-by-case basis that such ownership interest, guarantee, and loan, will substantially benefit small business concern.

Subsec. (c). Pub. L. 100-590, §112(c)(B), formerly §112(c)(1)(B), as amended by Pub. L. 103-403, added

subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–590, §112(c)(A), formerly §112(c)(1)(A), as amended by Pub. L. 103–403, redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–590, §117, which directed substitution of "(1) For purposes of" for "For purposes of", redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2), was executed to subsec. (e) to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (e) by Pub. L. 100–590, §112(c)(1).

Pub. L. 100–590, §112(c)(A), formerly §112(c)(1)(A), as amended by Pub. L. 103–403, redesignated former subsec. (d) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–306, §2, Sept. 24, 2004, 118 Stat. 1131, provided in part that: "The amendment made by the preceding sentence [amending section 2 of Pub. L. 108–205, which amended this section] shall take effect as if included in the enactment of the section to which it relates."

EFFECTIVE DATE OF 2001 AMENDMENT; USE OF FUNDS

Pub. L. 107–100, §6(d), (e), Dec. 21, 2001, 115 Stat. 972, provided that:

"(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]) of such amendments.

"(e) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 636 of this title] shall become effective on October 1, 2002."

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

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104–36, set out as a note under section 634 of this title.

TERMINATION DATE OF 1988 AMENDMENT

Pub. L. 100–590, title I, §112(c), Nov. 3, 1988, 102 Stat. 2996, as amended by Pub. L. 101–515, title V, §3, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 103–317, title IV, Aug. 26, 1994, 108 Stat. 1755, which provided that the amendment made by paragraph (1), amending this section, was to be repealed on Oct. 1, 1997, was repealed by Pub. L. 103–403, title II, §213(2), Oct. 22, 1994, 108 Stat. 4184.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

TEMPORARY FEE ELIMINATION FOR THE 504 LOAN PROGRAM

Pub. L. 116–260, div. N, title III, §327(b), Dec. 27, 2020, 134 Stat. 2037, provided that:

"(1) IN GENERAL.—During the period beginning on the date of enactment of this Act [Dec. 27, 2020] and ending on September 30, 2021, and to the extent the cost of such elimination in fees is offset by appropriations, with respect to each project or loan guaranteed by the Administrator [of the Small Business Administration] pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) for which an application is approved or pending approval on or after the date of enactment of this Act—

"(A) the Administrator shall, in lieu of the fee otherwise applicable under section 503(d)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)(2)), collect no fee; and

"(B) a development company shall, in lieu of the processing fee under section 120.971(a)(1) of title 13, Code of Federal Regulations (relating to fees paid by borrowers), or any successor regulation, collect no fee.

"(2) REIMBURSEMENT FOR WAIVED FEES.—

"(A) IN GENERAL.—To the extent that the cost of such payments is offset by appropriations, the Administrator shall reimburse each development company that does not collect a processing fee pursuant to paragraph (1)(B).

"(B) AMOUNT.—The payment to a development company under clause (i) shall be in an amount equal to 1.5 percent of the net debenture proceeds for which the development company does not collect a processing fee pursuant to paragraph (1)(B)."

¹ So in original. Probably should be capitalized.

§697a. Private debenture sales

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 697 of this title as follows:

(1) Of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed \$200,000,000.

(2) Of the program levels otherwise authorized by law for each of fiscal years 1987 and 1988, an amount not to exceed \$425,000,000.

(3) All of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the program authorized in this section;

(2) any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title V, §504, as added Pub. L. 99–272, title XVIII, §18008(a), Apr. 7, 1986, 100 Stat. 366; amended Pub. L. 100–72, §2 July 11, 1987, 101 Stat. 477; Pub. L. 100–590, title I, §112(a), Nov. 3, 1988, 102 Stat. 2996.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–590 inserted "Private debenture sales" as section catchline and amended text generally. Prior to amendment, text read as follows:

"(a) Notwithstanding any other law, rule, or regulation, the Administration shall conduct a pilot program involving the sale to investors, either publicly or by private placement, of debentures guaranteed pursuant to section 697 of this title as follows—

"(1) of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed \$200,000,000;

"(2) of the program levels otherwise authorized by law for fiscal year 1987, an amount not to exceed \$425,000,000; and

"(3) of the program levels otherwise authorized by law for fiscal year 1988, an amount not to exceed \$425,000,000.

"(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

"(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the pilot program authorized in this section,

"(2) any obligation which is an interest in any obligation described in paragraph (1), or

"(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2)."

1987—Subsec. (a). Pub. L. 100–72 struck out "and" at end of par. (1), substituted "\$425,000,000; and" for "\$295,000,000." in par. (2), and added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Small Business Administration to promulgate final rules and regulations to implement this section within 60 days of Apr. 7, 1986, see section 18008(d)(2) of Pub. L. 99–272, set out as a note under section 697b of this title.

PILOT PROGRAM REPORT

Pub. L. 99–272, title XVIII, §18008(b), Apr. 7, 1986, 100 Stat. 367, required the Small Business Administration to report to the President and Congress on the pilot program under former 15 U.S.C. 697a involving debenture sales to investors not later than 90 days after the date of the last debenture sale in each fiscal year, and unless a report was made by Oct. 1 of 1986 and 1987, the Administration was to make an interim report by such dates.

§697b. Pooling of debentures

(a) Issuance; debentures composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this chapter: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect any fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers; electronic registration

(1) The Administration shall—

(A) provide for a central registration of all trust certificates sold pursuant to this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

(D) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85–699, title V, §505, as added Pub. L. 99–272, title XVIII, §18008(c), Apr. 7, 1986, 100 Stat. 367; amended Pub. L. 100–590, title I, §111(d)(1), (2), Nov. 3, 1988, 102 Stat. 2995; Pub. L. 104–208, div. D, title II, §205(c), Sept. 30, 1996, 110 Stat. 3009–738.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–208 designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted "provide for a central registration of all trust certificates sold pursuant to this section;" for "provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;" and added par. (2).

1988—Pub. L. 100–590, §111(d)(2), inserted "Pooling of debentures" as section catchline.

Subsec. (a). Pub. L. 100–590, §111(d)(1), substituted "all or a" for "all of a".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

RULES AND REGULATIONS FOR IMPLEMENTATION OF CENTRAL REGISTRATION, PILOT PROGRAM AND TRUST CERTIFICATE PROVISIONS; CONSULTATION

Pub. L. 99–272, title XVIII, §18008(d), Apr. 7, 1986, 100 Stat. 368, provided that:

"(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 505(f)(1) of the Small Business Investment Act [15 U.S.C. 697b(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 505(f)(2) of such Act.

"(2) Notwithstanding any law, rule or regulation, within 60 days after the date of enactment of this Act

[Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act [15 U.S.C. 697a, 697b]."

§697c. Restrictions on development company assistance

NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this subchapter or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this subchapter; and (2) before such date, no department or agency of the United States Government which provides funding to any development company shall impose any condition, priority or restriction upon the type of small business which receives financing under this subchapter nor shall it include any condition or impose any requirement, directly or indirectly, upon any recipient of assistance under this subchapter: *Provided*, That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.

(Pub. L. 85-699, title V, §506, as added Pub. L. 100-590, title I, §117(b), Nov. 3, 1988, 102 Stat. 2998.)

§697d. Accredited Lenders Program

(a) Establishment

The Administration is authorized to establish an Accredited Lenders Program for qualified State and local development companies that meet the requirements of subsection (b).

(b) Requirements

The Administration may designate a qualified State or local development company as an accredited lender if such company—

(1) has been an active participant in the Development Company Program authorized by sections 696, 697, and 697a of this title for not less than the preceding 12 months;

(2) has well-trained, qualified personnel who are knowledgeable in the Administration's lending policies and procedures for such Development Company Program;

(3) has the ability to process, close, and service financing for plant and equipment under such Development Company Program;

(4) has a loss rate on the company's debentures that is reasonable and acceptable to the Administration;

(5) has a history of submitting to the Administration complete and accurate debenture guaranty application packages; and

(6) has demonstrated the ability to serve small business credit needs for financing plant and equipment through the Development Company Program.

(c) Expedited processing of loan applications

The Administration shall develop an expedited procedure for processing a loan application or servicing action submitted by a qualified State or local development company that has been designated as an accredited lender in accordance with subsection (b).

(d) Suspension or revocation of designation

(1) In general

The designation of a qualified State or local development company as an accredited lender may be suspended or revoked if the Administration determines that—

(A) the development company has not continued to meet the criteria for eligibility under subsection (b); or

(B) the development company has failed to adhere to the Administration's rules and regulations or is violating any other applicable provision of law.

(2) Effect

A suspension or revocation under paragraph (1) shall not affect any outstanding debenture guarantee.

(e) Definition

In this section, the term "qualified State or local development company" has the meaning given the term in section 697(e) of this title.

(Pub. L. 85–699, title V, §507, as added Pub. L. 103–403, title II, §212(a), Oct. 22, 1994, 108 Stat. 4183; amended Pub. L. 116–260, div. N, title III, §328(b), Dec. 27, 2020, 134 Stat. 2040.)

EDITORIAL NOTES

AMENDMENTS

2020—Subsecs. (e), (f). Pub. L. 116–260, §328(b)(2), added subsec. (e) and struck out former subsec. (e) which related to express loan authority of a local development company designated as an accredited lender, and subsec. (f) which defined terms "accredited lender certified company", "covered loan", and "qualified State or local development company" in this section.

Pub. L. 116–260, §328(b)(1), added subsecs. (e) and (f) and struck out former subsec. (e) which defined "qualified State or local development company" for purposes of this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title III, §328(b)(2), Dec. 27, 2020, 134 Stat. 2040, provided in part that the amendment made by section 328(b)(2) is effective on Sept. 30, 2023.

Except as otherwise provided, amendment by Pub. L. 116–260 effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as a note under section 636 of this title.

REGULATIONS

Pub. L. 103–403, title II, §212(b), Oct. 22, 1994, 108 Stat. 4184, provided that: "Not later than 120 days after the date of enactment of this Act [Oct. 22, 1994], the Administration shall promulgate final regulations to carry out this section [enacting this section and provisions set out below]."

REPORT ON IMPLEMENTATION OF PROGRAM

Pub. L. 103–403, title II, §212(c), Oct. 22, 1994, 108 Stat. 4184, provided that: "Not later than 1 year after the effective date of regulations promulgated under subsection (b) [set out above], and biennially thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] on the implementation of this section [enacting this section and provisions set out above]. Such report shall include data on the number of development companies designated as accredited lenders, their debenture guarantee volume, their loss rates, the average processing time on their guarantee applications, and such other information as the Administration deems appropriate."

§697e. Premier Certified Lenders Program

(a) Establishment

The Administration may establish a Premier Certified Lenders Program for certified development

companies that meet the requirements of subsection (b).

(b) Requirements

(1) Application

To be eligible to participate in the Premier Certified Lenders Program established under subsection (a), a certified development company shall prepare and submit to the Administration an application at such time, in such manner, and containing such information as the Administration may require.

(2) Designation

The Administration may designate a certified development company as a premier certified lender—

(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) if the company has a history of—

(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

(ii) of properly closing section 504 [15 U.S.C. 697a] loans and servicing its loan portfolio;

(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company); and

(D) the ¹ Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3) Applicability of criteria after designation

The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c) Loss reserve

(1) Establishment

A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

(2) Amount

The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C).

(3) Assets

Each loss reserve established under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) Contributions

The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

- (A) 50 percent when a debenture is closed.
- (B) 25 percent additional not later than 1 year after a debenture is closed.
- (C) 25 percent additional not later than 2 years after a debenture is closed.

(5) Replenishment

If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's share of the loss as provided in subsection (b)(2)(C). If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

(6) Disbursements

(A) In general

The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B) Temporary reduction based on outstanding balance

Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after May 28, 2004, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7) Alternative loss reserve

(A) Election

With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

(B) Contributions

(i) Ordinary rules inapplicable

Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

(ii) Based on loss

A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

- (I) not less than \$100,000; and
- (II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

(iii) Certification

Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL's obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

(C) Disbursements

(i) Ordinary rule inapplicable

Paragraph (6) shall not apply with respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

(ii) Excess funds

At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

(I) the amount of the loss reserve, over

(II) the greater of \$100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

(D) Recontribution

If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

(E) Risk management

If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

(F) Qualified high loss reserve PCL

The term "qualified high loss reserve PCL" means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

(i) the amount of the loss reserve of the company is not less than \$100,000;

(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

(G) Specified risk management benchmarks

For purposes of this paragraph, the term "specified risk management benchmarks" means the following rates, as determined by the Administrator:

(i) Currency rate.

(ii) Delinquency rate.

(iii) Default rate.

(iv) Liquidation rate.

(v) Loss rate.

(H) Qualified independent auditor

For purposes of this paragraph, the term "qualified independent auditor" means any auditor who—

- (i) is compensated by the qualified high loss reserve PCL;
- (ii) is independent of such PCL; and
- (iii) has been approved by the Administrator during the preceding year.

(I) PCLP loan

For purposes of this paragraph, the term "PCLP loan" means any loan guaranteed under this section.

(J) Eligible calendar quarter

For purposes of this paragraph, the term "eligible calendar quarter" means—

- (i) the first calendar quarter that begins after the end of the 90-day period beginning with May 28, 2004; and
- (ii) the 7 succeeding calendar quarters.

(K) Calendar quarter

For purposes of this paragraph, the term "calendar quarter" means—

- (i) the period which begins on January 1 and ends on March 31 of each year;
- (ii) the period which begins on April 1 and ends on June 30 of each year;
- (iii) the period which begins on July 1 and ends on September 30 of each year; and
- (iv) the period which begins on October 1 and ends on December 31 of each year.

(L) Regulations

Not later than 45 days after May 28, 2004, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

- (i) the approval of auditors under subparagraph (H); and
- (ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

(8) Bureau of PCLP Oversight

(A) Establishment

There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

(B) Purpose

The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

(C) Deadline

Not later than 90 days after May 28, 2004—

- (i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and
- (ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.

(d) Sale of certain defaulted loans

(1) Notice

If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as

possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) Limitations

The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(e) Loan approval authority

(1) In general

Notwithstanding section 697(b)(6) of this title, and subject to such terms and conditions as the Administration may establish, the Administration may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

(2) Scope of review

The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 697(a) of this title, but such final approval shall not include review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(f) Review

After the issuance and sale of debentures under this section, the Administration, at intervals not greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (g), but such review shall not affect any outstanding debenture guarantee.

(g) Suspension or revocation

The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administration determines that the company—

- (1) has not continued to meet the criteria for eligibility under subsection (b);
- (2) has not established or maintained the loss reserve required under subsection (c);
- (3) is failing to adhere to the Administration's rules and regulations; or
- (4) is violating any other applicable provision of law.

(h) Effect of suspension or revocation

A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

(i) Program goals

Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 697a of this title pursuant to the program authorized under this section.

(j) Report

Not later than 1 year after October 22, 1994, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include—

- (1) the number of certified development companies designated as premier certified lenders;

- (2) the debenture guarantee volume of such companies;
- (3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and
- (4) such other information as the Administration deems appropriate.

(Pub. L. 85–699, title V, §508, as added and amended Pub. L. 103–403, title II, §217, Oct. 22, 1994, 108 Stat. 4185; Pub. L. 105–135, title II, §223(a), Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106–554, §1(a)(9) [title III, §§305, 306], Dec. 21, 2000, 114 Stat. 2763, 2763A–685; Pub. L. 108–232, §§2–3(c), May 28, 2004, 118 Stat. 649–652.)

EDITORIAL NOTES

CODIFICATION

May 28, 2004, referred to in subsec. (c)(8)(C), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 108–232, which enacted subsec. (c)(8), to reflect the probable intent of Congress.

October 22, 1994, referred to in subsec. (j), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 103–403, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (b)(2)(C). Pub. L. 108–232, §3(b), inserted "(15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company)" before "; and".

Subsec. (b)(2)(D). Pub. L. 108–232, §3(c)(1), substituted "subsection (c)" for "subsection (c)(2)".

Subsec. (c)(5). Pub. L. 108–232, §3(c)(2), struck out "10 percent" after "the premier company's".

Subsec. (c)(6). Pub. L. 108–232, §2, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(7), (8). Pub. L. 108–232, §3(a), added pars. (7) and (8).

2000—Pub. L. 106–554, §1(a)(9) [title III, §305], repealed Pub. L. 103–403, §217(b). See 1994 Amendment note below.

Subsec. (a). Pub. L. 106–554, §1(a)(9) [title III, §306(1)], substituted "The" for "On a pilot program basis, the".

Subsecs. (d), (e). Pub. L. 106–554, §1(a)(9) [title III, §306(2), (5)], added heading and text of subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–554, §1(a)(9) [title III, §306(2), (3)], redesignated subsec. (e) as (f) and substituted "subsection (g)" for "subsection (f)". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 106–554, §1(a)(9) [title III, §306(2)], redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 106–554, §1(a)(9) [title III, §306(2), (4)], redesignated subsec. (g) as (h) and substituted "subsection (g)" for "subsection (f)". Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 106–554, §1(a)(9) [title III, §306(2)], redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1997—Subsec. (a). Pub. L. 105–135, §223(a)(1), struck out "not more than 15" before "certified development companies".

Subsec. (b)(2). Pub. L. 105–135, §223(a)(2)(A)(i), struck out "if such company" after "premier certified lender" in introductory provisions.

Subsec. (b)(2)(A), (B). Pub. L. 105–135, §223(a)(2)(A)(ii), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

"(A) has been an active participant in the accredited lenders program during the 12-month period preceding the date on which the company submits an application under paragraph (1), except that, prior to January 1, 1996, the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

"(B) has a history of submitting to the Administration adequately analyzed debenture guarantee application packages; and".

Subsec. (b)(2)(C). Pub. L. 105–135, §223(a)(2)(A)(iii), inserted "if the company" before "agrees to assume" and substituted "; and" for period at end.

Subsec. (b)(2)(D). Pub. L. 105–135, §223(a)(2)(A)(iv), added subpar. (D).

Subsec. (b)(3). Pub. L. 105–135, §223(a)(2)(B), added par. (3).

Subsec. (c). Pub. L. 105–135, §223(a)(3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows:

"(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financings approved pursuant to this section.

"(2) AMOUNT.—The amount of the loss reserve shall be based upon the greater of—

"(A) the historic loss rate on debentures issued by such company; or

"(B) 10 percent of the amount of the company's exposure as determined under subsection (b)(2)(C) of this section.

"(3) ASSETS.—The loss reserve shall be comprised of segregated assets of the company which shall be securitized in favor of the Administration.

"(4) CONTRIBUTIONS.—The company shall make contributions to the loss reserve in the following amounts and at the following intervals:

"(A) 50 percent when a debenture is closed.

"(B) 25 percent not later than 1 year after a debenture is closed.

"(C) 25 percent not later than 2 years after a debenture is closed."

Subsec. (d)(1). Pub. L. 105–135, §223(a)(4), substituted "to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans" for "to approve loans".

Subsec. (f). Pub. L. 105–135, §223(a)(5), substituted "certified development company" for "State or local development company" in introductory provisions.

Subsec. (g). Pub. L. 105–135, §223(a)(6), substituted "revocation" for "designation" in heading.

Subsec. (h). Pub. L. 105–135, §223(a)(7), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: "Not later than 180 days after October 22, 1994, the Administration shall promulgate regulations to carry out this section."

Subsec. (i)(3). Pub. L. 105–135, §223(a)(8), substituted "other lenders, specifically comparing default rates and recovery rates on liquidations" for "other lenders".

1994—Pub. L. 103–403, §217(b), which directed repeal of this section effective Oct. 1, 2000, and was repealed by section 1(a)(9) [title III, §305] of Pub. L. 106–554, was not executed to reflect the probable intent of Congress and the amendments to this section by section 1(a)(9) [title III, §306] of Pub. L. 106–554. See Termination Date note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

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.

TERMINATION DATE

Section 217(b) of Pub. L. 103–403, as amended by Pub. L. 105–135, title II, §223(c), Dec. 2, 1997, 111 Stat. 2606, which provided that this section was to be repealed effective Oct. 1, 2000, was repealed by Pub. L. 106–554, §1(a)(9) [title III, §305], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.

REGULATIONS

Pub. L. 105–135, title II, §223(b), Dec. 2, 1997, 111 Stat. 2606, provided that: "The Administrator shall—

"(1) not later than 150 days after the date of enactment of this Act [Dec. 2, 1997], promulgate regulations to carry out the amendments made by subsection (a) [amending this section]; and

"(2) not later than 180 days after the date of enactment of this Act, issue program guidelines and fully implement the amendments made by subsection (a)."

¹ *So in original. Probably should be preceded by "if".*

§697f. Prepayment of development company debentures

(a) In general

(1) Prepayment authorized

Subject to the requirements set forth in subsection (b), an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this chapter may, at the election of the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) and with the approval of the Administration, prepay such debenture in accordance with the provisions of this section.

(2) Procedure

(A) In general

In making a prepayment under paragraph (1)—

(i) the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) shall pay to the Federal Financing Bank an amount that is equal to the sum of the unpaid principal balance due on the debenture as of the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in subparagraph (B); and

(ii) the Administration shall pay to the Federal Financing Bank the difference between the repurchase premium paid by the borrower under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

(B) Repurchase premium

(i) In general

For purposes of subparagraph (A)(i), the repurchase premium is the amount equal to the product of—

(I) the unpaid principal balance due on the debenture on the date of prepayment; and

(II) the applicable percentage rate, as determined in accordance with clauses (ii) and (iii).

(ii) Applicable percentage rate

For purposes of clause (i)(II), the applicable percentage rate means—

(I) with respect to a 10-year term loan, 8.5 percent;

(II) with respect to a 15-year term loan, 9.5 percent;

(III) with respect to a 20-year term loan, 10.5 percent; and

(IV) with respect to a 25-year term loan, 11.5 percent.

(iii) Adjustments to applicable percentage rate

The percentage rates described in clause (ii) shall be increased or decreased by the Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103–317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

(b) Requirements

For purposes of subsection (a), the requirements of this subsection are that—

(1) the debenture is outstanding and neither the loan that secures the debenture, if any, nor the debenture is in default on the date on which the prepayment is made;

(2) State, local, or personal funds, or the proceeds of a refinancing in accordance with subsection (d) under the programs authorized by this subchapter, are used to prepay or roll over the debenture; and

(3) with respect to a debenture issued under section 697 of this title, the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

(c) No prepayment fees or penalties

No fees or penalties other than those specified in this section may be imposed on the issuer, the borrower, the Administration, or any fund or account administered by the Administration as the result of a prepayment under this section.

(d) Refinancing limitations

(1) In general

The refinancing of a debenture under sections 697a and 697b of this title, in accordance with subsection (b)(2)—

(A) shall not exceed the amount necessary to prepay existing debentures, including all costs associated with the refinancing and any applicable prepayment penalty or repurchase premium; and

(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 697a and 697b of this title and the rules and regulations promulgated thereunder, including rules and regulations governing payment of authorized expenses, commissions, fees, and discounts to brokers and dealers in trust certificates issued pursuant to section 697b of this title.

(2) Job creation

An applicant for refinancing under section 697a of this title of a loan made pursuant to section 697 of this title shall not be required to demonstrate that a requisite number of jobs will be created with the proceeds of a refinancing.

(3) Loan processing fee

To cover the cost of loan packaging, processing, and other administrative functions, a development company that provides refinancing under subsection (b)(2) may impose a one-time loan processing fee, not to exceed 0.5 percent of the principal amount of the loan.

(4) New debentures

Issuers of debentures under subchapter III may issue new debentures in accordance with such subchapter in order to prepay existing debentures as authorized in this section.

(5) Preliminary notice

(A) In general

The Administration shall use certified mail and other reasonable means to notify each eligible borrower of the prepayment program provided in this subchapter. Each preliminary notice shall specify the range and dollar amount of repurchase premiums which could be required of that borrower in order to participate in the program. In carrying out this program, the Administration shall provide a period of not less than 45 days following the receipt of such notice by the borrower during which the borrower must notify the Administration of the borrower's intent to participate in the program. The Administration shall require that a borrower who gives notice of its intent to participate to make an earnest money deposit of \$1,000 which shall not be refundable but which shall be credited toward the final repurchase premium.

(B) "Borrower" defined

For purposes of this paragraph, the term "borrower", in the case of a small business investment company or a specialized small business investment company, means "issuer".

(6) Final notice

Based upon the response to the preliminary notice under paragraph (5), the Administration shall make a final computation of the necessary prepayment premiums and shall notify each qualified respondent of the results of such computation. Each qualified respondent shall be afforded not less than 4 months to complete the prepayment.

(e) Definitions

For purposes of this section—

(1) the term "issuer" means—

(A) the qualified State or local development company that issued a debenture pursuant to section 697 of this title, which has been purchased by the Federal Financing Bank; and

(B) a small business investment company licensed pursuant to section 681 of this title; or

(2) the term "borrower" means a small business concern whose loan secures a debenture issued pursuant to section 697 of this title.

(f) Regulations

Not later than 30 days after October 22, 1994, the Administration shall promulgate such regulations as may be necessary to carry out this section.

(g) Authorization

There are authorized to be appropriated \$30,000,000 to carry out the provisions of The Small Business Prepayment Penalty Relief Act of 1994.

(Pub. L. 85–699, title V, §509, as added Pub. L. 103–403, title V, §503, Oct. 22, 1994, 108 Stat. 4199; amended Pub. L. 104–208, div. D, title II, §208(h)(1)(H), Sept. 30, 1996, 110 Stat. 3009–747.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a)(1), see References in Text note set out under section 661 of this title.

Public Law 103–317, referred to in subsec. (a)(2)(B)(iii), is Pub. L. 103–317, Aug. 26, 1994, 108 Stat. 1724, known as the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1995. For complete classification of this Act to the Code, see Tables.

The Small Business Prepayment Penalty Relief Act of 1994, referred to in subsec. (g), is title V of Pub. L. 103–403, Oct. 22, 1994, 108 Stat. 4198, which enacted this section and provisions set out as notes under this section and section 661 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 661 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, §208(h)(1)(H)(i), struck out at end "A small business investment company operating under the authority of section 681(d) of this title that has issued a debenture that was purchased by and is held by the Administration, may, under the same terms and conditions, prepay such debenture, and the penalty as provided in this section, and shall thereafter be immediately eligible to apply for additional assistance from the Administration."

Subsec. (e)(1)(B). Pub. L. 104–208, §208(h)(1)(H)(ii), substituted "section 681 of this title" for "subsection (c) or (d) of section 681 of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

INTENTION OF CONGRESS

Pub. L. 103–403, title V, §502, Oct. 22, 1994, 108 Stat. 4198, provided that:

"(a) **IN GENERAL.**—The Small Business Administration shall fully utilize the \$30,000,000 appropriated in Public Law 103–317 [108 Stat. 1724] to reduce, in accordance with this title [enacting this section and provisions set out as a note under section 661 of this title] and the amendments made by this title, prepayment penalties imposed in connection with debentures issued under—

"(1) section 303 or 503 of the Small Business Investment Act of 1958 [15 U.S.C. 683, 697], which have been purchased by the Federal Financing Bank; and

"(2) title III [probably means title III of Pub. L. 85–699, which is classified to section 681 et seq. of this title] to companies operating under section 301(d) of such Act [15 U.S.C. 681(d)], which have been purchased by the Small Business Administration.

"(b) **EQUAL OPPORTUNITY.**—In order to provide an equal opportunity to participate in the program

authorized under this title, the Small Business Administration shall afford each borrower or issuer of a debenture subject to this title, not less than 45 days to elect to participate and to provide an earnest money deposit. The Administration shall subsequently allow a period of not less than 4 months, during which those borrowers or issuers that elect to participate shall be allowed to complete the prepayment process.

"(c) RESTRICTIONS ON PARTICIPATION.—In no event shall the Small Business Administration—

"(1) allow any borrower or issuer to participate in the program if the borrower or issuer fails to—

"(A) make a timely election and provide the deposit on a timely basis; or

"(B) complete the prepayment process within the required time; or

"(2) allow any borrower or issuer to participate in the program at a percentage rate other than the rate finally determined to be applicable to all other borrowers or issuers with similar terms of years."

§697g. Foreclosure and liquidation of loans

(a) Delegation of authority

In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 697(e) of this title) that meets the eligibility requirements of subsection (b)(1) the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 697 of this title.

(b) Eligibility for delegation

(1) Requirements

A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) if—

(A) the company—

(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

(ii) is participating in the Premier Certified Lenders Program under section 697e of this title; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 697 of this title; and

(B) the company—

(i) has one or more employees—

(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 697 of this title; and

(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) Confirmation

On request the Administration shall examine the qualifications of any company described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

(c) Scope of delegated authority

(1) In general

Each qualified State or local development company to which the Administration delegates authority under section 1 (a) may with respect to any loan described in subsection (a)—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 696 of this title; or

(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

(2) Administration approval

(A) Liquidation plan

(i) In general

Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(iii) Routine actions

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

(B) Purchase of indebtedness

(i) In general

In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

(ii) Administration action on request

(I) Timing

Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

(II) Notice of no decision

With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

(C) Workout plan

(i) In general

In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(D) Compromise of indebtedness

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

(E) Contents of notice of no decision

Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

(i) shall be in writing;

(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

(3) Conflict of interest

In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) Suspension or revocation of authority

The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

(1) does not meet the requirements of subsection (b)(1);

(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

(e) Report

(1) In general

Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

(2) Contents

Each report submitted under paragraph (1) shall include the following information:

(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

- (i) the total cost of the project financed with the loan;
- (ii) the total original dollar amount guaranteed by the Administration;
- (iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;
- (iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and
- (v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(D) A comparison between—

- (i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and
- (ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.

(Pub. L. 85–699, title V, §510, as added Pub. L. 106–554, §1(a)(9) [title III, §307(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Programs Improvement Act of 1996, referred to in subsec. (b)(1)(A)(i), is Pub. L. 104–208, div. D, Sept. 30, 1996, 110 Stat. 3009–724. Provisions relating to loan liquidation pilot program are contained in section 204 of title II of div. D of Pub. L. 104–208, which is set out as a note under section 695 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 631 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

REGULATIONS

Pub. L. 106-554, §1(a)(9) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-689, provided that:

"(1) IN GENERAL.—Not later than 150 days after the date of the enactment of this Act [Dec. 21, 2000], the Administrator shall issue such regulations as may be necessary to carry out section 510 of the Small Business Investment Act of 1958 [15 U.S.C. 697g], as added by subsection (a) of this section.

"(2) TERMINATION OF PILOT PROGRAM.—Beginning on the date on which final regulations are issued under paragraph (1), section 204 of the Small Business Programs Improvement Act of 1996 [Pub. L. 104-208, div. D] (15 U.S.C. 695 note) shall cease to have effect."

¹ So in original. Probably should be "subsection".

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

Sec.

701 to 712. Omitted or Repealed.

712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies.

713 to Omitted or Repealed.

713a-3.

713a-4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.

713a-5. Exemption of Commodity Credit Corporation and its obligations from taxation.

713a-6. Sale of surplus agricultural commodities to foreign governments.

713a-7. Exchange of surplus agricultural commodities for reserve stocks of strategic materials.

713a-8. Omitted.

713a-9. Reimbursement of corporation from funds of Government agencies for services, losses, operating costs, or commodities purchased.

713a-10. Omitted.

713a-11. Annual appropriations to reimburse Commodity Credit Corporation for net realized loss.

713a-11a. Interest prohibited when reimbursing Corporation for net realized losses.

713a-12. Deposit of net realized gain of Commodity Credit Corporation in Treasury.

713a-13. Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation.

713a-14, Repealed.

713b.

713c. Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities.

713c-1. Annual report to Congress by Federal Surplus Commodities Corporation.

713c-2. Purchase and distribution of surplus fishery products.

713c-3. Promotion of the free flow of domestically produced fishery products.

713d. Declaration of purpose.

713d-1. Critical shortages; recommendations by President; public hearings.

- 713d-2. Food and conservation program; appropriations; administrative expenses.
- 713d-3. Authorizations for appropriations.

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

- 714. Creation and purpose of Corporation.
- 714a. Location of offices.
- 714b. General powers of Corporation.
- 714c. Specific powers of Corporation.
- 714d. Laws applicable to Corporation.
- 714e. Capital stock; amount; interest.
- 714f. Use of funds.
- 714g. Board of Directors.
- 714h. Officers and employees; appointment; duties.
- 714i. Cooperation with other governmental agencies.
- 714j. Utilization of associations and trade facilities.
- 714k. Records; annual report.
- 714l. Interest of Members of Congress.
- 714m. Crimes and offenses.
- 714n. Transfer of assets of Commodity Credit Corporation, a Delaware corporation.
- 714o. Dissolution of Delaware corporation.
- 714p. Release of innocent purchasers of converted goods.

SUBCHAPTER I—GENERALLY

§701. Omitted

EDITORIAL NOTES

CODIFICATION

Section was section 1 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375, which declared a national emergency and laid down policy objectives for the industrial recovery. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation v. U.S.* (N.Y. 1935, 55 S.Ct. 837, 295 U.S. 495, 79 L.Ed. 1570, 97 A.L.R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Orders Nos. 7252 and 7323, set out under sections 703 to 712 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117-121, §1, May 12, 2022, 136 Stat. 1188, provided that: "This Act [amending section 713c-3 of this title] may be cited as the 'American Fisheries Advisory Committee Act'."

§§702 to 702f. Repealed. Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 648

Section 702, act June 16, 1933, ch. 90, §2, 48 Stat. 195, and sections 702a to 702f, act June 19, 1934, ch. 677, §§1-6, 48 Stat. 1183, provided for establishment of agencies to administer the National Industrial Recovery Act during period of emergency and for regulation of employer-employee relations.

§§703 to 712. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 703 to 712 of this title were sections 3 to 10, 303, and 304 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation v. U.S.* (N. Y. 1935, 55 S. Ct. 837, 295 U. S. 495, 79 L. Ed. 1570, 97 A. L. R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Order Nos. 7252 and 7323, see below. Subsequently, sections 303 and 304 of the Act, classified to sections 711 and 712 of this title, were repealed by Pub. L. 107-217, §6(b), Aug. 21, 2002, 116 Stat. 1304. For history of the Commodity Credit Corporation, the Electric Home and Farm Authority, and the Export-Import Bank of Washington, see notes set out under section 712a of this title.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 7252. TERMINATING THE NATIONAL RECOVERY ADMINISTRATION AND TRANSFERRING CERTAIN AGENCIES AND FUNCTIONS THEREOF TO THE DEPARTMENTS OF COMMERCE AND LABOR

Ex. Ord. No. 7252, Dec. 21, 1935, provided:

1. The National Recovery Administration and the office of Administrator thereof are hereby terminated.
2. The Division of Review, the Division of Business Cooperation, and the Advisory Council, as constituted by Ex. Ord. No. 7075 of June 15, 1935, together with all of their officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Commerce. The Secretary of Commerce is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees engaged in the administration of the agencies transferred by this Order to the Department of Commerce, to exercise and perform in connection with the said agencies the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, to report to the President on all matters relating thereto, and to terminate the functions and duties of the said agencies not later than April 1, 1936.
3. The Consumers' Division, established within the National Recovery Administration by Executive Order No. 7120 of July 30, 1935, together with all of its officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Labor. The Secretary of Labor is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees as may be engaged in the administration of the said Consumers' Division, to exercise and perform in connection with said Consumers' Division the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, and to report to the President on all matters relating thereto.
4. No person transferred by this Order shall by such transfer acquire a civil service status. Any new appointments under this Order may be made without regard to the Civil Service Rules and Regulations.
5. All Orders and Regulations heretofore issued concerning the administration of Title I of the National Industrial Recovery Act, as amended, are hereby modified to the extent necessary to make this Order fully effective.
6. This Order shall become effective on January 1, 1936.

EXECUTIVE ORDER NO. 7323

Ex. Ord. No. 7323, Mar. 26, 1936, 1 F.R. 69, created the Committee of Industrial Analysis to complete the summary of the results and accomplishments of the National Industrial Recovery Administration and report thereon, which report was transmitted to the President on February 17, 1937.

NATIONAL EMERGENCY COUNCIL

National Emergency Council abolished and functions transferred to Executive Office of President and to Office of Education in Federal Security Agency by Reorg. Plan No. II of 1939, §§201(a), 301, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, 1435, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 401 to 404 of Reorg. Plan No. II of 1939, for provisions relating to transfer of functions, records, property, personnel, and funds.

NATIONAL RESOURCES COMMITTEE

National Resources Committee abolished and functions and personnel transferred to National Resources

Planning Board in Executive Office of President, which Board was also directed to wind up affairs of the Committee, by Reorg. Plan No. I of 1939, §§4, 5, eff. July 1, 1939, 4 F.R. 2727, 2728, 53 Stat. 1423, 1424, set out in the Appendix to Title 5, Government Organization and Employees. See, also, sections 7 to 9 of 1939 Reorg. Plan for provisions relating to transfer of records, property, funds, and personnel.

§712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies

(a) Notwithstanding any other provision of law, none of the establishments or agencies named in subsection (b) of this section shall, after June 30, 1937, incur any obligations for administrative expenses, except pursuant to an annual appropriation specifically therefor, nor shall any such establishment or agency continue to function after said date unless established by or pursuant to law: *Provided*, That nothing contained in this section shall be construed to extend the period during which any such establishment or agency heretofore has been authorized by law to function.

(b) [1., 2. Repealed] 3. Federal Housing Administration; 4. Federal Surplus Commodities Corporation; 5. Export-Import Bank of the United States; 6. Second Export-Import Bank of Washington, District of Columbia; 7. Reconstruction Finance Corporation; 8. Electric Home and Farm Authority; 9. Commodity Credit Corporation; 10. Federal Emergency Administration of Public Works; [11. Repealed] 12. Reconstruction Finance Mortgage Company.

(June 22, 1936, ch. 689, §7, 49 Stat. 1647; Pub. L. 87-353, §3(1), Oct. 4, 1961, 75 Stat. 774; Pub. L. 90-267, §1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 101-73, title VII, §741, Aug. 9, 1989, 103 Stat. 436.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-73 struck out "1. Federal Home Loan Bank Board; 2. Home Owners' Loan Corporation;" and "11. Federal Savings and Loan Insurance Corporation;".

1961—Subsec. (b). Pub. L. 87-353 struck out item 4. Federal Farm Mortgage Corporation and redesignated former items 5 to 13 as 4 to 12, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPLICABILITY TO NATIONAL HOUSING AGENCY; TRANSFER OF FUNDS; REPORT TO CONGRESS

Act May 3, 1945, ch. 106, title I, §101, 59 Stat. 122, provided in part: "Section 7 of the First Deficiency Appropriation Act, 1936 [this section], shall continue to apply to administrative expenses of and for the constituent units of the National Housing Agency mentioned in said section 7 [this section] and shall also apply to such expenses of said National Housing Agency in connection with the functions and purposes of said constituent units, and none of the funds made available by this Act [act May 3, 1945, ch. 106, title I, §101, 59 Stat. 106] for such administrative expenses shall be obligated or expended unless and until an appropriate appropriation account shall have been established therefor pursuant to an appropriation warrant or a covering warrant, and all such expenditures shall be accounted for and audited in accordance with the Budget and Accounting Act, as amended [see chapters 11 and 35 of Title 31, Money and Finance]: *Provided further*, That the Administrator may, with the approval of the President of the United States, transfer to this authorization or to an authorization of a constituent unit from funds available for administrative expenses of the constituent units or the Office of the Administrator such additional sums as represent a consolidation in the Office of the Administrator or in a constituent unit of any of the administrative functions of the National Housing Agency; but no such transfer of funds shall be made unless the consolidation will result in a reduction in manpower and a savings in administrative expenses, which savings shall not be used for administrative expenses but instead shall be returned to or remain in the funds from which administrative expenses are drawn under this authorization: *Provided further*, That a report of such transfers and the savings effected thereby shall be submitted to Congress in the annual budget."

Similar provisions were contained in acts June 26, 1943, ch. 145, title I, §101, 57 Stat. 184; June 27, 1944,

ch. 286, title I, §101, 58 Stat. 375.

EXECUTIVE DOCUMENTS

TRANSFERS OF FUNCTIONS AND CHANGES IN NAMES

Federal Housing Administration consolidated into National Housing Agency during World War II by Ex. Ord. No. 9070, Feb. 24, 1942. Federal Housing Administration subsequently consolidated into Housing and Home Finance Agency by Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954. Functions, powers, and duties of the Federal Housing Administration thereafter transferred to Secretary of Housing and Urban Development. See section 3534(a) of Title 42, The Public Health and Welfare.

Federal Surplus Commodities Corporation, which was included in Surplus Marketing Administration by Reorg. Plan No. III of 1940, §5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232, consolidated into Agricultural Marketing Administration by Ex. Ord. No. 9069, Feb. 23, 1942. Agricultural Marketing Administration consolidated into Food Distribution Administration of Department of Agriculture by Ex. Ord. No. 9280, Dec. 5, 1942. Food Distribution Administration consolidated into War Food Administration in Department of Agriculture by Ex. Ord. No. 9322, Mar. 26, 1943, 8 F.R. 3807, as amended by Ex. Ord. No. 9334, Apr. 19, 1943, 8 F.R. 5423. War Food Administration terminated and functions transferred to Secretary of Agriculture by Ex. Ord. No. 9577, June 29, 1945, 10 F.R. 8087. Functions of Surplus Marketing Administration transferred to Secretary of Agriculture by Reorg. Plan No. 3 of 1946, §501, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Export-Import Bank of Washington was set out as one of several agencies for which Federal Loan Administrator should supervise administration and be responsible for coordination of functions and activities by Reorg. Plan No. I of 1939, §402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees. Bank terminated by act July 31, 1945, ch. 341, §10, 59 Stat. 529, and a new Export-Import Bank of Washington was created by such act, which is set out as chapter 6A (§635 et seq.) of Title 12, Banks and Banking. "Export-Import Bank of Washington" changed to "Export-Import Bank of the United States" to conform to such change in name in Act July 31, 1945, provided for in section 1(a) of Pub. L. 90-267, Mar. 13, 1968, 82 Stat. 47.

