
15 U.S. Code § 632

Definitions

(a) Small business concerns

(1) In general

For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, 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.

(2) Establishment of size standards

(A) In general

In addition to the criteria specified in paragraph (1) and subject to the requirements specified under subparagraph (C), 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 (including the Administration when acting pursuant to subparagraph (A)) 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 24 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 5 years;

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

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) Variation by industry and consideration of other factors

When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the

differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

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

(A) Determination required

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

(B) Action required

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

- (i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or
- (ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) Qualified areas

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

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

(5) Alternative size standard

(A) In general

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

(B) Interim rule

Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 636(a) of this title or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

- (i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and
- (ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) Proposed rulemaking

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

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

- (B) an analysis of the competitive environment for that industry;
- (C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and
- (D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) Common size standards

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

(8) Number of size standards

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

(9) Petitions for reconsideration of size standards

(A) In general

A person may file a petition for reconsideration with the Office of Hearings and Appeals (as established under section 634(i) of this title) of a size standard revised, modified, or established by the Administrator pursuant to this subsection.

(B) Time limit

A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

(C) Process for agency review

The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) Judicial review

The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E) Rules or guidance

The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size standards revised, modified, or established in a Federal Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

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