

# United States Code

## TITLE 15 CHAPTER 14A § 632

### § 632. Small-business concern

#### (a) Criteria

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

#### (2) Establishment of size standards.—

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

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

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

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

(ii) provides for determining—

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

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

(III) the size of other business concerns on the basis of data over a period of not less

than 3 years; or

**(IV)** other appropriate factors; and

**(iii)** is approved by the Administrator.

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

### **(b) "Agency" defined**

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

### **(c) Qualified employee trust; eligibility for loan guarantee; "qualified employee trust" defined; regulations for treatment of trust as qualified employee trust**

**(1)** For purposes of this chapter, a qualified employee trust shall be eligible for any loan guarantee under section 636 (a) of this title with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

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

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

**(i)** which is maintained by such concern, and

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

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

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

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

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

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

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

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

**(B)** such concern maintains a plan—

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

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

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

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

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

#### **(d) "Qualified Indian tribe" defined**

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

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

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

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

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

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

**(f) “Handicapped individual” defined**

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

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

(2) who is a service-disabled veteran.

**(g) “Energy measures” defined**

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

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

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

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

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

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

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

**(h) "Credit elsewhere" defined**

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

**(i) "Homeowners" defined**

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

**(j) "Small agricultural cooperative" defined**

For the purposes of section 636 (b)(2) of this title, the term "small agricultural cooperative" means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

**(k) "Disaster" defined**

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

### **(l) "Computer crime" defined**

For purposes of this chapter—

**(1)** <sup>[1]</sup> the term "computer crime" means—

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

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

### **(m) "Simplified acquisition threshold" defined**

For purposes of this chapter, the term "simplified acquisition threshold" has the meaning given such term in section 403 (11) of title 41.

### **(n) "Small business concern owned and controlled by women" defined**

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

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

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

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

In this chapter:

#### **(1) Bundled contract**

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

#### **(2) Bundling of contract requirements**

The term "bundling of contract requirements" means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely

to be unsuitable for award to a small-business concern due to—

- (A) the diversity, size, or specialized nature of the elements of the performance specified;
- (B) the aggregate dollar value of the anticipated award;
- (C) the geographical dispersion of the contract performance sites; or
- (D) any combination of the factors described in subparagraphs (A), (B), and (C).

### **(3) Separate smaller contract**

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

## **(p) Definitions relating to HUBZones**

In this chapter:

### **(1) Historically underutilized business zone**

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

- (A) qualified census tracts;
- (B) qualified nonmetropolitan counties;
- (C) lands within the external boundaries of an Indian reservation; or
- (D) redesignated areas.

### **(2) HUBZone**

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

### **(3) HUBZone small business concern**

The term “HUBZone small business concern” means—

- (A) a small business concern that is owned and controlled by one or more persons, each of whom is a United States citizen;
- (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; or

(D) a small business concern that is—

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

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

#### **(4) Qualified areas**

##### **(A) Qualified census tract**

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

##### **(B) Qualified nonmetropolitan county**

The term “qualified nonmetropolitan county” means any county—

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

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(II) the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

##### **(C) Redesignated area**

The term “redesignated area” means any census tract that ceases to be qualified under

subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a "redesignated area" only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified.

## **(5) Qualified HUBZone small business concern**

### **(A) In general**

A HUBZone small business concern is "qualified", if—

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

**(I)** it is a HUBZone small business concern—

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

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

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

**(III)** with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that—

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

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

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

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

(I) successfully challenged by an interested party; or

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

**(B) Change in percentages**

The Administrator may utilize a percentage other than the percentage specified in item (aa) or (bb) of subparagraph (A)(i)(III), if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category.

**(C) Construction and other contracts**

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

**(D) List of qualified small business concerns**

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

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

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

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

**(6) Native American small business concerns**

**(A) Alaska Native Corporation**

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

**(B) Alaska Native Village**

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

**(C) Indian reservation**

The term “Indian reservation”—

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

**(I)** any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on December 21, 2000, unless that tribe is recognized after December 21, 2000, by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

**(II)** lands taken into trust or acquired by an Indian tribe after December 21, 2000, if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on December 21, 2000; and

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

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

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

#### **(7) Agricultural commodity**

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

#### **(q) Definitions relating to veterans**

In this chapter, the following definitions apply:

##### **(1) Service-disabled veteran**

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

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

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

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

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

disability, the spouse or permanent caregiver of such veteran.

**(3) Small business concern owned and controlled by veterans**

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

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

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

**(4) Veteran**

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