Second Export-Import Bank of Washington, D.C. was established under Ex. Ord. No. 6638, Mar. 9, 1934. Its commitments were transferred to Export-Import Bank of Washington (see above) and it was abolished by Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372.

Federal Loan Agency's and Federal Loan Administrator's functions and duties relating to Reconstruction Finance Corporation, Reconstruction Finance Mortgage Company, Electric Home and Farm Authority and Export-Import Bank of Washington, and other agencies, transferred to Department of Commerce, during World War II, see Ex. Ord. No. 9071, Feb. 24, 1942, 7 F.R. 1531. By act Feb. 24, 1945, ch. 4, 59 Stat. 5, former sections 1801 to 1805 of Title 12, Federal Loan Agency was reconstituted an independent establishment of Federal Government, and was abolished and its property and functions transferred to Reconstruction Finance Corporation by act June 30, 1947, ch. 166, title II, §204, 61 Stat. 208. Section 6(a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished Reconstruction Finance Corporation.

Electric Home and Farm Authority was set out as one of several agencies for which Federal Loan Administrator should supervise administration and be responsible for coordination of functions and activities, by Reorg. Plan No. I of 1939, §402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees.

Electric Home and Farm Authority, Inc., was authorized by Ex. Ord. No. 6514, Dec. 19, 1933. Existence continued until February 1, 1937, by act Mar. 31, 1936, ch. 163, §1, 49 Stat. 1186; extended to "close of business on June 30, 1939" by act Jan. 26, 1937, ch. 6, §2, 50 Stat. 5; to "June 30, 1941" by act Mar. 4, 1939, ch. 4, 53 Stat. 510 and to Jan. 22, 1947, by act June 10, 1941, ch. 190, §2, 55 Stat. 248. Said Authority dissolved on Oct. 13, 1942, by Ex. Ord. No. 9256, Oct. 13, 1942, 7 F.R. 8334, and for purposes of liquidation and payment of liabilities all assets, funds, records, contracts, personnel, and property were transferred to former Reconstruction Finance Corporation.

Commodity Credit Corporation, Federal Farm Mortgage Corporation, and Farm Credit Administration, and their functions and activities, together with their respective personnel, records, and property transferred to Department of Agriculture by Reorg. Plan No. I of 1939, §401, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees. Administration of program of Commodity Credit Corporation and functions of Federal Surplus Commodities Corporation transferred to Secretary of Agriculture by Reorg. Plan No. 3 of 1946, §501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100. See also notes under section 713 of this title.

Federal Emergency Administration of Public Works, created by act June 16, 1933, ch. 90, title II, §201, 48 Stat. 200, transferred to Federal Works Agency to be administered as Public Works Administration by Reorg. Plan No. I of 1939, §§301 and 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428. Federal Emergency Administration of Public Works further continued to June 30, 1940, by Res. of June 21, 1938, ch. 554, title II, §202, 52 Stat. 817. The act of June 16, 1933, ch. 90, title II, terminated June 30, 1943, by provisions of act June 27, 1942, ch. 450, §1, 56 Stat. 410. Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041, transferred functions of Public Works Administration to office of Federal Works Administrator.

For changes affecting other agencies enumerated in subsection (b) of this section, see Reorg. Plan No. I of 1939, §§301, 305, 401, 402, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, 1429, and Reorg. Plan No. III of 1940, §5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232. Reorganization Plans I and III are set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of corporations of Department of Agriculture, boards of directors and officers of such corporations; Advisory Board of Commodity Credit Corporation; and Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration excepted from functions of officers, agencies and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§713. Omitted

EDITORIAL NOTES

CODIFICATION

Section, acts Jan. 31, 1935, ch. 2, §7, 49 Stat. 4; Jan. 26, 1937, ch. 6, §2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5, §1(a), 53 Stat. 510; Dec. 23, 1943, ch. 383, 57 Stat. 643, was omitted as terminated by its own terms on June 30, 1948. It related to the Commodity Credit Corporation, which was recreated as a Federal corporation by section 714 of this title.

Subsec. (a), continuing the Commodity Credit Corporation, a Delaware corporation, until the close of business on June 30, 1948, authorizing the Corporation to use all its assets (including capital and net earnings therefrom and all moneys allocated to or borrowed by it) in the exercise of its functions as a United States agency, including the making of loans on agricultural commodities, and requiring the Corporation to maintain complete and accurate books of account and to determine the procedures to be followed in the transaction of corporate business, was superseded by sections 714, 714b(a), (d), (l), and 714f of this title.

Initial proviso clause of subsec. (b), "That the Corporation shall continue to have the authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers" was superseded by section 714b(k) of this title.

Remainder of section, relating to audit of financial transactions of the Corporation, was superseded by sections 841 to 870 of former Title 31 [see chapter 91 of Title 31, Money and Finance]. See, particularly, sections 846, 850 and 851 of former title 31 [31 U.S.C. 9101(3), 9105 and 9106].

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act July 1, 1941, ch. 270, §1, 55 Stat. 498, formerly classified to this section, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 651.

Acts July 16, 1943, ch. 241, §1, 57 Stat. 556; Feb. 28, 1944, ch. 71, §1, 58 Stat. 105; Apr. 12, 1945, ch. 54, §5, 59 Stat. 51; June 30, 1947, ch. 164, 61 Stat. 201, formerly classified to this section, were repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 652, 654.

DISSOLUTION OF CORPORATION

Secretary of Agriculture authorized to dissolve the Delaware corporation under authority of section 714o of this title.

TRANSFER OF ASSETS OF CORPORATION

Assets, funds, liabilities, etc., of Delaware corporation transferred to newly created Commodity Credit Corporation under authority of section 714n of this title.

SUBSIDY OPERATIONS

Act July 25, 1946, ch. 671, §6, 60 Stat. 671, provided that the last paragraph of section 902(e) of the former Appendix to Title 50, War and National Defense, should not apply to operations of the Commodity Credit Corporation and the former Reconstruction Finance Corporation for the fiscal year ending June 30, 1947, and placed limitations on certain subsidy payments made during such fiscal year June 30, 1947.

INCREASE IN CERTAIN SUBSIDY PAYMENTS

Act July 31, 1945, ch. 332, 59 Stat. 506, provided that subsidy payments with respect to livestock, wheat, and butter, shall be increased to certain amounts from time to time by the Secretary of Agriculture.

ALLOCATION OF LIVESTOCK AND POULTRY FEEDS

Act July 25, 1946, ch. 671, §15, 60 Stat. 677, directed Secretary of Agriculture to allocate livestock and poultry feeds through the Commodity Credit Corporation when an emergency condition arises with regard to such feeds.

PURCHASES OF WHEAT PRIOR TO APRIL 1, 1947

Act July 25, 1946, ch. 671, §16, 60 Stat. 677, provided that the Commodity Credit Corporation shall offer to purchase the wheat of producers, subject to certain limitations, which wheat has been required to be sold pursuant to Government order and was delivered to a grain elevator prior to April 1, 1947.

§713a. Repealed. June 30, 1947, ch. 166, title II, §206(p), 61 Stat. 208

Section, act Apr. 10, 1936, ch. 168, 49 Stat. 1191, authorized increase of capital stock of the Corporation by \$97,000,000.

§§713a–1, 713a–2. Repealed. Pub. L. 87–155, §1, Aug. 17, 1961, 75 Stat. 391

Section 713a–1, acts Mar. 8, 1938, ch. 44, §1, 52 Stat. 107; July 1, 1941, ch. 270, §2, 55 Stat. 498; Apr. 12, 1945, ch. 54, §4, 59 Stat. 51; Mar. 20, 1954, ch. 102, §1(b), 68 Stat. 30, related to annual appraisal of assets of Commodity Credit Corporation, and to restoration of any capital impairment. See section 713a–11 of this title for provisions authorizing appropriations to reimburse the Commodity Credit Corporation for its net realized yearly losses.

Section 713a–2, act Mar. 8, 1938, ch. 44, §2, 52 Stat. 107, related to deposit in Treasury of any capital excess of Commodity Credit Corporation. See section 713a–12 of this title for provisions requiring any net realized gain for the year by the Commodity Credit Corporation to be deposited in the Treasury.

§713a–3. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Mar. 8, 1938, ch. 44, §3, 52 Stat. 107, referred to stock of the Delaware corporation.

§713a–4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.

With the approval of the Secretary of the Treasury, the Commodity Credit Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding \$30,000,000,000. Such obligations shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject

to such terms and conditions, and shall be issued in such manner and sold at such prices as may be prescribed by the Commodity Credit Corporation, with the approval of the Secretary of the Treasury. Such obligations shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Commodity Credit Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such obligations. The Secretary of the Treasury, in his discretion, is authorized to purchase any obligations of the Commodity Credit Corporation issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under chapter 31 of title 31 and the purposes for which securities may be issued under such chapter are extended to include any purchases of the Commodity Credit Corporation's obligations hereunder. The Secretary of the Treasury may at any time sell any of the obligations of the Commodity Credit Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the obligations of the Commodity Credit Corporation shall be treated as public-debt transactions of the United States. No such obligations shall be issued in excess of the assets of the Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with this provision shall not invalidate the obligations or the guaranty of the same: *Provided*, That this sentence shall not limit the authority of the Corporation to issue obligations for the purpose of carrying out its annual budget programs submitted to and approved by the Congress pursuant to chapter 91 of title 31. The Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price.

(Mar. 8, 1938, ch. 44, §4, 52 Stat. 108; Mar. 4, 1939, ch. 5, §1(d), 53 Stat. 511; Aug. 9, 1940, ch. 649, 54 Stat. 782; July 1, 1941, ch. 270, §3, 55 Stat. 498; July 16, 1943, ch. 241, §2, 57 Stat. 566; Apr. 12, 1945, ch. 54, §1, 59 Stat. 50; Oct. 31, 1949, ch. 792, title IV, §410, 63 Stat. 1057; June 28, 1950, ch. 381, §1, 64 Stat. 261; Mar. 20, 1954, ch. 102, §1(a), 68 Stat. 30; Aug. 31, 1954, ch. 1172, §1, 68 Stat. 1047; Aug. 11, 1955, ch. 782, §1, 69 Stat. 634; Aug. 1, 1956, ch. 815, §1(b), 70 Stat. 783; Pub. L. 95-279, title III, §301(b), May 15, 1978, 92 Stat. 242; Pub. L. 100-202, §101(k) [title I, §101], Dec. 22, 1987, 101 Stat. 1329-322, 1329-336.)

EDITORIAL NOTES

CODIFICATION

"Chapter 31 of title 31" and "such chapter" substituted in text for "the Second Liberty Bond Act, as amended" and "such Act, as amended," and "chapter 91 of title 31" substituted for "the Government Corporation Control Act (31 U.S.C., 1946 edition, sec. 841)" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1987—Pub. L. 100-202 substituted "\$30,000,000,000" for "\$25,000,000,000".

1978—Pub. L. 95-279 substituted "\$25,000,000,000" for "\$14,500,000,000".

1956—Act Aug. 1, 1956, substituted "\$14,500,000,000" for "\$12,000,000,000".

1955—Act Aug. 11, 1955, substituted "\$12,000,000,000" for "\$10,000,000,000".

1954—Act Aug. 31, 1954, substituted "\$10,000,000,000" for "\$8,500,000,000".

Act Mar. 20, 1954, substituted "\$8,500,000,000" for "\$6,750,000,000".

1950—Act June 28, 1950, substituted "\$6,750,000,000" for "\$4,750,000,000".

1949—Act Oct. 31, 1949, inserted proviso in next to last sentence.

1945—Act Apr. 12, 1945, substituted "\$4,750,000,000" for "\$3,000,000,000".

1943—Act July 16, 1943, substituted "\$3,000,000,000" for "\$2,650,000,000".

1941—Act July 1, 1941, substituted "\$2,650,000,000" for "\$1,400,000,000".

1940—Act Aug. 9, 1940, substituted "\$1,400,000,000" for "\$900,000,000".

1939—Act Mar. 4, 1939, substituted "\$900,000,000" for "\$500,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–279, title III, §301(d), May 15, 1978, 92 Stat. 242, provided that: "The provisions of this section [amending this section and section 714b of this title and enacting provision set out as a note under section 714b of this title] shall become effective October 1, 1978."

DISCHARGE OF INDEBTEDNESS

Act May 26, 1947, ch. 82, title I, §101, 61 Stat. 109, provided in part that on the date of enactment of that Act [May 26, 1947] the Secretary of the Treasury was authorized and directed to discharge \$641,832,080.64 of the indebtedness of the Commodity Credit Corporation to the Secretary of the Treasury by canceling notes in such amount issued by the Corporation to the Secretary of the Treasury pursuant to section 4 of the Act of March 8, 1938, as amended [this section].

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a–5. Exemption of Commodity Credit Corporation and its obligations from taxation

Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of sections 713a–1 to 713a–5 of this title shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation (except surtaxes, estate, inheritance, and gift taxes). The Commodity Credit Corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Mar. 8, 1938, ch. 44, §5, 52 Stat. 108.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 713a–1 to 713a–5, referred to in text, was in the original "this Act". Section 1 and 2 of that act, set out as sections 713a–1 and 713a–2 of this title, have been repealed and section 3 of that act, set out as section 713a–3 of this title, has been omitted.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a-6. Sale of surplus agricultural commodities to foreign governments

Notwithstanding any other provision of law, the Commodity Credit Corporation, with the approval of the President, is authorized to sell surplus agricultural commodities, acquired by such Corporation through its loan operations, to foreign governments on the condition that, except for rotation to prevent deterioration, such commodities shall be held in reserve by such governments for a period of not less than five years from the date of acquisition, and shall not be disposed of unless a war or war emergency results in a serious interruption of normal supplies of such commodities: *Provided*, That under this section no concession below the prevailing world market price for the unrestricted use of such commodities, as determined by the Secretary of Agriculture, shall be granted, in consideration of the obligation assumed by such governments to hold such commodities in reserve as required hereinbefore, in excess of a maximum amount equal to the average carrying charges, as estimated by the Secretary of Agriculture, that would be incurred if such commodities should be held for an additional eighteen months' period by the Commodity Credit Corporation. In determining specific cotton to be sold under this section, the determination shall be made by sampling and selection at the place where the cotton is stored on the date of signing any sales agreement or contract under this section, and no cotton shall be sold under any such sales agreement or contract which, after such date, is transported to any other place and there sampled and selected: *Provided further*, That in case of a sale, settlement must be made within sixty days after delivery and not more than five hundred thousand bales of cotton shall be sold upon the terms and conditions provided in this section.

(Aug. 11, 1939, ch. 701, 53 Stat. 1418.)

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a-7. Exchange of surplus agricultural commodities for reserve stocks of strategic materials

Notwithstanding any other provision of law, whenever the President, by and with the advice and consent of the Senate, has concluded a treaty involving the exchange of surplus agricultural commodities produced in the United States which are held under loans made or made available by the Commodity Credit Corporation for stocks of strategic and critical materials produced abroad, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed by the Secretary of Agriculture, to accept such strategic and critical materials in exchange for such surplus agricultural commodities; and for the purpose of such exchange the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Interior acting jointly through the agency of the Munitions Board shall determine which materials are strategic and critical and the quantity and quality of such materials. In order to carry out the provisions of this section, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed by the Secretary of Agriculture, to procure, convey, transport, handle, store, maintain, or rotate such surplus agricultural commodities, and such reserve stocks of strategic and critical materials, as may be necessary to accomplish the purposes of this section.

The Commodity Credit Corporation is authorized and directed to transfer to warehouses in or near cotton manufacturing centers in New England not to exceed three hundred thousand bales of cotton, to which it now has title or may hereafter acquire title, having regard for the grades and staples customarily required by manufacturers in that area: *Provided*, That all necessary costs in connection with such transfer will not result in additional net cost to the Corporation.

In determining specific cotton to be exchanged under this section, the determination shall be made

by sampling and selection at the place where the cotton is stored on the date of ratification of a treaty providing for such exchange, and no cotton shall be exchanged under such treaty which, after such date, is transported to another place and there sampled and selected. Such reserve stocks of strategic and critical materials shall be stored on military or naval reservations or in other locations approved by the Secretary of the Army and the Secretary of the Navy. The Commodity Credit Corporation is authorized to transfer such reserve stocks of strategic and critical materials, upon such terms and conditions as the Secretary of Agriculture shall approve, to any other governmental agency. Such reserve stocks or strategic and critical materials shall be made available or disposed of by the Commodity Credit Corporation or other governmental agency only upon order of the President in accordance with the terms of the applicable treaty; when necessary to prevent deterioration, the Commodity Credit Corporation or other governmental agency is authorized to replace those quantities of the reserve stocks of such strategic and critical materials subject to deterioration with equivalent quantities of the same materials. The funds now or hereafter made available to the Commodity Credit Corporation are made available to carry out the purposes of this section. There is authorized to be appropriated such additional sums as may be required to carry out the provisions of this section. All funds for carrying out the provisions of this section shall be available for allotment to bureaus and offices of the Department of Agriculture, and for transfer to such other agencies of the Federal Government as the Secretary of Agriculture may request to cooperate or assist in carrying out the provisions of this section.

(Aug. 11, 1939, ch. 690, 53 Stat. 1407; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

EDITORIAL NOTES

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Army and Navy Munitions Board ceased to exist when Chairman of Board of Munitions took office and records and personnel of Army and Navy Munitions Board were transferred to Munitions Board by act July 26, 1947, ch. 343, title II, §213, 61 Stat. 505.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Munitions Board abolished by section 2 of Reorg. Plan No. 6 of 1953, 18 F.R. 3743, 67 Stat. 638, set out in the Appendix to Title 5, Government Organization and Employees, and functions of Munitions Board transferred to Secretary of Defense by section 1 of Reorg. Plan No. 6 of 1953.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a–8. Omitted

EDITORIAL NOTES

CODIFICATION

Section, acts July 1, 1941, ch. 270, §4, 55 Stat. 498; Oct. 2, 1942, ch. 578, §9(a), 56 Stat. 768; Feb. 28, 1944, ch. 71, §2, 58 Stat. 105; Ex. Ord. No. 9577, June 30, 1945, 10 F.R. 8087, which related to operations to cover the expansion of production of nonbasic agricultural commodities and to fulfillment of commitments to producers during the existing emergency, was omitted in light of the termination of hostilities declared by Proc. No. 2714 of Dec. 31, 1946 and Joint Res. July 25, 1947, ch. 327, §3, 61 Stat. 451, providing that July 25, 1947, be deemed the date of termination of any state of war or national emergency theretofore declared or proclaimed.

§713a–9. Reimbursement of corporation from funds of Government agencies for services, losses, operating costs, or commodities purchased

Full reimbursement shall be made to the Commodity Credit Corporation for services performed, losses sustained, operating costs incurred, or commodities purchased or delivered to or on behalf of the Lend-Lease Administration, the Army or Navy, the Board of Economic Warfare, the Reconstruction Finance Corporation, or any other Government agency, from the appropriate funds of these agencies.

(July 16, 1943, ch. 241, §4, 57 Stat. 566.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Lend-Lease Administration and Board of Economic Warfare, referred to in text, consolidated with Foreign Economic Administration by Ex. Ord. No. 9380, Sept. 25, 1943. Foreign Economic Administration subsequently terminated and functions of Lend-Lease Administration and Board of Economic Warfare transferred to Department of State pursuant to Ex. Ord. No. 9630, Sept. 27, 1945, 10 F.R. 12245, as amended by Ex. Ord. No. 9730, May 27, 1946, 11 F.R. 5777.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished Reconstruction Finance Corporation.

§713a–10. Omitted

EDITORIAL NOTES

CODIFICATION

Section was a composite of provisions contained in the Agriculture, Rural Development, and Related Agencies Appropriation Act for Fiscal Year 1983 (Pub. L. 97–370, title I, title IV, title VI, §625, Dec. 18, 1982, 96 Stat. 1797, 1798, 1808, 1812, as amended Pub. L. 99–386, title II, §202, Aug. 22, 1986, 100 Stat. 823, and related to the authority of the Commodity Corporation to make expenditures and to make contracts and commitments without regard to fiscal year limitations, with exceptions for the amount of funds to be transferred to support the General Sales Manager and to carry out the Export Credit Sales direct loan program. For provisions applicable to subsequent fiscal years, see the appropriate Agriculture, Rural Development, and Related Agencies Appropriation Act. Similar provisions were contained in the following prior appropriations acts:

Dec. 23, 1981, Pub. L. 97–103, title I, title IV, 95 Stat. 1476, 1477, 1485.

Aug. 13, 1981, Pub. L. 97–35, title I, §152, 95 Stat. 370.

Dec. 15, 1980, Pub. L. 96-528, title I, 94 Stat. 3103, 3104.
Nov. 9, 1979, Pub. L. 96-108, title I, 93 Stat. 829.
Oct. 11, 1978, Pub. L. 95-448, title I, 92 Stat. 1081, 1082.
Aug. 12, 1977, Pub. L. 95-97, title I, 91 Stat. 817, 818.
July 12, 1976, Pub. L. 94-351, title I, 90 Stat. 858.
Oct. 21, 1975, Pub. L. 94-122, title I, 89 Stat. 652, 653.
Dec. 31, 1974, Pub. L. 93-563, title I, 88 Stat. 1830.
Oct. 24, 1973, Pub. L. 93-135, title I, 87 Stat. 477.
Aug. 22, 1972, Pub. L. 92-399, title I, 86 Stat. 600.
Aug. 10, 1971, Pub. L. 92-73, title I, 85 Stat. 190.
Dec. 31, 1970, Pub. L. 91-566, title III, 84 Stat. 1494, 1495.
Nov. 26, 1969, Pub. L. 91-127, title III, 83 Stat. 259.
Aug. 8, 1968, Pub. L. 90-463, title III, 82 Stat. 652.
Oct. 14, 1967, Pub. L. 90-113, title III, 81 Stat. 332.
Sept. 7, 1966, Pub. L. 89-556, title III, 80 Stat. 702.
Nov. 2, 1965, Pub. L. 89-316, title III, 79 Stat. 1177, 1178.
Sept. 2, 1964, Pub. L. 88-573, title III, 78 Stat. 874.
Dec. 30, 1963, Pub. L. 88-250, title III, 77 Stat. 831.
Oct. 24, 1962, Pub. L. 87-879, title III, 76 Stat. 1213.
July 26, 1961, Pub. L. 87-112, title III, 75 Stat. 238, 239.
June 29, 1960, Pub. L. 86-532, title II, 74 Stat. 242.
April 13, 1960, Pub. L. 86-424, 74 Stat. 42.
July 8, 1959, Pub. L. 86-80, title II, 73 Stat. 177.
May 20, 1959, Pub. L. 86-30, title I, 73 Stat. 36.
June 13, 1958, Pub. L. 85-459, title II, 72 Stat. 198.
Aug. 2, 1957, Pub. L. 85-118, title II, 71 Stat. 338.
June 4, 1956, ch. 355, title II, 70 Stat. 238.
May 19, 1956, ch. 313, Ch. I, 70 Stat. 162.
May 23, 1955, ch. 43, title II, 69 Stat. 60, 61.
Jan. 25, 1955, ch. 3, Ch. II, 69 Stat. 5.
June 29, 1954, ch. 409, title II, 68 Stat. 317.
July 28, 1953, ch. 251, title II, 67 Stat. 222.
July 5, 1952, ch. 574, title II, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, 65 Stat. 244.
Sept. 6, 1950, ch. 896, Ch. VI, title II, 64 Stat. 677.
June 29, 1949, ch. 280, title II, 63 Stat. 346.
July 19, 1948, ch. 543, title II, §202, 62 Stat. 531.
July 30, 1947, ch. 356, title II, §202, 61 Stat. 550.

§713a-11. Annual appropriations to reimburse Commodity Credit Corporation for net realized loss

There is authorized to be appropriated annually for each fiscal year by means of a current, indefinite appropriation, out of any money in the Treasury not otherwise appropriated, an amount sufficient to reimburse Commodity Credit Corporation for its net realized loss incurred during such fiscal year, as reflected in its accounts and shown in its report of its financial condition as of the close of such fiscal year. Reimbursement of net realized loss shall be with appropriated funds, as provided herein, rather than through the cancellation of notes.

(Pub. L. 87-155, §2, Aug. 17, 1961, 75 Stat. 391; Pub. L. 100-203, title I, §1506(a), Dec. 22, 1987, 101 Stat. 1330-28.)

EDITORIAL NOTES

AMENDMENTS

1987—Pub. L. 100-203 substituted "by means of a current, indefinite appropriation" for ", commencing

with the fiscal year ending June 30, 1961".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title I, §1506(c), Dec. 22, 1987, 101 Stat. 1330-29, provided that: "This section and the amendment made by this section [amending this section and enacting provisions set out as a note below] shall apply beginning with fiscal year 1988."

OPERATING EXPENSES

Pub. L. 100-203, title I, §1506(b), Dec. 22, 1987, 101 Stat. 1330-29, provided that: "No funds may be appropriated for operating expenses of the Commodity Credit Corporation except as authorized under section 2 of Public Law 87-155 [15 U.S.C. 713a-11] to reimburse the Corporation for net realized losses."

§713a-11a. Interest prohibited when reimbursing Corporation for net realized losses

After September 30, 1964, the portion of borrowings from Treasury equal to the unreimbursed realized losses recorded on the books of the Commodity Credit Corporation after September 30 of the fiscal year in which such losses are realized, shall not bear interest and interest shall not be accrued or paid thereon.

(Pub. L. 89-316, title III, §301, Nov. 2, 1965, 79 Stat. 1178; Pub. L. 94-273, §2(6), Apr. 21, 1976, 90 Stat. 375.)

EDITORIAL NOTES

AMENDMENTS

1976—Pub. L. 94-273 substituted "September" for "June".

§713a-12. Deposit of net realized gain of Commodity Credit Corporation in Treasury

In the event the accounts of the Commodity Credit Corporation reflect a net realized gain for any such fiscal year, the amount of such net realized gain shall be deposited in the Treasury by the Commodity Credit Corporation and shall be credited to miscellaneous receipts.

(Pub. L. 87-155, §3, Aug. 17, 1961, 75 Stat. 391.)

§713a-13. Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation

Congress hereby reconfirms its long-standing policy of favoring the use by governmental agencies of the usual and customary channels, facilities, and arrangements of trade and commerce, and directs the Secretary of Agriculture and the Commodity Credit Corporation to the maximum extent practicable to adopt policies and procedures designed to minimize the acquisition of stocks by the Commodity Credit Corporation, to encourage orderly marketing of farm commodities through private competitive trade channels, both cooperative and noncooperative, and to obtain maximum returns in the marketplace for producers and for the Commodity Credit Corporation.

(Pub. L. 87-703, title IV, §402, Sept. 27, 1962, 76 Stat. 632.)

§713a–14. Repealed. Pub. L. 113–79, title I, §1423(a), Feb. 7, 2014, 128 Stat. 695

Section, Pub. L. 99–198, title I, §153, Dec. 23, 1985, 99 Stat. 1377; Pub. L. 100–418, title IV, §4308, Aug. 23, 1988, 102 Stat. 1399; Pub. L. 100–435, title I, §106, Sept. 19, 1988, 102 Stat. 1651; Pub. L. 101–624, title I, §114, Nov. 28, 1990, 104 Stat. 3380; Pub. L. 103–465, title IV, §411(b), Dec. 8, 1994, 108 Stat. 4963; Pub. L. 104–127, title I, §148, Apr. 4, 1996, 110 Stat. 920; Pub. L. 107–171, title I, §1503(a), May 13, 2002, 116 Stat. 207; Pub. L. 110–234, title I, §1503, May 22, 2008, 122 Stat. 992; Pub. L. 110–246, §4(a), title I, §1503, June 18, 2008, 122 Stat. 1664, 1721, related to the dairy export incentive program.

§713b. Repealed. July 31, 1945, ch. 341, §10, 59 Stat. 529

Section, acts Jan. 31, 1935, ch. 2, §9, 49 Stat. 4; Jan. 26, 1937, ch. 6, §2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5, §1(b), (c), 53 Stat. 510; Mar. 2, 1940, ch. 34, 54 Stat. 38; Sept. 26, 1940, ch. 734, §3, 54 Stat. 962, related to the Export-Import Bank of Washington, its continuation of existence, and its powers. See chapter 6A (§635 et seq.) of Title 12, Banks and Banking.

Section was also repealed by act June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 10 of act July 31, 1945, which repealed this section, was repealed by Pub. L. 102–429, title I, §121(c)(1), Oct. 21, 1992, 106 Stat. 2199.

EXECUTIVE DOCUMENTS

DISSOLUTION OF SECOND EXPORT-IMPORT BANK OF WASHINGTON, D.C.

Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372, dissolved said Bank on June 30, 1936, and provided that all remaining funds be covered into United States Treasury as miscellaneous receipts and all records transferred to Export-Import Bank of Washington.

§713c. Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities

In carrying out the provisions of clause (2) of section 612c of title 7, the Secretary of Agriculture may transfer to the Federal Surplus Commodities Corporation, which Corporation is continued, until June 30, 1945, as an agency of the United States under the direction of the Secretary of Agriculture, such funds, appropriated by said section, as may be necessary for the purpose of effectuating clause (2) of said section: *Provided*, That such transferred funds, together with other funds of the Corporation, may be used for purchasing, exchanging, processing, distributing, disposing, transporting, storing, and handling of agricultural commodities and products thereof and inspection costs, commissions, and other incidental costs and expenses, without regard to the provisions of existing law governing the expenditure of public funds and for administrative expenses, including rent, printing and binding, and the employment of persons and means, in the District of Columbia and elsewhere, such employment of persons to be in accordance with the provisions of law applicable to the employment of persons by the Agricultural Adjustment Administration. In carrying out clause (2) of said section, the funds appropriated by said section may be used for the purchase, without regard to the provisions of existing law governing the expenditure of public funds, of agricultural commodities and products thereof, and such commodities, as well as agricultural commodities and products thereof purchased under the preceding paragraph of this section, may be donated for relief purposes and for use in nonprofit summer camps for children.

(June 28, 1937, ch. 385, 50 Stat. 323; Feb. 16, 1938, ch. 30, title II, §204, 52 Stat. 38; June 27, 1942, ch. 454, 56 Stat. 461; Pub. L. 85–483, §2, July 2, 1958, 72 Stat. 287.)

EDITORIAL NOTES

AMENDMENTS

1958—Pub. L. 85–483 permitted donation of commodities for use in nonprofit summer camps for children.

1942—Act June 27, 1942, provided for the continuance of the Corporation from June 30, 1942, to June 30, 1945. It read as follows: "The Federal Surplus Commodities Corporation is hereby continued as an agency of the United States, under the direction of the Secretary of Agriculture, until June 30, 1945."

1938—Act Feb. 16, 1938, substituted "until June 30, 1942" for "until June 30, 1939".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

§713c–1. Annual report to Congress by Federal Surplus Commodities Corporation

The Federal Surplus Commodities Corporation shall submit to Congress on the first day of each regular session an annual report setting forth a statement of the activities, receipts, and expenditures of the Corporation during the previous year.

(Feb. 16, 1938, ch. 30, title II, §204, 52 Stat. 38.)

EDITORIAL NOTES

CODIFICATION

Section was previously classified to section 1293 of Title 7, Agriculture.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

§713c–2. Purchase and distribution of surplus fishery products

Any part of the funds not to exceed \$1,500,000 per year, created under and to carry out the provisions of section 612c of title 7, may also be used by the Secretary of Agriculture for the purpose of diverting surplus fishery products (including fish, shellfish, mollusks, and crustacea) from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief channels: *Provided*, That none of the funds made available to the Secretary of Agriculture under this section and section 713c–3 of this title shall be used to purchase any of the commodities designated in this section and section 713c–3 of this title which may have been produced in any foreign country. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this section and section 713c–3 of this title.

(Aug. 11, 1939, ch. 696, §1, 53 Stat. 1411; 1940 Reorg. Plan No. III, §5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; 1946 Reorg. Plan No. 3, §501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100.)

EDITORIAL NOTES

CODIFICATION

The first part of this section originally read: "Any part of the funds not to exceed \$1,500,000 per year, transferred by the Secretary of Agriculture to the Federal Surplus Commodities Corporation created under and to carry out the provisions of section 612c of title 7 may also be used by such Corporation", etc., and the

reference in the proviso to the Secretary of Agriculture originally read: "Federal Surplus Commodities Corporation". See Transfer of Functions note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SIMILAR PROVISIONS

Earlier provisions on this subject were contained in act Mar. 5, 1937, ch. 29, 50 Stat. 27, and in Joint Res. Apr. 12, 1937, ch. 73, 50 Stat. 61. The former forbade acquisition of commodities thereunder after 90 days after its enactment, but permitted distribution of commodities after such period. The latter made funds available to be used in accordance with the provisions of the former.

Joint Res. Apr. 12, 1937, ch. 73, 50 Stat. 61, provided as follows: "That not to exceed \$1,000,000 of the funds available to the Federal Surplus Commodities Corporation may be used by such Corporation for the purpose of diverting surplus fish (including shellfish) and the products thereof from the normal channels of trade and commerce by the acquisition and distribution thereof in accordance with the provisions of the Act entitled 'An Act to authorize the purchase and distribution of products of the fishing industry', approved March 5, 1937."

Act Mar. 5, 1937, ch. 29, 50 Stat. 27, provided as follows: "That there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$2,000,000 for the purpose of enabling the Federal Surplus Commodities Corporation to divert surplus fish (including shellfish) and the products thereof from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief agencies. No commodities shall be acquired under this Act after ninety days after the date of its enactment: *Provided, however*, That distribution thereof may extend beyond said period. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this Act."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of functions of Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

§713c–3. Promotion of the free flow of domestically produced fishery products

(a) Definitions

As used in this section—

(1) The term "person" means—

(A) any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands;

(B) any fishery development foundation or other private nonprofit corporation located in Alaska; and

(C) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private nonprofit corporation not located in Alaska), nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 50501 of title 46 and for purposes of applying such section 50501 with respect to this section—

(i) the term "State" as used therein includes any State referred to in paragraph (3),

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity or, in the case of a nonprofit entity, exercise control in the entity that is determined by the Secretary to be the equivalent of such ownership, and

(iii) nationals of the United States and citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting the ownership and control requirements

referred to in clause (ii).

(2) The term "Secretary" means the Secretary of Commerce.

(3) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(4) The term "United States fishery" means any fishery, including any tuna fishery, that is, or may be, engaged in by citizens or nationals of the United States or citizens of the Northern Mariana Islands.

(5) The term "citizen of the Northern Mariana Islands" means—

(A) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in subparagraph (A) or citizens or nationals of the United States, in cases in which "owned" is used in the same sense as in section 50501 of title 46.

(b) Transfer of funds

(1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 612c of title 7, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund only for—

(A) use by the Secretary—

(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c),¹

(ii) to implement the national fisheries research and development program provided for under subsection (d);

(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 1863 of title 16; and

(iv) to fund the Federal share of a fishing capacity reduction program established under section 1861a of title 16; and

(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a)² of the Fish and Seafood Promotion Act of 1986 [16 U.S.C. 4008(a)].

(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) \$750,000 in fiscal year 1987, \$3,000,000 in each of fiscal years 1988 and 1989, and \$2,000,000 in each of fiscal years 1990 and 1991.

(c) Fisheries research and development projects

(1) The Secretary shall make grants from the fund established under subsection (b) to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, fisheries science, recreational fishing, harvesting, processing, marketing, and associated infrastructures.

(2) The Secretary shall—

(A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;

(B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and

(C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (a)) in which the application was received.

(3)(A) No application for a grant under this subsection may be approved unless the Secretary—

(i) is satisfied that the applicant has the requisite technical and financial capability to carry out the project; and

(ii) based on the recommendations of the American Fisheries Advisory Committee established in subsection (e), evaluates the proposed project as to—

(I) soundness of design;

(II) the possibilities of securing productive results;

(III) minimization of duplication with other fisheries research and development projects;

(IV) the organization and management of the project;

(V) methods proposed for monitoring and evaluating the success or failure of the project; and

(VI) such other criteria as the Secretary may require.

(B) If the Secretary fails to provide funds to a grant selected by the American Fisheries Advisory Committee, the Secretary shall provide a written document to the Committee justifying the decision.

(4) Each grant made under this subsection shall be subject to such terms and conditions as the Secretary may require to protect the interests of the United States, including, but not limited to, the following:

(A) The recipient of the grant must keep such records as the Secretary shall require as being necessary or appropriate for disclosing the use made of grant funds and shall allow the Secretary and the Comptroller General of the United States, or any of their authorized representatives, access to such records for purposes of audit and examination.

(B) The amount of a grant may not be less than 50 percent of the estimated cost of the project.

(C) The recipient of the grant must submit to the Secretary periodic project status reports.

(5)(A) If the cost of a project will be shared by the grant recipient, the Secretary shall accept, as a part or all of that share, the value of in-kind contributions made by the recipient, or made available to, and applied by, the recipient, with respect to the project.

(B) For purposes of subparagraph (A), in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. The Secretary shall establish (i) the training, experience, and other qualifications which shall be required in order for services to be considered as in-kind contributions; and (ii) the standards under which the Secretary will determine the value of in-kind contributions for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be conclusive.

(6) Any person awarded a grant under this subsection shall make publicly available a title and abstract of the project to be carried out by the grant funds that serves as the public justification for funding the project that includes a statement describing how the project serves to enhance United States fisheries, including harvesting, processing, marketing, and associated infrastructures, if applicable.

(d) National fisheries research and development program

(1) The Secretary shall carry out a national program of research and development addressed to such aspects of United States fisheries (including, but not limited to, harvesting, processing, marketing, and associated infrastructures) if not adequately covered by projects assisted under subsection (c), as the Secretary deems appropriate.

(2) The Secretary shall, after consultation with appropriate representatives of the fishing industry, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives, an annual report, that must be submitted not later than 60 days before the close of each fiscal year, containing—

(A) the fisheries development goals and funding priorities under paragraph (1) for the next fiscal year;

(B) a description of all pending projects assisted under subsection (c) or carried out under paragraph (1), in addition to—

(i) a list of those applications approved and those disapproved under subsection (c), and the total amount of grants made, for the current fiscal year, and

(ii) a statement of the extent to which available funds were not obligated or expended by the Secretary for grants under subsection (c) during the current fiscal year; and

(C) an assessment of each project assisted under subsection (c) or carried out under paragraph (1) that was completed in the preceding fiscal year regarding the extent to which (i) the objectives of the project were attained, and (ii) the project contributed to fishery development.

(e) American Fisheries Advisory Committee

(1) Definitions

In this subsection:

(A) Committee

The term "Committee" means the American Fisheries Advisory Committee established under paragraph (2).

(B) Fishing community

The term "fishing community" means harvesters, marketers, growers, processors, recreational fishermen, charter fishermen, and persons providing them with goods and services.

(C) Marketing and promotion

The term "marketing and promotion" means an activity aimed at encouraging the consumption of seafood or expanding or maintaining commercial markets for seafood.

(D) Processor

The term "processor" means any person in the business of preparing or packaging seafood (including seafood of the processor's own harvesting) for sale.

(E) Seafood

The term "seafood" means farm-raised and wild-caught fish, shellfish, or marine algae harvested in the United States or by a United States flagged vessel for human consumption.

(2) Establishment

Not later than 90 days after May 12, 2022, the Secretary shall establish 6 regions within the American Fisheries Advisory Committee as follows:

(A) Region 1 shall consist of Alaska, Hawaii, the Commonwealth of the Northern Mariana Islands, and the Territories of Guam and American Samoa.

(B) Region 2 shall consist of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.

(C) Region 3 shall consist of Texas, Alabama, Louisiana, Mississippi, Florida, Arkansas, Puerto Rico, and the Territory of the Virgin Islands of the United States.

(D) Region 4 shall consist of California, Washington, Oregon, and Idaho.

(E) Region 5 shall consist of New Jersey, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

(F) Region 6 shall consist of Michigan, Minnesota, Wisconsin, Illinois, Indiana, Ohio, and Pennsylvania.

(3) Membership

The Committee shall be composed of the following members:

(A) Regional representation

Each of the regions listed in subparagraphs (A) through (F) of paragraph (2) shall be

represented on the Committee by 3 members—

- (i) who are appointed by the Secretary;
- (ii) who reside in a State or territory in the region that the member will represent;
- (iii) of which—
 - (I) one shall have experience as a seafood harvester or processor;
 - (II) one shall have experience as recreational or commercial fisher or have experience growing seafood; and
 - (III) one shall be an individual who represents the fisheries science community or the relevant Regional Fishery Management Council; and

(iv) that are selected so that the members of the Committee have experience or expertise with as many seafood species as practicable.

(B) At-large members

The Secretary shall appoint to the Committee at-large members as follows:

- (i) One individual with experience in food distribution, marketing, retail, or food service.
- (ii) One individual with experience in the recreational fishing industry supply chain, such as fishermen, manufacturers, retailers, and distributors.
- (iii) One individual with experience in the commercial fishing industry supply chain, such as fishermen, manufacturers, retailers, and distributors.
- (iv) One individual who is an employee of the National Marine Fisheries Service with expertise in fisheries research.

(C) Balanced representation

In selecting the members described in subparagraphs (A) and (B), the Secretary shall seek to maximize on the Committee, to the extent practicable, a balanced representation of expertise in United States fisheries, seafood production, and science.

(4) Member terms

The term for a member of the Committee shall be 3 years, except that the Secretary shall designate staggered terms for the members initially appointed to the Committee.

(5) Responsibilities

The Committee shall be responsible for—

- (A) identifying needs of the fishing community that may be addressed by a project funded with a grant under subsection (c);
- (B) developing the request for proposals for such grants;
- (C) reviewing applications for such grants; and
- (D) selecting applications for approval under subsection (c)(2)(B).

(6) Chair

The Committee shall elect a chair by a majority of those voting, if a quorum is present.

(7) Quorum

A simple majority of members of the Committee shall constitute a quorum, but a lesser number may hold hearings.

(8) Meetings

(A) Frequency

The Committee shall meet not more than 2 times each year.

(B) Location

The meetings of the Committee shall rotate between the geographic regions described under paragraph (2).

(C) Minimizing costs

The Committee shall seek to minimize the operational costs associated with meetings,

hearings, or other business of the Committee, including through the use of video or teleconference.

(9) Designation of staff member

The Secretary shall designate a staff member to coordinate the activities of the Committee and to assist with administrative and other functions as requested by the Committee.

(10) Per diem and expenses and funding

(A) In general

A member of the Committee shall serve without compensation, but shall be reimbursed in accordance with section 5703 of title 5 for reasonable travel costs and expenses incurred in performing duties as a member of the Committee.

(B) Funding

The costs of reimbursements under subparagraph (A) and the other costs associated with the Committee shall be paid from funds made available to carry out this section (which may include funds described in subsection (f)(1)(B)), except that no funds allocated for grants under subsection (f)(1)(A) shall be expended for any purpose under this subsection.

(11) Conflict of interest

The conflict of interest and recusal provisions set out in section 1852(j) of title 16 shall apply to any decision by the Committee and to all members of the Committee as if each member of the Committee is an affected individual within the meaning of such section 1852(j), except that in addition to the disclosure requirements of section 1852(j)(2)(C) of title 16, each member of the Committee shall disclose any financial interest or relationship in an organization or with an individual that is applying for a grant under subsection (c) held by the member of the Committee, including an interest as an officer, director, trustee, partner, employee, contractor, agent, or other representative.

(12) Technical review of applications

(A) In general

Prior to review of an application for a grant under subsection (c) by the Committee, the Secretary shall obtain an independent written technical evaluation from 3 or more appropriate Federal, private, or public sector experts (such as industry, academia, or governmental experts) who—

- (i) have subject matter expertise to determine the technical merit of the proposal in the application;
- (ii) shall independently evaluate each such proposal; and
- (iii) shall certify that the expert does not have a conflict of interest concerning the application that the expert is reviewing.

(B) Guidance

Not later than 180 days after May 12, 2022, the Secretary shall issue guidance related to carrying out the technical evaluations under subparagraph (A). Such guidance shall include criteria for the elimination by the National Oceanic and Atmospheric Administration of applications that fail to meet a minimum level of technical merit as determined by the review described in subparagraph (A).

(f) Allocation of fund moneys

(1) Notwithstanding any other provision of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section, and no such moneys shall be transferred from the fund for any other purpose. With respect to any fiscal year, all moneys in the fund, including the sum of all unexpended moneys carried over into that fiscal year and all moneys transferred to the fund under subsection (b) or any other provision of law with respect to that fiscal year, shall be allocated as follows:

(A) the Secretary shall use no less than 60 per centum of such moneys to make direct industry assistance grants to develop the United States fisheries and to expand domestic and foreign markets for United States fishery products pursuant to subsection (c) of this section; and

(B) the Secretary shall use the balance of the moneys in the fund to finance those activities of the National Marine Fisheries Service which are directly related to development of the United States fisheries pursuant to subsection (d) of this section.

(2) The Secretary shall, consistent with the number of meritorious applications received with respect to any fiscal year, obligate or expend all of the moneys in the fund described in paragraph (1). Any such moneys which are not expended in a given fiscal year shall remain available for expenditure in accordance with this section without fiscal year limitation, except that the Secretary shall not obligate such moneys at a rate less than that necessary to prevent the balance of moneys in the fund from exceeding \$3,000,000 at the end of any fiscal year.

(Aug. 11, 1939, ch. 696, §2, 53 Stat. 1412; July 1, 1954, ch. 447, 68 Stat. 376; Aug. 8, 1956, ch. 1036, §12(b), 70 Stat. 1124; Pub. L. 96-561, title II, §210, Dec. 22, 1980, 94 Stat. 3287; Pub. L. 97-424, title IV, §423(a), Jan. 6, 1983, 96 Stat. 2164; Pub. L. 99-659, title II, §209(e), Nov. 14, 1986, 100 Stat. 3721; Pub. L. 101-627, title VII, §703, Nov. 28, 1990, 104 Stat. 4463; Pub. L. 102-567, title IX, §902(c), Oct. 29, 1992, 106 Stat. 4319; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-297, title I, §116(c), Oct. 11, 1996, 110 Stat. 3603; Pub. L. 117-121, §§2-4, May 12, 2022, 136 Stat. 1188-1191.)

EDITORIAL NOTES

CODIFICATION

"Section 50501 of title 46" substituted for "section 2 of the Shipping Act, 1916 (46 U.S.C. 802)" in subsec. (a)(1)(C) and (5)(B) and "such section 50501" substituted for "such section 2" in subsec. (a)(1)(C) on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, section 8(b) of which enacted parts A and B of subtitle V of Title 46, Shipping.

Section is comprised of section 2 of act Aug. 11, 1939. Another subsec. (f) of section 2 of act Aug. 11, 1939, was omitted in view of the repeal of the reporting requirements contained in that subsection by section 1(13) of Pub. L. 89-348. See Termination of Reporting Requirements note below.

AMENDMENTS

2022—Subsec. (c)(1). Pub. L. 117-121, §3, inserted "fisheries science, recreational fishing," before "harvesting,".

Subsec. (c)(3). Pub. L. 117-121, §2(b), amended par. (3) generally. Prior to amendment, par. (3) provided conditions required for a grant application to be approved.

Subsec. (c)(6). Pub. L. 117-121, §4, added par. (6).

Subsecs. (e), (f). Pub. L. 117-121, §2(a), added subsec. (e) and redesignated former subsec. (e) as (f). See Codification note above.

1996—Subsec. (b)(1)(A)(iii). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1863 of title 16.

Subsec. (b)(1)(A)(iv). Pub. L. 104-297 added cl. (iv).

Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1861a of title 16.

1992—Subsec. (b)(1)(A). Pub. L. 102-567 struck out "and" at end of cl. (i) and added cl. (iii).

1990—Subsec. (b)(2). Pub. L. 101-627 substituted "each of fiscal years 1990 and 1991" for "fiscal year 1990".

1986—Subsec. (b). Pub. L. 99-659 designated existing provisions as introductory provisions and subpar. (A) of par. (1) and added pars. (1)(B) and (2).

1983—Subsec. (e). Pub. L. 97-424 amended subsec. (e) generally, which formerly had provided:

"(1) With respect to any fiscal year, not less than 50 percent of—

"(A) the moneys transferred to the fund under subsection (b) of this section or any other provision of law with respect to that fiscal year; and

"(B) such existing fund moneys carried over into that fiscal year;

shall be used by the Secretary during that fiscal year to provide financial assistance for projects under subsection (c) of this section; and the remainder of such moneys in the fund shall be used to implement the national fisheries research and development program established under subsection (d) of this section during that fiscal year.

"(2) Moneys accruing to the fund established under subsection (b) of this section for any fiscal year and not expended with respect to that year shall remain available for expenditure under this section without fiscal year limitation."

1980—Subsec. (a). Pub. L. 96–561, §210(2), (3), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsec. (b). Pub. L. 96–561, §210(1), (2), (4), redesignated subsec. (a) as (b), substituted "transfer to the Secretary" for "transfer to the Secretary of Commerce", "only for use by the Secretary" for "and used by the Secretary of Commerce", and provision directing that the fund be used to provide financial assistance for carrying out fisheries research and development projects and to implement the national fisheries research and development program for provision directing that the fund be used to promote free flow of domestically produced fisheries products by conducting a fishery educational service and fishery technological, biological, and related research programs, to acquire, construct, or maintain vessels and other facilities necessary for conducting research, to develop and increase markets for fishery products of domestic origin, and to conduct any biological, technological, or other research pertaining to American fisheries, and struck out former subsec. (b) which authorized any agency or wholly owned government corporation of the United States to transfer to the Secretary of Commerce any vessels or equipment excess to its needs.

Subsec. (c). Pub. L. 96–561, §210(1), (5), added subsec. (c) and struck out former subsec. (c) which directed the Secretary of Commerce to cooperate with other Federal, State, and local agencies for promotion of free flow of domestically produced fishery products and provided for the appointment of an advisory committee of the American fisheries industry to advise the Secretary in formulation of policy, rules, and regulations.

Subsec. (d). Pub. L. 96–561, §210(1), (5), added subsec. (d) and struck out former subsec. (d) which authorized the Secretary of Commerce to retransfer any funds available under this section, not to exceed \$1,500,000, to the Secretary of Agriculture to be used for the purposes specified in section 713c–2 of this title.

Subsec. (e). Pub. L. 96–561, §210(1), (5), added subsec. (e) and struck out former subsec. (e) which provided that the special fund created for use of the Secretary of Commerce under subsec. (a) of this section and the annual accruals thereto be available for each year until expended by the Secretary.

1956—Subsec. (e). Act Aug. 8, 1956, struck out provisions which limited expenditures to not more than \$3,000,000 in any fiscal year, restricted the balance of the fund to not more than \$5,000,000 at the end of any fiscal year, and required the Secretary of the Interior to retransfer funds in excess of the \$5,000,000 to the Secretary of Agriculture.

1954—Act July 1, 1954, amended section generally, to encourage the distribution of fishery products.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title IV, §423(b), Jan. 6, 1983, 96 Stat. 2165, provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect on October 1, 1983."

SHORT TITLE

Section 2 of act Aug. 11, 1939, which enacted this section, is popularly known as the "Saltonstall-Kennedy Act".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(2) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 50 of House Document No. 103–7.

Pub. L. 89–348, §1(13), Nov. 8, 1965, 79 Stat. 1311, repealed the following reporting requirement: "The annual report to the appropriate committees of Congress on the use of the separate fund created for the promotion of the free flow of domestically produced fishery products (68 Stat. 376; 15 U.S.C. 713c–3(f))."

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

CONTINUATION OF AUTHORIZATION FOR TRANSFER OF FUNDS

Act Aug. 8, 1956, ch. 1036, §12(a), 70 Stat. 1124, provided that: "The authorization for the transfer of certain funds from the Secretary of Agriculture to the Secretary of the Interior and their maintenance in a separate fund as contained in section 2(a) of the Act of August 11, 1939, as amended July 1, 1954 (68 Stat. 376), [now subsec. (b) of this section], shall be continued for the year ending June 30, 1957, and each year thereafter."

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

¹ *So in original. The comma probably should be a semicolon.*

² *So in original. Probably should be section "209(a)".*

§713d. Declaration of purpose

The purposes of this joint resolution are to aid in stabilizing the economy of the United States, to aid in curbing inflationary tendencies, to promote the orderly and equitable distribution of goods and facilities, and to aid in preventing maldistribution of goods and facilities which basically affect the cost of living or industrial production.

(Dec. 30, 1947, ch. 526, §1, 61 Stat. 945.)

EDITORIAL NOTES

REFERENCES IN TEXT

This joint resolution, referred to in text, means act Dec. 30, 1947, ch. 526, 61 Stat. 945. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1911 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as this section.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 9919. DELEGATION OF AUTHORITY AND ESTABLISHMENT OF PROCEDURES
UNDER 15 U.S.C. 713D ET SEQ.

Ex. Ord. No. 9919, Jan. 3, 1948, 13 F.R. 59, provided:

By virtue of the authority vested in me by the joint resolution approved December 30, 1947 (Public Law 395, 80th Congress) [15 U.S.C. 713d et seq.], and as President of the United States, it is hereby ordered as follows:

1. The authority to consult with representatives of industry, business, and agriculture with a view to encouraging the making of voluntary agreements or plans provided for in section 2 of the said joint resolution of December 30, 1947 [61 Stat. 945, former 50 App. U.S.C. 1912] (hereinafter referred to as the joint resolution), and the authority to approve any such agreements or plans and to make written requests for compliance with any such agreements or plans is delegated severally to the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Director of the Office of Defense Transportation as provided in paragraphs 2, 3, 4, and 5 hereof: *Provided, however*, that no such agreement or plan shall be approved by any of such officers unless it is first submitted to and approved by the Attorney General. The consultation above referred to may be through advisory committees approved by the appropriate governmental officer or agency as representative of the various segments of the industry involved. Prior to submitting any such proposed agreement or plan to the Attorney General the appropriate governmental officer or agency shall give industry, labor, and the public generally an opportunity to present their views with respect to the agreement or plan. The submission of the proposed agreement or plan to the Attorney General shall be accompanied by the favorable recommendation of the head of the appropriate department or agency and by a statement of (a) the circumstances which require the proposed agreement or plan, (b) the means by which the agreement or plan will be carried out, (c) the effect of the agreement or plan on persons and industries affected, including where appropriate the proposed degree of curtailment in amount and prospective use of any material, commodity, or product by any processor or user thereof, and the formulae for such curtailment, (d) the criteria used in the establishment of such formulae, and (e) the factual evidence on which the recommendation for approval is made, showing which information, if any, is subject to restrictions for reasons of military security.

2 (a). The authority delegated to the Secretary of the Interior by paragraph 1 hereof shall be exercised by him with respect to priority, allocation, and inventory control of fuels.

(b). For the purposes of this order the term "fuels" means coal, coke, petroleum and petroleum products, and natural and manufactured gas.

3 (a). The authority delegated to the Secretary of Agriculture by paragraph 1 hereof shall be exercised by him with respect to priority, allocation, and inventory control of agricultural commodities and with respect to speculative trading on commodity exchanges.

(b). For the purposes of this order, the term "agricultural commodities" means all commodities and products, simple, mixed, or compound, or complements to such commodities or products that are or may be eaten or drunk by human beings or animals, irrespective of other uses to which such commodities or products may be put, and at all stages of processing from the raw commodity to the product thereof in a vendible form for immediate human or animal consumption, but exclusive of such commodities and products as the Secretary of Agriculture shall determine. For the purposes of this order, the term "agricultural commodities" shall also include all starches, sugars, fats and oils of animal, vegetable, or marine origin (including oil seeds and other oil bearing materials, fatty acids, soap and soap powder), cotton, tobacco, wool, hemp, flax, fiber, and alcohol, and also such other commodities and products as the President may designate.

4 (a). The authority delegated to the Director of the Office of Defense Transportation by paragraph 1 hereof shall be exercised by him with respect to allocation of transportation facilities and equipment.

(b). The powers, authority, and discretion conferred on the President by section 4(a) of the joint resolution [61 Stat. 946, former 50 App. U.S.C. 1914(a)] with respect to the use of transportation equipment and facilities by rail carriers are hereby included within the powers, authority, and discretion delegated to the Director of the Office of Defense Transportation under Executive Order No. 8989 of December 18, 1941 (6 F.R. 6725), as amended by Executive Order No. 9389 of October 18, 1943 (8 F.R. 14183), Executive Order No. 9156 of May 2, 1942 (7 F.R. 3349), Executive Order No. 9214 of August 5, 1942 (7 F.R. 6097), and Executive Order No. 9729 of May 23, 1946 (11 F.R. 5641). The said Executive orders are amended accordingly.

5. The authority delegated to the Secretary of Commerce by paragraph 1 hereof shall be exercised by him with respect to priority, allocation, and inventory control of scarce commodities which basically affect the cost of living or industrial production, other than fuels as provided in paragraph 2, agricultural commodities as

provided in paragraph 3, and transportation facilities and equipment as provided in paragraph 4.

6. The Secretary of Agriculture is hereby authorized to carry out a program for the conservation of food and feed and for that purpose to exercise the authority conferred upon the President by section 8 of the joint resolution [15 U.S.C. 713d-2].

7. The Secretary of Commerce is hereby authorized to continue exercising the powers, authority, and discretion conferred upon the President by section 6 of the act of July 2, 1940, 54 Stat. 714, as amended [former 50 App. U.S.C. 701]. Such powers, authority, and discretion, and the powers, authority, and discretion vested in the President by section 3 of the joint resolution [61 Stat. 946, former 50 App. U.S.C. 1913] are hereby included within the delegation made to the Secretary of Commerce by Executive Order No. 9630 of September 27, 1945 (10 F.R. 12245), and the said Executive order is modified accordingly.

8. Each governmental officer or agency exercising authority delegated under this order shall, in exercising such authority, consult with other agencies or committees having special information or sources of such information about the supply of or demand for the materials, commodities, or facilities involved and with other agencies or committees having responsibilities related to such authority. Each agency shall establish such committees and other working groups as may be appropriate to consult with and obtain the advice of other agencies.

9. Nothing in this order shall be deemed to affect the powers, authority, or discretion delegated to the Secretary of Agriculture by Executive Order No. 9915 of December 30, 1947.

HARRY S. TRUMAN.

§713d-1. Critical shortages; recommendations by President; public hearings

(a) Whenever the President shall determine that there is or threatens to be a critical shortage of any raw material, commodity, or product which jeopardizes the health or safety of the people of the United States or its national security or welfare and that there is no prospect that such critical shortage may soon be remedied by an increase in the available supply without additional governmental action and that the situation cannot be solved by voluntary agreement under the provisions of this Act, he may prepare proposed measures for conserving such raw material, commodity, or product which he shall submit to the Congress in the following form:

(1) A statement of the circumstances which, in the President's judgment, require the proposed conservation measures.

(2) A detailed procedure for the administration of the proposed measures including the additional budget and additional personnel required for their enforcement.

(3) The proposed degree of curtailment in current and prospective use of each such raw material, commodity, or product by each processor and/or user thereof, including the specific formulae proposed for such curtailment with respect to each class or classes of processors or users and the criteria used in the establishment of such formulae.

(4) A complete record of the factual evidence upon which his recommendations are based, including all information provided by any agency of the Federal Government which may have been made available to him in the course of his consideration of the matter.

(b) Within fifteen days after the submission of such proposed conservation measures, the Joint Economic Committee shall conduct public hearings thereon and shall make such recommendations to the Congress for legislative action as in its judgment the recommendations of the President and any additional information disclosed at the public hearings may require.

(Dec. 30, 1947, ch. 526, §6, 61 Stat. 947; June 18, 1956, ch. 399, §2, 70 Stat. 290.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, means act Dec. 30, 1947, ch. 526, 61 Stat. 945. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1916 of the former Appendix to Title 50, War and National

Defense, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1956—Subsec. (b). Act June 18, 1956, changed "Joint Committee on the Economic Report" to "Joint Economic Committee".

§713d–2. Food and conservation program; appropriations; administrative expenses

(a) In order to alleviate shortages in foods and feeds, and to assist in stabilizing prices, the President shall carry out a program for the conservation of food and feed. In carrying out such program, the President is authorized, through the dissemination of information, educational and other campaigns, the furnishing of assistance, and such other voluntary and cooperative measures as he deems necessary or appropriate, to encourage and promote the efficient utilization, care, and preservation of food and feed, the elimination of practices which waste food and feed, the control and eradication of insects and rodents, the consumption of less of these foods and feeds which are in short supply and more of those foods and feeds which are in abundant supply, and other conservation practices. The authority herein conferred may be exercised by the President through such departments, agencies, independent establishments, and officials of the Federal Government and such State, local, and private agencies as he may determine.

(b) There is hereby authorized to be appropriated to the President such sums as may be necessary to carry out this section. To enable the President to carry out this section for the remainder of the fiscal year ending June 30, 1948, there is made available not to exceed \$1,000,000 from any funds made available by the Congress for carrying out Public Law 84, Eightieth Congress, or from any funds made available by the Congress for interim foreign aid. Funds made available for the purpose of this section may be used for necessary administrative expenses, including personal services in the District of Columbia and elsewhere, purchase or hire of motor vehicles, temporary or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract, without regard to the civil service and classification laws (the compensation of any such individual not to exceed \$50 per day). Funds made available for the purposes of this section may be allotted for any of the purposes of this section to any department, agency, or independent establishment of the Government, or transferred to any other agency requested to assist in carrying out this section. Funds allotted to any department, agency, or independent establishment of the Government shall be available for obligation and expenditure in accordance with the laws governing obligations and expenditures of the department, agency, or independent establishment, or organizational unit thereof concerned, and without regard to section 6101 of title 41 and section 3324(a) and (b) of title 31.

(Dec. 30, 1947, ch. 526, §8, 61 Stat. 947.)

EDITORIAL NOTES

REFERENCES IN TEXT

Public Law 84, Eightieth Congress, referred to in subsec. (b), is act May 31, 1947, ch. 90, 61 Stat. 125, which was classified generally to chapter 17 (§1411 et seq.) of Title 22, Foreign Relations and Intercourse, and was repealed by act Aug. 26, 1954, ch. 937, title V, §542(a)(2), 68 Stat. 861. For complete classification of this Act to the Code, see Tables.

Section 6101 of title 41, referred to in subsec. (b), was in the original a reference to section 3709 of the Revised Statutes, which was classified to section 5 of former Title 41, Public Contracts, and was repealed and restated in section 6101 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

Section 3324(a) and (b) of title 31, referred to in subsec. (b), was in the original a reference to section 3648 of the Revised Statutes, which was classified to section 529 of former Title 31, Money and Finance, and was repealed and restated as section 3324(a) and (b) of Title 31, Money and Finance, by Pub. L. 97–258, §§1, 5(b), Sept. 13, 1982, 96 Stat. 877, 1068.

CODIFICATION

Section was formerly classified to section 1918 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as this section.

§713d–3. Authorizations for appropriations

There is authorized to be appropriated such amounts as may be necessary for purposes of carrying out the provisions of this joint resolution.

(Dec. 30, 1947, ch. 526, §9, 61 Stat. 948.)

EDITORIAL NOTES

REFERENCES IN TEXT

This joint resolution, referred to in text, means act Dec. 30, 1947, ch. 526, 61 Stat. 945. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1919 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as this section.

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

§714. Creation and purpose of Corporation

For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of balanced and adequate supplies of agricultural commodities, products thereof, foods, feeds, and fibers (hereinafter collectively referred to as "agricultural commodities"), and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the "Corporation"), which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture (hereinafter referred to as the "Secretary").

(June 29, 1948, ch. 704, §2, 62 Stat. 1070; June 7, 1949, ch. 175, §1, 63 Stat. 154.)

EDITORIAL NOTES

AMENDMENTS

1949—Act June 7, 1949, placed the general supervision and direction of the Commodity Credit Corporation in the Secretary of Agriculture.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section 18 of act June 29, 1948, provided that sections 714 to 714o of this title shall take effect as of midnight June 30, 1948.

SHORT TITLE

Congress in enacting sections 714 to 714p of this title provided by section 1 of act June 29, 1948, that they should be popularly known as the "Commodity Credit Corporation Charter Act".

ESTABLISHING QUALITY AS GOAL FOR COMMODITY CREDIT CORPORATION

PROGRAMS

Pub. L. 101-624, title XXV, §2517, formerly §2518, Nov. 28, 1990, 104 Stat. 4078, as renumbered by Pub. L. 104-66, title I, §1011(h), Dec. 21, 1995, 109 Stat. 710, provided that: "In carrying out its activities the Commodity Credit Corporation shall, to the extent practicable, provide for program provisions that promote quality in the production and marketing of crops and livestock in the United States."

[Pub. L. 104-127, title VII, §711, Apr. 4, 1996, 110 Stat. 1112, which directed the repeal of section 2517 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624, relating to a study of transportation of fertilizer and agricultural chemicals to farmers, was not executed to provisions set out above, to reflect the probable intent of Congress and the amendment by Pub. L. 104-66, title I, §1011(h), Dec. 21, 1995, 109 Stat. 710, which repealed section 2517 of Pub. L. 101-624 relating to such study, and renumbered section 2518 of Pub. L. 101-624, set out above, as section 2517 of Pub. L. 101-624.]

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714a. Location of offices

The Corporation may establish offices in such place or places as it may deem necessary or desirable in the conduct of its business.

(June 29, 1948, ch. 704, §3, 62 Stat. 1070.)

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714b. General powers of Corporation

The Corporation—

(a) Shall have succession in its corporate name.

(b) May adopt, alter, and use a corporate seal, which shall be judicially noticed.

(c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of any Territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation: *Provided*, That the Corporation may intervene in any court in any suit, action, or proceeding in which it has an interest. Any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business. No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, or (2) in the event that the person bringing such suit shall have been under legal disability or beyond the seas at the time the right accrued, the suit shall have been brought within three years after the disability shall have ceased or within six years after the right accrued on which suit is brought, whichever period is longer. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided*, That the defendant shall not be

awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit. All suits against the Corporation shall be tried by the court without a jury. Notwithstanding any other provision of this subchapter, the Federal Tort Claims Act (Public Law 601, Seventy-ninth Congress ¹ shall be applicable to the Corporation. Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of subsection (c) to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of title 28, may be brought in the United States Court of Federal Claims, and (2) no such suit against the United States may be brought in a district court unless such suit might, without regard to the provisions of this subchapter, be brought in such court.

(d) May adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised.

(e) Shall have all the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from insolvent, deceased, or bankrupt debtors. The Corporation may assert such rights, privileges, and immunities in any suit, action, or proceeding.

(f) Shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government.

(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business, except that obligations under all such contracts or agreements (other than reimbursable agreements under section 714i of this title) for equipment or services relating to automated data processing, information technologies, or related items (including telecommunications equipment and computer hardware and software) may not exceed \$170,000,000 in fiscal year 1996 and not more than \$188,000,000 in the 6-fiscal year period beginning on October 1, 1996, unless additional amounts for such contracts and agreements are provided in advance in appropriation Acts. State and local regulatory laws or rules shall not be applicable with respect to contracts or agreements of the Corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules shall not be applicable, or to the extent that such laws or rules are inconsistent with such contracts or agreements.

(h) May contract for the use, in accordance with the usual customs of trade and commerce, of plants and facilities for the physical handling, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein for the purpose of providing storage adequate to carry out effectively and efficiently any of the Corporation's programs, or of securing or discharging obligations owing to the Corporation, or of otherwise protecting the financial interests of the Corporation: *Provided*, That the authority contained in this subsection shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: *Provided further*, That no refrigerated cold storage facilities shall be constructed or purchased except with funds specifically provided by Congress for that purpose: *And provided further*, That any contract entered into by the Corporation for the use of a storage facility shall provide at least that (1) the rental rate charged for an extended term in excess of one year shall be at an annual rate less than that which is charged for a one-year contract, (2) any obligation of the Corporation to pay for the use of any space in a facility shall be relieved to the extent that the Corporation does not use the space and payment is made by another person for the use of such space, and (3) if the Corporation determines that it no longer needs the space reserved in the facility, the Corporation may be relieved, for the remaining term of the contract, of its obligations to an extent and in a manner that will provide significant savings to the Corporation while permitting the owner of the facility reasonable time to lease such space to another person: *And provided further*, That nothing contained in this subsection shall limit the duty of the Corporation, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and

efficient conduct of its business, to utilize the usual and customary channels, facilities, and arrangements of trade and commerce in the warehousing of commodities: *And provided further*, That to encourage the storage of grain on farms, where it can be stored at the lowest cost, the Corporation may make loans to grain growers needing storage facilities when such growers shall apply to the Corporation for financing the construction or purchase of suitable storage, and these loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers, except that the Secretary shall make such loans in areas in which the Secretary determines that there is a deficiency of such storage. To encourage the alleviation of natural resource conservation problems that reduce the productive capacity of the Nation's land and water resources or that cause degradation of environmental quality, the Corporation may, beginning December 22, 1981, make loans to any agricultural producer for those natural resource conservation and environmental enhancement measures that are recommended by the applicable county and State committees established under section 590h(b) of title 16 and are included in the producer's conservation plan approved by the local soil and water conservation district; such loans shall be for a period not to exceed ten years at a rate of interest based upon the rate of interest charged the Corporation by the United States Treasury; the Corporation may make loans to any one producer in any fiscal year in an amount not to exceed \$25,000; loans up to \$10,000 in amount may be unsecured and loans in excess of \$10,000 shall be secured; and the total of such unsecured and secured loans made in each fiscal year shall not exceed \$200,000,000: *Provided*, That the authority provided by this sentence to make loans shall be effective only to the extent and in such amounts as may be provided for in prior appropriation Acts. Notwithstanding any other provision of law, the Commodity Credit Corporation shall, to the maximum extent practicable, in consultation with the Secretary of State, and upon terms and conditions prescribed or approved by the Secretary of Agriculture, accept strategic and critical materials produced abroad in exchange for agricultural commodities acquired by the Corporation. Insofar as practicable, in effecting such exchange of goods, the Secretary shall: (1) use normal commercial trade channels; (2) take action to avoid displacing usual marketings of United States agricultural commodities and the products thereof; (3) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities used for such exchange; and (4) give priority to commodities easily storable and those which serve as prime incentive goods to stimulate production of critical and strategic materials. The Corporation may solicit bids from, and utilize, private trading firms to effect such exchange of goods. The determination of the quantities and qualities of such materials which are desirable for stock piling and the determination of which materials are strategic and critical shall be made in the manner prescribed by section 3 of the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98b]. Strategic and critical materials acquired by Commodity Credit Corporation in exchange for agricultural commodities shall, to the extent approved by the President, be transferred to the stock pile provided for by the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98 et seq.]; and in the same fiscal year such materials are transferred to the stock pile the Commodity Credit Corporation shall be reimbursed for the strategic and critical materials so transferred to the stock pile from the funds made available for the purpose of the Strategic and Critical Materials Stock Piling Act, in an amount equal to the fair market value, as determined by the Secretary of the Treasury, of the material transferred to the stock pile. If the volume of petroleum products (including crude oil) stored in the Strategic Petroleum Reserve is less than the level prescribed under section 6234 of title 42, the Corporation shall, to the maximum extent practicable and with the approval of the Secretary of Agriculture, make available annually to the Secretary of Energy, upon the request of the Secretary of Energy, a quantity of agricultural products owned by the Corporation with a market value at the time of such request of at least \$300,000,000 for use by the Secretary of Energy in acquiring petroleum products (including crude oil) produced abroad for placement in the Strategic Petroleum Reserve through an exchange of such agricultural products. The terms and conditions of each such exchange, including provisions for full reimbursement to the Commodity Credit Corporation, shall be determined by the Secretary of Energy and the Secretary of Agriculture. Nothing contained herein shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such quantity of strategic and critical

materials as it deems advisable in carrying out its functions and protecting its assets: *Provided*, That, notwithstanding any other provision of law, where a grain storage facility owned by the Corporation is not needed by the Corporation and, upon being offered for sale no person offers to pay the minimum price set by the Corporation for such facility for use in connection with storage or handling of agricultural commodities, then the Corporation may, without declaring such facility to be excess property, sell it by bids at not less than such minimum price to any public or private nonprofit agency or organization for use for the purposes of such agency or organization. This provision shall apply also to facilities which on the effective date of this Act have been declared excess to the needs of the Commodity Credit Corporation but have not been claimed by any other Government agency, or surplus to the needs of the Government but not disposed of pursuant to the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(i) May borrow money subject to any provision of law applicable to the Corporation: *Provided*, That the total of all money borrowed by the Corporation, other than trust deposits and advances received on sales, shall not at any time exceed in the aggregate \$30,000,000,000. The Corporation shall at all times reserve a sufficient amount of its authorized borrowing power which, together with other funds available to the Corporation, will enable it to purchase, in accordance with its contracts with lending agencies, notes, or other obligations evidencing loans made by such agencies under the Corporation's programs.

(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.

(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers.

(l) May make such loans and advances of its funds as are necessary in the conduct of its business.

(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally; but any research financed by the Corporation shall relate to the conservation or disposal of commodities owned or controlled by the Corporation and shall be conducted in collaboration with research agencies of the Department of Agriculture. Notwithstanding any other provision of this subchapter, the Corporation may, in the exercise of its power to remove and dispose of surplus agricultural commodities, export, or cause to be exported, not to exceed such amounts of commodities owned by the Corporation as will enable the Corporation to finance research and development of external combustion engines using fuel other than that derived from petroleum and petroleum products. The total value of commodities exported annually for the purposes of the research authorized by the preceding sentence may not exceed \$30,000,000.

(June 29, 1948, ch. 704, §4, 62 Stat. 1070; June 7, 1949, ch. 175, §§2, 5, 63 Stat. 154, 156; Aug. 10, 1949, ch. 412, §12(a), 63 Stat. 591; June 28, 1950, ch. 381, §2, 64 Stat. 261; Mar. 20, 1954, ch. 102, §2, 68 Stat. 30; Aug. 31, 1954, ch. 1172, §2, 68 Stat. 1047; Aug. 11, 1955, ch. 782, §2, 69 Stat. 634; Aug. 1, 1956, ch. 815, §1(a), 70 Stat. 783; Pub. L. 89-758, Nov. 5, 1966, 80 Stat. 1307; Pub. L. 95-113, title XI, §1104, Sept. 29, 1977, 91 Stat. 954; Pub. L. 95-279, title III, §301(a), May 15, 1978, 92 Stat. 242; Pub. L. 96-41, §3(b), July 30, 1979, 93 Stat. 325; Pub. L. 96-234, §3, Apr. 11, 1980, 94 Stat. 333; Pub. L. 97-35, title I, §151, Aug. 13, 1981, 95 Stat. 370; Pub. L. 97-98, title XV, §1520(a), title XVI, §1606, Dec. 22, 1981, 95 Stat. 1335, 1347; Pub. L. 97-164, title I, §161(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 99-198, title XI, §1167(b), title XVII, §1761, Dec. 23, 1985, 99 Stat. 1503, 1651; Pub. L. 99-260, §11, Mar. 20, 1986, 100 Stat. 52; Pub. L. 100-202, §101(k) [title I, §101], Dec. 22, 1987, 101 Stat. 1329-322, 1329-336; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-127, title I, §161(b)(1), Apr. 4, 1996, 110 Stat. 934; Pub. L. 105-185, title V, §521(a), June 23, 1998, 112 Stat. 580; Pub. L. 105-277, div. A, §101(a) [title VII, §756], Oct. 21, 1998, 112 Stat. 2681, 2681-34.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (c), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (h), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96–41, §2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

The effective date of this Act, referred to in subsec. (h), probably refers to the effective date of Pub. L. 89–758, which was approved on Nov. 5, 1966.

CODIFICATION

The words "of the District of Columbia and" in the phrase of subsec. (c) reading "including the district courts of the District of Columbia and of any Territory or possession" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district" and section 88 of Title 28 which states that "The District of Columbia constitutes one judicial district".

In subsec. (h), "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949, as amended" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Amendment by Pub. L. 95–113, which directed the Corporation to make secured storage facility loans of not to exceed \$50,000, later increased to \$100,000, to growers of dry or high moisture grain, soybeans, rice, and high moisture forage and silage during the period Oct. 1, 1977, to Sept. 30, 1981, was omitted from the Code as terminated. See Effective and Termination Dates of 1977 Amendment note set out below.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–277 substituted "\$188,000,000" for "\$193,000,000".

Pub. L. 105–185 substituted "\$193,000,000" for "\$275,000,000".

1996—Subsec. (g). Pub. L. 104–127, §161(b)(1)(A), inserted before period at end of first sentence ", except that obligations under all such contracts or agreements (other than reimbursable agreements under section 714i of this title) for equipment or services relating to automated data processing, information technologies, or related items (including telecommunications equipment and computer hardware and software) may not exceed \$170,000,000 in fiscal year 1996 and not more than \$275,000,000 in the 6-fiscal year period beginning on October 1, 1996, unless additional amounts for such contracts and agreements are provided in advance in appropriation Acts".

Subsec. (h). Pub. L. 104–127, §161(b)(1)(B), in second sentence, struck out "shall have power to acquire personal property necessary to the conduct of its business but" after "The Corporation".

1992—Subsec. (c). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1987—Subsec. (i). Pub. L. 100–202 substituted "\$30,000,000,000" for "\$25,000,000,000".

1986—Subsec. (m). Pub. L. 99–260 inserted provision authorizing the Corporation to dispose of or export surplus agricultural commodities in amounts that will enable the Corporation to finance research and development of external combustion engines using fuel other than that derived from petroleum and petroleum products and limiting the total value of the commodities exported annually to a maximum of \$30,000,000.

1985—Subsec. (h). Pub. L. 99–198, §1761, inserted an additional proviso reading as follows: "That any contract entered into by the Corporation for the use of a storage facility shall provide at least that (1) the rental rate charged for an extended term in excess of one year shall be at an annual rate less than that which is charged for a one-year contract, (2) any obligation of the Corporation to pay for the use of any space in a facility shall be relieved to the extent that the Corporation does not use the space and payment is made by another person for the use of such space, and (3) if the Corporation determines that it no longer needs the space reserved in the facility, the Corporation may be relieved, for the remaining term of the contract, of its

obligations to an extent and in a manner that will provide significant savings to the Corporation while permitting the owner of the facility reasonable time to lease such space to another person:".

Pub. L. 99-198, §1167(b), in sentence beginning "Notwithstanding any other provision of law" substituted "Commodity Credit Corporation shall, to the maximum extent practicable, in consultation with the Secretary of State, and upon terms and conditions prescribed or approved by the Secretary of Agriculture, accept strategic and critical materials" for "Commodity Credit Corporation is authorized, upon terms and conditions prescribed or approved by the Secretary of Agriculture, to accept strategic and critical materials"; in sentence beginning "Insofar as practicable" substituted "the Secretary shall: (1) use normal commercial trade channels; (2) take action to avoid displacing usual marketings of United States agricultural commodities and the products thereof; (3) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities used for such exchange; and (4) give priority" for "normal commercial trade channels shall be utilized and priority shall be given"; inserted sentence reading "The Corporation may solicit bids from, and utilize, private trading firms to effect such exchange of goods."; in sentence beginning "Strategic and critical materials" substituted "in the same fiscal year such materials are transferred" for "when transferred"; and inserted sentence beginning "If the volume of petroleum products" and sentence beginning "the terms and conditions" relating to acquisition of petroleum products for placement in the Strategic Petroleum Reserve and terms and conditions of each exchange.

1982—Subsec. (c). Pub. L. 97-164 substituted "Claims Court" for "Court of Claims".

1981—Subsec. (h). Pub. L. 97-98 inserted ", except that the Secretary shall make such loans in areas in which the Secretary determines that there is a deficiency of such storage", and inserted provision authorizing the Secretary to make loans to grain growers needing storage facilities for the storage of grain on farms in areas where the Secretary determines that there is a deficiency of such storage and also inserted provision that, to encourage the alleviation of natural resource conservation problems that reduce the productive capacity of the Nation's land and water resources or that cause degradation of environmental quality, the Corporation may, beginning December 22, 1981, make loans to any agricultural producer for those natural resource conservation and environmental enhancement measures that are recommended by the applicable county and State committees established under section 590h(b) of title 16 and are included in the producer's conservation plan approved by the local soil and water conservation district, that such loans shall be for a period not to exceed ten years at a rate of interest based upon the rate of interest charged the Corporation by the United States Treasury, that the Corporation may make loans to any one producer in any fiscal year in an amount not to exceed \$25,000, that loans up to \$10,000 in amount may be unsecured and loans in excess of \$10,000 shall be secured, that the total of such unsecured and secured loans made in each fiscal year shall not exceed \$200,000,000, and that the authority to make such loans be effective only to the extent and in such amounts as may be provided for in prior appropriation Acts.

Pub. L. 97-35 substituted "the Corporation may make loans" for "the Corporation shall make loans" in fourth proviso.

1980—Subsec. (h). Pub. L. 96-234 substituted "\$100,000" for "\$50,000" in two places, and struck out provisions respecting the size of the facility for purposes of obtaining loans.

1979—Subsec. (h). Pub. L. 96-41 substituted "section 3 of the Strategic and Critical Materials Stock Piling Act" for "section 2 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596)" and "the President" for "the Munitions Board of the Department of Defense".

1978—Subsec. (i). Pub. L. 95-279 substituted "\$25,000,000,000" for "\$14,500,000,000".

1977—Subsec. (h). Pub. L. 95-113 inserted proviso directing the Corporation to make secured storage facility loans of not to exceed \$50,000 to growers of dry or high moisture grain, soybeans, rice, and high moisture forage and silage during the period Oct. 1, 1977, to Sept. 30, 1981. See Codification note set out above.

1966—Subsec. (h). Pub. L. 89-758 inserted provisions allowing for the sale of grain storage facilities by bids when no person offers to pay the minimum price set by the Commodity Credit Corporation at not less than the minimum price to any public or private nonprofit agency.

1956—Subsec. (i). Act Aug. 1, 1956, substituted "\$14,500,000,000" for "\$12,000,000,000".

1955—Subsec. (i). Act Aug. 11, 1955, substituted "\$12,000,000,000" for "\$10,000,000,000".

1954—Subsec. (i). Act Aug. 31, 1954, substituted "\$10,000,000,000" for "\$8,500,000,000".

Subsec. (i). Act Mar. 20, 1954, substituted "\$8,500,000,000" for "\$6,750,000,000".

1950—Subsec. (i). Act June 28, 1950, substituted "\$6,750,000,000" for "\$4,750,000,000".

1949—Subsec. (c). Act June 7, 1949, §5, conferred jurisdiction on the district courts "without regard to the amount in controversy", enabled the Corporation and persons having claims against the Corporation to plead set-offs and counterclaims which are barred by the statute of limitations, if, at the time the plaintiff's cause of

action arose, the defendant's cause of action on which the set-off or counterclaim is based was not barred by the statute of limitations, and provided that certain claims against the United States could be brought in the United States Court of Claims.

Subsec. (h). Act June 7, 1949, §2, enabled the Corporation to acquire items of personal and real property to be used in connection with the care, preservation, storage, and handling of agricultural commodities controlled by it, and enabled the Corporation to take liens on real property as security for obligations owing to it and to bid in on any execution or foreclosure sale to protect its financial interests in the matter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

National Military Establishment changed to Department of Defense by act Aug. 10, 1949.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–185, title V, §521(b), June 23, 1998, 112 Stat. 580, provided that: "The amendment made by subsection (a) [amending this section] takes effect on October 1, 1997."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–279 effective Oct. 1, 1978, see section 301(d) of Pub. L. 95–279, set out as a note under section 713a–4 of this title.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 1104 of Pub. L. 95–113 provided that the amendment made by that section is effective only with respect to the fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1981.

STORAGE COST ADJUSTMENT FOR FISCAL YEARS 1988 AND 1989

Pub. L. 100–203, title I, §1106, Dec. 22, 1987, 101 Stat. 1330–5, required the Secretary of Agriculture to reduce expenditures of the Commodity Credit Corporation for commercial storage, transportation, and handling of commodities owned by the Corporation by \$230,000,000 from the amount of funds otherwise projected to be expended in fiscal years 1988 and 1989 under the budget base determined under section 901 of title 2.

INCREASE IN BORROWING AUTHORITY EFFECTIVE ONLY TO EXTENT PROVIDED IN APPROPRIATION ACTS

Pub. L. 95–279, title III, §301(c), May 15, 1978, 92 Stat. 242, provided that: "The increase in the borrowing authority of the Commodity Credit Corporation made by this section [amending this section and section 713a–4 of this title] shall be effective only to the extent provided in appropriation Acts."

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under subsec. (h) of this section delegated to Secretary of Defense, see section 2 of Ex. Ord. No. 12626, Feb. 25, 1988, 53 F.R. 6114, set out as a note under section 98 of Title 50, War and National Defense.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to

Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

¹ So in original. Should be "Congress)".

§714c. Specific powers of Corporation

In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to chapter 91 of title 31, the Corporation is authorized to use its general powers only to—

(a) Support the prices of agricultural commodities (other than tobacco) through loans, purchases, payments, and other operations.

(b) Make available materials and facilities required in connection with the production and marketing of agricultural commodities (other than tobacco).

(c) Procure agricultural commodities (other than tobacco) for sale to other Government agencies, foreign governments, and domestic, foreign, or international relief or rehabilitation agencies, and to meet domestic requirements.

(d) Remove and dispose of or aid in the removal or disposition of surplus agricultural commodities (other than tobacco).

(e) Increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

(f) Export or cause to be exported, or aid in the development of foreign markets for, agricultural commodities (other than tobacco) (including fish and fish products, without regard to whether such fish are harvested in aquacultural operations).

(g) Carry out conservation or environmental programs authorized by law.

(h) Carry out such other operations as the Congress may specifically authorize or provide for.

In the Corporation's purchasing and selling operations with respect to agricultural commodities (other than tobacco) (except sales to other Government agencies), and in the warehousing, transporting, processing, or handling of agricultural commodities (other than tobacco), the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce (including, at the option of the Corporation, the use of private sector entities).

(June 29, 1948, ch. 704, §5, 62 Stat. 1072; Pub. L. 98–623, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3409; Pub. L. 104–127, title III, §381(a), Apr. 4, 1996, 110 Stat. 1016; Pub. L. 107–171, title I, §1609, May 13, 2002, 116 Stat. 218; Pub. L. 108–357, title VI, §612(d), Oct. 22, 2004, 118 Stat. 1524.)

EDITORIAL NOTES

CODIFICATION

"Chapter 91 of title 31" substituted in provision preceding subsec. (a) for "the Government Corporation Control Act (31 U.S.C., 1940 edition, Supp. V, 841)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Pub. L. 108–357 inserted "(other than tobacco)" after "agricultural commodities" wherever appearing.

2002—Pub. L. 107–171 inserted "(including, at the option of the Corporation, the use of private sector entities)" before period at end of last sentence.

1996—Subsecs. (g), (h). Pub. L. 104–127 added subsec. (g) and redesignated former subsec. (g) as (h).

1984—Subsec. (f). Pub. L. 98–623 inserted "(including fish and fish products, without regard to whether

such fish are harvested in aquacultural operations)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to the 2005 and subsequent crops of tobacco, see section 643 of Pub. L. 108–357, set out as an Effective Date note under section 518 of Title 7, Agriculture.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–127, title III, §381(b), Apr. 4, 1996, 110 Stat. 1016, provided that: "The amendments made by subsection (a) [amending this section] shall become effective on January 1, 1997."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–623, title IV, §405(d), Nov. 8, 1984, 98 Stat. 3409, provided that: "For purposes of section 135 of the Omnibus Budget Reconciliation Act of 1982 (7 U.S.C. 612c note) [Pub. L. 97–253], the amendments made by this section [amending this section and sections 1707a and 1732 of Title 7, Agriculture] shall be considered to have taken effect before the date of the enactment of that Act [Sept. 8, 1982]."

CONTINUATION OF LIABILITY FOR 2004 AND EARLIER CROP YEARS

Amendment by sections 611 to 614 of Pub. L. 108–357 not to affect the liability of any person under any provision of law so amended with respect to the 2004 or an earlier crop of tobacco, see section 614 of Pub. L. 108–357, set out as a note under section 515 of Title 7, Agriculture.

EXPORT ENHANCEMENT PROGRAM; PROMOTION OF UNITED STATES MEAT EXPORTS

Pub. L. 101–220, §2, Dec. 12, 1989, 103 Stat. 1876, provided that in each of fiscal years 1990, 1991, and 1992, the Commodity Credit Corporation would, in carrying out the export enhancement program established in this section, promote the export of United States meat, including poultry products, to commissaries on military installations in the European Community, and provided for funding and costs.

USE OF COMMODITY CREDIT CORPORATION FOR PURCHASE OF AGRICULTURAL PRODUCTS FORMERLY INTENDED FOR EXPORT TO SOVIET UNION

Pub. L. 96–494, title II, §206, Dec. 3, 1980, 94 Stat. 2572, provided that: "Notwithstanding any other provision of law, the Secretary of Agriculture may use, subject to such terms and conditions as the Secretary may deem appropriate, the funds, facilities, and authorities of the Commodity Credit Corporation in purchasing and handling agricultural products, other than grains, that—

"(1) were intended to be exported to the Union of Soviet Socialist Republics under contracts entered into prior to January 5, 1980, but

"(2) cannot be exported under such contracts due to the imposition, on January 4, 1980, of restrictions on the export of agricultural products to the Union of Soviet Socialist Republics, in the same manner and under the same conditions as the Secretary purchases and handles grains under similar contracts and subject to the imposition of the same restrictions."

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714d. Laws applicable to Corporation

The Federal statutes applicable to Commodity Credit Corporation, a Delaware corporation, shall be applicable to the Corporation. Commodity Credit Corporation, a Delaware corporation, shall cease to be an agency of the United States as provided in section 713(a) of this title.

(June 29, 1948, ch. 704, §6, 62 Stat. 1072.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 713(a) of this title, referred to in text, was omitted from the Code. See Codification note under former section 713 of this title.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714e. Capital stock; amount; interest

The Corporation shall have a capital stock of \$100,000,000 which shall be subscribed by the United States. Such subscription shall be deemed to be fully paid by the transfer of assets to the Corporation pursuant to section 714n of this title. The Corporation shall pay interest to the United States Treasury on the amount of its capital stock, and on the amount of the obligations of the Corporation purchased by the Secretary of the Treasury pursuant to the Act of March 8, 1938 (U.S.C., title 15, sec. 713a-4), as amended, at such rates as may be determined by the Secretary of the Treasury to be appropriate in view of the terms for which such amounts are made available to the Corporation.

(June 29, 1948, ch. 704, §7, 62 Stat. 1072.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of March 8, 1938, referred to in text, is act Mar. 8, 1938, ch. 44, §§1-5, 52 Stat. 107, which was classified to sections 713a-1 to 713a-5 of this title. Sections 713a-1 and 713a-2 were repealed by Pub. L. 87-155, §1, Aug. 17, 1961, 75 Stat. 391, and section 713a-3 was omitted from the Code.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714f. Use of funds

The Corporation is authorized to use in the conduct of its business all its funds and other assets, including capital and net earnings therefrom, and all funds and other assets which have been or may hereafter be transferred or allocated to, borrowed by, or otherwise acquired by it.

(June 29, 1948, ch. 704, §8, 62 Stat. 1072.)

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714g. Board of Directors

(a) Composition; appointment, tenure and compensation; quorum; duties

The management of the Corporation shall be vested in a board of directors (hereinafter referred to as the "Board"), subject to the general supervision and direction of the Secretary. The Secretary shall be an ex officio director and shall serve as Chairman of the Board. The Board shall consist of seven members (in addition to the Secretary), who shall be appointed by the President. In addition to their duties as members of the Board, such appointed members shall perform such other duties as may be prescribed by the Secretary. Each appointed member of the Board shall receive compensation at such rate not in excess of the maximum then payable under chapter 51 and subchapter III of chapter 53 of title 5 as may be fixed by the Secretary, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this section. A majority of the directors shall constitute a quorum of the Board and action shall be taken only by a majority vote of those present.

(b) Advisory board; composition, tenure and compensation; meetings; duties

In addition to the Board of Directors there shall be an advisory board reflecting broad agricultural and business experience in its membership and consisting of five members who shall be appointed by the President, and who shall serve at the pleasure of the President. Not more than three of such members shall belong to the same political party. The advisory board shall meet at the call of the Secretary, who shall require it to meet not less often than once each ninety days; shall survey the general policies of the Corporation, including its policies in connection with the purchase, storage, and sale of commodities, and the operation of lending and price-support programs; and shall advise the Secretary with respect thereto. Members of the advisory board shall receive for their services as members compensation of not to exceed \$50 per diem when actually engaged in the performance of their duties as such, together with their necessary traveling expenses while going to and coming from meetings.

(June 29, 1948, ch. 704, §9, 62 Stat. 1072; June 7, 1949, ch. 175, §3, 63 Stat. 155; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 94-561, §4, Oct. 19, 1976, 90 Stat. 2643; Pub. L. 112-166, §2(a)(3), Aug. 10, 2012, 126 Stat. 1283.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112-166 struck out "by and with the advice and consent of the Senate" before period at end of third sentence.

1976—Subsec. (a). Pub. L. 94-561 increased number of Board of Directors from six to seven members.

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

Act June 7, 1949, amended section generally by bringing the Board under the direct control of the Secretary who will serve as Chairman of the Board, and by adding subsec. (b) to provide for the appointment and duties of an advisory board.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section

6(a) of Pub. L. 112-166, set out as a note under section 113 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-561 effective Oct. 19, 1976, see section 5 of Pub. L. 94-561, set out as a note under section 5313 of Title 5, Government Organization and Employees.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714h. Officers and employees; appointment; duties

The Secretary shall appoint such officers and employees as may be necessary for the conduct of the business of the Corporation, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine. With the exception of experts, appointments shall be made pursuant to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(June 29, 1948, ch. 704, §10, 62 Stat. 1073; June 7, 1949, ch. 175, §4, 63 Stat. 156; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 92-310, title II, §224(b), June 6, 1972, 86 Stat. 206.)

EDITORIAL NOTES

CODIFICATION

"Chapter 51 and subchapter III of chapter 53 of title 5" substituted in text for "the Classification Act of 1949" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1972—Pub. L. 92-310 struck out provisions which permitted the Secretary to designate officers and employees to be bonded, and which authorized the Corporation to pay the premium on the bonds.

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

Act June 7, 1949, amended section generally to permit the Secretary to appoint the officers and employees of the Corporation and to define their authority and duties.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

SALES MANAGER

Pub. L. 87-367, title I, §103(11), Oct. 4, 1961, 75 Stat. 789, repealed such part of section 101 of act Aug. 4,

1955, ch. 451, Ch. I, 69 Stat. 451, which authorized the position of sales manager in the Commodity Credit Corporation to be placed in grade 17 of the General Schedule of the Classification Act of 1949. See section 5332 of Title 5, Government Organization and Employees.

Positions existing prior to Oct. 4, 1961, compensation thereof and appointments thereto unaffected by changes made by Pub. L. 87-367 and positions in grades 16, 17 and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action is taken under title I of Pub. L. 87-367 and section 5108 of Title 5, see section 104 of Pub. L. 87-367.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714i. Cooperation with other governmental agencies

The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, and of any State, the District of Columbia, any Territory or possession, or any political subdivision thereof. The Corporation may allot to any bureau, office, administration, or other agency of the Department of Agriculture or transfer to such other agencies as it may request to assist it in the conduct of its business any of the funds available to it for administrative expenses. The personnel and facilities of the Corporation may, with the consent of the Corporation, be utilized on a reimbursable basis by any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, in the performance of any part or all of the functions of such agency. After September 30, 1996, the total amount of all allotments and fund transfers from the Corporation under this section (including allotments and transfers for automated data processing or information resource management activities but excluding any amounts used to provide technical assistance under title X of the Agriculture Improvement Act of 2018 or an amendment made by that title) for a fiscal year may not exceed the total amount of the allotments and transfers made under this section in fiscal year 1995. (June 29, 1948, ch. 704, §11, 62 Stat. 1073; Pub. L. 104-127, title I, §161(b)(2), Apr. 4, 1996, 110 Stat. 934; Pub. L. 115-334, title X, §10112, Dec. 20, 2018, 132 Stat. 4908.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Agriculture Improvement Act of 2018, referred to in text, is Pub. L. 115-334, Dec. 20, 2018, 132 Stat. 4490. Title X of the Act enacted subchapter VII of chapter 38 and sections 1627c and 6521a of Title 7, Agriculture, amended this section and sections 136a, 1622b, 1632a, 1632b, 2204h, 2207b, 2276, 2401, 2402, 2541, 2568, 3003, 5925c, 6502, 6514, 6515, 6518, 6519, 6521-6523, and 7655a of Title 7, repealed sections 3005 and 3006 of Title 7, enacted provisions set out as notes under sections 1627c, 1639o, 6503, and 6521a of Title 7, and amended provisions set out as a note under section 1621 of Title 7. For complete classification of this Act to the Code, see Short Title of 2018 Amendment note set out under section 9001 of Title 7 and Tables.

AMENDMENTS

2018—Pub. L. 115-334 inserted "but excluding any amounts used to provide technical assistance under title X of the Agriculture Improvement Act of 2018 or an amendment made by that title" after "activities".

1996—Pub. L. 104-127 inserted at end "After September 30, 1996, the total amount of all allotments and fund transfers from the Corporation under this section (including allotments and transfers for automated data processing or information resource management activities) for a fiscal year may not exceed the total amount

of the allotments and transfers made under this section in fiscal year 1995."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CLARIFICATION OF USE OF FUNDS FOR TECHNICAL ASSISTANCE

Pub. L. 113–79, title X, §10017, Feb. 7, 2014, 128 Stat. 953, provided that: "In the case of each program established or amended by this title [title X of Pub. L. 113–79, see Tables for classification] that is authorized or required to be carried out using funds of the Commodity Credit Corporation, the use of those funds to provide technical assistance shall not be considered an allotment or fund transfer from the Commodity Credit Corporation for purposes of the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i)."

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714j. Utilization of associations and trade facilities

The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.

(June 29, 1948, ch. 704, §12, 62 Stat. 1073.)

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714k. Records; annual report

The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary of Agriculture a complete report as to the business of the Corporation, a copy of which shall be forwarded by the Secretary of Agriculture to the President for transmission to the Congress. In addition to the annual report, the Corporation shall submit to Congress on a quarterly basis an itemized report of all expenditures over \$10,000 made under section 714c or 714i of this title during the period covered by the report, including expenditures in the form of allotments or fund transfers to other agencies and departments of the Federal Government.

(June 29, 1948, ch. 704, §13, 62 Stat. 1073; Pub. L. 104–127, title I, §161(b)(3), Apr. 4, 1996, 110 Stat. 934.)

EDITORIAL NOTES

AMENDMENTS

1996—Pub. L. 104–127 inserted at end "In addition to the annual report, the Corporation shall submit to Congress on a quarterly basis an itemized report of all expenditures over \$10,000 made under section 714c or 714i of this title during the period covered by the report, including expenditures in the form of allotments or fund transfers to other agencies and departments of the Federal Government."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the requirement, under the 1st sentence of this section, to transmit to Congress a complete annual report as to the business of the Corporation, is listed on page 46), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

DELEGATION OF CERTAIN REPORTING AUTHORITY

Memorandum of President of the United States, Dec. 8, 2004, 69 F.R. 74941, provided:

Memorandum for the Secretary of Agriculture

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 13 of Public Law 806, 80th Congress (15 U.S.C. 714k), to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§714l. Interest of Members of Congress

The provisions of section 6306(a) of title 41 shall apply to all contracts or agreements of the Corporation, except contracts or agreements of a kind which the Corporation may enter into with farmers participating in a program of the Corporation.

(June 29, 1948, ch. 704, §14, 62 Stat. 1074.)

EDITORIAL NOTES

CODIFICATION

In text, "section 6306(a) of title 41" substituted for "section 1 of the Act of February 27, 1877, as amended (41 U.S.C., 1940 edition, 22)" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714m. Crimes and offenses

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any

security, for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining for himself or another, money, property, or anything of value, under this subchapter, or under any other Act applicable to the Corporation, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment by not more than five years, or both.

(b) Embezzlement, etc.; false entries; fraudulent issue of obligations of Corporation

Whoever, being connected in any capacity with the Corporation or any of its programs, (i) embezzles, abstracts, purloins, or willfully misapplies any money, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it; or (ii) with intent to defraud the Corporation, or any other body, politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of, or to, the Corporation, or draws any order, or issues, puts forth or assigns any note or other obligation or draft, mortgage, judgment, or decree thereof; or (iii) with intent to defraud the Corporation, participates or shares in, or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of the Corporation, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

(c) Larceny; conversion of property

Whoever shall willfully steal, conceal, remove, dispose of, or convert to his own use or to that of another any property owned or held by, or mortgaged or pledged to, the Corporation, or any property mortgaged or pledged as security for any promissory note, or other evidence of indebtedness, which the Corporation has guaranteed or is obligated to purchase upon tender, shall, upon conviction thereof, if such property be of an amount or value in excess of \$500, be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both, and, if such property be of an amount or value of \$500 or less, be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.

(d) Conspiracy to commit offense

Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, upon conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful acts.

(e) General statutes applicable

All the general penal statutes relating to crimes and offenses against the United States shall apply with respect to the Corporation, its property, money, contracts and agreements, employees, and operations: *Provided*, That such general penal statutes shall not apply to the extent that they relate to crimes and offenses punishable under subsections (a), (b), (c), and (d) of this section: *Provided further*, That sections 431 and 432 of title 18 shall not apply to contracts or agreements of a kind which the Corporation may enter into with farmers participating in a program of the Corporation.

(f) Use of words "Commodity Credit Corporation"

No individual, association, partnership, or corporation shall use the words "Commodity Credit Corporation" or any combination of the same, as the name or a part thereof under which he or it shall do or purport to do business. Every individual, partnership, association, or corporation violating this prohibition shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.

(June 29, 1948, ch. 704, §15, 62 Stat. 1074; June 7, 1949, ch. 175, §6, 63 Stat. 157; Aug. 1, 1956, ch. 815, §2, 70 Stat. 783.)

EDITORIAL NOTES

CODIFICATION

In subsec. (e), "sections 431 and 432 of title 18" substituted for "sections 114 and 115 of the Act of March 4, 1909, as amended (18 U.S.C., 1940 edition, 204, 205)" on authority of act June 25, 1948, ch. 645, 62 Stat.

683, the first section of which enacted Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1956—Subsec. (c). Act Aug. 1, 1956, made it an offense to willfully steal or convert property mortgaged or pledged to a lending agency under a program of the Corporation and prescribed punishment not exceeding \$1,000 fine or one year imprisonment or both in the case of property of an amount or value of \$500 or less.

1949—Subsec. (f). Act June 7, 1949, added subsec. (f).

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714n. Transfer of assets of Commodity Credit Corporation, a Delaware corporation

The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation, are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this subchapter shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation.

(June 29, 1948, ch. 704, §16, 62 Stat. 1075.)

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714o. Dissolution of Delaware corporation

The Secretary of Agriculture, representing the United States as the sole owner of the capital stock of Commodity Credit Corporation, a Delaware corporation, is authorized and directed to institute or cause to be instituted such proceedings as are required for the dissolution of said Corporation under the laws of the State of Delaware. The costs of such dissolution of said Corporation shall be borne by the Corporation.

(June 29, 1948, ch. 704, §17, 62 Stat. 1075.)

EXECUTIVE DOCUMENTS

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714p. Release of innocent purchasers of converted goods

A buyer in the ordinary course of business of fungible goods sold and physically delivered by a warehouseman or other dealer who was regularly engaged in the business of buying and selling such goods shall take or be deemed to have taken such goods free of any claim, existing or hereafter arising, by Commodity Credit Corporation, based on the want of authority in the seller to sell such goods, provided the buyer purchased such goods for value in good faith and did not know or have reason to know of any defect in the seller's authority to sell such goods. To be entitled to relief under this section a buyer must assert as an affirmative defense and establish by a preponderance of the evidence the facts necessary to entitle him to such relief.

(June 29, 1948, ch. 704, §19, as added May 23, 1955, ch. 46, 69 Stat. 65.)

CHAPTER 15A—INTERSTATE TRANSPORTATION OF PETROLEUM PRODUCTS

Sec.	
715.	Purpose of chapter.
715a.	Definitions.
715b.	Interstate transportation of contraband oil forbidden.
715c.	Suspension of operation of section 715b of this title.
715d.	Enforcement of chapter.
715e.	Penalties for violation of chapter.
715f.	Forfeiture of contraband oil shipped in violation of law; procedure.
715g.	Refusal of carrier to accept shipment without certificate of clearance; certificate as justifying acceptance of shipment.
715h.	Hearings and investigation by boards; appointment of board and employees.
715i.	Restraining violations.
715j.	"President" as including agencies, officers and employees.
715k.	Saving clause.
715l.	Repealed.
715m.	Cooperation between Secretary of the Interior and Federal and State authorities.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONSTRUCTION OF PETROLEUM PIPE LINES

Act July 30, 1941, ch. 333, 55 Stat. 610, as amended June 30, 1943, ch. 180, 57 Stat. 270; June 8, 1945, ch. 177, 59 Stat. 233; July 25, 1947, ch. 327, §1, 61 Stat. 449, related to the construction of pipe lines for the transportation and/or distribution of petroleum or petroleum products moving in interstate commerce, or the extension or completion of any such pipe lines already wholly or partly constructed, that might be necessary for national-defense purposes. Section 9 of Act July 30, 1941, provided that neither the President, any department or agency of the Government nor any person shall exercise any of the powers conferred by sections 2, 3, 4, or 6 of Act July 30, 1941, after June 30, 1946, and in no case shall any pipe line constructed, extended or completed under authority of section 4 be operated or maintained by or under the direction or control of the President or any department or agency of the Government after the expiration of one year after the termination of the unlimited national emergency proclaimed on May 27, 1941. Joint Res. July 25, 1947, ch. 327, §3, 61 Stat. 451, provided that in the interpretation of Act July 30, 1941, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergency proclaimed by the President on May 27, 1941.

NATIONAL DEFENSE PIPE LINES AUTHORIZED BY ACT

Construction of one or more national defense pipe lines from Port Saint Joe, and other points on the Gulf Coast of Florida to the Saint Johns River, Florida, and a crude-oil pipe line from Yazoo, Mississippi, to Charleston, South Carolina and/or Savannah, Georgia, was authorized by act July 23, 1942, ch. 520, §1, 56 Stat. 703, as amended June 17, 1943, ch. 127, 57 Stat. 156.

EXECUTIVE DOCUMENTS

NATIONAL DEFENSE PIPE LINES AUTHORIZED BY PRESIDENTIAL PROCLAMATION

Construction of a national defense pipe line from Baton Rouge, Louisiana, to Greensboro, North Carolina, by the Plantation Pipe Line Company was authorized by Proc. No. 2505, Aug. 23, 1941, 6 F.R. 4429, 55 Stat. 1670.

Construction of a national defense pipe line from South Portland, Maine, through North Troy, Vermont, to Montreal, Canada, by the Portland Pipe Line Company was authorized by Proc. No. 2517, Oct. 1, 1941, 6 F.R. 5081, 55 Stat. 1691.

Construction of a national defense pipe line from Port Saint Joe, Florida, to Chattanooga, Tennessee, by the Southeastern Pipe Line Company was authorized by Proc. No. 2508, Sept. 3, 1941, 6 F.R. 4583, 55 Stat. 1672.

Construction of a national defense pipe line from El Dorado, Arkansas, to Helena, Arkansas, by the Project Five Pipe Line Corporation, was authorized by Proc. No. 2567, Aug. 28, 1942, 7 F.R. 6839, 56 Stat. 1975.

§715. Purpose of chapter

It is declared to be the policy of Congress to protect interstate and foreign commerce from the diversion and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil as herein defined, and to encourage the conservation of deposits of crude oil situated within the United States.

(Feb. 22, 1935, ch. 18, §1, 49 Stat. 30.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Act Feb. 22, 1935, which is classified to this chapter, is popularly known as the "Hot Oil Act" and also as the "Connally Hot Oil Act".

§715a. Definitions

As used in this chapter—

(1) The term "contraband oil" means petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State, or any of the products of such petroleum, except petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

(2) The term "products" or "petroleum products" includes any article produced or derived in whole or in part from petroleum or any product thereof by refining, processing, manufacturing, or otherwise.

(3) The term "interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.

(4) The term "person" includes an individual, partnership, corporation, or joint-stock company, (Feb. 22, 1935, ch. 18, §2, 49 Stat. 30; Pub. L. 89-644, Oct. 13, 1966, 80 Stat. 890.)

EDITORIAL NOTES

AMENDMENTS

1966—Pub. L. 89-644 inserted provisions in par. (1) exempting petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

§715b. Interstate transportation of contraband oil forbidden

The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is prohibited. For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State.

(Feb. 22, 1935, ch. 18, §3, 49 Stat. 31.)

§715c. Suspension of operation of section 715b of this title

Whenever the President finds that the amount of petroleum and petroleum products moving in interstate commerce is so limited as to be the cause, in whole or in part, of a lack of parity between supply (including imports and reasonable withdrawals from storage) and consumptive demand (including exports and reasonable additions to storage) resulting in an undue burden on or restriction of interstate commerce in petroleum and petroleum products, he shall by proclamation declare such finding, and thereupon the provisions of section 715b of this title shall be inoperative until such time as the President shall find and by proclamation declare that the conditions which gave rise to the suspension of the operation of the provisions of such section no longer exist. If any provision of this section or the application thereof shall be held to be invalid, the validity of application of section 715b of this title shall not be affected thereby.

(Feb. 22, 1935, ch. 18, §4, 49 Stat. 31.)

§715d. Enforcement of chapter

(a) Rules and regulations

The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this chapter, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.

(b) Certificate of clearance for petroleum and petroleum products

Whenever the President finds it necessary or appropriate for the enforcement of the provisions of this chapter he shall require certificates of clearance for petroleum and petroleum products moving or to be moved in interstate commerce from any particular area, and shall establish a board or boards for the issuance of such certificates. A certificate of clearance shall be issued by a board so established in any case where such board determines that the petroleum or petroleum products in question does not constitute contraband oil. Denial of any such certificate shall be by order of the board, and only after reasonable opportunity for hearing. Whenever a certificate of clearance is required for any area in any State, it shall be unlawful to ship or transport petroleum or petroleum products in interstate commerce from such area unless a certificate has been obtained therefor.

(c) Review of order of denial of certificate of clearance

Any person whose application for a certificate of clearance is denied may obtain a review of the order denying such application in the United States District Court for the district wherein the board is sitting by filing in such court within thirty days after the entry of such order a written petition praying that the order of the board be modified or set aside, in whole or in part. A copy of such petition shall be forthwith served upon the board, and thereupon the board shall certify and file in the

court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, such court shall have jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the board shall be considered by the court unless such objection shall have been urged before the board. The finding of the board as to the facts, if supported by evidence, shall be conclusive. The judgment and decree of the court shall be final, subject to review as provided in sections 1254, 1291, and 1292 of title 28.

(Feb. 22, 1935, ch. 18, §5, 49 Stat. 31.)

EDITORIAL NOTES

CODIFICATION

In subsec. (c), "sections 1254, 1291, and 1292 of title 28" substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

§715e. Penalties for violation of chapter

Any person knowingly violating any provision of this chapter or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed \$2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

(Feb. 22, 1935, ch. 18, §6, 49 Stat. 32.)

§715f. Forfeiture of contraband oil shipped in violation of law; procedure

(a) Seizure procedure; return of contraband oil

Contraband oil shipped or transported in interstate commerce in violation of the provisions of this chapter shall be liable to be proceeded against in any district court of the United States within the jurisdiction of which the same may be found, and seized for forfeiture to the United States by a process of libel for condemnation; but in any such case the court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture. The proceedings in such cases shall conform as nearly as may be to proceedings in rem in admiralty, except that either party may demand a trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. Contraband oil forfeited to the United States as provided in this section shall be used or disposed of pursuant to such rules and regulations as the President shall prescribe.

(b) Certificates of clearance

No such forfeiture shall be made in the case of contraband oil owned by any person (other than a person shipping such contraband oil in violation of the provisions of this chapter) who has with respect to such contraband oil a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such person had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact.

(Feb. 22, 1935, ch. 18, §7, 49 Stat. 32.)

§715g. Refusal of carrier to accept shipment without certificate of clearance; certificate as justifying acceptance of shipment

No common carrier who shall refuse to accept petroleum or petroleum products from any area in which certificates of clearance are required under authority of this chapter, by reason of the failure of

the shipper to deliver such a certificate to such carrier, or who shall refuse to accept any petroleum or petroleum products when having reasonable ground for believing that such petroleum or petroleum products constitute contraband oil, shall be liable on account of such refusal for any penalties or damages. No common carrier shall be subject to any penalty under section 715e of this title in any case where (1) such carrier has a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such carrier had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact, or (2) such carrier, as respects any shipment originating in any area where certificates of clearance are not required under authority of this chapter, had no reasonable ground for believing such petroleum or petroleum products to constitute contraband oil.

(Feb. 22, 1935, ch. 18, §8, 49 Stat. 32.)

§715h. Hearings and investigation by boards; appointment of board and employees

(a) Hearings

Any board established under authority of section 715d of this title, and any agency designated under authority of section 715j of this title, may hold and conduct such hearings, investigations, and proceedings as may be necessary for the purposes of this chapter, and for such purposes those provisions of section 78u of this title relating to the administering of oaths and affirmations, and to the attendance and testimony of witnesses and the production of evidence (including penalties), shall apply.

(b) Appointments

The members of any board established under authority of section 715d of this title shall be appointed by the President, subject to chapter 51 and subchapter III of chapter 53 of title 5; and any such board may appoint, subject to chapter 51 and subchapter III of chapter 53 of title 5, such employees as may be necessary for the execution of its functions under this chapter.

(Feb. 22, 1935, ch. 18, §9, 49 Stat. 33; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

EDITORIAL NOTES

CODIFICATION

Provisions of subsec. (b) that authorized appointments "without regard to the civil service laws" omitted as obsolete and superseded. Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" substituted in subsec. (b) for "the Classification Act of 1949, as amended" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

§715i. Restraining violations

(a) Mandatory injunction upon application of President

Upon application of the President, by the Attorney General, the United States District Courts shall have jurisdiction to issue mandatory injunctions commanding any person to comply with the provisions of this chapter or any regulation issued thereunder.

(b) Discretionary action in district court to enjoin acts or practices

Whenever it shall appear to the President that any person is engaged or about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter or of any regulation thereunder, he may in his discretion, by the Attorney General, bring an action in the proper United States District Court to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Exclusive jurisdiction of district court; review

The United States District Courts shall have exclusive jurisdiction of violations of this chapter or the regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or regulations thereunder, or to enjoin any violation of this chapter or any regulations thereunder, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28.

(Feb. 22, 1935, ch. 18, §10, 49 Stat. 33.)

EDITORIAL NOTES

CODIFICATION

In subsec. (c), "sections 1254, 1291, and 1292 of title 28" substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

§715j. "President" as including agencies, officers and employees

Wherever reference is made in this chapter to the President such reference shall be held to include, in addition to the President, any agency, officer, or employee who may be designated by the President for the execution of any of the powers and functions vested in the President under this chapter.

(Feb. 22, 1935, ch. 18, §11, 49 Stat. 33.)

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Ex. Ord. No. 6979, Feb. 28, 1935, which designated and appointed Secretary of the Interior to execute powers and functions vested in President by this chapter except those vested in him by section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

Ex. Ord. No. 7756, Dec. 1, 1937, 2 F.R. 2664, which delegated to Secretary of the Interior powers and functions vested in President under this chapter except those vested in him by section 715c of this title, and authorized Secretary to establish a Petroleum Conservation Division in Department of the Interior, the functions and duties of which shall be: (1) to assist, in such manner as may be prescribed by Secretary of the

Interior, in administering said act, (2) to cooperate with oil and gas-producing States in prevention of waste in oil and gas production and in adoption of uniform oil- and gas-conservation laws and regulations, and (3) to keep informed currently as to facts which may be required for exercise of responsibility of President under section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

EX. ORD. NO. 10752. DELEGATION OF FUNCTIONS TO THE SECRETARY OF THE INTERIOR

Ex. Ord. No. 10752, Feb. 12, 1958, 23 F.R. 973, provided:

SECTION 1. The Secretary of the Interior is hereby designated and appointed as the agent of the President for the execution of all the powers and functions vested in the President by the act of February 22, 1935, 49 Stat. 30, entitled "An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes," as amended (15 U.S.C. 715 *et seq.*), except those vested in the President by section 4 of the act (15 U.S.C. 715c).

SEC. 2. The Secretary of the Interior may make such provisions in the Department of the Interior as he may deem appropriate to administer the said act.

SEC. 3. This Executive order supersedes Executive Order No. 6979 of February 28, 1935, Executive Order No. 7756 of December 1, 1937 (2 F.R. 2664), Executive Order No. 9732 of June 3, 1946 (11 F.R. 5985), and paragraph (q) of section 1 of Executive Order No. 10250 of June 5, 1951 (16 F.R. 5385).

DWIGHT D. EISENHOWER.

§715k. Saving clause

If any provision of this chapter, or the application thereof to any person or circumstance, shall be held invalid, the validity of the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Feb. 22, 1935, ch. 18, §12, 49 Stat. 33.)

§715l. Repealed. June 22, 1942, ch. 436, 56 Stat. 381

Section, acts Feb. 22, 1935, ch. 18, §13, 49 Stat. 33; June 14, 1937, ch. 335, 50 Stat. 257; June 29, 1939, ch. 250, 53 Stat. 927, provided for expiration of this chapter on June 30, 1942.

§715m. Cooperation between Secretary of the Interior and Federal and State authorities

The Secretary of the Interior, in carrying out the Act of February 22, 1935, as amended (15 U.S.C., ch. 15A), is authorized to cooperate with Federal and State authorities.

(June 25, 1946, ch. 472, §3, 60 Stat. 307.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of February 22, 1935, referred to in text, is act Feb. 22, 1935, ch. 18, 49 Stat. 30, popularly known as the "Hot Oil Act" and also as the "Connally Hot Oil Act", which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 715 of this title and Tables.

CODIFICATION

Section was not enacted as a part of act Feb. 22, 1935, which comprises this chapter.

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Delegation of President's authority to Secretary of the Interior, see note set out under section 715j of this title.

CHAPTER 15B—NATURAL GAS

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§717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign

commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

- (1) not otherwise a natural-gas company; or
- (2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

(June 21, 1938, ch. 556, §1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36; Pub. L. 102–486, title IV, §404(a)(1), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, §311(a), Aug. 8, 2005, 119 Stat. 685.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted "and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation," after "such transportation or sale,".

1992—Subsec. (d). Pub. L. 102–486 added subsec. (d).

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

STATE LAWS AND REGULATIONS

Pub. L. 102–486, title IV, §404(b), Oct. 24, 1992, 106 Stat. 2879, provided that: "The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of State law—

"(1) in closed containers; or

"(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle, shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regulation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety."

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95-2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11969

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which delegated to the Secretary of Energy the authority vested in the President by the Emergency Natural Gas Act of 1977 except the authority to declare and terminate a natural gas emergency, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, which emergency was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, formerly set out below.

PROCLAMATION NO. 4495

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, terminated the natural gas emergency declared to exist by Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, formerly set out above.

§717a. Definitions

When used in this chapter, unless the context otherwise requires—

- (1) "Person" includes an individual or a corporation.
- (2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.
- (3) "Municipality" means a city, county, or other political subdivision or agency of a State.
- (4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.
- (5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.
- (6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.
- (7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.
- (8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.
- (9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.
- (10) "Vehicular natural gas" means natural gas that is ultimately used as a fuel in a self-propelled vehicle.
- (11) "LNG terminal" includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—
 - (A) waterborne vessels used to deliver natural gas to or from any such facility; or

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 717f of this title.

(June 21, 1938, ch. 556, §2, 52 Stat. 821; Pub. L. 102-486, title IV, §404(a)(2), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109-58, title III, §311(b), Aug. 8, 2005, 119 Stat. 685.)

EDITORIAL NOTES

AMENDMENTS

2005—Par. (11). Pub. L. 109-58 added par. (11).

1992—Par. (10). Pub. L. 102-486 added par. (10).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§717b. Exportation or importation of natural gas; LNG terminals

(a) Mandatory authorization order

After six months from June 21, 1938, no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) Free trade agreements

With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a "first sale" within the meaning of section 3301(21) of this title; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) Expedited application and approval process

For purposes of subsection (a), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

(d) Construction with other laws

Except as specifically provided in this chapter, nothing in this chapter affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e) LNG terminals

(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this chapter, nothing in this chapter is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 717b–1 of this title;

(C) decide the matter in accordance with this subsection; and

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find ¹ necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

(ii) condition an order on—

(I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;

(II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or

(III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.

(C) Subparagraph (B) shall cease to have effect on January 1, 2030.

(4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.

(f) Military installations

(1) In this subsection, the term "military installation"—

(A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and

(B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult ² with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.

(3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of liquefied natural gas facilities affecting the training or activities of an active military installation.

(June 21, 1938, ch. 556, §3, 52 Stat. 822; Pub. L. 102–486, title II, §201, Oct. 24, 1992, 106 Stat.

2866; Pub. L. 109–58, title III, §311(c), Aug. 8, 2005, 119 Stat. 685.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

The Clean Air Act, referred to in subsec. (d)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) 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 7401 of Title 42 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (d)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2005—Pub. L. 109–58, §311(c)(1), inserted "; LNG terminals" after "natural gas" in section catchline. Subsecs. (d) to (f). Pub. L. 109–58, §311(c)(2), added subsecs. (d) to (f).

1992—Pub. L. 102–486 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with authorizations for importation of natural gas from Alberta as pre-deliveries of Alaskan gas issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to the Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

DELEGATION OF FUNCTIONS

Functions of President respecting certain facilities constructed and maintained on United States borders delegated to Secretary of State, see Ex. Ord. No. 11423, Aug. 16, 1968, 33 F.R. 11741, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10485. PROVIDING FOR THE PERFORMANCE OF CERTAIN FUNCTIONS HERETOFORE PERFORMED BY THE PRESIDENT WITH RESPECT TO ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON THE BORDERS OF THE UNITED STATES

Ex. Ord. No. 10485. Sept. 3, 1953, 18 F.R. 5397, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

SECTION 1. (a) The Secretary of Energy is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign

country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

¹ *So in original. Probably should be "finds".*

² *So in original. Probably should be "coordinates and consults".*

§717b–1. State and local safety considerations

(a) Promulgation of regulations

The Commission shall promulgate regulations on the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pre-filing process within 60 days after August 8, 2005. An applicant shall comply with pre-filing process required under the National Environmental Policy Act of 1969 prior to filing an application with the Commission. The regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for authorization to construct an LNG terminal and encourage applicants to cooperate with State and local officials.

(b) State consultation

The Governor of a State in which an LNG terminal is proposed to be located shall designate the appropriate State agency for the purposes of consulting with the Commission regarding an application under section 717b of this title. The Commission shall consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 717b of this title. For the purposes of this section, State and local safety considerations include—

- (1) the kind and use of the facility;
- (2) the existing and projected population and demographic characteristics of the location;
- (3) the existing and proposed land use near the location;
- (4) the natural and physical aspects of the location;
- (5) the emergency response capabilities near the facility location; and
- (6) the need to encourage remote siting.

(c) Advisory report

The State agency may furnish an advisory report on State and local safety considerations to the Commission with respect to an application no later than 30 days after the application was filed with the Commission. Before issuing an order authorizing an applicant to site, construct, expand, or operate an LNG terminal, the Commission shall review and respond specifically to the issues raised by the State agency described in subsection (b) in the advisory report. This subsection shall apply to any application filed after August 8, 2005. A State agency has 30 days after August 8, 2005 to file an advisory report related to any applications pending at the Commission as of August 8, 2005.

(d) Inspections

The State commission of the State in which an LNG terminal is located may, after the terminal is operational, conduct safety inspections in conformance with Federal regulations and guidelines with respect to the LNG terminal upon written notice to the Commission. The State commission may notify the Commission of any alleged safety violations. The Commission shall transmit information regarding such allegations to the appropriate Federal agency, which shall take appropriate action and notify the State commission.

(e) Emergency Response Plan

(1) In any order authorizing an LNG terminal the Commission shall require the LNG terminal operator to develop an Emergency Response Plan. The Emergency Response Plan shall be prepared in consultation with the United States Coast Guard and State and local agencies and be approved by the Commission prior to any final approval to begin construction. The Plan shall include a cost-sharing plan.

(2) A cost-sharing plan developed under paragraph (1) shall include a description of any direct cost reimbursements that the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

(A) at the LNG terminal; and

(B) in proximity to vessels that serve the facility.

(June 21, 1938, ch. 556, §3A, as added Pub. L. 109–58, title III, §311(d), Aug. 8, 2005, 119 Stat. 687.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) 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 4321 of Title 42 and Tables.

§717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Filing of rates and charges with Commission; public inspection of schedules

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to

the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Changes in rates and charges; notice to Commission

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Authority of Commission to hold hearings concerning new schedule of rates

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Storage services

(1) In exercising its authority under this chapter or the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), the Commission may authorize a natural gas company (or any person that will be a natural gas company on completion of any proposed construction) to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after August 8, 2005, notwithstanding the fact that the company is unable to demonstrate that the company lacks market power, if the Commission determines that—

- (A) market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and
- (B) customers are adequately protected.

(2) The Commission shall ensure that reasonable terms and conditions are in place to protect consumers.

(3) If the Commission authorizes a natural gas company to charge market-based rates under this subsection, the Commission shall review periodically whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.

(June 21, 1938, ch. 556, §4, 52 Stat. 822; Pub. L. 87-454, May 21, 1962, 76 Stat. 72; Pub. L. 109-58, title III, §312, Aug. 8, 2005, 119 Stat. 688.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (f)(1), is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109-58 added subsec. (f).

1962—Subsec. (e). Pub. L. 87-454 inserted "or gas distributing company" after "State commission", and struck out proviso which denied authority to the Commission to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ADVANCE RECOVERY OF EXPENSES INCURRED BY NATURAL GAS COMPANIES FOR NATURAL GAS RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS

Pub. L. 102-104, title III, Aug. 17, 1991, 105 Stat. 531, authorized Federal Energy Regulatory Commission, pursuant to this section, to allow recovery, in advance, of expenses by natural-gas companies for research, development and demonstration activities by Gas Research Institute for projects on use of natural gas in motor vehicles and on use of natural gas to control emissions from combustion of other fuels, subject to Commission finding that benefits, including environmental benefits, to both existing and future ratepayers resulting from such activities exceed all direct costs to both existing and future ratepayers, prior to repeal by Pub. L. 102-486, title IV, §408(c), Oct. 24, 1992, 106 Stat. 2882.

§717c-1. Prohibition on market manipulation

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j(b) of this title) in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers. Nothing in this section shall be construed to create a private right of action.

(June 21, 1938, ch. 556, §4A, as added Pub. L. 109-58, title III, §315, Aug. 8, 2005, 119 Stat. 691.)

§717d. Fixing rates and charges; determination of cost of production or transportation

(a) Decreases in rates

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to

be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) Costs of production and transportation

The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

(June 21, 1938, ch. 556, §5, 52 Stat. 823.)

§717e. Ascertainment of cost of property

(a) Cost of property

The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Inventory of property; statements of costs

Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 21, 1938, ch. 556, §6, 52 Stat. 824.)

§717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

(A) natural gas sold by the producer to such person; and

(B) natural gas produced by such person.

(d) Application for certificate of public convenience and necessity

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area; jurisdiction of transportation to ultimate consumers

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if

across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) Certificate of public convenience and necessity for service of area already being served

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

(June 21, 1938, ch. 556, §7, 52 Stat. 824; Feb. 7, 1942, ch. 49, 56 Stat. 83; July 25, 1947, ch. 333, 61 Stat. 459; Pub. L. 95–617, title VI, §608, Nov. 9, 1978, 92 Stat. 3173; Pub. L. 100–474, §2, Oct. 6, 1988, 102 Stat. 2302.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–474 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (c). Pub. L. 95–617, §608(a), (b)(1), designated existing first paragraph as par. (1)(A) and existing second paragraph as par. (1)(B) and added par. (2).

Subsec. (e). Pub. L. 95–617, §608(b)(2), substituted "subsection (c)(1)" for "subsection (c)".

1947—Subsec. (h). Act July 25, 1947, added subsec. (h).

1942—Subsecs. (c) to (g). Act Feb. 7, 1942, struck out subsec. (c), and added new subsecs. (c) to (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–474, §3, Oct. 6, 1988, 102 Stat. 2302, provided that: "The provisions of this Act [amending this section and enacting provisions set out as a note under section 717w of this title] shall become effective one hundred and twenty days after the date of enactment [Oct. 6, 1988]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with certificates of public convenience and necessity issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section

3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§717g. Accounts; records; memoranda

(a) Rules and regulations for keeping and preserving accounts, records, etc.

Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter: *Provided, however,* That nothing in this chapter shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) Access to and inspection of accounts and records

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

(c) Books, accounts, etc., of the person controlling gas company subject to examination

The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission.

(June 21, 1938, ch. 556, §8, 52 Stat. 825.)

§717h. Rates of depreciation

(a) Depreciation and amortization

The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or

charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

(b) Rules

The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations.

(June 21, 1938, ch. 556, §9, 52 Stat. 826.)

§717i. Periodic and special reports

(a) Form and contents of reports

Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this chapter. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other reserves, cost of facilities, cost of maintenance and operation of facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

(b) Unlawful conduct

It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this chapter or any rule, regulation, or order thereunder.

(June 21, 1938, ch. 556, §10, 52 Stat. 826.)

§717j. State compacts for conservation, transportation, etc., of natural gas

(a) Assembly of pertinent information; report to Congress

In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.

(b) Assembly of information relative to operation of compact; report to Congress

It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained, together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

(c) Availability of services, etc., of other agencies

In carrying out the purposes of this chapter, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission.

(June 21, 1938, ch. 556, §11, 52 Stat. 827.)

§717k. Officials dealing in securities

It shall be unlawful for any officer or director of any natural-gas company to receive for his own benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas company of any security issued, or to be issued, by such natural-gas company, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends, other than liquidating dividends, of such natural-gas company from any funds properly included in capital account.

(June 21, 1938, ch. 556, §12, 52 Stat. 827.)

§717l. Complaints

Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this chapter may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

(June 21, 1938, ch. 556, §13, 52 Stat. 827.)

§717m. Investigations by Commission

(a) Power of Commission

The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provisions of this chapter or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this chapter or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress. The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized by section 825k of title 16, and make available to State commissions and municipalities, information concerning any such matter.

(b) Determination of adequacy of gas reserves

The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company, or by anyone on its behalf, including its owned or

leased properties or royalty contracts; and may also, after hearing, determine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases. For the purpose of such determinations, the Commission may require any natural-gas company to file with the Commission true copies of all its lease and royalty agreements with respect to such gas reserves.

(c) Administration of oaths and affirmations; subpoena of witnesses, etc.

For the purpose of any investigation or any other proceeding under this chapter, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(d) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(e) Testimony of witnesses

The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(f) Deposition of witnesses in a foreign country

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(g) Witness fees

Witnesses whose depositions are taken as authorized in this chapter, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(June 21, 1938, ch. 556, §14, 52 Stat. 828; Pub. L. 91-452, title II, §218, Oct. 15, 1970, 84 Stat. 929.)

EDITORIAL NOTES

AMENDMENTS

1970—Subsec. (h). Pub. L. 91-452 struck out subsec. (h) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

STUDY AND REPORT ON NATURAL GAS PIPELINE AND STORAGE FACILITIES IN NEW ENGLAND

Pub. L. 107-355, §26, Dec. 17, 2002, 116 Stat. 3012, required the Federal Energy Regulatory Commission, in consultation with the Department of Energy, to conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network, and submit a report on the results to Congress by not later than 1 year after Dec. 17, 2002.

§717n. Process coordination; hearings; rules of procedure

(a) Definition

In this section, the term "Federal authorization"—

(1) means any authorization required under Federal law with respect to an application for authorization under section 717b of this title or a certificate of public convenience and necessity under section 717f of this title; and

(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an application for authorization under section 717b of this title or a certificate of public convenience and necessity under section 717f of this title.

(b) Designation as lead agency

(1) In general

The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Other agencies

Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.

(c) Schedule

(1) Commission authority to set schedule

The Commission shall establish a schedule for all Federal authorizations. In establishing the schedule, the Commission shall—

- (A) ensure expeditious completion of all such proceedings; and
- (B) comply with applicable schedules established by Federal law.

(2) Failure to meet schedule

If a Federal or State administrative agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission, the applicant may pursue remedies under section 717r(d) of this title.

(d) Consolidated record

The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization. Such record shall be the record for—

(1) appeals or reviews under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), provided that the record may be supplemented as expressly provided pursuant to section 319 of that Act [16 U.S.C. 1465]; or

(2) judicial review under section 717r(d) of this title of decisions made or actions taken of Federal and State administrative agencies and officials, provided that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Commission for further development of the consolidated record.

(e) Hearings; parties

Hearings under this chapter may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(f) Procedure

All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this chapter.

(June 21, 1938, ch. 556, §15, 52 Stat. 829; Pub. L. 109–58, title III, §313(a), Aug. 8, 2005, 119 Stat. 688.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) 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 4321 of Title 42 and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), is title III of Pub. L. 89–454, as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

2005—Pub. L. 109–58 substituted "Process coordination; hearings; rules of procedure" for "Hearings; rules of procedure" in section catchline, added subsecs. (a) to (d), and redesignated former subsecs. (a) and (b) as

(e) and (f), respectively.

§717o. Administrative powers of Commission; rules, regulations, and orders

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

(June 21, 1938, ch. 556, §16, 52 Stat. 830.)

§717p. Joint boards

(a) Reference of matters to joint boards; composition and power

The Commission may refer any matter arising in the administration of this chapter to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

(b) Conference with State commissions regarding rate structure, costs, etc.

The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) Information and reports available to State commissions

The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the

appropriation from which the amounts were expended in carrying out the provisions of this subsection.

(June 21, 1938, ch. 556, §17, 52 Stat. 830.)

§717q. Appointment of officers and employees

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 21, 1938, ch. 556, §18, 52 Stat. 831; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

EDITORIAL NOTES

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter "without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States" are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

"Chapter 51 and subchapter III of chapter 53 of title 5" substituted in text for "the Classification Act of 1949, as amended" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

§717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts

upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review

(1) In general

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Agency delay

The United States Court of Appeals for the District of Columbia shall have original and

exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a facility subject to section 717b of this title or section 717f of this title. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 717n(c) of this title shall be considered inconsistent with Federal law for the purposes of paragraph (3).

(3) Court action

If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 717b of this title or section 717f of this title, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

(4) Commission action

For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

(5) Expedited review

The Court shall set any action brought under this subsection for expedited consideration.

(June 21, 1938, ch. 556, §19, 52 Stat. 831; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §19, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109-58, title III, §313(b), Aug. 8, 2005, 119 Stat. 689.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), (2), is title III of Pub. L. 89-454, as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

CODIFICATION

In subsec. (b), "section 1254 of title 28" substituted for "sections 239 and 240 of the Judicial Code, as amended [28 U.S.C. 346, 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109-58 added subsec. (d).

1958—Subsec. (a). Pub. L. 85-791, §19(a), inserted sentence providing that until record in a proceeding has been filed in a court of appeals, Commission may modify or set aside any finding or order issued by it.

Subsec. (b). Pub. L. 85-791, §19(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", substituted "file with the court" for "certify and file with the court a transcript of", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record with it shall be exclusive" for "exclusive jurisdiction".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing.

§717s. Enforcement of chapter

(a) Action in district court for injunction

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of the Federal antitrust laws to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings.

(b) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys by Commission

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Violation of market manipulation provisions

In any proceedings under subsection (a), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the court determines, any individual who is engaged or has engaged in practices constituting a violation of section 717c–1 of this title (including related rules and regulations) from—

- (1) acting as an officer or director of a natural gas company; or
- (2) engaging in the business of—
 - (A) the purchasing or selling of natural gas; or
 - (B) the purchasing or selling of transmission services subject to the jurisdiction of the Commission.

(June 21, 1938, ch. 556, §20, 52 Stat. 832; June 25, 1948, ch. 646, §1, 62 Stat. 875, 895; Pub. L. 109–58, title III, §318, Aug. 8, 2005, 119 Stat. 693.)

EDITORIAL NOTES

CODIFICATION

The words "the District Court of the United States for the District of Columbia" in subsec. (a) following "district court of the United States" and in subsec. (b) following "district courts of the United States" omitted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

§717t. General penalties

(a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this chapter required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than \$1,000,000 or by imprisonment for not more than 5 years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this chapter, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding \$50,000 for each and every day during which such offense occurs.

(June 21, 1938, ch. 556, §21, 52 Stat. 833; Pub. L. 109–58, title III, §314(a)(1), Aug. 8, 2005, 119 Stat. 690.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §314(a)(1)(A), substituted "\$1,000,000" for "\$5,000" and "5 years" for "two years".

Subsec. (b). Pub. L. 109–58, §314(a)(1)(B), substituted "\$50,000" for "\$500".

§717t–1. Civil penalty authority

(a) In general

Any person that violates this chapter, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this chapter, shall be subject to a civil penalty of not more than \$1,000,000 per day per violation for as long as the violation continues.

(b) Notice

The penalty shall be assessed by the Commission after notice and opportunity for public hearing.

(c) Amount

In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation and the efforts to remedy the violation.

(June 21, 1938, ch. 556, §22, as added Pub. L. 109–58, title III, §314(b)(1)(B), Aug. 8, 2005, 119 Stat. 691.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 22 of act June 21, 1938, was renumbered section 24 and is classified to section 717u of this title.

§717t–2. Natural gas market transparency rules

(a) In general

(1) The Commission is directed to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.

(2) The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in

interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.

(3) The Commission may—

(A) obtain the information described in paragraph (2) from any market participant; and

(B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b).

(4) In carrying out this section, the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services, and shall rely on such publishers and services to the maximum extent possible. The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing price discovery or market transparency.

(b) Information exempted from disclosure

(1) Rules described in subsection (a)(2), if adopted, shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

(2) In determining the information to be made available under this section and the time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

(c) Information sharing

(1) Within 180 days of August 8, 2005, the Commission shall conclude a memorandum of understanding with the Commodity Futures Trading Commission relating to information sharing, which shall include, among other things, provisions ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and provisions regarding the treatment of proprietary trading information.

(2) Nothing in this section may be construed to limit or affect the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(d) Compliance with requirements

(1) The Commission shall not condition access to interstate pipeline transportation on the reporting requirements of this section.

(2) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to comply with the reporting requirements of this section.

(e) Retroactive effect

(1) Except as provided in paragraph (2), no person shall be subject to any civil penalty under this section with respect to any violation occurring more than 3 years before the date on which the person is provided notice of the proposed penalty under section 717t–1(b) of this title.

(2) Paragraph (1) shall not apply in any case in which the Commission finds that a seller that has entered into a contract for the transportation or sale of natural gas subject to the jurisdiction of the Commission has engaged in fraudulent market manipulation activities materially affecting the contract in violation of section 717c–1 of this title.

(June 21, 1938, ch. 556, §23, as added Pub. L. 109–58, title III, §316, Aug. 8, 2005, 119 Stat. 691.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 23 of act June 21, 1938, was renumbered section 25 and is classified to section 717v of this title.

§717u. Jurisdiction of offenses; enforcement of liabilities and duties

The District Courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter.

(June 21, 1938, ch. 556, §24, formerly §22, 52 Stat. 833; June 25, 1948, ch. 646, §1, 62 Stat. 875, 895; renumbered §24, Pub. L. 109–58, title III, §314(b)(1)(A), Aug. 8, 2005, 119 Stat. 690.)

EDITORIAL NOTES

CODIFICATION

The words "the District Court of the United States for the District of Columbia" following "The District Courts of the United States" omitted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district" and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

"Sections 1254, 1291, and 1292 of title 28" substituted in text for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28.

PRIOR PROVISIONS

A prior section 24 of act June 21, 1938, was renumbered section 26 and is classified to section 717w of this title.

§717v. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 21, 1938, ch. 556, §25, formerly §23, 52 Stat. 833; renumbered §25, Pub. L. 109–58, title III, §314(b)(1)(A), Aug. 8, 2005, 119 Stat. 690.)

§717w. Short title

This chapter may be cited as the "Natural Gas Act."

(June 21, 1938, ch. 556, §26, formerly §24, 52 Stat. 833; renumbered §26, Pub. L. 109–58, title III, §314(b)(1)(A), Aug. 8, 2005, 119 Stat. 690.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-474, §1, Oct. 6, 1988, 102 Stat. 2302, provided that: "This Act [amending section 717f of this title and enacting provisions set out as a note under section 717f of this title] may be cited as the 'Uniform Regulatory Jurisdiction Act of 1988'."

§717x. Conserved natural gas

(a) Determination of entitlement

(1) For purposes of determining the natural gas entitlement of any local distribution company under any curtailment plan, if the Commission revises any base period established under such plan, the volumes of natural gas which such local distribution company demonstrates—

(A) were sold by the local distribution company, for a priority use immediately before the implementation of conservation measures, and

(B) were conserved by reason of the implementation of such conservation measures,

shall be treated by the Commission following such revision as continuing to be used for the priority use referred to in subparagraph (A).

(2) The Commission shall, by rule, prescribe methods for measurement of volumes of natural gas to which subparagraphs (A) and (B) of paragraph (1) apply.

(b) Conditions, limitations, etc.

Subsection (a) shall not limit or otherwise affect any provision of any curtailment plan, or any other provision of law or regulation, under which natural gas may be diverted or allocated to respond to emergency situations or to protect public health, safety, and welfare.

(c) Definitions

For purposes of this section—

(1) The term "conservation measures" means such energy conservation measures, as determined by the Commission, as were implemented after the base period established under the curtailment plan in effect on November 9, 1978.

(2) The term "local distribution company" means any person engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(3) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.]) in effect under the Natural Gas Act [15 U.S.C. 717 et seq.] which provides for recognizing and implementing priorities of service during periods of curtailed deliveries.

(Pub. L. 95-617, title VI, §605, Nov. 9, 1978, 92 Stat. 3167.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (c)(3), is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The Natural Gas Act, referred to in subsec. (c)(3), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to this chapter (§717 et seq.). For complete classification of this Act to the Code, see section 717w of this title and Tables.

CODIFICATION

Section was enacted as part of the Public Utility Regulatory Policies Act of 1978, and not as part of the Natural Gas Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 2602 of Title 16, Conservation.

§717y. Voluntary conversion of natural gas users to heavy fuel oil

(a) Transfer of contractual interests

(1) In order to facilitate voluntary conversion of facilities from the use of natural gas to the use of heavy petroleum fuel oil, the Commission shall, by rule, provide a procedure for the approval by the Commission of any transfer to any person described in paragraph 2(B)(i), (ii), or (iii) of contractual interests involving the receipt of natural gas described in paragraph 2(A).

(2)(A) The rule required under paragraph (1) shall apply to—

(i) natural gas—

(I) received by the user pursuant to a contract entered into before September 1, 1977, not including any renewal or extension thereof entered into on or after such date other than any such extension or renewal pursuant to the exercise by such user of an option to extend or renew such contract;

(II) other than natural gas the sale for resale or the transportation of which was subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as of September 1, 1977;

(III) which was used as a fuel in any facility in existence on September 1, 1977.

(ii) natural gas subject to a prohibition order issued under section 717z of this title.

(B) The rule required under paragraph (1) shall permit the transfer of contractual interests—

(i) to any interstate pipeline;

(ii) to any local distribution company served by an interstate pipeline; and

(iii) to any person served by an interstate pipeline for a high priority use by such person.

(3) The rule required under paragraph (1) shall provide that any transfer of contractual interests pursuant to such rule shall be under such terms and conditions as the Commission may prescribe. Such rule shall include a requirement for refund of any consideration, received by the person transferring contractual interests pursuant to such rule, to the extent such consideration exceeds the amount by which the costs actually incurred, during the remainder of the period of the contract with respect to which such contractual interests are transferred, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility exceeds the price under such contract for natural gas, subject to such contract, delivered during such period.

(4) In prescribing the rule required under paragraph (1), and in determining whether to approve any transfer of contractual interests, the Commission shall consider whether such transfer of contractual interests is likely to increase demand for imported refined petroleum products.

(b) Commission approval

(1) No transfer of contractual interests authorized by the rule required under subsection (a)(1) may take effect unless the Commission issues a certificate of public convenience and necessity for such transfer if such natural gas is to be resold by the person to whom such contractual interests are to be transferred. Such certificate shall be issued by the Commission in accordance with the requirements of this subsection and those of section 7 of the Natural Gas Act [15 U.S.C. 717f], and the provisions of such Act [15 U.S.C. 717 et seq.] applicable to the determination of satisfaction of the public convenience and necessity requirements of such section.

(2) The rule required under subsection (a)(1) shall set forth guidelines for the application on a regional or national basis (as the Commission determines appropriate) of the criteria specified in subsection (e)(2) and (3) to determine the maximum consideration permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

Any provision of any contract, which provision prohibits any transfer of any contractual interests thereunder, or any commingling or transportation of natural gas subject to such contract with natural gas the sale for resale or transportation of which is subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], or terminates such contract on the basis of any such transfer, commingling, or transportation, shall be unenforceable in any court of the United States and in any court of any State if applied with respect to any transfer approved under the rule required under subsection (a)(1).

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to the rule required under subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This section shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term "natural gas" has the same meaning as provided by section 2(5) of the Natural Gas Act [15 U.S.C. 717a(5)].

(2) The term "just compensation", when used with respect to any contractual interests pursuant to the rule required under subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (not including capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1), in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility, exceeds

(B) the price under such contract for natural gas, subject to such contract, delivered during such period.

For purposes of subparagraph (A), the reasonable costs directly associated with the use of heavy petroleum fuel oil as a fuel shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such facility, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such heavy petroleum fuel oil.

(3) The term "just compensation", when used with respect to any intrastate pipeline which would have transported or distributed natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1), to the extent such loss—

(A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to the rule required under subsection (a)(1); and

(B) is not offset by—

(i) a reduction in expenses associated with such discontinuation; and

(ii) revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(4) The term "contractual interests" means the right to receive natural gas under contract as affected by an applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(5) The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term "high-priority use" means any use of natural gas (other than its use for the generation of steam for industrial purposes or electricity) identified by the Commission as a high priority use for which the Commission determines a substitute fuel is not reasonably available.

(7) The term "heavy petroleum fuel oil" means number 4, 5, or 6 fuel oil which is domestically refined.

(8) The term "local distribution company" means any person, other than any intrastate pipeline or any interstate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(9) The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act.

(10) The term "facility" means any electric powerplant, or major fuel burning installation, as such terms are defined in the Powerplant and Industrial Fuel Use Act of 1978 [42 U.S.C. 8301 et seq.].

(11) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.]), in effect under the Natural Gas Act or State law, which provides for recognizing and implementing priorities of service during periods of curtailed deliveries by any local distribution company, intrastate pipeline, or interstate pipeline.

(12) The term "interstate commerce" has the same meaning as such term has under the Natural Gas Act.

(f) Coordination with the Natural Gas Act

(1) Consideration in any transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section shall be deemed just and reasonable for purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d] if such consideration does not exceed just compensation.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as a natural gas-company (within the meaning of such Act) or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale, or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests pursuant to the rule required under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the sale in interstate commerce for resale or the transportation in interstate commerce of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1).

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred pursuant to the rule required under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests pursuant to the rule required under subsection (a)(1), if no such transfer had occurred; and

(3) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of

contractual interests.

(Pub. L. 95–617, title VI, §606, Nov. 9, 1978, 92 Stat. 3167.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(2)(A)(i)(II), (b)(1), (c), (e)(5), (9), (11), (12), (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to this chapter (§717 et seq.). For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (e)(10), is Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3291, which is classified principally to chapter 92 (§8301 et seq.) 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 8301 of Title 42 and Tables.

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(11), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Public Utility Regulatory Policies Act of 1978, and not as part of the Natural Gas Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 2602 of Title 16, Conservation.

§717z. Emergency conversion of utilities and other facilities

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under this section is reasonably necessary, having exhausted other alternatives (not including section 3363 of this title) to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof) previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(c) Prohibitions

During a natural gas emergency declared under this section, the President may, by order, prohibit the burning of natural gas by any electric powerplant or major fuel-burning installation if the President determines that—

(1) such powerplant or installation had on September 1, 1977 (or at any time thereafter) the capability to burn petroleum products without damage to its facilities or equipment and without

interference with operational requirements;

(2) significant quantities of natural gas which would otherwise be burned by such powerplant or installation could be made available before the termination of such emergency to any person served by an interstate pipeline for use by such person in a high-priority use; and

(3) petroleum products will be available for use by such powerplant or installation throughout the period the order is in effect.

(d) Limitations

The President may specify in any order issued under this section the periods of time during which such order will be in effect and the quantity (or rate of use) of natural gas that may be burned by an electric powerplant or major fuel-burning installation during such period, including the burning of natural gas by an electric powerplant to meet peak load requirements. No such order may continue in effect after the termination or expiration of such natural gas supply emergency.

(e) Exemption for secondary uses

The President shall exempt from any order issued under this section the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization by an electric powerplant or major fuel-burning installation.

(f) Exemption for air-quality emergencies

The President shall exempt any electric powerplant or major fuel-burning installation in whole or in part, from any order issued under this section for such period and to such extent as the President determines necessary to alleviate any imminent and substantial endangerment to the health of persons within the meaning of section 7603 of title 42.

(g) Limitation on injunctive relief

(1) Except as provided in paragraph (2), no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued under this section unless such relief is in connection with a final judgment entered with respect to such order.

(2)(A) On the petition of any person aggrieved by an order issued under this section, the United States District Court for the District of Columbia may, after an opportunity for a hearing before such court and on an appropriate showing, issue a preliminary injunction temporarily enjoining, in whole or in part, the implementation of such order.

(B) For purposes of this paragraph, subpoenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States, except that no writ of subpoena under the authority of this section shall issue for witnesses outside of the District of Columbia at a greater distance than 100 miles from the place of holding court unless the permission of the District Court for the District of Columbia has been granted after proper application and cause shown.

(h) Definitions

For purposes of this section—

(1) The terms "electric powerplant", "powerplant", "major fuel-burning installation", and "installation" shall have the same meanings as such terms have under section 8302 of title 42.

(2) The term "petroleum products" means crude oil, or any product derived from crude oil other than propane.

(3) The term "high priority use" means any—

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(C) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(4) The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60

degrees Fahrenheit.

(i) Use of general terms

In applying the provisions of this section in the case of natural gas subject to a prohibition order issued under this section, the term "petroleum products" (as defined in subsection (h)(2) of this section) shall be substituted for the term "heavy petroleum fuel oil" (as defined in section 717y(e)(7) of this title) if the person subject to any order under this section demonstrates to the Commission that the acquisition and use of heavy petroleum fuel oil is not technically or economically feasible.

(Pub. L. 95–617, title VI, §607, Nov. 9, 1978, 92 Stat. 3171.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Public Utility Regulatory Policies Act of 1978, and not as part of the Natural Gas Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 2602 of Title 16, Conservation.

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under this section, except for authority to declare, extend, and terminate a natural gas supply emergency pursuant to subsecs. (a) and (b) of this section, delegated to Secretary of Energy, see section 1–102 of Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, set out as a note under section 3364 of this title.

CHAPTER 15C—ALASKA NATURAL GAS TRANSPORTATION

Sec.

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§719. Congressional findings

The Congress finds and declares that—

(1) a natural gas supply shortage exists in the contiguous States of the United States;

(2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;

(3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and

(4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system.

(Pub. L. 94-586, §2, Oct. 22, 1976, 90 Stat. 2903.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXPIRATION DATE

Pub. L. 94-586, §20, Oct. 22, 1976, 90 Stat. 2916, provided that: "This Act [this chapter] shall terminate in the event that no decision of the President takes effect under section 8 of this Act [section 719f of this title], such termination to occur at the end of the last day on which a decision could be, but is not, approved under such section."

SHORT TITLE

Pub. L. 94-586, §1, Oct. 22, 1976, 90 Stat. 2903, provided that: "This Act [enacting this chapter and provisions set out as notes under this section and section 1651 of Title 43, Public Lands] may be cited as the 'Alaska Natural Gas Transportation Act of 1976'."

ANTITRUST STUDY

Pub. L. 94-586, §19, Oct. 22, 1976, 90 Stat. 2916, directed Attorney General of United States to conduct a thorough study of antitrust issues and problems relating to production and transportation of Alaska natural gas and, not later than six months after Oct. 22, 1976, to complete such study and submit to Congress a report containing his findings and recommendations with respect thereto.

§719a. Congressional statement of purpose

The purpose of this chapter is to provide the means for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas to the contiguous States for construction and initial operation by providing for the participation of the President and the Congress in the selection process, and, if such a system is approved under this chapter, to expedite its construction and initial operation by (1) limiting the jurisdiction of the courts to review the actions of Federal officers or agencies taken pursuant to the direction and authority of this chapter, and (2) permitting the limitation of administrative procedures and effecting the limitation of judicial procedures related to such actions. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, and particularly with respect to the limitation of judicial review of actions of Federal officers or agencies taken pursuant thereto.

(Pub. L. 94-586, §3, Oct. 22, 1976, 90 Stat. 2903.)

§719b. Definitions

As used in this chapter:

(1) the term "Alaska natural gas" means natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including the Continental Shelf thereof;

(2) the term "Commission" means the Federal Power Commission;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "provision of law" means any provision of a Federal statute or rule, regulation, or order issued thereunder; and

(5) the term "approved transportation system" means the system for the transportation of Alaska natural gas designated by the President pursuant to section 719e(a) or 719f(b) of this title and approved by joint resolution of the Congress pursuant to section 719f of this title.

(Pub. L. 94-586, §4, Oct. 22, 1976, 90 Stat. 2904.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§719c. Federal Power Commission reviews and reports

(a) Proceedings: suspension, vacation or removal of suspension; issuance of certificate of convenience and necessity

(1) Notwithstanding any provision of the Natural Gas Act or any other provision of law, the Commission shall suspend all proceedings pending before the Commission on October 22, 1976, relating to a system for the transportation of Alaska natural gas as soon as the Commission determines to be practicable after such date, and the Commission may refuse to act on any application, amendment thereto, or other requests for action under the Natural Gas Act relating to a system for the transportation of Alaska natural gas until such time as (A) a decision of the President designating such a system for approval takes effect pursuant to section 719f of this title, (B) no such decision takes effect pursuant to section 719f of this title, or (C) the President decides not to designate such a system for approval under section 719f of this title and so advises the Congress pursuant to section 719e of this title.

(2) In the event a decision of the President designating such a system takes effect pursuant to this chapter, the Commission shall forthwith vacate proceedings suspended under paragraph (1) and, pursuant to section 719g of this title and in accordance with the President's decision, issue a certificate of public convenience and necessity respecting such system.

(3) In the event such a decision of the President does not take effect pursuant to this chapter or the President decides not to designate such a system and so advises the Congress pursuant to section 719e of this title, the suspension provided for in paragraph (1) of this subsection shall be removed.

(b) Recommendation; submittal to President; rule for presentation of data, views, and arguments; Federal agency cooperation

(1) The Commission shall review all applications for the issuance of a certificate of public convenience and necessity relating to the transportation of Alaska natural gas pending on October 22, 1976, and any amendments thereto which are timely made, and after consideration of any alternative transportation system which the Commission determines to be reasonable, submit to the President not later than May 1, 1977, a recommendation concerning the selection of such a transportation system. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or in such other form as the Commission determines to be appropriate, or may recommend that no decision respecting the selection of such a transportation system be made at this time or pursuant to this chapter. Any recommendation that the President approve a particular transportation system shall (A) include a description of the nature and route of the system, (B) designate a person to construct and operate the system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such

system, (C) if such recommendation is for an all-land pipeline transportation system, or a transportation system involving water transportation, include provision for new facilities to the extent necessary to assure direct pipeline delivery of Alaska natural gas contemporaneously to points both east and west of the Rocky Mountains in the lower continental United States.

(2) The Commission may, by rule, provide for the presentation of data, views, and arguments before the Commission or a delegate of the Commission pursuant to such procedures as the Commission determines to be appropriate to carry out its responsibilities under paragraph (1) of this subsection. Such a rule shall, to the extent determined by the Commission, apply, notwithstanding any provision of law that would otherwise have applied to the presentation of data, views, and arguments.

(3) The Commission may request such information and assistance from any Federal agency as the Commission determines to be necessary or appropriate to carry out its responsibilities under this chapter. Any Federal agency requested to submit information or provide assistance shall submit such information to the Commission at the earliest practicable time after receipt of a Commission request.

(c) Report; public availability; factors to be discussed

The Commission shall accompany any recommendation under subsection (b)(1) with a report, which shall be available to the public, explaining the basis for such recommendation and including for each transportation system reviewed or considered a discussion of the following:

(1) for each year of the 20-year period which begins with the first year following October 22, 1976, the estimated—

(A) volumes of Alaska natural gas which would be available to each region of the United States directly, or indirectly by displacement or otherwise, and

(B) transportation costs and delivered prices of any such volumes of gas by region;

(2) the effects of each of the factors described in subparagraphs (A) and (B) of paragraph (1) on the projected natural gas supply and demand for each region of the United States and on the projected supplies of alternative fuels available by region to offset shortages of natural gas occurring in such region for each such year;

(3) the impact upon competition;

(4) the extent to which the system provides a means for the transportation to United States markets of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;

(5) environmental impacts;

(6) safety and efficiency in design and operation and potential for interruption in deliveries of Alaska natural gas;

(7) construction schedules and possibilities for delay in such schedules or for delay occurring as a result of other factors;

(8) feasibility of financing;

(9) extent of reserves, both proven and probable and their deliverability by year for each year of the 20-year period which begins with the first year following October 22, 1976;

(10) the estimate of the total delivered cost to users of the natural gas to be transported by the system by year for each year of the 20-year period which begins with the first year following October 22, 1976;

(11) capability and cost of expanding the system to transport additional volumes of natural gas in excess of initial system capacity;

(12) an estimate of the capital and operating costs, including an analysis of the reliability of such estimates and the risk of cost overruns; and

(13) such other factors as the Commission determines to be appropriate.

(d) Recommendation not based upon Canadian pipeline system decision

The recommendation by the Commission pursuant to this section shall not be based upon the fact that the Government of Canada or agencies thereof have not, by then rendered a decision as to authorization of a pipeline system to transport Alaska natural gas through Canada.

(e) Transportation system: recommendation, submittal to President; environmental impact statement: submittal to President

If the Commission recommends the approval of a particular transportation system, it shall submit to the President with such recommendation (1) an identification of those facilities and operations which are proposed to be encompassed within the term "construction and initial operation" in order to define the scope of directions contained in section 719g of this title and (2) the terms and conditions permitted under the Natural Gas Act [15 U.S.C. 717 et seq.], which the Commission determines to be appropriate for inclusion in a certificate of public convenience and necessity to be issued respecting such system. The Commission shall submit to the President contemporaneously with its' report an environmental impact statement prepared respecting the recommended system, if any, and each environmental impact statement which may have been prepared respecting any other system reported on under this section.

(Pub. L. 94-586, §5, Oct. 22, 1976, 90 Stat. 2904.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(1) and (e), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719d. Federal and State officer or agency and other interested persons' reports

(a) Federal officer or agency comments; submittal to President; public availability

Not later than July 1, 1977, any Federal officer or agency may submit written comments to the President with respect to the recommendation and report of the Commission and alternative methods for transportation of Alaska natural gas for delivery to the contiguous States. Such comments shall be made available to the public by the President when submitted to him, unless expressly exempted

from this requirement in whole or in part by the President, under section 552(b)(1) of title 5. Any such written comment shall include information within the competence of such Federal officer or agency with respect to—

- (1) environmental considerations, including air and water quality and noise impacts;
- (2) the safety of the transportation systems;
- (3) international relations, including the status and time schedule for any necessary Canadian approvals and plans;
- (4) national security, particularly security of supply;
- (5) sources of financing for capital costs;
- (6) the impact upon competition;
- (7) impact on the national economy, including regional natural gas requirements; and
- (8) relationship of the proposed transportation system to other aspects of national energy policy.

(b) State officer or agency and other interested persons' comments; submittal to President

Not later than July 1, 1977, the Governor of any State, any municipality, State utility commission, and any other interested person may submit to the President such written comments with respect to the recommendation and report of the Commission and alternative systems for delivering Alaska natural gas to the contiguous States as they determine to be appropriate.

(c) Report of Federal officer or agency to the President

Not later than July 1, 1977, each Federal officer or agency shall report to the President with respect to actions to be taken by such officer or agency under section 719g(a) of this title relative to each transportation system reported on by the Commission under section 719c(c) of this title and shall include such officer's or agency's recommendations with respect to any provision of law to be waived pursuant to section 719f(g) of this title in conjunction with any decision of the President which designates a system for approval.

(d) Report of Council on Environmental Quality to the President

Following receipt by the President of the Commission's recommendations, the Council on Environmental Quality shall afford interested persons an opportunity to present oral and written data, views, and arguments respecting the environmental impact statements submitted by the Commission under section 719c(e) of this title. Not later than July 1, 1977, the Council on Environmental Quality shall submit to the President a report, which shall be contemporaneously made available by the Council to the public, summarizing any data, views, and arguments received and setting forth the Council's views concerning the legal and factual sufficiency of each such environmental impact statement and other matters related to environmental impact as the Council considers to be relevant. (Pub. L. 94-586, §6, Oct. 22, 1976, 90 Stat. 2906.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska

Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719e. Presidential decision and report

(a) Dateline for decision; transmission to Congress, delay: notice to Congress; contents of decision; chairman, appointment; Federal inspector of construction: duties, including establishment of joint surveillance and monitoring agreement

(1) As soon as practicable after July 1, 1977, but not later than September 1, 1977, the President shall issue a decision as to whether a transportation system for delivery of Alaska natural gas should be approved under this chapter. If he determines such a system should be so approved, his decision shall designate such a system for approval pursuant to section 719f of this title and shall be consistent with section 719c(b)(1)(C) of this title to assure delivery of Alaska natural gas to points both east and west of the Rocky Mountains in the continental United States. The President in making his decision shall take into consideration the Commission's recommendation pursuant to section 719c of this title, the report under section 719c(c) of this title, and any comments submitted under section 719d of this title; and his decision to designate a system for approval shall be based on his determination as to which system, if any, best serves the national interest.

(2) The President, for a period of up to 90 additional calendar days after September 1, 1977, may delay the issuance of his decision and transmittal thereof to the House of Representatives and the Senate, if he determines (A) that there exists no environmental impact statement prepared relative to a system he wishes to consider or that any prepared environmental impact statement relative to a system he wishes to consider is legally or factually insufficient, or (B) that the additional time is otherwise necessary to enable him to make a sound decision on an Alaska natural gas transportation system. The President shall promptly, but in no case any later than September 1, 1977, notify the House of Representatives and the Senate if he so delays his decision and submit a full explanation of the basis of any such delay.

(3) If, on or before May 1, 1977, the President determines to delay issuance and transmittal of his decision to the House of Representatives and the Senate pursuant to paragraph (2) of this subsection, he may authorize a delay of not more than 90 days in the date of taking of any action specified in sections 719c and 719d of this title. The President shall promptly notify the House of Representatives and the Senate of any such authorization of delay and submit a full explanation of the basis of any such authorization.

(4) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he shall in such decision—

(A) describe the nature and route of the system designated for approval;

(B) designate a person to construct and operate such a system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system;

(C) identify those facilities, the construction of which, and those operations, the conduct of which, shall be encompassed within the term "construction and initial operation" for purposes of defining the scope of the directions contained in section 719g of this title, taking into consideration any recommendation of the Commission with respect thereto; and

(D) identify those provisions of law, relating to any determination of a Federal officer or agency as to whether a certificate, permit, right-of-way, lease, or other authorization shall be issued or be granted, which provisions the President finds (i) involve determinations which are subsumed in his decision and (ii) require waiver pursuant to section 719f(g) of this title in order to permit the expeditious construction and initial operation of the transportation system.

(5) Repealed. Pub. L. 102-486, title XXX, §3012(a), Oct. 24, 1992, 106 Stat. 3128.

(6) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he may identify in such decision such terms and conditions permissible under existing law as he determines appropriate for inclusion with respect to any issuance or authorization directed to be made pursuant to section 719g of this title.

(b) Transmittal to Congress

The decision of the President made pursuant to subsection (a) of this section shall be transmitted to both Houses of Congress and shall be considered received by such Houses for the purposes of this section on the first day on which both are in session occurring after such decision is transmitted. Such decision shall be accompanied by a report explaining in detail the basis for his decision with specific reference to the factors set forth in sections 719c(c) and 719d(a) of this title, and the reasons for any revision, modification of, or substitution for, the Commission recommendation.

(c) Financial analysis

The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system designated for approval. Unless the President finds and states in his report submitted pursuant to this section that he reasonably anticipates that the system designated by him can be privately financed, constructed, and operated, his report shall also be accompanied by his recommendation concerning the use of existing Federal financing authority or the need for new Federal financing authority.

(d) Views and objectives involving intergovernmental and international cooperation

In making his decision under subsection (a) the President shall inform himself, through appropriate consultation, of the views and objectives of the States, the Government of Canada, and other governments with respect to those aspects of such a decision that may involve intergovernmental and international cooperation among the Government of the United States, the States, the Government of Canada, and any other government.

(e) Decision effective as provided in section 719f of this title; financing authority unaffected

If the President determines to designate a transportation system for approval, the decision of the President shall take effect as provided in section 719f of this title, except that the approval of a decision of the President shall not be construed as amending or otherwise affecting the laws of the United States so as to grant any new financing authority as may have been identified by the President pursuant to subsection (c).

(Pub. L. 94-586, §7, Oct. 22, 1976, 90 Stat. 2907; Pub. L. 102-486, title XXX, §3012(a), Oct. 24, 1992, 106 Stat. 3128.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a)(5). Pub. L. 102-486 struck out par. (5) which provided for Presidential appointment of officer or board to serve as Federal inspector of construction of Alaska natural gas transportation system and specified duties and powers of such inspector.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

ABOLITION OF OFFICE OF FEDERAL INSPECTOR

Pub. L. 102-486, title XXX, §3012(b), Oct. 24, 1992, 106 Stat. 3128, provided that: "The Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System [also known as "Office of the

Federal Inspector for the Alaska Natural Gas Transportation System"], created pursuant to the paragraph [15 U.S.C. 719e(a)(5)] repealed by subsection (a) of this section, is abolished. All functions and authority vested in the Inspector are hereby transferred to the Secretary of Energy."

[Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.]

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter, all functions assigned to the person or board to be appointed by the President under subsec. (a)(5) of this section, and, pursuant to subsec. (a)(6) of this section, function of enforcing terms and conditions described in section 5 of the Decision and Report to the Congress on the Alaska Natural Gas Transportation System, approved by Congress pursuant to Pub. L. 95-158, set out under section 719f of this title, with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see sections 102(h) and 203(a) of Reorg. Plan No. 1 of 1979 set out below. Subsec. (a)(5) of this section was repealed, Office of the Federal Inspector for the Alaska Natural Gas Transportation System, created pursuant to subsec. (a)(5) abolished, and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out below. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

REORGANIZATION PLAN NO. 1 OF 1979

EFF. JULY 1, 1979, 44 F.R. 33663, 93 STAT. 1373

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, April 2, 1979, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

OFFICE OF THE FEDERAL INSPECTOR FOR CONSTRUCTION OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

PART I. OFFICE OF THE FEDERAL INSPECTOR AND TRANSFER OF FUNCTIONS

SECTION 101. ESTABLISHMENT OF THE OFFICE OF FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

(a) There is hereby established as an independent establishment in the executive branch, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (the "Office").

(b) The Office shall be headed by a Federal Inspector for the Alaska Natural Gas Transportation System (the "Federal Inspector") who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for Level III of the Executive Schedule [5 U.S.C. 5314], and who shall serve at the pleasure of the President.

(c) Each Federal agency having statutory responsibilities over any aspect of the Alaska Natural Gas Transportation System shall appoint an Agency Authorized Officer to represent that authority on all matters pertaining to pre-construction, construction, and initial operation of the system.

SEC. 102. TRANSFER OF FUNCTIONS TO THE FEDERAL INSPECTOR

Subject to the provisions of Sections 201, 202, and 203 of this Plan, all functions insofar as they relate to enforcement of Federal statutes or regulations and to enforcement of terms, conditions, and stipulations of grants, certificates, permits and other authorizations issued by Federal agencies with respect to pre-construction, construction, and initial operation of an "approved transportation system" for transport of Canadian natural gas and "Alaskan natural gas," as such terms are defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), hereinafter called the "Act", are hereby transferred to the Federal Inspector. This transfer shall vest in the Federal Inspector exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation. With respect to each of the statutory authorities cited below, the transferred functions include all enforcement functions of the given agencies or their officials under the statutes as may be related to the enforcement of such terms, conditions, and stipulations, including but not limited to the specific sections of the statute cited.

"Enforcement", for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process. These transferred functions include:

(a) Such enforcement functions of the Administrator or other appropriate official or entity in the Environmental Protection Agency related to compliance with: national pollutant discharge elimination system permits provided for in Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); spill prevention, containment and countermeasure plans in Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); review of the Corps of Engineers' dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); new source performance standards in Section 111 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1977 (42 U.S.C. 7411); prevention of significant deterioration review and approval in Sections 160–169 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1977 (42 U.S.C. 7470 et seq.); and the resource conservation and recovery permits issued under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

(b) Such enforcement functions of the Secretary of the Army, the Chief of Engineers, or other appropriate officer or entity in the Corps of Engineers of the United States Army related to compliance with: dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); and permits for structures in navigable waters, issued under Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403);

(c) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Transportation related to compliance with: the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671, et seq.) and the gas pipeline safety regulations issued thereunder; the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.) and authorizations and regulations issued thereunder; and permits for bridges across navigable waters, issued under Section 9 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401);

(d) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Energy and such enforcement functions of the Commission, Commissioners, or other appropriate officer or entity in the Federal Energy Regulatory Commission related to compliance with: the certificates of public convenience and necessity, issued under Section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f); and authorizations for importation of natural gas from Alberta as predeliveries of Alaskan gas issued under Section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b);

(e) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Interior related to compliance with: grants of rights-of-way and temporary use permits for Federal land, issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for temporary use of public lands and other associated land uses, issued under Sections 302, 501, and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1761, and 1763–1771); materials sales contracts under the Materials Act of 1947 (30 U.S.C. 601–603); rights-of-way across Indian lands, issued under the Rights of Way Through Indian Lands Act (25 U.S.C. 321, et seq.); removal permits issued under the Materials Act of 1947 (30 U.S.C. 601–603); approval to cross national wildlife refuges, National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668jj) and the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 721–731); wildlife consultation in the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.); protection of certain birds in the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.); Bald and Golden Eagles Protection Act (16 U.S.C. 668–668d); review of Corps of Engineers dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); rights-of-way across recreation lands issued under the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601–4—4601–11) [see 54 U.S.C. 200301 et seq.]; historic preservation under the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470–470f) [see 54 U.S.C. 300101 et seq.]; permits issued under the Antiquities Act of 1906 ([former] 16 U.S.C. 432, 433) [see 18 U.S.C. 1866(b), 54 U.S.C. 320301(a) to (c), 320302, 320303]; and system activities requiring coordination and approval under general authorities of the National Trails System Act, as amended (16 U.S.C. 1241–1249), the Wilderness Act, as amended (16 U.S.C. 1131–1136), the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f), and an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c) [see 54 U.S.C. 312501 et seq.];

(f) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Agriculture, insofar as they involve lands and programs under the jurisdiction of that Department, related to compliance with: associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for other associated land uses issued under Sections 501 and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761, 1763–1771), under the Organic Administration Act of June 4,

1897, as amended (16 U.S.C. 473, 474–482, 551), and under Title III of the Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. 1010–1012); removal of materials under the Materials Act of 1947 (30 U.S.C. 601–603) and objects of antiquity under the Antiquities Act of 1906 ([former] 16 U.S.C. 432, 433) [see 18 U.S.C. 1866(b), 54 U.S.C. 320301(a) to (c), 320302, 320303]; construction and utilization of national forest roads under the Roads and Trails System Act of 1964 (16 U.S.C. 532–538); and system activities requiring coordination and approval under general authorities of the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.); the Multiple Use-Sustained-Yield Act of 1960 (16 U.S.C. 528–531); the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. 1601–1610); the National Trails System Act, as amended (16 U.S.C. 1241–1249); the Wilderness Act, as amended (16 U.S.C. 1131–1136); the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287); the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460 et seq.) [see 54 U.S.C. 200301 et seq.]; the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1151 et seq.) [33 U.S.C. 1251 et seq.]; the Fish and Wildlife Coordination Act and Fish and Game Sanctuaries Act (16 U.S.C. 661 et seq. and 694, 694a–b, respectively); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470f) [see 54 U.S.C. 300101 et seq.]; an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c) [see 54 U.S.C. 312501 et seq.]; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.); the Soil and Water [Resources] Conservation Act of 1977 (16 U.S.C. 2001 et seq.); and the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f);

(g) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for the storage of explosives, Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 841–848);

(h)(1) The enforcement functions authorized by, and supplemental enforcement authority created by the Act (15 U.S.C. 719 et seq.);

(2) All functions assigned to the person or board to be appointed by the President under Section 7(a)(5) of the Act (15 U.S.C. 719e); and

(3) Pursuant to Section 7(a)(6) of the Act (15 U.S.C. 719e), enforcement of the terms and conditions described in Section 5 of the Decision and Report to the Congress on the Alaska Natural Gas Transportation System, as approved by the Congress pursuant to Public Law 95–158 (91 Stat. 1268), November 2[8], 1977 [set out under 15 U.S.C. 719f], (hereinafter the "Decision").

PART II. OTHER PROVISIONS

SEC. 201. EXECUTIVE POLICY BOARD

The Executive Policy Board for the Alaska Natural Gas Transportation System, hereinafter the "Executive Policy Board", which shall be established by executive order, shall advise the Federal Inspector on the performance of the Inspector's functions. All other functions assigned, or which could be assigned pursuant to the Decision, to the Executive Policy Board are hereby transferred to the Federal Inspector.

SEC. 202. FEDERAL INSPECTOR AND AGENCY AUTHORIZED OFFICERS

(a) The Agency Authorized Officers shall be detailed to and located within the Office. The Federal Inspector shall delegate to each Agency Authorized Officer the authority to enforce the terms, conditions, and stipulations of each grant, permit, or other authorization issued by the Federal agency which appointed the Agency Authorized Officer. In the exercise of these enforcement functions, the Agency Authorized Officers shall be subject to the supervision and direction of the Federal Inspector, whose decision on enforcement matters shall constitute "action" for purposes of Section 10 of the Act (15 U.S.C. 719h).

(b) The Federal Inspector shall be responsible for coordinating the expeditious discharge of nonenforcement activities by Federal agencies and coordinating the compliance by all the Federal agencies with Section 9 of the Act (15 U.S.C. 719g). Such coordination shall include requiring submission of scheduling plans for all permits, certificates, grants or other necessary authorizations, and coordinating scheduling of system-related agency activities. Such coordination may include serving as the "one window" point for filing for and issuance of all necessary permits, certificates, grants or other authorizations, and, consistent with law, Federal government requests for data or information related to any application for a permit, certificate, grant or other authorization. Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

(c) The Federal Inspector and Agency Authorized Officers in implementing the enforcement authorities herein transferred shall carry out the enforcement policies and procedures established by the Federal agencies

which nominally administer these authorities, except where the Federal Inspector determines that such policies and procedures would require action inconsistent with Section 9 of the Act (15 U.S.C. 719g).

(d) Under the authority of Section 15 of the Act (15 U.S.C. 719m), the Federal Inspector will undertake to obtain appropriations for all aspects of the Federal Inspector's operations. Such undertaking shall include appropriations for all of the functions specified in the Act and in the general terms and conditions of the Decision as well as for the enforcement activities of the Federal Inspector. The Federal Inspector will consult with the various Federal agencies as to resource requirements for enforcing their respective permits and other authorizations in preparing a unified budget for the Office. The budget shall be reviewed by the Executive Policy Board.

SEC. 203. SUBSEQUENT TRANSFER PROVISION

(a) Effective upon the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, the functions transferred by Section 102 of this Plan shall be transferred to the agency which performed the functions on the date prior to the provisions of Section 102 of this Plan were made effective pursuant to Section 205 of this Plan.

(b) Upon the issuance of the final determination order by the Director of the Office of Management and Budget for the transfers provided for by subsection (a) of this section, the Office and the position of Federal Inspector shall, effective on the date of that order, stand abolished.

SEC. 204. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for the terminating of the affairs of the Office and the Federal Inspector upon their abolition pursuant to this Plan and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Plan.

SEC. 205. EFFECTIVE DATE

This Plan shall become effective at such time or times as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code, except that the provisions of Section 203 shall occur as provided by the terms of that Section.

[Pursuant to Ex. Ord. No. 12142, June 21, 1979, 44 F.R. 36927, this Reorg. Plan is effective July 1, 1979].

[For abolition of Office of the Federal Inspector for the Alaska Natural Gas Transportation System and transfer of functions and authority, see section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note above.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1979 to create the Office of Federal Inspector for the Alaska Natural Gas Transportation System and establish the position of Federal Inspector. Creation of this Office and the transfer of appropriate Federal enforcement authority and responsibility is consistent with my September 1977 Decision and Report to the Congress on the Alaska Natural Gas Transportation System. This decision was approved by the Congress November 2, 1977.

The Alaska Gas Transportation System is a 4,748-mile pipeline to be constructed in partnership with Canada. Canada completed legislation enacting a similar transfer last year and has already appointed an official to coordinate its activities prior to and during pipeline construction. The Northwest Alaska Pipeline Company has been selected to construct the pipeline, with completion scheduled in late 1984. Estimated construction costs are \$10-\$15 billion, to be financed by private investment.

Natural gas is among the Nation's most valuable fuels. It is in the national interest to bring Alaskan gas reserves to market at the lowest possible price for consumers. Construction of a gas pipeline from the Prudhoe Bay reserves in Alaska through Canada to points in the West and Midwest United States will provide a system which will deliver more Alaskan natural gas at less cost to a greater number of Americans than any alternative transportation system. Every effort must be made to ensure timely completion of the pipeline at the lowest possible cost consistent with Federal regulatory policies.

As a result of our experience in construction of the Trans-Alaska Oil Pipeline, we recognize the need for the Federal Government to be in a strong position to manage its own role in this project through prompt,

coordinated decisionmaking in pre-construction approval functions and in enforcing the terms and conditions of the permits, certificates, leases, and other authorizations to be issued by various Federal agencies. We must avoid duplicating the delays and cost escalations experienced in the construction of the Trans-Alaska Pipeline System. The Plan I am submitting would establish clear responsibility for the efficient functioning of Federal enforcement activities by assigning the Federal Inspector authority to carry out these responsibilities.

The Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.] only provided for monitoring the construction of the pipeline. The Plan transfers to the Federal Inspector the authority to supervise the enforcement of terms and conditions of the permits and other authorizations, including those to be issued by the Departments of Agriculture, Interior, Transportation, and Treasury, and the Environmental Protection Agency, the Federal Energy Regulatory Commission, and the U.S. Army Corps of Engineers. The Plan provides for the Federal Inspector to coordinate other Federal activities directly related to the pipeline project. Federal agencies retain their authority to issue permits and related authorizations, but enforcement of the terms and conditions of these authorizations is transferred to the Federal Inspector. Transfer of enforcement authority from Federal agencies to the Federal Inspector is limited in scope to their participation in this project and in duration to the pre-construction, construction, and initial operation phases of the project.

The Decision and Report to the Congress recommended an Executive Policy Board with policy-making and supervisory authority over the Federal Inspector. I plan to sign an Executive Order upon approval of this Plan by the Congress which will create an Executive Policy Board which will be only advisory, but which will enhance communication and coordinate among Federal agencies and with the Federal Inspector. The Plan modifies the Decision and Report in that regard. The Federal Inspector will use the policies and procedures of the agencies involved in exercising the transferred enforcement responsibilities to the maximum extent practicable. The Board provides the opportunity for agencies to contribute to the policy deliberations of the Inspector and exercises an oversight role to insure that pipeline activities are carried on within existing regulatory policy. The Board is required to review the budget of the Office of the Federal Inspector and periodically report to me on the progress of construction and on major problems encountered. I am convinced that the Federal Inspector must have authority commensurate with his responsibilities.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. The appointment and compensation of the Federal Inspector is in accordance with the provisions of the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.], and the Reorganization Act of 1977. The provisions for appointment and pay in this Plan are necessary by reason of a reorganization made by the Plan. The rate of compensation is comparable to rates for similar positions within the Executive Branch. This reorganization will result in a reduction in the cost of construction for the pipeline system and ultimately in savings to American consumers. A small increase in cost to the Federal government will result from the creation of the Office of the Federal Inspector. The Plan requires that the Office and the position of Federal Inspector will be abolished upon the first anniversary date after the pipeline becomes operational.

JIMMY CARTER.

THE WHITE HOUSE, April 2, 1979.

EX. ORD. NO. 12142. ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Ex. Ord. No. 12142, June 21, 1979, 44 F.R. 36927, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 301 of Title 3 of the United States Code and Sections 201 and 205 of Reorganization Plan No. 1 of 1979 [set out above], it is hereby ordered as follows:

1-101. Reorganization Plan No. 1 of 1979 [set out above], not having been disapproved by Congress (S. Res. 126, 125 Cong. Rec. S 6563-64 (May 23, 1979) [Cong. Rec., vol. 125, pt. 10, pp. 12413-12414, May 23, 1979]; H. Res. 199, 125 Cong. Rec. H 3950-51 (May 31, 1979) [Cong. Rec., vol. 125, pt. 10, pp. 13052-13053, May 31, 1979]), shall be effective on July 1, 1979.

1-102. In accord with Section 201 of that Plan, there is hereby established the Executive Policy Board for the system for the transportation of Alaska natural gas ("the System") as such system is defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.).

1-103. The Board shall consist of the Secretaries of the Departments of Agriculture, Energy, Labor, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army, and the Chairman of the Federal Energy Regulatory Commission. Additional members may be elected to the Board by vote of a majority of the members. The Board will by majority vote elect a Chairman to serve for a one-year term.

1-104. The Board shall perform the following functions:

(a) Advise the Federal Inspector for the Alaska Natural Gas Transportation System (the "Federal Inspector") established by Reorganization Plan No. 1 of 1979, on policy issues in accord with applicable law and existing Departmental or Agency policies.

(b) Provide advice, through the Federal Inspector, to the officers representing and exercising the functions of the Federal Departments and Agencies that concern the System ("Agency Authorized Officers").

(c) Advise the Federal Inspector and the Agency Authorized Officers on matters concerning enforcement actions.

(d) At least every six months, assess the progress made and problems encountered in constructing the System and make necessary recommendations to the Federal Inspector.

1-105. The Federal Inspector shall keep the Board informed of the progress made and problems encountered in the course of construction of the System.

1-106. Whenever the Federal Inspector determines that implementation of Departmental or Agency enforcement policies and procedures would require action inconsistent with Section 9 of the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719g], the Federal Inspector shall issue a written statement of such determination including a complete factual and legal basis for the determination. A copy of each statement shall be forwarded promptly to the Board and made available to the public by the Federal Inspector.

1-107. After written notice of a proposed enforcement action is given by the Federal Inspector, the Federal Inspector will be subject to the rules of procedure for ex parte contacts as reflected in the guidelines and policies of Departments and Agencies from which the specific enforcement authority is transferred.

1-108. The Federal Inspector and all employees of the Office of the Federal Inspector shall be subject to the provisions of Executive Order No. 11222 concerning standards of conduct for Federal employees. The Federal Inspector shall issue standards of conduct, pursuant to the Order, for the Office of the Federal Inspector.

1-109. To the extent permitted by law, each Department and Agency shall cooperate with and furnish necessary information and assistance to the Board in the performance of its functions.

1-110. This Order shall be effective on July 1, 1979.

JIMMY CARTER.

§719f. Congressional review

(a) Effectiveness of decision designating transportation system for approval upon enactment of joint resolution

Any decision under section 719e(a) of this title or subsection (b) designating for approval a transportation system for the delivery of Alaska natural gas shall take effect upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of a decision transmitted pursuant to section 719e(b) of this title or subsection (b) of this section.

(b) New decision: statement of reasons for proposal; transmittal to Congress

If the Congress does not enact such a joint resolution within such 60-day period, the President, not later than the end of the 30th day following the expiration of the 60-day period, may propose a new decision and shall provide a detailed statement concerning the reasons for such proposal. The new decision shall be submitted in accordance with section 719e(a) of this title and transmitted to the House of Representatives and the Senate on the same day while both are in session and shall take effect pursuant to subsection (a) of this section. In the event that a resolution respecting the President's decision was defeated by vote of either House, no new decision may be transmitted pursuant to this subsection unless such decision differs in a material respect from the previous decision.

(c) Sessions of Congress

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d) Rules under rulemaking powers of Congress; change of rules; "resolution" defined;

referral to Congressional committees; debate limitation; motion for consideration of resolution; debate on resolution; nondebatable motions and appeals from procedural decisions

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this chapter, the term "resolution" means (A) a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on _____, 19 __, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural ¹ Environmental Policy Act of 1969."; the blank space therein shall be filled with the date on which the President submits his decision to the House of Representatives and the Senate; or (B) a joint resolution described in subsection (g).

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall be referred to one or more committees (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a Presidential decision on an Alaska natural gas transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5)(A) When any committee has reported, or has been discharged from further consideration of, a resolution, but in no case earlier than 30 days after the date of receipt of the President's decision to the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution described in paragraph (2)(A) of this subsection shall be limited to not more than 10 hours and on any resolution described in subsection (g) to one hour. This time shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was

agreed to or disagreed to or, thereafter within such 60-day period, to consider any other resolution respecting the same Presidential decision.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(e) Presidential finding respecting and supplementation or modification of environmental impact statement; submittal to Congressional committees

The President shall find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the President has been prepared and that such statement is in compliance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. Such finding shall be set forth in the report of the President submitted under section 719e of this title. The President may supplement or modify the environmental impact statements prepared by the Commission or other Federal officers or agencies. Any such environmental impact statement shall be submitted contemporaneously with the transmittal to the Senate and House of Representatives of the President's decision pursuant to section 719e(b) of this title or subsection (b) of this section.

(f) Report of Commission: submittal to Congress; Council on Environmental Quality: hearings, report, submittal to Congress; Congressional committee hearings

Within 20 days of the transmittal of the President's decision to the Congress under section 719e(b) of this title or under subsection (b) of this section, (1) the Commission shall submit to the Congress a report commenting on the decision and including any information with regard to that decision which the Commission considers appropriate, and (2) the Council on Environmental Quality shall provide an opportunity to any interested person to present oral and written data, views, and arguments on any environmental impact statement submitted by the President relative to any system designated by him for approval which is different from any system reported on by the Commission under section 719c(c) of this title, and shall submit to the Congress a report summarizing any such views received. The committees in each House of Congress to which a resolution has been referred under subsection (d)(3) shall conduct hearings on the Council's report and include in any report of the committee respecting such resolution the findings of the committee on the legal and factual sufficiency of any environmental impact statement submitted by the President relative to any system designated by him for approval.

(g) Waiver; submittal to Congress

(1) At any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 719g of this title require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress.

(2) Such provision shall be waived with respect to actions to be taken under subsection (a) or (c) of section 719g of this title upon enactment of a joint resolution pursuant to the procedures specified in subsections (c) and (d) of this section (other than subsection (d)(2) thereof) within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such proposal.

(3) The resolving clause of the joint resolution referred to in this subsection is as follows: "That the House of Representatives and Senate approve the waiver of the provision of law () as proposed by the President, submitted to the Congress on , 19 ." The first blank space therein being filled with the citation to the provision of law and the second blank space therein being filled with the date on which the President submits his decision to the House of Representatives and the Senate.

(4) In the case of action with respect to a joint resolution described in this subsection, the phrase

"a waiver of a provision of law" shall be substituted in subsection (d) for the phrase "the Alaska natural gas transportation system."

(Pub. L. 94-586, §8, Oct. 22, 1976, 90 Stat. 2909.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (d)(2) and (e), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) 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 4321 of Title 42 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

CONGRESSIONAL APPROVAL OF PRESIDENTIAL RECOMMENDATIONS FOR WAIVER OF LAW TO PERMIT EXPEDITIOUS CONSTRUCTION AND INITIAL OPERATION OF SYSTEM

Pub. L. 97-93, Dec. 15, 1981, 95 Stat. 1204, provided: "That the House of Representatives and Senate approve the waiver of the provision of law (Public Law 95-158 [set out as a note below], Public Law numbered 688, Seventy-fifth Congress, second session [section 717 et seq. of this title], and Public Law 94-163 [42 U.S.C. 6201 et seq.]) as proposed by the President, submitted to the Congress on October 15, 1981." [The Message of the President, dated Oct. 15, 1981, submitting the findings and proposed waiver of law, is set out in 17 Weekly Compilation of Presidential Documents 1135, Oct. 19, 1981.]

CONGRESSIONAL APPROVAL OF PRESIDENTIAL DECISION ON ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Pub. L. 95-158, Nov. 8, 1977, 91 Stat. 1268, provided: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on September 22, 1977, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [National] Environmental Policy Act of 1969 [section 4321 et seq. of Title 42, The Public Health and Welfare]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

¹ *So in original. Probably should be "National".*

§719g. Transportation system certificates, rights-of-way, permits, leases, or other authorizations

(a) Earliest practicable date for issuance or grant of authorizations

To the extent that the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system requires a certificate, right-of-way, permit, lease, or other authorization to be issued or granted by a Federal officer or agency, such Federal officer or agency shall—

(1) to the fullest extent permitted by the provisions of law administered by such officer or agency, but

(2) without regard to any provision of law which is waived pursuant to section 719f(g) of this title issue or grant such certificates, permits, rights-of-way, leases, and other authorizations at the earliest practicable date.

(b) Expedition and precedence of actions on applications or requests

All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of a certificate, right-of-way, permit, lease, or other authorization to which subsection (a) applies shall be expedited and any such application or request shall take precedence over any similar applications or requests of the Federal officer or agency.

(c) Required terms and conditions

Any certificate, right-of-way, permit, lease, or other authorization issued or granted pursuant to the direction under subsection (a) shall include the terms and conditions required by law unless waived pursuant to a resolution under section 719f(g) of this title, and may include terms and conditions permitted by law, except that with respect to terms and conditions permitted but not required, the Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to include terms and conditions as would compel a change in the basic nature and general route of the approved transportation system or those the inclusion of which would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(d) Additions to, and amendment or abrogation of authorizations; exception

Any Federal officer or agency, with respect to any certificate, permit, right-of-way, lease, or other authorization issued or granted by such officer or agency, may, to the extent permitted under laws administered by such officer or agency add to, amend or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization except that with respect to any such action which is permitted but not required by law, such Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to take such action if the terms and conditions to be added, or as amended, would compel a change in the basic nature and general route of the approved transportation system or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(e) Appropriate terms and conditions

Any Federal officer or agency to which subsection (a) applies, to the extent permitted under laws administered by such officer or agency, shall include in any certificate, permit, right-of-way, lease, or authorization issued or granted those terms and conditions identified in the President's decision as appropriate for inclusion except that the requirement to include such terms and conditions shall not limit the Federal officer or agency's authority under subsection (d) of this section.

(Pub. L. 94-586, §9, Oct. 22, 1976, 90 Stat. 2912.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with

respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719h. Judicial review

(a) Exclusiveness of remedy

Notwithstanding any other provision of law, the actions of Federal officers or agencies taken pursuant to section 719g of this title, shall not be subject to judicial review except as provided in this section.

(b) Limitations for filing claims

(1) Claims alleging the invalidity of this chapter may be brought not later than the 60th day following the date a decision takes effect pursuant to section 719f of this title.

(2) Claims alleging that an action will deny rights under the Constitution of the United States, or that an action is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right may be brought not later than the 60th day following the date of such action, except that if a party shows that he did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(c) Jurisdiction

(1) Special Courts

(A) In general

A claim under subsection (b) shall be barred unless a complaint is filed prior to the expiration of such time limits in the United States Court of Appeals for the District of Columbia acting as a Special Court.

(B) Exclusive jurisdiction

The Special Court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, or any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after October 22, 1976.

(2) Expedited consideration

The Special Court shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 719 of this title.

(3) Environmental impact statements

The enactment of a joint resolution under section 719f of this title approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the environmental impact statements submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(Pub. L. 94-586, §10, Oct. 22, 1976, 90 Stat. 2913; Pub. L. 98-620, title IV, §402(16), Nov. 8, 1984,

98 Stat. 3358; Pub. L. 108–324, div. C, §107(d), Oct. 13, 2004, 118 Stat. 1261.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(3), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) 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 4321 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–324, §107(d)(1), inserted heading.

Subsec. (c)(1). Pub. L. 108–324, §107(d)(1), (2), designated first sentence as subpar. (A) and inserted par. and subpar. headings and designated last sentence as subpar. (B), inserted subpar. heading, and substituted "The Special Court shall have" for "Such court shall have".

Subsec. (c)(2). Pub. L. 108–324, §107(d)(3), added par. (2).

Subsec. (c)(3). Pub. L. 108–324, §107(d)(4), inserted heading.

1984—Subsec. (c)(2). Pub. L. 98–620 struck out par. (2) which required that any such proceeding had to be assigned for hearing and completed at the earliest possible date, would, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and had to be expedited in every way by such court and such court had to render its decision relative to any claim within 90 days from the date such claim was brought unless such court determined that a longer period of time was required to satisfy requirements of the United States Constitution.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719i. Supplemental enforcement authority

(a) Compliance order or civil action

In addition to remedies available under other applicable provisions of law, whenever any Federal officer or agency determines that any person is in violation of any applicable provision of law administered or enforceable by such officer or agency or any rule, regulation, or order under such provision, including any term or condition of any certificate, right-of-way, permit, lease, or other authorization, issued or granted by such officer or agency, such officer or agency may—

(1) issue a compliance order requiring such person to comply with such provision or any rule,

regulation, or order thereunder, or

(2) bring a civil action in accordance with subsection (c).

(b) Specificity of compliance order

Any order issued under subsection (a) shall state with reasonable specificity the nature of the violation and a time of compliance, not to exceed 30 days, which the officer or agency, as the case may be, determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) Appropriate relief and jurisdiction of civil action

Upon a request of such officer or agency, as the case may be, the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for violations of the compliance order issued under subsection (a). Any action under this subsection may be brought in any district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty or give ancillary relief.

(Pub. L. 94-586, §11, Oct. 22, 1976, 90 Stat. 2914.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719j. Export limitations

Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act [15 U.S.C. 717 et seq.] and section 103 ¹ of the Energy Policy and Conservation Act, except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

(Pub. L. 94-586, §12, Oct. 22, 1976, 90 Stat. 2914.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in text, is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§6201 et seq.) of Title 42, The Public Health and Welfare.

Section 103 of the Act was classified to section 6212 of Title 42, prior to repeal by Pub. L. 114–113, div. O, title I, §101(a), Dec. 18, 2015, 129 Stat. 2987. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

¹ [*See References in Text note below.*](#)

§719k. Equal access to facilities

(a) Ownership in transportation system

There shall be included in the terms of any certificate, permit, right-of-way, lease, or other authorization issued or granted pursuant to the directions contained in section 719g of this title, a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system shall be prevented from doing so or be discriminated against in the terms and conditions of service on the basis of degree of ownership, or lack thereof, of the Alaska natural gas transportation system.

(b) Use within Alaska

The State of Alaska is authorized to ship its royalty gas on the approved transportation system for use within Alaska and, to the extent its contracts for the sale of royalty gas so provide, to withdraw such gas from the interstate market for use within Alaska; the Federal Power Commission shall issue all authorizations necessary to effectuate such shipment and withdrawal subject to review by the Commission only of the justness and reasonableness of the rate charged for such transportation.

(Pub. L. 94–586, §13, Oct. 22, 1976, 90 Stat. 2915.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas

Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719l. Antitrust laws

Nothing in this chapter, and no action taken hereunder, shall imply or effect an amendment to, or exemption from, any provision of the antitrust laws.

(Pub. L. 94-586, §14, Oct. 22, 1976, 90 Stat. 2915.)

§719m. Authorization of appropriations

There is hereby authorized to be appropriated beginning in fiscal year 1978 and each fiscal year thereafter, such sums as may be necessary to carry out the functions of the Federal inspector appointed by the President with the advice and consent of the Senate under section 719e of this title.

(Pub. L. 94-586, §15, Oct. 22, 1976, 90 Stat. 2915.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719n. Separability

If any provision of this chapter, or the application thereof, is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 94-586, §16, Oct. 22, 1976, 90 Stat. 2915.)

§719o. Civil rights; affirmative action of Federal officers and agencies; rules: promulgation and enforcement

All Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any certificates, permit, right-of-way, lease, or other authorization granted or issued pursuant to this chapter. The appropriate Federal officers and agencies shall promulgate such rules as are necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section through agency

and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 94-586, §17, Oct. 22, 1976, 90 Stat. 2915.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

CHAPTER 15D—ALASKA NATURAL GAS PIPELINE

Sec.

- 720. Definitions.
- 720a. Issuance of certificate of public convenience and necessity.
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- 720e. Judicial review.
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§720. Definitions

In this chapter:

(1) Alaska natural gas

The term "Alaska natural gas" means natural gas derived from the area of the State of Alaska

lying north of 64 degrees north latitude.

(2) Alaska natural gas transportation project

The term "Alaska natural gas transportation project" means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under—

- (A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or
- (B) section 720a of this title.

(3) Alaska natural gas transportation system

The term "Alaska natural gas transportation system" means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) and designated and described in section 2 of the President's decision.

(4) Commission

The term "Commission" means the Federal Energy Regulatory Commission.

(5) Federal Coordinator

The term "Federal Coordinator" means the head of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects established by section 720d(a) of this title.

(6) President's decision

The term "President's decision" means the decision and report to Congress on the Alaska natural gas transportation system—

- (A) issued by the President on September 22, 1977, in accordance with section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e); and
- (B) approved by Public Law 95–158 (15 U.S.C. 719f note; 91 Stat. 1268).

(7) Secretary

The term "Secretary" means the Secretary of Energy.

(8) State

The term "State" means the State of Alaska.

(Pub. L. 108–324, div. C, §102, Oct. 13, 2004, 118 Stat. 1255.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out below and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in pars. (2)(A) and (3), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, which is classified generally to chapter 15C (§719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 108–324, div. C, §101, Oct. 13, 2004, 118 Stat. 1255, provided that: "This division [enacting this chapter and amending section 719h of this title] may be cited as the 'Alaska Natural Gas Pipeline Act'."

§720a. Issuance of certificate of public convenience and necessity

(a) Authority of the Commission

Notwithstanding the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, in accordance with section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) Issuance of certificate

(1) In general

The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) Considerations

In considering an application under this section, the Commission shall presume that—

- (A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and
- (B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through the project to markets in the contiguous United States.

(c) Expedited approval process

Not later than 60 days after the date of issuance of the final environmental impact statement under section 720b of this title for an Alaska natural gas transportation project, the Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity for the project under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section.

(d) Prohibition of certain pipeline route

No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that—

- (1) traverses land beneath navigable waters (as defined in section 1301 of title 43) beneath, or the adjacent shoreline of, the Beaufort Sea; and
- (2) enters Canada at any point north of 68 degrees north latitude.

(e) Open season

(1) In general

Not later than 120 days after October 13, 2004, the Commission shall issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects (including procedures for the allocation of capacity).

(2) Regulations

The regulations referred to in paragraph (1) shall—

- (A) include the criteria for and timing of any open seasons;
- (B) promote competition in the exploration, development, and production of Alaska natural gas; and
- (C) for any open season for capacity exceeding the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

(3) Applicability

Except in a case in which an expansion is ordered in accordance with section 720c of this title, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations issued under paragraph (1).

(f) Projects in the contiguous United States

(1) In general

An application for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made in accordance with the Natural Gas Act [15 U.S.C. 717 et seq.].

(2) Expansion

To the extent that a pipeline facility described in paragraph (1) includes the expansion of any facility constructed in accordance with the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), that Act shall continue to apply.

(g) Study of in-State needs

The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) Alaska royalty gas

(1) In general

Except as provided in paragraph (2), the Commission, on a request by the State and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project by the State (or State designee) for the transportation of royalty gas of the State for the purpose of meeting local consumption needs within the State.

(2) Exception

The rates of shippers of subscribed capacity on an Alaska natural gas transportation project described in paragraph (1), as in effect as of the date on which access under that paragraph is granted, shall not be increased as a result of such access.

(i) Regulations

The Commission may issue such regulations as are necessary to carry out this section. (Pub. L. 108–324, div. C, §103, Oct. 13, 2004, 118 Stat. 1256.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Alaska Natural Gas Transportation Act of 1976, referred to in subsecs. (a) and (f)(2), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, which is classified generally to chapter 15C (§719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

The Natural Gas Act, referred to in subsec. (f)(1), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

§720b. Environmental reviews

(a) Compliance with NEPA

The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 720a of this title shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) Designation of lead agency

(1) In general

The Commission—

(A) shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) shall be responsible for preparing the environmental impact statement required by section 102(2)(c) ¹ of that Act [42 U.S.C. 4332(2)(C)] with respect to an Alaska natural gas transportation project under section 720a of this title.

(2) Consolidation of statements

In carrying out paragraph (1), the Commission shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the Alaska natural gas transportation project covered by the environmental impact statement.

(c) Other agencies

(1) In general

Each Federal agency considering an aspect of the construction and operation of an Alaska natural gas transportation project under section 720a of this title shall—

(A) cooperate with the Commission; and

(B) comply with deadlines established by the Commission in the preparation of the environmental impact statement under this section.

(2) Satisfaction of NEPA requirements

The environmental impact statement prepared under this section shall be adopted by each Federal agency described in paragraph (1) in satisfaction of the responsibilities of the Federal agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to the Alaska natural gas transportation project covered by the environmental impact statement.

(d) Expedited process

The Commission shall—

(1) not later than 1 year after the Commission determines that the application under section 720a of this title with respect to an Alaska natural gas transportation project is complete, issue a draft environmental impact statement under this section; and

(2) not later than 180 days after the date of issuance of the draft environmental impact statement, issue a final environmental impact statement, unless the Commission for good cause determines that additional time is needed.

(Pub. L. 108–324, div. C, §104, Oct. 13, 2004, 118 Stat. 1257.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) 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 4321 of Title 42 and Tables.

¹ *So in original. Probably should be section "102(2)(C)".*

§720c. Pipeline expansion

(a) Authority

With respect to any Alaska natural gas transportation project, on a request by 1 or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of the Alaska natural gas project if the Commission determines that such an expansion is required by

the present and future public convenience and necessity.

(b) Responsibilities of Commission

Before ordering an expansion under subsection (a), the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that a proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the tariff of the Alaska natural gas transportation project in effect as of the date of the expansion;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) Requirement for a firm transportation agreement

Any order of the Commission issued in accordance with this section shall be void unless the person requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within such reasonable period of time as the order may specify.

(d) Limitation

Nothing in this section expands or otherwise affects any authority of the Commission with respect to any natural gas pipeline located outside the State.

(e) Regulations

The Commission may issue such regulations as are necessary to carry out this section.

(Pub. L. 108–324, div. C, §105, Oct. 13, 2004, 118 Stat. 1258.)

§720d. Federal Coordinator

(a) Establishment

There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) Federal Coordinator

(1) Appointment

The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve a term to last until 1 year following the completion of the project referred to in section 720a of this title.

(2) Compensation

The Federal Coordinator shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) Duties

The Federal Coordinator shall be responsible for—

- (1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and
- (2) ensuring the compliance of Federal agencies with the provisions of this chapter.

(d) Reviews and actions of other Federal agencies

(1) Expedited reviews and actions

All reviews conducted and actions taken by any Federal agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines under this chapter.

(2) Prohibition of certain terms and conditions

No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(3) Prohibition of certain actions

Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(4) Limitation

The Federal Coordinator shall not have authority to—

(A) override—

- (i) the implementation or enforcement of regulations issued by the Commission under section 720a of this title; or
- (ii) an order by the Commission to expand the project under section 720c of this title; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) State coordination

(1) In general

The Federal Coordinator and the State shall enter into a joint surveillance and monitoring agreement similar to the agreement in effect during construction of the Trans-Alaska Pipeline, to be approved by the President and the Governor of the State, for the purpose of monitoring the construction of the Alaska natural gas transportation project.

(2) Primary responsibility

With respect to an Alaska natural gas transportation project—

(A) the Federal Government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses Federal land or private land; and

(B) the State government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses State land.

(f) Transfer of Federal Inspector functions and authority

On appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary under section 3012(b) of the Energy Policy Act of 1992 (15 U.S.C. 719e

note; Public Law 102-486), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

(g) Temporary authority

The functions, authorities, duties, and responsibilities of the Federal Coordinator shall be vested in the Secretary until the earlier of the appointment of the Federal Coordinator by the President, or 18 months after October 13, 2004.

(h) Administration

(1) Personnel appointments

(A) In general

The Federal Coordinator may appoint and terminate such personnel as the Federal Coordinator determines to be appropriate.

(B) Authority of Federal Coordinator

Personnel appointed by the Federal Coordinator under subparagraph (A) shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service.

(2) Compensation

(A) In general

Subject to subparagraph (B), personnel appointed by the Federal Coordinator under paragraph (1)(A) shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 (relating to classification and General Schedule pay rates).

(B) Maximum level of compensation

The rate of pay for personnel appointed by the Federal Coordinator under paragraph (1)(A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule (5 U.S.C. 5314).

(C) Allowances

Section 5941 of title 5 shall apply to personnel appointed by the Federal Coordinator under paragraph (1)(A).

(3) Temporary services

(A) In general

The Federal Coordinator may procure temporary and intermittent services in accordance with section 3109(b) of title 5.

(B) Maximum level of compensation

The level of compensation of an individual employed on a temporary or intermittent basis under subparagraph (A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule (5 U.S.C. 5314).

(4) Fees, charges, and commissions

(A) In general

With respect to the duties of the Federal Coordinator, as described in this chapter, the Federal Coordinator shall have similar authority to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds as provided to the Secretary of the Interior in section 1734 of title 43.

(B) Authority of Secretary of the Interior

Subparagraph (A) shall not affect the authority of the Secretary of the Interior to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require

deposits of payments, and provide refunds under section 1734 of title 43.

(C) Use of funds

The Federal Coordinator is authorized to use, without further appropriation, amounts collected under subparagraph (A) to carry out this section.

(Pub. L. 108–324, div. C, §106, Oct. 13, 2004, 118 Stat. 1259; Pub. L. 109–148, div. A, title VIII, §8128, Dec. 30, 2005, 119 Stat. 2731; Pub. L. 110–140, title VIII, §802, Dec. 19, 2007, 121 Stat. 1717.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(2) and (d)(1), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. This chapter, referred to in subsec. (h)(4)(A), was in the original "this Act", also meaning division C of Pub. L. 108–324 as provided in section 2 of Pub. L. 108–324, 118 Stat. 1220. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

Reorganization Plan No. 1 of 1979, referred to in subsec. (f), is set out as a note under section 719e of this title.

Executive Order No. 12142, referred to in subsec. (f), is set out as a note under section 719e of this title.

AMENDMENTS

2007—Subsec. (h). Pub. L. 110–140 added subsec. (h).

2005—Subsec. (g). Pub. L. 109–148 substituted "earlier" for "later".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§720e. Judicial review

(a) Exclusive jurisdiction

Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this chapter;

(2) the constitutionality of any provision of this chapter, or any decision made or action taken under this chapter; or

(3) the validity of any determination, permit, approval, authorization, review, or other related action taken under any provision of law relating to a gas transportation project constructed and operated in accordance with section 720a of this title, including—

(A) subchapter II of chapter 5, and chapter 7, of title 5 (commonly known as the "Administrative Procedure Act");

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) chapter 2003 of title 54; [1](#) and

(E) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(b) Deadline for filing claim

A claim arising under this chapter may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) Expedited consideration

The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(Pub. L. 108–324, div. C, §107, Oct. 13, 2004, 118 Stat. 1261; Pub. L. 111–11, title XIII, §13003, Mar. 30, 2009, 123 Stat. 1448; Pub. L. 113–287, §5(c), Dec. 19, 2014, 128 Stat. 3264.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

The Endangered Species Act of 1973, referred to in subsec. (a)(3)(B), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(3)(C), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) 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 4321 of Title 42 and Tables.

The Alaska National Interest Lands Conservation Act, referred to in subsec. (a)(3)(E), is Pub. L. 96–487, Dec. 2, 1980, 94 Stat. 2371. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

Section is comprised of section 107 of Pub. L. 108–324. Subsec. (d) of section 107 of Pub. L. 108–324 amended section 719h of this title.

AMENDMENTS

2014—Subsec. (a)(3)(D). Pub. L. 113–287, which directed the substitution of "chapter 2003 of title 54" for "the National Historic Preservation Act (16 U.S.C. 470 et seq.)" in section 1072(a)(3)(D) of the Alaska Natural Gas Pipeline Act, was executed to this section, which is section 107 of the Alaska Natural Gas Pipeline Act, to reflect the probable intent of Congress.

2009—Subsec. (a)(3). Pub. L. 111–11 added par. (3) and struck out former par. (3) which read as follows: "the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this chapter."

¹ So in original. Probably should be "division A of subtitle III of title 54;".

§720f. State jurisdiction over in-State delivery of natural gas

(a) Local distribution

Any facility receiving natural gas from an Alaska natural gas transportation project for delivery to consumers within the State—

(1) shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)); and

(2) shall not be subject to the jurisdiction of the Commission.

(b) Additional pipelines

Except as provided in section 720a(d) of this title, nothing in this chapter shall preclude or otherwise affect a future natural gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State for consumption within or distribution outside the State.

(c) Rate coordination

(1) In general

In accordance with the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission shall establish rates for the transportation of natural gas on any Alaska natural gas transportation project.

(2) Consultation

In carrying out paragraph (1), the Commission, in accordance with section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall consult with the State regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State.

(Pub. L. 108–324, div. C, §108, Oct. 13, 2004, 118 Stat. 1261.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

The Natural Gas Act, referred to in subsec. (c)(1), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

§720g. Study of alternative means of construction

(a) Requirement of study

If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission by the date that is 18 months after October 13, 2004, the Secretary shall conduct a study of alternative approaches to the construction and operation of such an Alaska natural gas transportation project.

(b) Scope of study

The study under subsection (a) shall take into consideration the feasibility of—

- (1) establishing a Federal Government corporation to construct an Alaska natural gas transportation project; and
- (2) securing alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the Alaska natural gas transportation project.

(c) Consultation

In conducting the study under subsection (a), the Secretary shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Chief of Engineers).

(d) Report

On completion of any study under subsection (a), the Secretary shall submit to Congress a report that describes—

- (1) the results of the study; and
- (2) any recommendations of the Secretary (including proposals for legislation to implement the recommendations).

(Pub. L. 108–324, div. C, §109, Oct. 13, 2004, 118 Stat. 1262.)

§720h. Clarification of ANGTA status and authorities

(a) Savings clause

Nothing in this chapter affects—

- (1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or
- (2) any Presidential finding or waiver issued in accordance with that Act [15 U.S.C. 719 et seq.].

(b) Clarification of authority to amend terms and conditions to meet current project requirements

Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescission—

- (1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or
- (2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) Updated environmental reviews

The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

(Pub. L. 108–324, div. C, §110, Oct. 13, 2004, 118 Stat. 1262.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(2), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, which is classified generally to chapter 15C (§719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

§720i. Sense of Congress concerning use of steel manufactured in North America and negotiation of a project labor agreement

It is the sense of Congress that—

- (1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and
- (2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should make every effort to—
 - (A) use steel that is manufactured in North America; and
 - (B) negotiate a project labor agreement to expedite construction of the pipeline.

(Pub. L. 108–324, div. C, §111, Oct. 13, 2004, 118 Stat. 1263.)

§720j. Sense of Congress concerning participation by small business concerns

(a) Definition of small business concern

In this section, the term "small business concern" has the meaning given the term in section 632(a)

of this title.

(b) Sense of Congress

It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(Pub. L. 108–324, div. C, §112, Oct. 13, 2004, 118 Stat. 1263; Pub. L. 111–68, div. A, title I, §1501(b), Oct. 1, 2009, 123 Stat. 2041.)

EDITORIAL NOTES

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–68 struck out subsec. (c) which related to study to determine extent to which small business concerns participate in construction of oil and gas pipelines in the United States.

§720k. Alaska pipeline construction training program

(a) Program

(1) Establishment

The Secretary of Labor (in this section referred to as the "Secretary") shall make grants to the Alaska Workforce Investment Board—

(A) to recruit and train adult and dislocated workers in Alaska, including Alaska Natives, in the skills required to construct and operate an Alaska gas pipeline system; and

(B) for the design and construction of a training facility to be located in Fairbanks, Alaska, to support an Alaska gas pipeline training program.

(2) Coordination with existing programs

The training program established with the grants authorized under paragraph (1) shall be consistent with the vision and goals set forth in the State of Alaska unified plan or combined plan, as appropriate, as developed pursuant to section 3112 or 3113, as appropriate, of title 29.

(b) Requirements for grants

The Secretary shall make a grant under subsection (a) only if—

(1) the Governor of the State of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of the Alaska natural gas pipeline system will commence by the date that is 2 years after the date of the certification; and

(2) the Secretary of Energy concurs in writing to the Secretary with the certification made under paragraph (1) after considering—

(A) the status of necessary Federal and State permits;

(B) the availability of financing for the Alaska natural gas pipeline project; and

(C) other relevant factors.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section \$20,000,000. Not more than 15 percent of the funds may be used for the facility described in subsection (a)(1)(B).

(Pub. L. 108–324, div. C, §113, Oct. 13, 2004, 118 Stat. 1264; Pub. L. 113–128, title V, §512(c), July 22, 2014, 128 Stat. 1706.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–128 substituted "consistent with the vision and goals set forth in the State of Alaska unified plan or combined plan, as appropriate, as developed pursuant to section 3112 or 3113, as appropriate, of title 29" for "consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

§720l. Sense of Congress concerning natural gas demand

It is the sense of Congress that—

(1) North American demand for natural gas will increase dramatically over the course of the next several decades;

(2) both the Alaska Natural Gas Pipeline and the Mackenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America;

(3) Federal and State officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion;

(4) Federal and State officials should acknowledge that the smaller scope, fewer permitting requirements, and lower cost of the Mackenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline;

(5) natural gas production in the 48 contiguous States and Canada will not be able to meet all domestic demand in the coming decades; and

(6) as a result, natural gas delivered from Alaskan North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the Mackenzie Delta or production from the 48 contiguous States.

(Pub. L. 108–324, div. C, §114, Oct. 13, 2004, 118 Stat. 1264.)

§720m. Sense of Congress concerning Alaskan ownership

It is the sense of Congress that—

(1) Alaska Native Regional Corporations, companies owned and operated by Alaskans, and individual Alaskans should have the opportunity to own shares of the Alaska natural gas pipeline in a way that promotes economic development for the State; and

(2) to facilitate economic development in the State, all project sponsors should negotiate in good faith with any willing Alaskan person that desires to be involved in the project.

(Pub. L. 108–324, div. C, §115, Oct. 13, 2004, 118 Stat. 1265.)

§720n. Loan guarantees

(a) Authority

(1) The Secretary may enter into agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 720a(b) of this title or section 719g of this title or with an entity the Secretary determines is qualified to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska, to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1

or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska.

(b) Conditions

(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 720a(b) of this title or an amended certificate under section 719g of this title has been issued for the project, or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska. In no case shall loan guarantees be issued for more than one qualified project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

(4) Such loan guarantee may be utilized only by the project chosen by the Federal Energy Regulatory Commission as the qualified project.

(c) Limitations on amounts

(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, \$18,000,000,000, which amount shall be indexed for United States dollar inflation from October 13, 2004, as measured by the Consumer Price Index, except that the total amount of principal that may be guaranteed for a qualified liquefied natural gas project may not exceed a principal amount in which the cost of loan guarantees, as defined by section 661a(5) of title 2, exceeds \$2,000,000,000.

(d) Loan terms and fees

(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) Regulations

The Secretary may issue regulations to carry out this section.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section, as defined by section 661a(5) of title 2. Such sums shall remain available until expended.

(g) Definitions

In this section:

(1) Consumer Price Index

The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) Eligible lender

The term "eligible lender" means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 [15 U.S.C. 77a et seq.]), including—

(A) a qualified retirement plan (as defined in section 4974(c) of title 26) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of title 26) that is a qualified institutional buyer.

(3) Federal guarantee instrument

The term "Federal guarantee instrument" means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) Qualified infrastructure project

The term "qualified infrastructure project" means an Alaskan natural gas transportation project or system consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants, liquification plants, and liquefied natural gas tankers for transportation of liquefied natural gas from southcentral Alaska), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope.

(Pub. L. 108–324, div. C, §116, Oct. 13, 2004, 118 Stat. 1265; Pub.L. 108–199, div. H, §146, Jan. 23, 2004, 118 Stat. 444; Pub. L. 108–447, div. J, title I, §114, Dec. 8, 2004, 118 Stat. 3346; Pub. L. 117–58, div. D, title IV, §40401(d), Nov. 15, 2021, 135 Stat. 1037.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (g)(2), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117–58, §40401(d)(1)(A), struck out "to West Coast States" after "Alaska".

Subsec. (a)(3). Pub. L. 117–58, §40401(d)(1)(B), struck out "to the continental United States" after "Alaska".

Subsec. (b)(1). Pub. L. 117–58, §40401(d)(2), struck out "to West Coast States" after "Alaska".

Subsec. (g)(4). Pub. L. 117–58, §40401(d)(3), substituted "plants, liquification plants, and" for "plants liquification plants and" and struck out "to the West Coast" after "southcentral Alaska" and "to the continental United States" after "Alaska North Slope".

2004—Subsec. (a)(1). Pub.L. 108–199, §146(1), as amended by Pub. L. 108–447, §114(a)(1), (2), which directed the amendment of subsec. (a) by inserting "or with an entity the Secretary determines is qualified to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States," before "to issue", was executed to par. (1) of subsec. (a) to reflect the probable intent of Congress.

Subsec. (b)(1). Pub.L. 108–199, §146(2), as amended by Pub. L. 108–447, §114(1)–(3), inserted before period at end ", or after the Secretary certifies there exists a qualified entity to construct and operate a

liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States. In no case shall loan guarantees be issued for more than one qualified project".

Subsec. (b)(4). Pub. L. 108-447, §114(b), added par. (4).

Subsec. (c)(2). Pub. L. 108-199, §146(3), as amended by Pub. L. 108-447, §114(1), (2), (4), which directed the amendment of subsec. (a)(2) by inserting ", except that the total amount of principal that may be guaranteed for a qualified liquefied natural gas project may not exceed a principal amount in which the cost of loan guarantees, as defined by section 661a(5) of title 2, exceeds \$2,000,000,000" before period at end, was executed by making the amendment to subsec. (c)(2), to reflect the probable intent of Congress.

Subsec. (g)(4). Pub.L. 108-199, §146(4), as amended by Pub. L. 108-447, §114(1), (2), (5), inserted "or system" after "gas transportation project" and "liquification plants and liquefied natural gas tankers for transportation of liquefied natural gas from Southcentral Alaska to the West Coast" after "including gas treatment plants".

STATUTORY NOTES AND RELATED SUBSIDIARIES

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

CHAPTER 16—EMERGENCY RELIEF

§§721, 722. Omitted

EDITORIAL NOTES

CODIFICATION

Sections, acts May 12, 1933, ch. 30, §§1, 2, 48 Stat. 55, 56; Feb. 15, 1934, ch. 13, §1, 48 Stat. 351, were enacted as temporary legislation during the economic emergency in 1933.

SUPPLEMENTARY LEGISLATION

Legislation supplementary to the Federal Emergency Relief Act of 1933 was contained in the following acts, executive orders, and reorganization plans: Res. Apr. 8, 1935, ch. 48, 49 Stat. 115; Aug. 12, 1935, ch. 508, §3, 49 Stat. 596; Aug. 24, 1935, ch. 641, §55, 49 Stat. 781; Feb. 11, 1936, ch. 49, §7, 49 Stat. 1134; Feb. 11, 1936, ch. 51, 49 Stat. 1135; June 22, 1936, ch. 689, title II, 49 Stat. 1608; Res. Feb. 24, 1937, ch. 17, 50 Stat. 21; June 29, 1937, 11 p.m., ch. 401, 50 Stat. 357; Mar. 2, 1938, ch. 38, 52 Stat. 83; June 21, 1938, ch. 554, 52 Stat. 817; Feb. 4, 1939, ch. 1, 53 Stat. 508; Res. Apr. 1, 1939, ch. 34, 53 Stat. 555; Apr. 13, 1939, ch. 62, 53 Stat. 578; Res. June 30, 1939, ch. 252, 53 Stat. 927; Apr. 6, 1940, ch. 77, 54 Stat. 99; June 26, 1940, ch. 428, title II, 54 Stat. 590; Res. June 26, 1940, ch. 432, 54 Stat. 611; June 27, 1940, ch. 437, title I, 54 Stat. 633; Oct. 9, 1940, ch. 780, title I, 54 Stat. 1035; Mar. 1, 1941, ch. 9, §1, 55 Stat. 15; Apr. 5, 1941, ch. 40, §1, 55 Stat. 110; July 1, 1941, ch. 266, 55 Stat. 396; July 1, 1941, ch. 269, title II, 55 Stat. 487; Dec. 17, 1941, ch. 591, 55 Stat. 810; June 27, 1942, ch. 450, §1, 56 Stat. 410; July 2, 1942, ch. 475, title II, 56 Stat. 571; Res. July 2, 1942, ch. 479, 56 Stat. 634; June 22, 1943, ch. 138, 57 Stat. 161; June 26, 1943, ch. 145, title I, §101, 57 Stat. 180; July 12, 1943, ch. 221, title VII, 57 Stat. 518; July 12, 1943, 4 p.m., E. W. T., ch. 229, title I, 57 Stat. 539, 540; Dec. 23, 1943, ch. 380, title I, 57 Stat. 615; June 28, 1944, ch. 302, title II, 58 Stat. 564; June 28, 1944, ch. 304, title I, 58 Stat. 602; Apr. 25, 1945, ch. 95, title I, §1, 59 Stat. 80.

Ex. Ord. Nos. 7305, Feb. 28, 1936; 7334, Apr. 3, 1936, 1 F.R. 121; 7436, Aug. 21, 1936, 1 F.R. 1204; 7469, Oct. 13, 1936, 1 F.R. 1581; 7512, Dec. 16, 1936, 1 F.R. 2159; 7553, Feb. 17, 1937, 2 F.R. 338.

Reorg. Plan No. I of 1939, §§201, 206, 301, 305, 306, eff. July 1, 1939, 4 F.R. 2728-2730, 53 Stat. 1424-1428.

§723. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648

Section, acts May 12, 1933, ch. 30, §3, 46 Stat. 56; Feb. 15, 1934, ch. 13, §1, 48 Stat. 351, was enacted as temporary legislation during the economic emergency in 1933.

§§724 to 728. Omitted

EDITORIAL NOTES

CODIFICATION

Sections, acts May 12, 1933, ch. 30, §§4–8, 48 Stat. 56–58; Feb. 15, 1934, ch. 13, §1, 48 Stat. 351, were enacted as temporary legislation during the economic emergency in 1933.

CHAPTER 16A—EMERGENCY PETROLEUM ALLOCATION

§§751 to 760h. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 751 to 760h were omitted pursuant to section 760g of this title.

Section 751, Pub. L. 93–159, §2, Nov. 27, 1973, 87 Stat. 628, provided Congressional findings and declaration of purpose.

Section 752, Pub. L. 93–159, §3, Nov. 27, 1973, 87 Stat. 628, provided definitions for this chapter.

Section 753, Pub. L. 93–159, §4, Nov. 27, 1973, 87 Stat. 629; Pub. L. 93–511, Dec. 5, 1974, 88 Stat. 1608; Pub. L. 94–99, §2, Sept. 29, 1975, 89 Stat. 481; Pub. L. 94–133, §1, Nov. 14, 1975, 89 Stat. 694; Pub. L. 94–163, title IV, §§401(b)(1)–(3), 402(a), 403(a), 451, Dec. 22, 1975, 89 Stat. 946, 948; Pub. L. 96–294, title II, §274, June 30, 1980, 94 Stat. 711, provided for mandatory allocation.

Section 754, Pub. L. 93–159, §5, Nov. 27, 1973, 87 Stat. 633; Pub. L. 94–163, title IV, §452, Dec. 22, 1975, 89 Stat. 948, provided for administration, enforcement, delegation of authority, and civil and criminal penalties.

Section 755, Pub. L. 93–159, §6, Nov. 27, 1973, 87 Stat. 633; Pub. L. 94–163, title IV, §453, Dec. 22, 1975, 89 Stat. 949, related to impact of this chapter on other laws.

Section 756, Pub. L. 93–159, §7, Nov. 27, 1973, 87 Stat. 635, related to monitoring of program by Federal Trade Commission.

Section 757, Pub. L. 93–159, §8, as added Pub. L. 94–163, title IV, §401(a), Dec. 22, 1975, 89 Stat. 941; amended Pub. L. 94–385, title I, §§121, 122, Aug. 14, 1976, 90 Stat. 1132, 1133, related to oil pricing policy.

Section 758, Pub. L. 93–159, §9, as added Pub. L. 94–163, title IV, §401(a), Dec. 22, 1975, 89 Stat. 946, related to passthroughs of cost price decreases.

Section 759, Pub. L. 93–159, §10, as added Pub. L. 94–163, title IV, §402(c), Dec. 22, 1975, 89 Stat. 947, limited pricing authority of President.

Section 760, Pub. L. 93–159, §11, as added Pub. L. 94–163, title IV, §454, Dec. 22, 1975, 89 Stat. 950, related to reevaluation and promulgation of amendments to regulations and report to Congress.

Section 760a, Pub. L. 93–159, §12, as added Pub. L. 94–163, title IV, §455, Dec. 22, 1975, 89 Stat. 950, related to conversion mechanism to standby authorities.

Section 760b, Pub. L. 93–159, §13, as added Pub. L. 94–163, title IV, §456, Dec. 22, 1975, 89 Stat. 952, related to standby purchase authority of President.

Section 760c, Pub. L. 93–159, §14, as added Pub. L. 94–163, title IV, §457, Dec. 22, 1975, 89 Stat. 953, related to direct Presidential control of refinery operations.

Section 760d, Pub. L. 93–159, §15, as added Pub. L. 94–163, title IV, §458, Dec. 22, 1975, 89 Stat. 953, related to Presidential control of domestic oil and oil product inventories.

Section 760e, Pub. L. 93–159, §16, as added Pub. L. 94–163, title IV, §459, Dec. 22, 1975, 89 Stat. 954,

prohibited willful accumulation of excess crude, etc., oil during severe energy supply interruption.

Section 760f, Pub. L. 93–159, §17, as added Pub. L. 94–163, title IV, §460, Dec. 22, 1975, 89 Stat. 955, authorized President to amend regulations requiring allocation of asphalt, and thereafter to exempt asphalt from such regulation.

Section 760g, Pub. L. 93–159, §18, as added Pub. L. 94–163, title IV, §461, Dec. 22, 1975, 89 Stat. 955, provided for conversion of certain Presidential authority from mandatory to discretionary, for expiration of certain limitations, and for expiration, at midnight Sept. 30, 1981, of President's authority to promulgate and amend any regulation or to issue any order under this chapter, but such expiration not to affect any action or pending proceedings, administrative, civil, or criminal, not finally determined on such date, nor any administrative, civil, or criminal action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

Section 760h, Pub. L. 93–159, §19, as added Pub. L. 94–163, title IV, §462, Dec. 22, 1975, 89 Stat. 955, provided for reimbursement to States for implementation of delegated responsibilities.

CHAPTER 16B—FEDERAL ENERGY ADMINISTRATION

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

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| Sec. | |
| 761. | Congressional declaration of purpose. |
| 762. | Establishment. |
| 763. | Repealed. |
| 764. | Specific functions and purposes. |
| 765. | Transfer of functions. |
| 766. | Administrative provisions. |
| 767. | Transitional and savings provisions. |
| 768. | Repealed. |
| 769. | Definitions. |
| 770. | Appointments. |
| 771. | Comptroller General, powers and duties. |
| 772. | Administrator's information-gathering power. |
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| 774. | Reports and recommendations. |
| 775. | Sex discrimination; enforcement; other legal remedies. |
| 776. | Repealed. |
| 777. | Economic analysis of proposed actions. |
| 778. | Management oversight review; report to Administrator. |
| 779. | Coordination with, and technical assistance to, State governments. |
| 780. | Office of Private Grievances and Redress. |
| 781. | Comprehensive energy plan. |
| 782. | Petrochemical report to Congress. |
| 783. | Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds. |
| 784. | Exports of coal and refined petroleum products. |
| 785. | Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity. |
| 786. | Repealed. |
| 787. | Project Independence Evaluation System documentation; access to model by Congress and public. |
| 788. | Use of commercial standards. |
| 789. | Repealed. |

SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

- 790. Establishment of Office of Energy Information and Analysis.
- 790a. National Energy Information System; information required to be maintained.
- 790b. Administrative provisions.
- 790c. Analysis and evaluation of energy information; establishment and maintenance by Director of professional, etc., capability; specific capabilities.
- 790d. Repealed.
- 790e. Coordination by Director of energy information gathering activities of Federal agencies.
- 790f. Reports by Director.
- 790g. Access by Director to energy information.
- 790h. Congressional access to energy information; disclosure by Congress.

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

§761. Congressional declaration of purpose

(a) Objectives

The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation.

(b) Necessity for reorganization

The Congress finds that to help achieve these objectives, and to assure a coordinated and effective approach to overcoming energy shortages, it is necessary to reorganize certain agencies and functions of the executive branch and to establish a Federal Energy Administration.

(c) Creation of Federal Energy Administration

The sole purpose of this chapter is to create an administration in the executive branch, called the Federal Energy Administration, to vest in the Administration certain functions as provided in this chapter, and to transfer to such Administration certain executive branch functions authorized by other laws, where such transfer is necessary on an interim basis to deal with the Nation's energy shortages.

(Pub. L. 93–275, §2, May 7, 1974, 88 Stat. 97.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE AND TERMINATION DATES

Section 30 of Pub. L. 93–275, as amended by Pub. L. 94–332, June 30, 1976, 90 Stat. 784; Pub. L. 94–385, title I, §112(a), Aug. 14, 1976, 90 Stat. 1132; Pub. L. 95–70, §6, July 21, 1977, 91 Stat. 277, under which this chapter became effective sixty days after May 7, 1974, and was to terminate Sept. 30, 1978, was repealed by Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607.

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–70, §1, July 21, 1977, 91 Stat. 275, provided that: "This Act [enacting sections 788 and 789 of this title and amending sections 766 and 792 of this title, sections 6246, 6309, and 6881 of Title 42, The Public Health and Welfare, and notes under this section] may be cited as the 'Federal Energy Administration Authorization Act of 1977'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–385, title I, §101, Aug. 14, 1976, 90 Stat. 1127, provided that: "This title [enacting sections 787, 790 to 790h of this title, amending sections 757, 764, 766, 772, 774, 777 and 784 of this title and sections 5818, 6211 and 6295 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 753, 757, and 790 of this title] may be cited as the 'Federal Energy Administration Act Amendments of 1976'."

SHORT TITLE

Pub. L. 93-275, §1, May 7, 1974, 88 Stat. 96, provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Federal Energy Administration Act of 1974'."

SEPARABILITY

Pub. L. 93-275, §27, May 7, 1974, 88 Stat. 115, provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administration or in its Administrator, officers, and components transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 93-275, §29, May 7, 1974, 88 Stat. 115, as amended by Pub. L. 94-385, title I, §110, Aug. 14, 1976, 90 Stat. 1130; Pub. L. 95-70, §2, July 21, 1977, 91 Stat. 275, provided that:

"(a) There are authorized to be appropriated to the Federal Energy Administration the following sums:

"(1) subject to the restrictions specified in subsection (b), to carry out the functions identified as assigned to Executive Direction and Administration of the Federal Energy Administration as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed \$35,627,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed \$41,017,000.

"(2) to carry out the functions identified as assigned to the Office of Energy Information and Analysis as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed \$34,971,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed \$43,544,000.

"(3) to carry out the functions identified as assigned to the Office of Regulatory Programs as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed \$62,459,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed \$62,459,000.

"(4) to carry out the functions identified as assigned to the Office of Conservation and Environment as of January 1, 1977 (other than functions described in part A [section 6861 et seq. of Title 42, The Public Health and Welfare] and part D [section 6881 et seq. of Title 42] of title IV of the Energy Conservation and Production Act, parts B [section 6291 et seq. of Title 42] and C [section 6321 et seq. of Title 42] of title III of the Energy Policy and Conservation Act and, for the fiscal year ending September 30, 1977, functions described in title II of the Energy Conservation and Production Act [section 6801 et seq. of Title 42] and in paragraph (7) of this subsection)—

"(A) for the fiscal year ending September 30, 1977, not to exceed \$38,603,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed \$46,908,000.

"(5) to carry out the functions identified as assigned to the Office of Energy Resource Development as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed \$16,934,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed \$26,017,000.

"(6) to carry out the functions identified as assigned to the Office of International Energy Affairs as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed \$1,921,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed \$1,846,000.

"(7) subject to the restriction specified in subsection (c), to carry out a program to develop the policies, plans, implementation strategies, and program definitions for promoting accelerated utilization and widespread commercialization of solar energy and to provide overall coordination of Federal solar energy commercialization activities, for the fiscal year ending September 30, 1977, not to exceed \$2,500,000.

"(8) for the purpose of permitting public use of the Project Independence Evaluation System pursuant to section 31 of this Act [section 787 of this title], not to exceed the aggregate amount of the fees estimated to be charged for such use.

"(b) The following restrictions shall apply to the authorization of appropriations specified in paragraph (1) of subsection (a)—

"(1) amounts to carry out the functions identified as assigned to the Office of Communication and

Public Affairs as of January 1, 1977, shall not exceed \$2,112,000 for the fiscal year ending September 30, 1977; and

"(2) no amounts authorized to be appropriated in such paragraph may be used to carry out the functions identified as assigned to the Office of Nuclear Affairs as of January 1, 1976.

"(c) No amounts authorized to be appropriated in paragraphs (5) (B) and (7) of subsection (a) may be used to carry out solar energy research, development, or demonstration activities.

"(d) Subject to the provisions of any other law enacted after the date of the enactment of this subsection [July 21, 1977], if any function for which funds are authorized to be appropriated by this section is transferred by or pursuant to any such provision of law to any department, agency, or office, the unexpended balances of appropriations, authorizations, allocations, and other funds, held, used, arising from, available to, or to be made available in connection with such function shall be transferred to such department, agency, or office, but shall continue to be subject to any restriction to which they were subject before such transfer."

ADVICE AND CONSENT OF SENATE REQUIRED FOR APPOINTMENT OF DIRECTOR OF ENERGY POLICY OFFICE

Pub. L. 93-153, title IV, §404, Nov. 16, 1973, 87 Stat. 590, directed that Director of Energy Policy Office be appointed by President, by and with advice and consent of Senate, but that if any individual serving in this office on Nov. 16, 1973, were nominated for such position, he may continue to act unless and until such nomination were disapproved by Senate.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11712

Ex. Ord. No. 11712, Apr. 18, 1973, 38 F.R. 9657, which related to the Special Committee on Energy and the National Energy Office, was superseded by Ex. Ord. No. 11726, June 29, 1973, 38 F.R. 17711, formerly set out as a note under section 791a of Title 16, Conservation.

EXECUTIVE ORDER NO. 11726

Ex. Ord. No. 11726, June 29, 1973, 38 F.R. 17711, formerly set out as a note under section 791a of Title 16, Conservation, which established the Energy Policy Office, was superseded by Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415, set out below.

EX. ORD. NO. 11775. ABOLITION OF ENERGY POLICY OFFICE

Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415, as amended by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, provided:

Executive Order No. 11726 of June 29, 1973, established in the Executive Office of the President an Energy Policy Office. Executive Order No. 11748 of December 4, 1973 [set out as a note under section 754 of this title], established in the Executive Office of the President a Federal Energy Office. In order to permit an orderly transition, the Energy Policy Office was continued in being on an interim basis. That transition has been successfully completed and the Energy Policy Office should now be abolished.

NOW, THEREFORE, by virtue of the authority vested in me as the President of the United States of America it is hereby ordered as follows:

SEC. 1. The Energy Policy Office is hereby abolished and Executive Order No. 11726 of June 29, 1973, is hereby superseded.

SEC. 2. [Revoked by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185].

SEC. 3. The Administrator of General Services shall take such steps as may be necessary to wind up the affairs of the Energy Policy Office, and unobligated funds, if any, that may remain available to defray the expenses of that Office shall be returned to the Emergency Fund of the President.

RICHARD NIXON.

EX. ORD. NO. 11790. EFFECTUATION OF CHAPTER

Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12919, §904(c), June 3, 1994, 59 F.R. 29534, provided:

Under and by virtue of the authority vested in me by the Federal Energy Administration Act of 1974 (Public Law 93-275) [this chapter], the Emergency Petroleum Allocation Act of 1973 (Public Law 93-159; 87 Stat. 627) [15 U.S.C. 751 et seq.], the Economic Stabilization Act of 1970, as amended [formerly 12 U.S.C. 1904 note], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) [now 50 U.S.C. 4501 et seq.], and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Pursuant to the authority vested in me by section 30 of the Federal Energy Administration Act of 1974 [set out above], notice is hereby given that that act shall be effective as of June 27, 1974.

SEC. 2. (a) There is hereby delegated to the Secretary of Energy (hereinafter referred to as the "Secretary"), all authority vested in the President by the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §751 et seq.].

(b) The Secretary shall submit to the Congress the reports required by section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §753(c)(2)].

SEC. 3. (a) There is hereby delegated to the Secretary the authority vested in the President by section 203(a)(3) of the Economic Stabilization Act of 1970, as amended [formerly 12 U.S.C. §1904 note], to the extent such authority remains available under the provisions of section 218 of that act [formerly 12 U.S.C. §1904 note].

(b) The authority under the Economic Stabilization Act of 1970, as amended [formerly 12 U.S.C. §1904 note], that was delegated to the Administrator of the Federal Energy Office by the Chairman of the Cost of Living Council pursuant to section 4(b) of Executive Order No. 11748 of December 4, 1973 [set out as a note under section 754 of this title], is hereby transferred to the Secretary to the extent such authority remains available under the provisions of section 218 of that act [formerly 12 U.S.C. §1904 note].

SEC. 4. Notwithstanding the provisions of Executive Order No. 12919, as amended [formerly set out as a note under section 2153 of the former Appendix to Title 50, War and National Defense], the Secretary is authorized to exercise the authority vested in the President by the Defense Production Act of 1950, as amended [50 U.S.C. 4501 et seq.], except section 708 thereof [50 U.S.C. 4558], as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government.

SEC. 5. (a) The Federal Energy Office established by Executive Order No. 11748 is hereby abolished, and that Executive order is hereby revoked.

(b) The authority vested in the Administrator of the Federal Energy Office to appoint a Deputy Administrator of that Office and to compensate that officer at the rate prescribed for officers and positions at level III of the Executive Schedule (5 U.S.C. 5314) is hereby revoked.

(c) All orders, regulations, circulars, or other directives issued and all other actions taken pursuant to any authority delegated or transferred to the Secretary by this order prior to and in effect on the date of this order are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless or until altered, amended, or revoked by the Secretary or by such competent authority as he may specify.

(d) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions of the Administrator of the Federal Energy Office, as Administrator of that Office or as Chairman of the Oil Policy Committee, are hereby transferred to the Secretary.

SEC. 6. All authority delegated or transferred to the Secretary by this order may be further delegated, in whole or in part, by the Secretary to any other office or any department or agency of the United States, or, if authorized by law, to any State or officer thereof.

SECS. 7 to 10. [Deleted.]

EXECUTIVE ORDER NO. 11930

Ex. Ord. No. 11930, July 30, 1976, 41 F.R. 32399, which related to the establishment of the Federal Energy Office and the performance by the Office of the energy functions of the Federal Energy Administration, was revoked by Ex. Ord. No. 11933, Aug. 25, 1976, 41 F.R. 36641, set out below.

EX. ORD. NO. 11933. TERMINATION OF FEDERAL ENERGY OFFICE

Ex. Ord. No. 11933, Aug. 25, 1976, 41 F.R. 36641, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Executive Order No. 11930 of July 30, 1976, which established the Federal Energy Office, is, consistent with the Federal Energy Administration Act Amendments of 1976 (Title I of Public Law 94-385) [for classification, see Short Title of 1976 Amendment note set out above], hereby revoked as of the date of its issuance.

SEC. 2. All orders, rules, regulations, rulings, interpretations, and other directives issued or pending, all rule making, judicial and administrative proceedings commenced or pending, all voluntary agreements, plans of action, and all other actions of whatever nature taken, continued, confirmed, ratified or made effective under Executive Order 11930, shall, in accordance with the Federal Energy Administration Act Amendments of

1976 [for classification, see Short Title of 1976 Amendment note set out above], be deemed to have been actions of the Federal Energy Administration and shall continue and remain in full force and effect, unless amended or revoked by the Federal Energy Administration.

SEC. 3. All authority and responsibility vested in the Federal Energy Administration by Executive order or proclamation prior to July 31, 1976 was not revoked by Executive Order No. 11930, subsists in the Federal Energy Administration, and shall be deemed to have been continuously vested in the Federal Energy Administration, whose existence has been retroactively extended by the Federal Energy Administration Act Amendments of 1976 [for classification, see Short Title of 1976 Amendment note set out above].

GERALD R. FORD.

§762. Establishment

There is hereby established an independent agency in the executive branch to be known as the Federal Energy Administration (hereinafter in this chapter referred to as the "Administration").

(Pub. L. 93-275, §3, May 7, 1974, 88 Stat. 97.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administration or in its Administrator, officers, and components transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§763. Repealed. Pub. L. 95-91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93-275, §4, May 7, 1974, 88 Stat. 97, related to officers of Federal Energy Administration.

§764. Specific functions and purposes

(a) Limitation on discretionary powers

Subject to the provisions and procedures set forth in this chapter, the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions—

- (1) specifically transferred to or vested in him by or pursuant to this chapter;
- (2) delegated to him by the President pursuant to specific authority vested in the President by law; and
- (3) otherwise specifically vested in the Administrator by the Congress.

(b) Duties

To the extent authorized by subsection (a) of this section, the Administrator shall—

- (1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;
- (2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;
- (3) develop effective arrangements for the participation of State and local governments in the resolution of energy problems;
- (4) develop plans and programs for dealing with energy production shortages;
- (5) promote stability in energy prices to the consumer, promote free and open competition in all

aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;

(7) develop and oversee the implementation of equitable voluntary and mandatory energy conservation programs and promote efficiencies in the use of energy resources;

(8) develop and recommend policies on the import and export of energy resources;

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;

(10) work with business, labor, consumer and other interests and obtain their cooperation;

(11) in administering any pricing authority, provide by rule, for equitable allocation of all component costs of producing propane gas. Such rules may require that (a) only those costs directly related to the production of propane may be allocated by any producer to such gas for purposes of establishing any price for propane, and (b) prices for propane shall be based on the prices for propane in effect on May 15, 1973. The Administrator shall not allow costs attributable to changes in ownership and movement of propane gas where, in the opinion of the Administrator, such changes in ownership and movement occur primarily for the purpose of establishing a higher price; and

(12) perform such other functions as may be prescribed by law.

(c) Exercise of delegated discretion concerning exemptions

(1) The Administrator shall not exercise the discretion delegated to him by the President, pursuant to section 754(b) ¹ of this title, to submit to the Congress as one energy action any amendment to the regulation under section 753(a) ¹ of this title, pursuant to section 760a ¹ of this title, which amendment exempts any oil, refined petroleum product, or refined product category from both the allocation and pricing provisions of the regulation under section 753 ¹ of this title.

(2) Nothing in this subsection shall prevent the Administrator from concurrently submitting an energy action relating to price together with an energy action relating to allocation of the same oil, refined petroleum product, or refined product category.

(Pub. L. 93-275, §5, May 7, 1974, 88 Stat. 98; Pub. L. 94-385, title I, §102, Aug. 14, 1976, 90 Stat. 1127.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 753, 754, and 760a of this title, referred to in subsec. (c)(1), were omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-385 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

¹ [*See References in Text note below.*](#)

§765. Transfer of functions

(a) Functions of Secretary and Department of the Interior

There are hereby transferred to and vested in the Administrator all functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department—

- (1) as relate to or are utilized by the Office of Petroleum Allocation;
- (2) as relate to or are utilized by the Office of Energy Conservation;
- (3) as relate to or are utilized by the Office of Energy Data and Analysis; and
- (4) as relate to or are utilized by the Office of Oil and Gas.

(b) Functions of Chairman and Executive Director of Cost of Living Council

There are hereby transferred to and vested in the Administrator all functions of the Chairman of the Cost of Living Council, the Executive Director of the Cost of Living Council, and the Cost of Living Council, and officers and components thereof, as relate to or are utilized by the Energy Division of the Cost of Living Council.

(Pub. L. 93-275, §6, May 7, 1974, 88 Stat. 100.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

EXECUTIVE DOCUMENTS

ABOLITION OF COST OF LIVING COUNCIL

Cost of Living Council abolished July 1, 1974, by Ex. Ord. No. 11788, §1, June 18, 1974, 39 F.R. 22113.

§766. Administrative provisions

(a) Rules, regulations, and procedures; Environmental Protection Agency, notification; quality of environment, publication of comments; emergency preclusion of review by Environmental Protection Agency

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided*, That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of

fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(b) Adjustments; procedures respecting application and operation; judicial review

Any officer or agency authorized to issue any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, pursuant to this chapter shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after August 14, 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with subsection (c) when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(c) Judicial review of administrative rulemaking; filing of petition in United States Court of Appeals

Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],¹ may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973,¹ may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(d) to (k) Repealed or Redesignated. Pub. L. 95-91, title VII, §709(a)(2)(B), (C), (F), (G), Aug. 4, 1977, 91 Stat. 608

(l) Authority and responsibility of General Counsel

Effective beginning July 1, 1977, amounts authorized to be appropriated under this chapter or any other Act shall not be available for the payment of salaries and other expenses with respect to any office of regional counsel of the Administration unless such office is under the direct supervision and control of the General Counsel of the Administration.

(Pub. L. 93-275, §7, May 7, 1974, 88 Stat. 100; Pub. L. 94-385, title I, §§103-106, Aug. 14, 1976, 90 Stat. 1127-1129; Pub. L. 95-70, §8, July 21, 1977, 91 Stat. 277; Pub. L. 95-91, title VII, §709(a)(2), Aug. 4, 1977, 91 Stat. 607.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (c), is Pub. L. 93-159, Nov. 27,

1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–91, §709(a)(2)(A), struck out subsec. (a) provisions: for appointment, employment, and compensation of officers and employees; for prescription of their authority and duties; for placement of specified number of positions in GS–16, 17, and 18 and making competitive service provisions inapplicable to a limited number of such positions; and making classification standards and procedures applicable to the authority provided for in this section and for duration of such authority; and redesignated subsec. (c) as (a).

Subsec. (b). Pub. L. 95–91, §709(a)(2)(A), (C)–(E), struck out subsec. (b) provisions respecting employment and compensation of experts and consultants, redesignated subsec. (i)(1)(D) as (b), and substituted therein "any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5 pursuant to this chapter" for "the rules, regulations, or orders described in paragraph (A)" and "subsection (c)" for "paragraph (2) of this subsection".

Subsec. (c). Pub. L. 95–91, §709(a)(2)(F), redesignated subsec. (i)(2)(A) as (c). Former subsec. (c) redesignated (a).

Subsecs. (d) to (h). Pub. L. 95–91, §709(a)(2)(B), struck out subsecs. (d) to (h) relating to: interagency cooperation and reimbursement; seal and judicial notice; acceptance of gifts; contract authority; and performance of other necessary activities.

Subsec. (i)(1)(A) to (C). Pub. L. 95–91, §709(a)(2)(C), struck out subpar. (A) to (C) provisions relating to: application of subch. II of ch. 5 of title 5 to rules, regulations, or orders issued under this chapter; publication of notice of proposed rules, regulations, or orders in the Federal Register and opportunity for comment and waiver of the requirements when warranted by considerations of public health, safety, or welfare; and opportunity for oral presentation of views, data, and arguments where rules, regulations, or orders are likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

Subsec. (i)(1)(D). Pub. L. 95–91, §709(a)(2)(C), redesignated subpar. (D) as subsec. (b).

Subsec. (i)(E), (F). Pub. L. 95–91, §709(a)(2)(C), struck out provisions of subpars. (E) and (F) providing for public availability of internal rules and guidelines of the agency forming a basis for rules, regulations, or orders and agency opinions respecting determinations of requests for exception or exemption from rules or orders; and procedures for holding hearings or oral presentation of views with respect to rules or regulations the effects of which are confined to a single unit of local government or the residents thereof, a single geographic area within a State or the residents thereof, or a single State or the residents thereof.

Subsec. (i)(2)(A). Pub. L. 95–91, §709(a)(2)(F), redesignated subpar. (A) as subsec. (c).

Subsec. (i)(2)(B), (3). Pub. L. 95–91, §709(a)(2)(F), (G), struck out par. (2)(B) provisions relating to jurisdiction of federal district courts, power of courts of competent jurisdiction to consider defenses, removal of cases raising constitutional defenses, and concurrent jurisdiction of cases or controversies arising under rules, regulations, or orders of State or local government agencies; and par. (3) provisions relating to procedures for State or local government agencies.

Subsecs. (j), (k). Pub. L. 95–91, §709(a)(2)(G), struck out subsecs. (j) and (k) relating to information for independent regulatory agencies and limitation on enforcement authority of the Administrator.

Subsec. (l). Pub. L. 95–70 added subsec. (l).

1976—Subsec. (c). Pub. L. 94–385, §103, struck out provisions relating to review of rules, regulations and procedures by the Cost of Living Council and redistributed remaining provisions as pars. (1) and (2).

Subsec. (i)(1)(D). Pub. L. 94–385, §104, inserted provisions which require any officer or agency authorized to issue rules, regulations or orders to establish criteria and guidelines for evaluation of special hardship situations, to include in every decision the standards applied in the disposition of such situations, and requiring the hearing upon request of the aggrieved party to be heard by an officer other than the one denying the adjustment.

Subsec. (i)(1)(F). Pub. L. 94–385, §105, added subpar. (F).

Subsec. (k). Pub. L. 94–385, §106, added subsec. (k).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The

Public Health and Welfare.

¹ [See References in Text note below.](#)

§767. Transitional and savings provisions

(a) Continuance of effective status

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Pending proceedings; orders, appeals, payments

This chapter shall not affect any proceeding pending, at the time this chapter takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 766(i)(2) of this title) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this chapter had not been enacted.

(c) Commencement of suits before effective date

Except as provided in subsection (e)—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(d) Litigation; abatement prohibition; Federal parties

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this chapter takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(e) Substitution of parties

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department,

agency, or officer is transferred to the Administrator, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator, or other official as the case may be, substituted.

(f) Judicial review; other requirements respecting notices, hearings, action upon record, and administrative review; conflicting provisions

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred or delegated by this chapter shall apply to the performance of those functions by the Administrator, or any officer or component of the Administration. In the event of any inconsistency between the provisions of this subsection and section 766 of this title, the provisions of section 766 of this title shall govern.

(g) References in other laws deemed references to transferee offices or officers

With respect to any function transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, Administrator, or other office or officers in which this chapter vests such functions.

(h) Presidential functions, authorities, and delegations unaffected

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegations of functions.

(i) References to other provisions deemed references to such provisions as amended or supplemented

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(Pub. L. 93-275, §8, May 7, 1974, 88 Stat. 103.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§768. Repealed. Pub. L. 95-91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93-275, §9, May 7, 1974, 88 Stat. 105, related to incidental transfers of personnel, assets, liabilities, contracts, etc., by the Director of the Office of Management and Budget necessary and appropriate to accomplish the intent and purpose of this chapter.

§769. Definitions

As used in this chapter—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be

deemed to include the exercise of power, authority, rights, and privileges.
(Pub. L. 93-275, §10, May 7, 1974, 88 Stat. 105.)

§770. Appointments

(a) Interim funds

Funds available to any department or agency (or any official or component thereof), and lawfully authorized for any of the specific functions which are transferred to the Administrator by this chapter, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this chapter until such times as funds for that purpose are otherwise available.

(b) Interim appointments

In the event that any officer required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this chapter, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this chapter, or any officer who was performing essentially the same functions immediately prior to the effective date of this chapter to act in such office until the office is filled as provided in this chapter: *Provided*, That any officer acting pursuant to the provisions of this subsection may act no longer than a period of thirty days unless during such period his appointment as such an officer is submitted to the Senate for its advice and consent.

(c) Nontemporary personnel; transferee rights for one year

Transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation, except for cause, for one year after such transfer.

(d) Compensation of new position at not less than provided for in Executive Schedule for previous position in cases of appointees without break in service

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position.

(Pub. L. 93-275, §11, May 7, 1974, 88 Stat. 105.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§771. Comptroller General, powers and duties

(a) Scope of activities; monitoring activity; data to Comptroller General from Administration; reports and recommendations to Congress

For the duration of this chapter, the Comptroller General of the United States shall monitor and evaluate the operations of the Administration including its reporting activities. The Comptroller General shall (1) conduct studies of existing statutes and regulations governing the Administration's programs; (2) review the policies and practices of the Administration; (3) review and evaluate the procedures followed by the Administrator in gathering, analyzing, and interpreting energy statistics,

data, and information related to the management and conservation of energy, including but not limited to data related to energy costs, supply, demand, industry structure, and environmental impacts; and (4) evaluate particular projects or programs. The Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this chapter and shall report to the Congress at such times as he deems appropriate with respect to the Administration's programs, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

(b) Access to material and written energy information from owners or operators of facilities or business premises engaged in energy matters; scope of information

The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section may request access to any books, documents, papers, statistics, data, records, and information of any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this chapter, including but not limited to energy costs, demand, supply, industry structure, and environmental impacts. The Comptroller General may request such person to submit in writing such energy information as the Comptroller General may prescribe.

(c) Access to material and information from recipients of Federal funds or assistance under Federal transactions

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any recipients of Federal funds or assistance under contracts, leases, cooperative agreements, or other transactions entered into pursuant to subsection (d) or (g) of section 766 ¹ of this title which in the opinion of the Comptroller General may be related or pertinent to such contracts, leases, cooperative agreements, or similar transactions.

(d) Subpenas; committee resolution; issuance; production of evidence

To assist in carrying out his responsibilities under this section, the Comptroller General may, with the concurrence of a duly established committee of Congress having legislative or investigative jurisdiction over the subject matter and upon the adoption of a resolution by such a committee which sets forth specifically the scope and necessity therefor, and the specific identity of those persons from whom information is sought, sign and issue subpenas requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section.

(e) Enforcement of subpenas; jurisdiction; order for production of evidence; contempt

In case of disobedience to a subpena issued under subsection (d) of this section, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Comptroller General, issue an order requiring such person to produce the books, documents, papers, statistics, data, records, or information; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(f) Availability to public of reports submitted to Congress; prohibited disclosures: confidential information and trade secrets; preservation of confidentiality in disclosures to Government

Reports submitted by the Comptroller General to the Congress pursuant to this section shall be available to the public at reasonable cost and upon identifiable request. The Comptroller General may not disclose to the public any information which concerns or relates to a trade secret or other matter referred to in section 1905 of title 18, except that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality—

(1) to other Federal Government departments, agencies, and officials for official use upon

request;

(2) to committees of Congress upon request; and

(3) to a court in any judicial proceeding under court order.

(Pub. L. 93-275, §12, May 7, 1974, 88 Stat. 106.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsections (d) and (g) of section 766 of this title, referred to in subsec. (c), were repealed by Pub. L. 95-91, title VII, §709(a)(2)(B), Aug. 4, 1977, 91 Stat. 608.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

Functions of Comptroller General of United States under this section made applicable with respect to monitoring and evaluation of all functions and activities of Department of Energy by section 7137 of Title 42.

¹ [See References in Text note below.](#)

§772. Administrator's information-gathering power

(a) Comprehensive and particular energy information; categorical groupings; monitoring activity and policy guidance

The Administrator shall collect, assemble, evaluate, and analyze energy information by categorical groupings, established by the Administrator, of sufficient comprehensiveness and particularity to permit fully informed monitoring and policy guidance with respect to the exercise of his functions under this chapter.

(b) Information and data to Administrator from owners or operators of facilities or business premises engaged in energy matters

All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the Administrator such information and periodic reports, records, documents, and other data, relating to the purposes of this chapter, including full identification of all data and projections as to source, time, and methodology of development, as the Administrator may prescribe by regulation or order as necessary or appropriate for the proper exercise of functions under this chapter.

(c) General or special orders for filing reports or answers in writing to specific questions, surveys, or questionnaires; oath or otherwise; filing period

The Administrator may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under this chapter. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe.

(d) Investigations, physical inspections, inventories and samples, copies, and interrogations

The Administrator, to verify the accuracy of information he has received or otherwise to obtain information necessary to perform his functions under this chapter, is authorized to conduct investigations, and in connection therewith, to conduct, at reasonable times and in a reasonable

manner, physical inspections at energy facilities and business premises, to inventory and sample any stock of fuels or energy sources therein, to inspect and copy records, reports, and documents from which energy information has been or is being compiled, and to question such persons as he may deem necessary.

(e) Subpenas; attendance and testimony of witnesses; production of evidence; enforcement; judicial orders; contempt

(1) The Administrator, or any of his duly authorized agents, shall have the power to require by subpoena the attendance and testimony of witnesses, and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section.

(2) Any appropriate United States district court may, in case of contumacy or refusal to obey a subpoena issued pursuant to this section, issue an order requiring the party to whom such subpoena is directed to appear before the Administration and to give testimony touching on the matter in question, or to produce any matter described in paragraph (1) of this subsection, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(f) Federal information concerning energy resources on Federal lands; scope of information

The Administrator shall collect from departments, agencies and instrumentalities of the executive branch of the Government (including independent agencies), and each such department, agency, and instrumentality is authorized and directed to furnish, upon his request, information concerning energy resources on lands owned by the Government of the United States. Such information shall include, but not be limited to, quantities of reserves, current or proposed leasing agreements, environmental considerations, and economic impact analyses.

(g) Maintenance of records and accounts

With respect to any person who is subject to any rule, regulation, or order promulgated by the Administrator or to any provision of law the administration of which is vested in or transferred or delegated to the Administrator, the Administrator may require, by rule, the keeping of such accounts or records as he determines are necessary or appropriate for determining compliance with such rule, regulation, order, or any applicable provision of law.

(h) Alleviation of reporting burdens for small businesses

In exercising his authority under this chapter and any other provision of law relating to the collection of energy information, the Administrator shall take into account the size of businesses required to submit reports with the Administrator so as to avoid, to the greatest extent practicable, overly burdensome reporting requirements on small marketers and distributors of petroleum products and other small business concerns required to submit reports to the Administrator.

(i) Penalties for failure to file information

Any failure to make information available to the Administrator under subsection (b), any failure to comply with any general or special order under subsection (c), or any failure to allow the Administrator to act under subsection (d) shall be subject to the same penalties as any violation of section 796 of this title or any rule, regulation, or order issued under such section.

(Pub. L. 93-275, §13, May 7, 1974, 88 Stat. 107; Pub. L. 94-385, title I, §§107, 108, Aug. 14, 1976, 90 Stat. 1129.)

EDITORIAL NOTES

AMENDMENTS

1976—Subsecs. (g), (h). Pub. L. 94-385, §107, added subsecs. (g) and (h).
Subsec. (i). Pub. L. 94-385, §108, added subsec. (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§773. Public disclosure of information

(a) Analyses, data, information, reports, and summaries; objectives of disclosure

The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts.

(b) Freedom of Information Act applicable; disclosure of confidential information or trade secrets; disclosure of matter included in public annual reports to Securities and Exchange Commission and matter excepted from such disclosure

Subject to the provisions of this chapter, section 552 of title 5 shall apply to public disclosure of information by the Administrator: *Provided*, That notwithstanding said section, the provisions of section 1905 of title 18, or any other provision of law, (1) all matters reported to, or otherwise obtained by, any person exercising authority under this chapter containing trade secrets or other matter referred to in section 1905 of title 18, may be disclosed to other persons authorized to perform functions under this chapter solely to carry out the purposes of the chapter, or when relevant in any proceeding under this chapter, and (2) the Administrator shall disclose to the public, at a reasonable cost, and upon a request which reasonably describes the matter sought, any matter of the type which could not be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 78m or 78o(d) of this title by a business enterprise exclusively engaged in the manufacture or sale of a single product, unless such matter concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a business enterprise.

(c) Guidelines and procedures for handling information pertaining to individuals; access of individuals to such personal information

To protect and assure privacy of individuals and confidentiality of personal information, the Administrator is directed to establish guidelines and procedures for handling any information which the Administration obtains pertaining to individuals. He shall provide, to the extent practicable, in such guidelines and procedures a method for allowing any such individual to gain access to such information pertaining to himself.

(Pub. L. 93-275, §14, May 7, 1974, 88 Stat. 108.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§774. Reports and recommendations

(a) Administrator's initial submittal to President and Congress

Not later than one year after the effective date of this chapter, the Administrator shall submit a report to the President and Congress which will provide a complete and independent analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf, as well as of the existing productive capacity and the extent to which such capacity could be increased for

crude oil and each major petroleum product each year for the next ten years through full utilization of available technology and capacity. The report shall also contain the Administration's recommendations for improving the utilization and effectiveness of Federal energy data and its manner of collection. The data collection and analysis portion of this report shall be prepared by the Federal Trade Commission for the Administration. Unless specifically prohibited by law, all Federal agencies shall make available estimates, statistics, data and other information in their files which, in the judgment of the Commission or Administration, are necessary for the purposes of this subsection.

(b) Administrator's annual report to Congress; contents

The Administrator shall prepare and submit directly to the Congress and the President every year after May 7, 1974, a report which shall include—

- (1) a review and analysis of the major actions taken by the Administrator;
- (2) an analysis of the impact these actions have had on the Nation's civilian requirements for energy supplies for materials and commodities;
- (3) a projection of the energy supply for the midterm and long term for each of the major types of fuel and the potential size and impact of any anticipated shortages, including recommendations for measures to—
 - (A) minimize deficiencies of energy supplies in relation to needs;
 - (B) maintain the health and safety of citizens;
 - (C) maintain production and employment at the highest feasible level;
 - (D) equitably share the burden of shortages among individuals and business firms; and
 - (E) minimize any distortion of voluntary choices of individuals and firms;
- (4) a summary listing of all recipients of funds and the amount thereof within the preceding period;
- (5) a summary listing of information-gathering activities conducted under section 772 of this title; and
- (6) an analysis of the energy needs of the United States and the methods by which such needs can be met, including both tax and nontax proposals and energy conservation strategies.

In the first annual report submitted after August 14, 1976, the Administrator shall include in such report with respect to the analysis referred to in paragraph (6) a specific discussion of the utility and relative benefits of employing a Btu tax as a means for obtaining national energy goals.

(c) Citizen fuel use; summer guidelines

Not later than thirty days after the effective date of this chapter, the Administrator shall issue preliminary summer guidelines for citizen fuel use.

(d) Administrator's interim reports to Congress

The Administrator shall provide interim reports to the Congress from time to time and when requested by committees of Congress.

(e) Energy needs analysis; time for submission; contents; continuation of analysis after termination of Administration

The analysis referred to in subsection (b)(6) shall include, for each of the next five fiscal years following the year in which the annual report is submitted and for the tenth fiscal year following such year—

- (1) the effect of various conservation programs on such energy needs;
- (2) the alternate methods of meeting the energy needs identified in such annual report and of—
 - (A) the relative capital and other economic costs of each such method;
 - (B) the relative environmental, national security, and balance-of-trade risks of each such method;
 - (C) the other relevant advantages and disadvantages of each such method; and
- (3) recommendations for the best method or methods of meeting the energy needs identified in

such annual report and for legislation needed to meet those needs.

Notwithstanding the termination of this chapter, the President shall designate an appropriate Federal agency to conduct the analysis specified in subsection (b)(6).

(Pub. L. 93–275, §15, May 7, 1974, 88 Stat. 108; Pub. L. 94–385, title I, §109(a)–(c), Aug. 14, 1976, 90 Stat. 1130.)

EDITORIAL NOTES

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsecs. (a) and (c), see Effective and Termination Dates note set out under section 761 of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–385, §109(a), redesignated subsec. (b) as (a) and struck out former subsec. (a) relating to submission of a report by the President to Congress with recommendations for disposition, continuation, or reorganization of Energy Administration and organization of the Federal Government for the management of energy and natural resources policies and programs.

Subsec. (b). Pub. L. 94–385, §109(a)(2), (b), redesignated subsec. (c) as (b) and added par. (6) and provisions requiring Administrator to include in report a discussion on benefits of employing a utility and Btu tax as a means for obtaining national energy goals. Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 94–385, §109(a)(2), (c), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and added new subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§775. Sex discrimination; enforcement; other legal remedies

No individual shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination.

(Pub. L. 93–275, §16, May 7, 1974, 88 Stat. 109.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

§776. Repealed. Pub. L. 105–28, §2(b)(2), July 18, 1997, 111 Stat. 245

Section, Pub. L. 93–275, §17, May 7, 1974, 88 Stat. 110, related to composition and manner of meeting of

boards, task forces, commissions, committees, or similar groups not composed entirely of full-time Government employees, established or utilized by Administrator.

§777. Economic analysis of proposed actions

(a) Scope of analysis

In carrying out the provisions of this chapter, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on—

- (1) the fiscal integrity of State and local governments;
- (2) vital industrial sectors of the economy;
- (3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;
- (4) the economic vitality of regional, State, and local areas;
- (5) the availability and price of consumer goods and services;
- (6) the gross national product;
- (7) low and middle income families as defined by the Bureau of Labor Statistics;
- (8) competition in all sectors of industry; and
- (9) small business.

(b) Conservation measures

The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

(c) Explicit analyses; interagency cooperation; other review and cause of action provisions

Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: *Provided*, That the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

(d) Monitoring economic impact of energy actions; report and recommendations to Congress

The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with an annual report on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such report shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

(e) Industrial or regional discrimination; equal bearing of costs and burdens of meeting energy shortages

The Administrator shall formulate and implement regulatory and other actions in a manner (1) which does not unduly discriminate against any industry or any region of the United States; and (2) designed to insure that, to the greatest extent possible, the costs and burdens of meeting energy shortages shall be borne equally by every sector and segment of the country and of the economy.

(Pub. L. 93-275, §18, May 7, 1974, 88 Stat. 110; Pub. L. 94-385, title I, §109(d), Aug. 14, 1976, 90 Stat. 1130.)

EDITORIAL NOTES

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-385 substituted "an annual report" for "a report every six months".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to providing an annual report to Congress on the impact of the energy shortage and the Administrator's actions on employment and the economy, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 84 of House Document No. 103-7.

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§778. Management oversight review; report to Administrator

The Administrator may, for a period not to exceed thirty days in any one calendar year, provide for the exercise or performance of a management oversight review with respect to the conduct of any Federal or State (with consent of the Governor) energy program conducted pursuant to this chapter. Such review may be conducted by contract or by any Federal department or agency. A written report shall be submitted to the Administrator concerning the findings of the review.

(Pub. L. 93-275, §19, May 7, 1974, 88 Stat. 111.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§779. Coordination with, and technical assistance to, State governments

(a) Report to Congress and State governments: organization of Administration; report to the public, Congress and State governments; scope of nontechnical report; comments of State governments respecting rules, regulations, or policies and programs; energy shortages, status reports; information clearinghouse

The Administrator shall—

(1) coordinate Federal energy programs and policies with such programs and policies of State governments by providing—

(A) within sixty days of the effective date of this chapter, the Congress and State governments with a report on the manner in which he has organized the Administration based upon the functions delegated by the President or assigned to the Administrator by this chapter or under the authority of other Acts; and

(B) within one hundred and twenty days of the effective date of this chapter, the public, State governments, and all Members of the Congress with a report in nontechnical language which—

(i) describes the functions performed by the Administration;

(ii) sets forth in detail the organization of the Administration, the location of its offices (including regional, State, and local offices), the names and phone numbers of Administration officials, and other appropriate information concerning the operation of the Administration;

(iii) delineates the role that State, and Federal governments will or may perform in achieving the purposes of this chapter; and

(iv) provides the public with a clear understanding of their duties and obligations, rights, and responsibilities under any of the programs or functions of the Administration;

(2) before promulgating any rules, regulations, or policies, and before establishing any programs under the authority of this chapter, provide, where practicable, a reasonable period in which State governments may provide written comments if such rules, regulations, policies, or programs substantially affect the authority or responsibility of such State governments;

(3) provide, in accordance with the provisions of this chapter, upon request, to State governments all relevant information he possesses concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, within the distribution area serving that particular State government; and

(4) provide for a central clearinghouse for Federal agencies and State governments seeking energy information and assistance from the Federal Government.

(b) Technical assistance; task forces; conferences: expenses of participation; model legislation; uniform criteria, procedures, and forms for grant or contract applications for State government energy proposals

Pursuant to his responsibility under this section, the Administrator shall—

(1) provide technical assistance—including advice and consultation relating to State programs, and, where necessary, the use of task forces of public officials and private persons assigned to work with State governments—to assist State governments in dealing with energy problems and shortages and their impact and in the development of plans, programs, and policies to meet the problems and shortages so identified;

(2) convene conferences of State and Federal officials, and such other persons as the Administrator designates, to promote the purposes of this chapter, and the Administrator is authorized to pay reasonable expenses incurred in the participation of individuals in such conferences;

(3) draft and make available to State governments model legislation with respect to State energy programs and policies; and

(4) promote the promulgation of uniform criteria, procedures, and forms for grant or contract applications for energy proposals submitted by State governments.

(Pub. L. 93–275, §20, May 7, 1974, 88 Stat. 111.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§780. Office of Private Grievances and Redress

(a) Establishment; director; statement of purpose

The Administrator shall establish and maintain an Office of Private Grievances and Redress, headed by a director, to receive and evaluate petitions filed in accordance with subsection (b) of this section, and to make recommendations to the Administrator for appropriate action.

(b) Petition for special redress, relief, or other extraordinary assistance; nature of remedy

Any person, adversely affected by any order, rule, or regulation issued by the Administrator in carrying out the functions assigned to him under this chapter, may petition the Administrator for special redress, relief, or other extraordinary assistance, apart from, or in addition to, any right or privilege to seek redress of grievances provided in section 766 of this title.

(c) Statement for annual report; recommendations to Congress

The Administrator shall submit to the Secretary for inclusion in the annual report required by section 7267 of title 42 a statement on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him. (Pub. L. 93-275, §21, May 7, 1974, 88 Stat. 112; Pub. L. 96-470, title II, §203(h), Oct. 19, 1980, 94 Stat. 2244.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-470 substituted "submit to the Secretary for inclusion in the annual report required by section 7267 of title 42 a statement" for "report quarterly to the Congress".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§781. Comprehensive energy plan

(a) Report to President and Congress; analytical justification; scope of analysis

Pursuant and subject to the provisions and procedures set forth in this chapter, the Administrator shall, within six months from May 7, 1974, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this chapter. Such plan shall be accompanied by full analytical justification for the actions proposed therein. Such analysis shall include, but not be limited to—

- (1) estimates of the energy savings of each action and of the program as a whole;
- (2) estimates of any windfall losses and gains to be experienced by corporations, industries, and citizens grouped by socioeconomic class;
- (3) estimates of the impact on supplies and consumption of energy forms consequent to such price changes as are or may be proposed; and
- (4) a description of alternative actions which the Administrator has considered together with a rationale in explanation of the rejection of any such alternatives in preference to the measures actually proposed.

(b) Alterations; analytical justifications

The Administrator may, from time to time, modify or otherwise alter any such plan, except that, upon request of an appropriate committee of the Congress, the Administrator shall supply analytical justifications for any such alterations.

(c) Monitoring activity

The Administrator shall be responsible for monitoring any such plans as are implemented with respect to their effectiveness in achieving the anticipated benefits.

(Pub. L. 93-275, §22, May 7, 1974, 88 Stat. 113.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§782. Petrochemical report to Congress

(a) Scope of report

Within ninety days after he has entered upon the office of Administrator or has been designated by the President to act in such office, the Administrator, or acting Administrator, as the case may be, with the assistance of the Department of Commerce, the Cost of Living Council, and the United States International Trade Commission shall, by written report, inform the Congress as to the—

(1) effect of current petrochemical prices upon the current level of petrochemical exports, and export levels expected for 1975;

(2) effect of current and expected 1975 petrochemical export levels upon domestic petrochemical raw materials and products available to petrochemical producers, converters, and fabricators currently and in 1975;

(3) current contribution of petrochemical imports to domestic supplies and the expected contributions in 1975;

(4) anticipated economic effects of current and expected 1975 levels of domestic supplies of petrochemicals upon domestic producers, converters, and fabricators of petrochemical raw materials and products; and

(5) exact nature, extent, and sources of data and other information available to the Federal Government regarding the matters set forth in paragraphs (1) through (4) of this subsection, including the exact nature, extent, and sources of such data and information utilized in connection with the report required by this subsection.

(b) "Petrochemical" defined

As used in this section, the term "petrochemical" includes organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia.

(Pub. L. 93-275, §23, May 7, 1974, 88 Stat. 113; Pub. L. 93-618, title I, §171(b), Jan. 3, 1975, 88 Stat. 2009.)

EDITORIAL NOTES

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-618 substituted "United States International Trade Commission" for "United States Tariff Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

EXECUTIVE DOCUMENTS

ABOLITION OF COST OF LIVING COUNCIL

Cost of Living Council abolished July 1, 1974, by Ex. Ord. No. 11788, §1, June 18, 1974, 39 FR 22113.

§783. Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds

Within ninety days of the effective date of this chapter, the Administrator of the Federal Energy Administration, in consultation with the Secretary of the Interior and the Secretary of the Army, shall—

(1) transmit to the Congress—

(A) a list of hydroelectric generating facilities and electric power transmission facilities which have been authorized for construction by the Congress and which are not yet completed, and

(B) a list of opportunities to increase the capacity of existing hydroelectric generating facilities, and

(2) provide, for each such facility which is listed—

(A) a construction schedule and cost estimates for an expedited construction program which would make the facility available for service at the earliest practicable date, and

(B) a statement of the accomplishments which could be provided by the expedited completion of each facility and a statement of any funds which have been appropriated but not yet obligated.

(Pub. L. 93-275, §24, May 7, 1974, 88 Stat. 114.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§784. Exports of coal and refined petroleum products

(a) File concerning export transactions, sales, exchanges or shipments: establishment and maintenance; scope of information

The Administrator is authorized and directed to establish and maintain a file which shall contain information concerning every transaction, sale, exchange or shipment involving the export from the United States to a foreign nation of coal, crude oil, residual oil or any refined petroleum product. Information to be included in the file shall be current and shall include, but shall not be limited to, the name of the exporter (including the name or names of the holders of any beneficial interests), the volume and type of product involved in the export transaction, the manner of shipment and identification of the vessel or carrier, the destination, the name of the purchaser if a sale, exchange or other transaction is involved, and a statement of reasons justifying the export.

(b) Information and report to committee of Congress or head of Federal agency from Administrator; exception: disclosure detrimental to national security

Upon request of any committee of Congress or the head of any Federal agency, the Administrator shall promptly provide any information maintained in the file and a report thereon to such committee, or agency head, except where the President finds such disclosure to be detrimental to national security.

(c) Information to Administrator from Federal agency

Notwithstanding any other provision of law, any Federal agency which collects or has information relevant to the functions required by this section shall make such information available to the

Administrator.

(d) Collection of independent information

The Administrator shall not be required to collect independently information described in subsection (a) if he can secure the information described in subsection (a) from other Federal agencies and the information secured from such agencies is available to the Congress pursuant to a request under subsection (b).

(Pub. L. 93–275, §25, May 7, 1974, 88 Stat. 114; Pub. L. 94–385, title I, §111, Aug. 14, 1976, 90 Stat. 1132.)

EDITORIAL NOTES

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–385 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§785. Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity

The Administrator shall conduct a comprehensive review of foreign ownership of, influence on, and control of domestic energy sources and supplies. Such review shall draw upon existing information, where available, and any independent investigation necessary by the Administration. The Administrator shall, on or before the expiration of the one hundred and eighty day period following the effective date of this chapter, report to the Congress in sufficient detail so as to apprise the Congress as to the extent and forms of such foreign ownership of, influence on, and control of domestic energy sources and supplies, and shall thereafter continue to monitor such ownership, influence and control.

(Pub. L. 93–275, §26, May 7, 1974, 88 Stat. 115.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§786. Repealed. Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93–275, §28, May 7, 1974, 88 Stat. 115, provided that upon termination of this chapter, any functions or personnel transferred by this chapter shall revert to the department, agency, or office from which they were transferred.

§787. Project Independence Evaluation System documentation; access to model by Congress and public

The Administrator of the Federal Energy Administration shall—

(1) submit to the Congress, not later than September 1, 1976, full and complete structural and parametric documentation, and not later than January 1, 1977, operating documentation, of the Project Independence Evaluation System computer model;

(2) provide access to such model to representatives of committees of the Congress in an expeditious manner; and

(3) permit the use of such model on the computer system maintained by the Federal Energy Administration by any member of the public upon such reasonable terms and conditions as the Administrator shall, by rule, prescribe. Such rules shall provide that any member of the public who uses such model may be charged a fair and reasonable fee, as determined by the Administrator, for using such model.

(Pub. L. 93-275, §31, as added Pub. L. 94-385, title I, §113, Aug. 14, 1976, 90 Stat. 1132.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§788. Use of commercial standards

(a) General notice of proposed rulemaking

If any proposed rule by the Administrator contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall—

(1) identify, by name, the organization which promulgated such standards; and

(2) state whether or not, in the judgment of the Administrator, such organization complied with the requirements of subsection (b) in the promulgation of such standards.

(b) Promulgation of commercial standards

An organization complies with the requirements of this subsection in promulgating any commercial standards if—

(1) it gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearings or meetings which are open to the public;

(2) the membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;

(3) before promulgating such standards, it makes available to the public any records of proceedings of the organization, and any documents, letters, memorandums, and materials, relating to such standards; and

(4) it has procedures allowing interested persons to—

(A) obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and

(B) obtain a review of the standards (including a review of the basis or adequacy of such standards).

(c) Consultation with Attorney General and Chairman of Federal Trade Commission; impact of rules on competition

The Administrator shall not incorporate within any rule, nor prescribe any rule specifically authorizing or requiring the use of, any commercial standards unless he has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of such standards on competition and neither such individual recommends against such incorporation or use.

(d) Rules relating to Administration procurement activities

The foregoing provisions of this section shall not apply with respect to rules prescribed by the Administrator which relate to the procurement activities of the Administration.

(e) Participation of Administration employees in organizations relating to promulgation of commercial standards

Not later than 90 days after July 21, 1977, the Administrator shall prescribe, by rule, guidelines or criteria which set forth the extent to which, and the terms and conditions under which, employees of the Administration may participate in their official capacity in the activities of any organization (which is not a Federal entity) which relate to the promulgation of commercial standards. Such guidelines and criteria may allow for such participation if it is in the public interest and relates to the purposes of this chapter, but in no event may such employees who are participating in their official capacity be allowed under such guidelines or criteria to vote on any matter relating to commercial standards.

(f) "Commercial standards" defined

As used in this section, the term "commercial standards" means—

- (1) specifications of materials;
- (2) methods of testing;
- (3) criteria for adequate performance or operation;
- (4) model codes;
- (5) classification of components;
- (6) delineation of procedures or definition of terms;
- (7) measurement of quantity or quality for evaluating or referring to materials, products, systems, services, or practices; or
- (8) similar rules, procedures, requirements, or standards;

which are promulgated by any organization which is not a Federal entity. For purposes of the preceding sentence, any revision by any such organization of any such rule, procedure, requirement, or standard shall be considered to be the same as the promulgation of such standard.

(Pub. L. 93–275, §32, as added Pub. L. 95–70, §9, July 21, 1977, 91 Stat. 278.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§789. Repealed. Pub. L. 104–106, div. D, title XLIII, §4304(b)(2), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 93–275, §33, as added Pub. L. 95–70, §10, July 21, 1977, 91 Stat. 279, related to organizational conflicts of interest of persons contracting to perform research, development, or evaluation activities or technical and management support services.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2220 of Title 10, Armed Forces.

SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

§790. Establishment of Office of Energy Information and Analysis

(a) Director; appointment; qualifications

(1) There is established within the Federal Energy Administration an Office of Energy Information and Analysis (hereinafter in this chapter referred to as the "Office") which shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(b) Delegation of authority by Administrator

The Administrator shall delegate (which delegation may be on a nonexclusive basis as the Administrator may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the authority vested in him under section 796 of this title and section 772 of this title and the Director may act in the name of the Administrator under section 797 of this title and section 772 of this title for the purpose of obtaining enforcement of the authorities delegated to him.

(c) "Energy information" defined

As used in this chapter the term "energy information" shall have the meaning described in section 796 of this title.

(Pub. L. 93-275, §51, as added Pub. L. 94-385, title I, §142, Aug. 14, 1976, 90 Stat. 1135.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 94-385, title I, §143, Aug. 14, 1976, 90 Stat. 1140, provided that: "The amendments made by this part C to the Federal Energy Administration Act of 1974 [enacting this subchapter] shall take effect 150 days after the date of enactment of this Act [Aug. 14, 1976], except that section 56(c) of the Federal Energy Administration Act of 1974 (as added by this part) [section 790e(c) of this title] shall take effect on the date of enactment of this Act [Aug. 14, 1976]."

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42.

CONGRESSIONAL FINDINGS AND PURPOSE

Pub. L. 94-385, title I, §141, Aug. 14, 1976, 90 Stat. 1135, provided that:

"(a) The Congress finds that the public interest requires that decisionmaking, with respect to this Nation's energy requirements and the sufficiency and availability of energy resources and supplies, be based on adequate, accurate, comparable, coordinated, and credible energy information.

"(b) The purpose of this title [see Short Title note set out under section 761 of this title] is to establish within the Federal Energy Administration an Office of Energy Information and Analysis and a National Energy Information System to assure the availability of adequate, comparable, accurate, and credible energy information to the Federal Energy Administration, to other Government agencies responsible for energy-related policy decisions, to the Congress, and to the public."

§790a. National Energy Information System; information required to be

maintained

(a) It shall be the duty of the Director to establish a National Energy Information System (hereinafter referred to in this chapter as the "System"), which shall be operated and maintained by the Office. The System shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate to meet adequately the needs of—

- (1) the Federal Energy Administration in carrying out its lawful functions;
- (2) the Congress;
- (3) other officers and employees of the United States in whom have been vested, or to whom have been delegated energy-related policy decisionmaking responsibilities; and
- (4) the States to the extent required by the Natural Gas Act [15 U.S.C. 717 et seq.] and the Federal Power Act [16 U.S.C. 791a et seq.].

(b) At a minimum, the System shall contain such energy information as is necessary to carry out the Administration's statistical and forecasting activities, and shall include, at the earliest date and to the maximum extent practical subject to the resources available and the Director's ordering of those resources to meet the responsibilities of his Office, such energy information as is required to define and permit analysis of—

- (1) the institutional structure of the energy supply system including patterns of ownership and control of mineral fuel and nonmineral energy resources and the production, distribution, and marketing of mineral fuels and electricity;
- (2) the consumption of mineral fuels, nonmineral energy resources, and electricity by such classes, sectors, and regions as may be appropriate for the purposes of this chapter;
- (3) the sensitivity of energy resource reserves, exploration, development, production, transportation, and consumption to economic factors, environmental constraints, technological improvements, and substitutability of alternate energy sources;
- (4) the comparability of energy information and statistics that are supplied by different sources;
- (5) industrial, labor, and regional impacts of changes in patterns of energy supply and consumption;
- (6) international aspects, economic and otherwise, of the evolving energy situation; and
- (7) long-term relationships between energy supply and consumption in the United States and world communities.

(Pub. L. 93–275, §52, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1135; amended Pub. L. 95–91, title VII, §709(a)(3), Aug. 4, 1977, 91 Stat. 608.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(4), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Federal Power Act, referred to in subsec. (a)(4), is act June 10, 1920, ch. 285, 41 Stat. 1063, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95–91 added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under

section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790b. Administrative provisions

(a) Compensation of Director

The Director of the Office shall receive compensation at the rate now or hereafter prescribed for offices and positions at level IV of the Executive Schedule as specified in section 5315 of title 5.

(b) Authorization of Director to appoint and fix compensation of employees

To carry out the functions of the Office, the Director, on behalf of the Administrator, is authorized to appoint and fix the compensation of such professionally qualified employees as he deems necessary, including up to ten of the employees in grade GS-16, GS-17, or GS-18 authorized by section 766 of this title.

(c) Delegation of functions by the Director

The functions and powers of the Office shall be vested in or delegated to the Director, who may from time to time, and to the extent permitted by law, consistent with the purposes of this chapter, delegate such of his functions as he deems appropriate. Such delegation may be made, upon request, to any officer or agency of the Federal Government.

(d) Access to Director by Congress; requests for appropriations

(1) The Director shall be available to the Congress to provide testimony on such subjects under his authority and responsibility as the Congress may request, including but not limited to energy information and analyses thereof.

(2) Any request for appropriations for the Federal Energy Administration submitted to the Congress shall identify the portion of such request intended for the support of the Office, and a statement of the differences, if any, between the amounts requested and the Director's assessment of the budgetary needs of the Office.

(Pub. L. 93-275, §53, as added Pub. L. 94-385, title I, §142, Aug. 14, 1976, 90 Stat. 1136.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§790c. Analysis and evaluation of energy information; establishment and maintenance by Director of professional, etc., capability; specific capabilities

(a) The Director shall establish and maintain the scientific, engineering, statistical, or other technical capability to perform analysis of energy information to—

- (1) verify the accuracy of items of energy information submitted to the Director; and
- (2) insure the coordination and comparability of the energy information in possession of the Office and other Federal agencies.

(b) The Director shall establish and maintain the professional and analytic capability to evaluate independently the adequacy and comprehensiveness of the energy information in possession of the Office and other agencies of the Federal Government in relation to the purposes of this chapter and for the performance of the analyses described in section 790a of this title. Such analytic capability shall include—

- (1) expertise in economics, finance, and accounting;
- (2) the capability to evaluate estimates of reserves of mineral fuels and nonmineral energy resources utilizing alternative methodologies;
- (3) the development and evaluation of energy flow and accounting models describing the production, distribution, and consumption of energy by the various sectors of the economy and lines of commerce in the energy industry;
- (4) the development and evaluation of alternative forecasting models describing the short- and long-term relationships between energy supply and consumption and appropriate variables; and
- (5) such other capabilities as the Director deems necessary to achieve the purposes of this chapter.

(Pub. L. 93–275, §54, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1137.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of the Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790d. Repealed. Pub. L. 104–66, title I, §1051(k), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 93–275, §55, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1137; amended Pub. L. 95–91, title VII, §709(a)(4), Aug. 4, 1977, 91 Stat. 608, related to annual performance audit review of Office of Energy Information and Analysis procedures and methodology by Professional Audit Review Team.

§790e. Coordination by Director of energy information gathering activities of Federal agencies

(a) Review

In carrying out the purposes of this chapter the Director shall, as he deems appropriate, review the energy information gathering activities of Federal agencies with a view toward avoiding duplication